

How To Properly Reject An Applicant

If you screen your prospective tenants carefully, you will need to reject many of them. The key is to do it right, incurring as little ire as possible and without tripping over the Fair Credit Reporting Act and your local jurisdiction's anti-discrimination laws.

The best way to reject an applicant is to say so, directly, at the point at which the decision to reject is made. Mealy-mouthed statements neither insulates you from any liability, nor do they ease the disappointment the prospective applicant might feel. They only lead to argument and hard feelings. But that is not all there is to it. Beyond letting the prospective tenant know, unequivocally, that he cannot have the unit, you must, under the law, let him know certain other things. This article will give you a thumbnail sketch of what you must and should say and how to say it, as well as to provide a form (find it here) you can use if you do not want to draft the rejection letter from scratch.

In some instances, the information on which the adverse action is based need not have come from the credit report. An adverse action is defined in the FCRA as an outright denial, or a demand for more security, or any other increased burden to the prospect, in order to be approved. An example of this last might be the demand for an increased security deposit, or prepayment of several months rent, to compensate for greater perceived risk from a tenant who has undergone an eviction.

The exact course of action the landlord must take depends on the source of the information that leads to the adverse action. There are three possible sources of such information:

1. Credit reporting agencies,
2. Third parties which are not credit reporting agencies, and
3. Internal records or records of affiliates.

CREDIT REPORTING AGENCIES

If the landlord takes adverse action in response to information in a credit report, then 15 USC 1681m(a) specifies:

If any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person shall;

1. Provide oral, written, or electronic notice of the adverse action to the consumer,
2. Provide to the consumer orally, in writing, or electronically
 - A. The name, address, and telephone number of the consumer reporting agency (including a toll-free telephone number established by the agency if the agency complies and maintains files on consumers on a nationwide basis) that furnished the report to the person; and
 - B. A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
3. Provide to the consumer an oral, written, or electronic notice of the consumer's right
 - A. to obtain, under section 1681j, a free copy of a consumer report on the consumer from the consumer reporting agency referred to in paragraph (2), which notice shall include an indication of the 60 day period under that section for obtaining such a copy; and
 - B. to dispute, under section 1681i, with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency. If the reporting agency does not provide an appropriate notification letter to the applicant, you

may use the following language in any form letter:

"We regret to inform you that your application to rent 1234 Main Street has been declined. This action was in whole or in part the result of information contained in a credit report. This report was supplied by National Tenant Network, 1810 Broad Ripple Ave 2A, Indianapolis, Indiana 46220, 1-800-249-4399. National Tenant Network did not make the decision to take this adverse action and is unable to provide the specific reasons why the adverse action was taken. You have a right to obtain a free copy of a report by making a written request on National Tenant Network within 60 days of your receipt of this letter. You also have a right to dispute with National Tenant Network the accuracy or completeness of any consumer report furnished by them."

Despite what the federal code says, the landlord should make the disclosure in writing, in hard copy, never orally or electronically alone. Nothing can substantiate compliance more effectively than a hard copy of a letter with the notation "mailed 4/29/00." The landlord should do this disclosure whether or not he has discussed the adverse action and the contents of the report informally with the applicant.

Third parties which are not credit reporting agencies

If the information is supplied by a third party, not a credit reporting agency, then 15 USC Sec. 1681m(b), quoted here in relevant part, applies. The landlord's duties differ depending on whether the information is received from an independent source or from an entity affiliated by ownership or common corporate control. In the event the information is received from an independent third party, then the following language from the cited section applies:

"Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer."

In the event the information is received from a third party which is affiliated by ownership or common corporate control, then the obligations differ depending on the nature of the information. If the information is based solely upon the business experience of the applicant and the affiliate, then the disclosure cited above as to third parties in general suffices. Imagine a situation in which the landlord is the principal shareholder in two corporations, each of which owns an apartment building. The applicant applies for an apartment in the building owned by corporation B. The manager of that building consults the manager of the building owned by corporation A and discovers that the applicant had a poor rent payment history while he was a tenant there some years before. This results in a denial. Because this information is based solely on the business experience of the applicant and corporation A, the disclosure described above is sufficient.

