**KNOW YOUR LEGAL RIGHTS**

**Landlord discrimination and refusal to rent to a tenant**

Know Your Legal Rights is a bi-monthly column distributed by the State Bar of Wisconsin. It is written by members of the State Bar of Wisconsin’s Lawyer Referral and Information Service (LRIS), which connects Wisconsinites with lawyers throughout the state. Learn more at [wislaw.org](http://www.wislaw.org/).

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By Attorney Kelly Schwab

It’s a common question from both landlords and tenants alike: Can a landlord refuse to rent to a tenant? The answer is simple, yet complex. Landlords cannot discriminate against tenants (or potential tenants), but discrimination comes in different forms.

The Wisconsin Fair Housing Law protects the rights of individuals, making it unlawful for a landlord to discriminate against a person due to race, color, family status, disability, sex, national origin, religion, marital status, ancestry, source of income, sexual orientation, age, and status as victim of domestic abuse, sexual assault, or stalking.

Some examples of discrimination include, but are not limited to, misrepresenting the availability of a dwelling, applying different lease terms and conditions, providing different rental services, or interfering with an individual’s quiet enjoyment of a dwelling.

**Can a landlord refuse to rent to me?**

There are legal reasons why a landlord may not rent to you. For example, your income may not qualify you to rent the property or the landlord is unable to verify you’re income. You can also be denied the opportunity to rent if you have:

* no rental history or you have poor rental history;
* provided false information on your rental application or you don’t complete the application in its entirety;
* a previous eviction;
* a low credit score; or
* filed bankruptcy.

Believe it or not, but you can be denied if you are a smoker.

**What should the tenant (or potential tenant) do?**

If you feel you have been discriminated against, you may file a complaint with the Wisconsin Department of Workforce Development - Equal Rights Division (ERD), within one year of the incident. A complaint form is available at https://dwd.wisconsin.gov/er/tech/onlinecomplaint.htm.

**Next steps**

The ERD will explore settlement options before taking the case to court. If a settlement cannot be reached, the investigation will begin.

If the investigation finds probable cause, the ERD will file a discrimination charge. Note: either party may decide to take civil action in circuit court.

If there is no civil action, the complaint will be decided by an administrative law judge or the ERD. At that hearing, if no probable cause is found, the ERD will dismiss the case. This may be appealed in writing within 20 days of the determination.

**Compensation for the victim**

Damages that can be sought for discrimination in housing include, but are not limited to, out of pocket losses and interest, attorneys’ fees and costs, compensatory damages for losses and/or injury, punitive damages (if filed in circuit court), and injunctive relief.

Title VIII of the Civil Rights Act of 1968, the U.S. Fair Housing Act, and local ordinances are other laws to consult when considering whether an action by a landlord could be construed as discriminatory.

**Landlords should document their denials**

Some landlords will provide their reason for denial in writing, while others shy away from doing so. Either way, a landlord should memorialize the reason for rejection in writing for their future reference.

If the landlord bases their decision on standard rental criteria, it is best to use that form for documentation, circling the items that were the basis for the denial, and attaching written documentation supporting that decision.

Information relating to when and how the denial was communicated should also be included with this written documentation. The written documentation should be retained for at least three years, as this is the statute of limitations for most fair housing laws.

**Special considerations for landlords**

Any decisions made relating to the denial of tenancy should be decided cautiously, as there can be significant damages caused to the tenant, and in turn significant ramifications caused to the landlord, if an incorrect decision is made.

There are federal, state and local laws that govern these situations, with damages that may apply, if the landlord fails to abide by such.

Landlords should consider:

* whether the parties are a member of a protected class;
* whether the tenant has a need for a special accommodation relating to a disability the tenant may have; and
* decisions made relating to arrest records and/or background checks.

Again, once a decision is made, it should be properly documented by the landlord, based upon a policy developed by the landlord. The policy should elaborate the landlord’s position on providing a written determination to the tenant.

It is imperative that both landlords and tenants are cognizant of the laws pertaining to the refusal of tenancy.

Attorney Kelly J. Schwab, Renning Lewis & Lacy, S.C., Oshkosh, focuses on business, corporate, real estate, landlord/tenant, estate planning, probate and collections. She is a member of the State Bar of Wisconsin Lawyer Referral and Information Service, which connects Wisconsin residents with lawyers throughout the state. Learn more at [wislaw.org](http://www.wislaw.org/).