

Discrimination when renting

Information for tenants and prospective tenants

Everybody should be given a 'Fair Go' when renting or trying to rent a property. While landlords and agents have the right to choose the most suitable tenant, they are not able to unfairly discriminate against you when you apply for a rental property.

Anti-discrimination laws

The law states that you cannot be discriminated against or harassed because of your:

- race (colour, nationality or descent)
- sex (male or female)
- pregnancy
- marital status (e.g. singles or unmarried mothers)
- disability (physical, intellectual or psychiatric disability)
- homosexuality (both gay and lesbian)
- age (both young or old)
- transgender (transsexual).

It is also against the law to discriminate against you because of the race, sex, pregnancy, marital status, disability, homosexuality, age or transgender of your relatives, friends or associates.

But people sometimes claim "that's discrimination!" without understanding the law. As long as the landlord or agent is not discriminating on one of the listed grounds they may rent to whoever they like. If, for example, they do not want smokers in their premises or tenants with pets, or if they reject your rental application because you have a poor tenancy history or they do not think you can pay the rent, there is no law to stop them from rejecting you as a tenant for that reason.

However, landlords and agents may be liable for discriminatory acts if, for example, the owner instructs an agent not to rent the property to 'foreigners' and the agent carries out those instructions. In that case both the landlord and the agent may be liable. It is no defence for an agent to say she or he was simply carrying out instructions.

Direct and indirect discrimination

Direct discrimination is when a person is treated less favourably than another person because of their race, sex, marital status etc. One example of direct discrimination would be if a landlord refused to rent to you because you have children.

Indirect discrimination is where there is a requirement (a rule, policy, practice or procedure) that is the same for everyone, but which has an unequal or disproportionate effect on particular groups (for example, women, people of certain races, young people). Unless this requirement is 'reasonable having regard to the circumstances of the case' (Anti-Discrimination Act) it is likely to be indirect discrimination.

The following are examples of possible indirect discrimination:

- setting more restrictive standards, such as a higher than necessary income
- requiring all younger tenants to have one of their parents sign the lease as a co-tenant knowing that they do not intend to live in the premises
- having an across the board 'no pets' policy which also excludes the needs of disabled tenants, such as those with a guide dog
- requiring all applicants to have a proven rental history for a minimum number of years, which, for example, could exclude young people trying to rent their first home
- placing unrealistic restrictions on the number of occupants permitted which, for example, could exclude those who are pregnant
- having a complicated and long application form which may, for example, deter recently arrived migrants from applying.

Fair trading laws

Fair trading laws prohibit agents from engaging in conduct that is, in the circumstances, misleading in

connection with the supply of goods and services to a customer.

The following is an example that may be both discrimination and misleading conduct.

An Aboriginal person rings the real estate agent about a rental property. On the phone the agent tells the caller that the property is available. When the Aboriginal person goes to the office to lodge an application, the agent informs them that it is no longer available. Then a non-Aboriginal person asks the same agent and is told that the property is still available.

In an actual case like this, the Administrative Decisions Tribunal ruled that the real estate agent was liable under anti-discrimination law and awarded \$6,000 damages against the agent.

More information

If you believe that you have been discriminated against when applying for a rental property and would like more information, contact the NSW Anti-Discrimination Board on 9268 5555 or 1800 670 812 or visit their website at www.lawlink.nsw.gov.au/adb.

www.fairtrading.nsw.gov.au
Fair Trading enquiries 13 32 20
TTY 1300 723 404
Language assistance 13 14 50

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

© State of New South Wales through NSW Fair Trading
You may freely copy, distribute, display or download this information with some important restrictions. See NSW Fair Trading's copyright policy at www.fairtrading.nsw.gov.au or email publications@services.nsw.gov.au