Assume the same situation, but in this case, the manager of building A faxes to the manager of building B a report on references in an application obtained six months before when the applicant applied for an apartment in building A. Based on derogatory information contained in the report, the manager of building B denies the application. In this instance, the applicant is not supplied the disclosure required for information from third parties. However, affiliates may only share third party reports, as opposed to actual business experience, if the possibility of such sharing was disclosed to the applicant AND the applicant was given an opportunity to prohibit the sharing. Because of the difficulty of keeping track of who prohibited sharing and who did not, the sharing of credit reports between affiliates is not recommended as a safety precaution. If, however, the landlord intends to permit it, the following language in the credit application, in addition anything else which has been recommended so far, should suffice:

"I/we, the undersigned (check one) ____authorize [name of landlord] to share the contents of any credit reports or other information, or the reports themselves, which may be obtained in connection with this application with any other person, including any affiliates as that term is used in the Federal Fair Credit Reporting Act."

A landlord who presides over a network of interlocking corporations or partnerships owning multiple buildings would be well advised to obtain a written opinion in this regard from an attorney sophisticated not only in the FCRA, but also state and local privacy laws.

Internal records or records of affiliates

If the information from the affiliate is not based on direct experience, then a third procedure applies. This type of information might include information gleaned from references included in a credit application, or personal knowledge of an employee of the affiliate. In this instance 15 USC 1681m(b)(2)(A) requires that the landlord:

- i. notify the consumer of the action, including a statement that the consumer may obtain the information in accordance with clause (ii), and
- ii. upon a written request from the consumer received within 60 days after transmittal of the notice required by clause (i), disclose to the consumer the nature of the information upon which the action is based by not later than 30 days after receipt of the request."

In this example, and the first example, the form of the notices may be the same, as it is only the time frame which differs. An example of the denial notice might be as follows:

"We regret to inform you that your application to rent 1234 Main Street, Apt. 9, is denied. This action was taken in whole or in part because of information obtained from a third party. You have 60 days to demand in writing a disclosure of the nature of such adverse information.

Send any such demand to the address given above."

It is unlikely that the applicant will respond. The circumstances of rental applicants are such as to make finding another residence more pressing. If the landlord does receive a response from the applicant the landlord is only required to disclose the "nature" of the information relied on, not to specify the information in detail, nor to provide its source. This disclosure, in the letter responding to the applicant's demand in our example above, might be this:

"Adverse history of repayment of debts."

Let us take other examples. Suppose the landlord learned that the applicant had done considerable damage to a previous landlord's property. In that case, the disclosure might be:

"History of damage to other rental properties."

What if a personal reference stated that the applicant was noted for late night disturbances? Then the response would be:

"Adverse references regarding relations with neighbors."

This is as far as the landlord is obligated to go and should go no farther particularly in the case of information obtained from independent third parties. The landlord should not get between the applicant and one of his putative friends or a former landlord or employer. It is not recommended that you orally inform

the applicant of his denial, in person or over the phone. Write a letter (see below). If you do talk to the applicant, inform him that his "app is being processed" or that he will "be receiving a letter in the mail."

TIP: Keep the application, credit report, notes, and a copy of the denial letter your files. Find out more about this same subject by Landlord.com.

See our other articles in the tenant screening section on developing and applying qualification standards for applicants.

The landlord may always rely on internal information, not obtained from credit reporters or third parties, without making any disclosures whatsoever, although, as part of the application process, a letter advising the applicant of any adverse action is advised, this is not because of anything in the FCRA.

This article is intended to supply only the requirements common to all landlords in the United States. Individual states also have privacy laws, and some states and localities have laws and ordinances governing certain aspects of applications and rejections, such as holding deposits, charges for credit reports, and so on. The landlord should consult his local apartment or rental property owner's association or a real estate attorney for insight as to these any of these requirements.

SELECTING AMONG SEVERAL APPLICANTS

How does a landlord choose between several applications received within a short time frame, all of which satisfy his minimum requirements for qualification for the rental unit, and what does the landlord tell the applicants when he has made his choice? Four or five written applications with checks for holding deposits and credit check fees may have been received during a Sunday afternoon of showing, for example, and now the landlord must choose among them on Monday morning. The choice must be made in such a way as to avoid both the actuality and appearance of fair housing law violations. We can only speak in general terms here, you will need to check with your local enforcement agency to ensure you are in compliance with regulations they have in force, but the following should be of value as a general approach.

Keep in mind what fair housing laws are designed to do. They are designed to prevent you from discriminating against applicants on prohibited grounds.

These are usually race, sex, handicap, etc. You, as a landlord are not in the business of providing preferences for such protected classes, nor should you try to do so even if you want to. Your task is not to allow their status to enter into your decision making process.

