LEGAL Q & A

Don’t Mess with Pests

written by VARIOUS AUTHORS

When determining who is to blame (and therefore, pay) for a bedbug infestation, save the dispute until after a complete extermination.

Q. I’m dealing with a bedbug infestation in one of my units. Because the bedbug addendum was included in the lease agreement, can I pass the full cost of treatment to the tenants?

A. The answer to your question depends in large part on the underlying cause of the bedbug infestation and the language of the bedbug addendum.

Landlords have a duty under state law to provide a habitable premises, and must pay to exterminate pests, including bedbugs. If bedbugs were present prior to the commencement of the tenancy, the landlord must provide to their tenant a written disclosure about the infestation. When a landlord can show the tenant is the underlying cause of the bedbug infestation, the landlord can pass the cost of treatment and repair of the unit to the tenants. However, if a dispute arises as to who is at fault, the landlord should first treat the unit and deal with the cause at a later time. Delaying treatment of the unit pending an investigation into the cause may subject the landlord to civil liabilities.

The bedbug addendum places a greater degree of responsibility on the part of the tenant to prevent the infestation or spread of bedbugs, which may include vacuuming, frequently washing clothing and bedsheets, and maintaining a clean premises. Some bedbug addendums contain a provision requiring the tenant to reimburse the owner/landlord for expenses incurred as a result of any bedbug infestation caused by the tenant. If a landlord’s expenses for treatment and repair of a unit infested by bedbugs results in litigation, a landlord can sue for breach of contract based on the addendum. However, the greatest hurdle for the landlord will be proving that the tenant was the cause of the bedbug infestation.

If the landlord can show that the tenant is the underlying cause of the bedbug infestation, this may be just cause for eviction on the grounds that the infestation constitutes nuisance under the San Francisco Rent Ordinance.

—Johnathan Madison

Q. A tenant is growing marijuana in his unit. He has converted a large walk-in closet into a “grow room,” fully equipped with special lighting and irrigation. Is this legal?

A. An owner of a rental unit has the right to prohibit smoking and growing marijuana in a lease. Many outdated leases prohibit “smoking” or “smoking tobacco.” To enforce a provision of no smoking and no growing marijuana, the lease needs to expressly say so. If the lease is unclear, you should consult with an attorney.

On the federal level, the use and possession of marijuana is illegal. A conflict exists, because California has given adults the green light to purchase and grow marijuana. California permits up to six marijuana plants within a residential unit and up to 24 plants in San Francisco for medical purposes. Despite this conflict, landlords need to comply with California law.

If your lease does not explicitly prohibit smoking and growing marijuana, the landlord is limited on prohibiting such behavior. However, here are a
few considerations.

Nuisance: Nuisance is defined as substantial damage to the unit (waste) or creating a substantial interference with the comfort, safety, or enjoyment of the landlord or others in the building. Often, marijuana smoked and cultivated permeates and damages the walls, ceilings, and

floors in residential units, and the tenant may be held responsible for such behavior. If other tenants complain about this, this would also be considered a nuisance.

Illegal use: The tenant cannot simply alter a unit without permission if alterations are prohibited under the lease, and a tenant certainly cannot undertake electrical work without permits. Additionally, growing marijuana and selling it is unreasonable and illegal.

Fair housing laws: Keep in mind that fair housing laws impose certain obligations on landlords, including making exceptions in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with disabilities an equal opportunity to use and enjoy a dwelling. Such accommodation may include using or growing marijuana in the rental unit, even though the lease prohibits it.

As a landlord, you have the duty to provide quiet enjoyment for all tenants, including those tenants who are 420 friendly.

—Angela Sandoval

Q. The only applicants I received for a vacant unit are Section 8. How long can I wait for a non-Section-8 tenant before risking a lawsuit?

A. Last year, the answer might have been different, but a recent appellate decision confirms that “Section 8” is a protected category in local housing anti-discrimination law. Today, the answer is, “the longer you wait, the more you expose yourself to liability.” A San Francisco landlord may not reject an otherwise qualified candidate merely because a portion of their rent will be paid by the San Francisco Housing Authority.

California’s Fair Employment and Housing Act makes it unlawful to discriminate on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information. It defines “source of income” to include “lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant,” where “a landlord is not considered a representative of a tenant”. This definition excludes payments by the SFHA on a tenant’s behalf, and nothing in FEHA prevents a landlord from opting out of Section 8.

There are plenty of reasons a landlord might not want to participate. Two-party landlord-tenant contracts are already highly regulated. Section 8 tenancies require landlords to contract with a third party—the local public housing agency (SFHA). The units must be inspected prior to approval. While the landlord receives market rate (up to the HUD voucher standards), a failure to meet federal housing quality standards justifies total rent abatement until the problem is cured. These contracts add an entire body of federal housing regulations on top of the already onerous local ones.

Finding a shortage of available Section 8 housing, however, San Francisco defines source of income discrimination to include the subsidy. In CCSF v. Post (2018) a residential landlord posted housing ads expressly excluding Section 8 candidates. The City sued and sought an injunction, and the landlord appealed. The Court of Appeal found that, while FEHA regulates the above 15 categories and “occupies the field” of regulating housing discrimination encompassed by FEHA, San Francisco’s broader definition of “source of income” wasn’t “encompassed” by FEHA, so FEHA didn’t preempt it.

For now, treat these applicants as you would treat any other protected category (e.g., age, sexual orientation, family status, ancestry). And while San Francisco hasn’t tried to regulate your thoughts yet, any time that you spend denying otherwise qualified candidates (who fall into a protected category) could be evidence of discrimination (even if that wasn’t your intent). Discrimination of otherwise qualified, Section 8 candidates is a violation of San Francisco law, even if it is not a violation of state law.

—Justin A. Goodman

The information contained in this article is general in nature. Consult the advice of an attorney for any specific problem. Johnathan Madison and Angelica A. Sandoval and are with Fried & Williams LLP and can be reached at 510-625-0100. Justin A. Goodman is with Zacks, Freedman & Patterson, P.C. and can be reached at 415-956-8100.