

## Choosing a Tenant

Tenant selection is probably the most important thing that rental property owners do. Even if you have just one rental unit, Massachusetts laws stipulates that you have the same responsibilities as someone who owns hundreds of units. It also says that you are subject to the same penalties if you fail to comply with state regulations. Getting rid of a bad tenant can be very difficult and very costly. A few simple steps can save you untold time and expenses.

The first thing to remember is that being a landlord is a business. Choosing someone as a friend is a personal decision, based on how much you like that individual. Choosing a tenant is a business decision, based on your determination of whether an applicant meets certain standards, and doing so in a manner that complies with federal and state housing laws. Confusing the two can sometimes be a bad mistake for a rental property owner.

### All good tenants share certain characteristics:

- **They pay the rent fully and on time.** This means two things. First, they should have a regular source of funds that allows them to pay the rent and meet their other expenses. It is illegal to discriminate against an applicant based on the fact that his or her source of funds is Transitional Assistance ("welfare"), the Housing Choice Voucher Program ("Section 8") or the Massachusetts Rental Voucher Program. Second, they, or whoever co-signs with them on your lease or rental agreement, should have a history of prompt and complete rental payment.
- **They keep their house or apartment clean and do not cause damage.** Find this out by checking their references before you rent to them.
- **They do not disturb other tenants or neighbors.** Find this out by checking their references. A good tenant is quiet and considerate of the "quiet enjoyment" of others.
- **They do not engage in any illegal activities.** This applies to all members of their household. Although this information is included in the report you obtain from a landlord screening service, you can also request a partial record of an applicant's criminal convictions from the state – their "CORI report." In addition, many landlord associations feature a list of persons recently arrested for drug violations in their newsletters.
- **They abide by the terms of the tenancy.**

If your choice is based on the above criteria, you should be able to find the right tenant. Never make the mistake of assuming that because you and an applicant share the same friends, or because you both come from a similar background, that this individual shares your values. This assumption can lead you to a disastrous tenancy and may well place you in violation of the Fair Housing Laws.

The Fair Housing Laws. There are a number of fair housing laws, both federal and state, that apply to tenant selection in Massachusetts. The "protected categories" against which it is illegal to discriminate include: race, color, national origin, sex, disability, familial status, ancestry, age, marital status, the presence of children in the household, veteran status, sexual preference, and whether someone's income comes from public assistance or that individual is on a housing subsidy program. Placing a discriminatory ad or even inquiring into someone's status can also be a violation of the fair housing laws.

Except for discrimination based on race (for which there are no exceptions), there are certain exemptions from the fair housing laws that may apply to owners of single-family or two-family dwellings in some instances. Owners of two- or three-family homes in which someone resides whose well-being might be adversely affected by the presence of children because of age or ill health are exempted from the Massachusetts Fair Housing Laws that apply to tenants with children. It is worth noting that the Massachusetts Lead Paint Laws otherwise prohibit refusal to rent to a family with children because of the presence of lead paint.

It is important to remember that the Fair Housing Laws do not require you to rent to someone just because he or she is a member of a protected category. The laws simply state that you cannot discriminate against that person because he or she is a member of that category. Since none of these categories have anything to do with whether someone will be a good tenant, all you need to do to comply is to treat everyone fairly and uniformly and choose your tenant based good business practice. For a more complete explanation of these regulations, see the Resource entitled Fair Housing Laws.

#### **Here are some tips that may help you find the right tenant.**

- **Let People Know It's Available.** Start by listing your unit on UMOCH.org. Besides listing it with us, go ahead and spend the money to place an ad in local newspapers. Put up flyers at local business establishments (after securing their permission). Schools, churches, and housing agencies may also provide free listings of available apartments. Be cautious about using Craig's List or other such websites where postings are not vetted before submissions.
- **Use a Written Rental Application.** (See UMOCH Sample Forms) Be sure that everyone who applies for your apartment completes an application form that lists every address where they have lived, the dates they were there, and their present and former landlords' names, addresses, and phone numbers. It must also include a signed release giving you permission to check references. Let your applicants know that any misrepresentation on the application will automatically disqualify them from being a potential tenant. Be sure that applicants list everyone who will be living in the apartment. Note that the State Sanitary Code sets standards for the maximum number of people who can live in an apartment of a particular size. Your Town may also have By Laws that limit the number of people able to rent your unit.
- **Check References.** Talk to every landlord that the applicant has rented from – not just the most recent. Unfortunately, landlords will sometimes lie and give a favorable review just to get rid of a bad tenant. Previous landlords are more likely to speak honestly about their experiences.
- **Make sure that you are talking to a landlord when you check references.** Tenants who know that their current or previous landlords will give them an unfavorable reference will sometimes give you the name of a friend or relative who will pretend to be a former landlord when you call. Remember that it is not your responsibility to prove that someone will be a bad tenant; it is your applicant's job to supply you with the information necessary for you to determine that he or she will be a good tenant.

- **Make the criteria listed above into “objective” questions that the former landlord can comfortably and clearly answer.** “Did the tenant always pay the rent fully and on time?” “Was the rent ever late?” “Were there ever any complaints about noise?” “Did the police ever have to be called?” “Was there any damage found when the tenant moved out of your apartment, and if so, how much?” “Would you rent to that tenant again?” Landlords are almost always comfortable giving answers to strictly factual questions about the behavior of their former tenants.
- **Look for gaps in the applicant’s rental history or for a pattern of many tenancies of short duration.**
- **Run a Credit Check.** Once you have determined the one or two top candidates by thoroughly checking their references, it’s time to run a credit check. There are both local and internet-based landlord reporting companies that, for a modest fee, will provide landlords with a profile on prospective tenants that includes their credit reports, whether they have been evicted and whether they have been arrested for drugs. They may even be able to access data from other regions if a potential tenant has recently moved to this area. You must obtain a signed release from prospective tenants in order to be able to run a credit check on them, and you must properly notify individuals that you reject on the basis of their credit reports. Running a credit check should never take the place of a thorough review of the applicant’s references, but it can provide you with information that may not be otherwise available.

**Make the Decision.** Now you have the information you need to choose the right tenant. Remember that it’s a business decision. If you make the decision fairly and even-handedly, based on sound business principles, you will not only satisfy the law – you should also have a tenant you can count on.

**Using a Property Manager:** Some landlords prefer to pay a property manager to perform tenant screening and other management tasks. If you are considering hiring a property manager, first check with your fellow rental property owners to be sure that he or she is someone who will use proper care during the selection process.

**One last and important point:** When you have identified a tenant, be sure that you both sign a lease or rental agreement that clearly spells out the terms of the tenancy. Tenancies based on verbal agreements almost always result in trouble for one party or the other.