

LANDLORD LOSES SUPREME COURT BATTLE OVER REJECTING TENANT

By Judith I. Johannsen

Rules - they're inescapable and everywhere we turn. There are driving rules, condo rules and school rules. Games have rules (and referees), parents have rules, and there are even rules for eating, which actually may be just good manners (and a subsection of parents rules), but they are rules nonetheless.

Landlords have rules to follow, too – there are landlord and tenant laws, and then there are federal and state fair housing laws. Federal fair housing laws make it illegal to refuse to rent, or refuse to negotiate for the rental of, or make unavailable or deny a dwelling to any person in a protected class, namely, race, color, religion, sex, familial status or national origin.

Connecticut's fair housing laws mirror the federal laws, but also include additional protected classes, one of which is *lawful source of income*. The purpose of including *lawful source of income* in CT's fair housing laws was to make it illegal for landlords to deny rental opportunities to people whose source of income included federal or state housing assistance (i.e., Section 8 vouchers).

The Section 8 program is a federally operated rent supplement program under HUD and administered locally by municipal housing authorities and is designed to help qualified low and very low income families obtain decent places to live. The program allows tenants to rent private units by paying approximately 30% of their monthly adjusted income, with the local housing authority paying the remainder of the rent directly to the landlord.

While the end result of including *lawful source of income* as a protected class is that a property owner cannot discriminate in the rental of a dwelling to a tenant because that tenant is a Section 8 voucher holder, a landlord can refuse to rent to a tenant on the basis of insufficient income for that tenant's share of the rental payment.

In 2005, a case involving a landlord who refused to rent to a Section 8 tenant went to trial and what follows is the short version of what happened. A prospective tenant called on an ad to rent a unit for \$825 a month. The office manager confirmed that the unit was available. The prospective tenant filled out an application stating her yearly income as \$21,000 and that she would have a Section 8 voucher, but was unsure how much that assistance would be.

The office manager told the prospective tenant that the landlord required a tenant to earn a minimum of \$40,000 a year and she did not earn enough money to qualify. The telephone conversation ended. The tenant called back to ask again why she did not qualify. The office manager put the tenant on hold and gave the tenant's information to the landlord. The landlord said this prospective tenant did not qualify because she earned insufficient income, and besides, Section 8 required him to modify certain terms of his lease and he wouldn't do it; therefore, he chose not to participate in the Section 8 program claiming it was voluntary.

The prospective tenant believed she had been discriminated against, so she spoke to the director of fair housing for the City of Bridgeport about her rejection by a landlord who said he would not participate in the Section 8 program. The fair housing director confirmed that the landlord's comments and practices were discriminatory, so the tenant filed a complaint with the Commission on Human Rights and Opportunities ("CHRO") against the landlord for discrimination based on lawful source of income.

The trial court decided that insufficient income relates to the tenant being able to afford *its portion* of the rental payment, not the total monthly rental amount. A landlord, in deciding not to rent to a prospective tenant, can look to a tenant's ability to meet its personal rental obligations and the obligations that go along with a tenancy (electricity, cable, telephone, etc.) because the statute does not rule out decisions based on lack of income – it disallows rejections based on the fact that the income comes from public housing assistance, a government benefit, which is a lawful source of income.

The trial court held in favor of the tenant and awarded the tenant \$4,793 and \$6,000 to the state. In January 2008, CT's Supreme Court affirmed the trial court's holding, but remanded the case to discuss awarding attorney's fees.

So, just as rules of the road require drivers to stop at a red light, football rules prohibit roughing the kicker, and table manners require elbows off the table, landlords cannot refuse to rent a dwelling to a prospective tenant because his or her lawful source of income is through the Section 8 rental assistance program.

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