There are two distinct schools of thought on how to do this. One says that you should take the applications on a first come, first served basis, so that the first in time gets the unit if his application checks out in the screening process, even if there is a better qualified applicant who came in later. The second says that you should sort the applicants by the strength of the information on the application that is important to you, and select the first one whose information is verified.

Realty professionals tend to favor the first method, for the same reason that human resource managers in big companies like racial quotas and oppose legislation to eliminate them. By using an arbitrary number or event to make the selection for them, they think they can avoid being sued for discrimination. In your case, if a housing investigator comes to see you, you just say, "I didn't decide anything, I just took the first one that came in and qualified." Then you show him the applications and the date and time written on them. In reality, a resourceful housing advocate will find a way to sue you if he wants to anyway, so this is not a route to lawsuit proofing.

There are strong advocates for the second method. They point out, quite rightly, that there is nothing in the fair housing law that precludes you from judging applications on the basis of their quality, as opposed to their rank in time. As John observes, "I think one angle to consider is that many of us are "moms and pops" who live in (or very near) the property and have a more one on one, face to face relationship with our tenants (and neighbors) and can be hurt more easily if we don't look for the best possible tenants."

This is a telling point from the financial point of view alone. A landlord with 3 or 4 units is much more severely injured by a deadbeat than a landlord with 100 or 200.

You could also use either method depending on the situation that confronts you. If all the applications are pretty much the same, so that no one or two stand out, then use the first come, first served method.

The second part of the question is, what to tell the ones who do not get the apartment. This applies to whatever method you choose to select among them.

Obviously, if you check the first applicant, and in the course of doing it, you find his credit report is lousy, you send the appropriate letter. If the second applicant is selected, you are left with three who may well be fully qualified, but who will not get the apartment. It goes without saying that you will have told all the applicants that Sunday that you expect to have several, and that you will select them either on the basis of the strength of their application or first come, first served. Since you have not considered their credit reports nor checked references on them, you do not have a federal fair housing or FCRA issue, except to tell them the basis for your decision in the hope of avoiding a complaint to the local enforcement agency. We would suggest the following, with their deposit check, uncashed, enclosed.

Thank you for applying for the apartment at _____ last Sunday.

As I explained, there were a number of applicants for the unit, and one of those ahead of you qualified for it. Enclosed, uncashed, is your check for a holding deposit. Please be advised that we have run no credit report nor have we contacted any of your references.

Keep it short, friendly, but to the point. This is, after all, a putatively qualified applicant and he may be interested in a future vacancy. Put him on your follow up list and contact him when you have another vacancy coming up. Remember, it is OK to reject a member of a protected class, as long as you are not rejecting them because they are members of a protected class.

All you can really do is to adopt a rational and legal method of discriminating among applicants, apply it, then keep good enough records to show how you did it.

Application Denial Letter

Date: _____

Applicant Name(s): _____

Thank you for applying at (Rental Address) _____:

Regretfully, your application to rent the above described premises was not approved for one or more of the following reasons;

() Incomplete application, inaccurate or false information or unable to verify information provided by the applicant.

() Insufficient income or debt to income ratio to meet qualifying standard.

() Information was received from a person or company other than a consumer reporting agency. Under Section 315(b) of the Fair Credit Reporting Act you have a right to make a written request to us within 60 days of receiving this letter for a disclosure of the nature of this information.

() Adverse history of damage to other rental properties, references regarding relations with neighbors.

() Information was received from (name, address telephone and toll free telephone of provider). (name of provider) did not make the decision to take this adverse action and is unable to provide the specific reasons why the adverse action was taken. You have a right to obtain a free copy of a report by making demand on the provider within 60 days of your receipt of this letter. You also have a right to dispute with the provider the accuracy or completeness of any consumer report furnished by them. You have certain rights under federal law regarding your credit history.

During the sixty day period that starts now you have the right to receive a free copy of your consumer report from the consumer reporting agency marked above. That disclosure can be made orally, in writing, or electronically.

You have a right to dispute the accuracy or completeness of any information contained in your consumer report, as furnished by the consumer reporting agency whose name is checked off above. If you believe your file contains errors, is inaccurate or incomplete, call the consumer reporting agency at their toll free number listed above, or write to them at the address listed.

You may have additional rights under the credit reporting or consumer protection laws of your state. Contact your state or local consumer protection agency or a state Attorney General's office.

Sincerely

Landlord/Agent