

## Tenants with criminal records

Posted by ft Editorial Staff | Mar 21, 2017



**How often do you order a criminal background report on your prospective tenants?**

- Always. (36%, 22 Votes)
- Never. (36%, 22 Votes)
- Only when something in their rental application raises suspicion.  
(28%, 17 Votes)

Total Voters: **61**

### **Question:**

May a landlord reject a prospective tenant or evict an existing tenant due to the tenant's criminal record?

### **Answer:**

While a landlord may *consider* criminal activity in their screening of tenants, landlords are prohibited from enforcing *blanket bans* against prospective tenants or evicting tenants due to a **criminal record**.

### **Criminal records and housing discrimination**

The **Department of Housing and Urban Development (HUD)** has provided guidance prohibiting landlords from refusing housing to prospective tenants based on criminal records. Though tenants with a criminal history are not a protected class under fair housing laws, criminal record-based housing restrictions **disparately impact** racial minorities — a protected group.

Thus, housing restrictions based on a tenant's criminal history are violations of the California **Fair Employment and Housing Act (FEHA)** and the federal **Fair Housing Act (FHA)**, which separately expose a landlord to civil liability. [Calif. Government Code §12900, et seq.; 42 United States Code §3601, et seq.]

Further, a California Supreme Court decision confirmed landlords cannot refuse to rent to prospective tenants or evict existing tenants they suspect of having gang affiliations or who “appear” to be involved in criminal activity. Such a screening practice encourages arbitrary and unlawful housing discrimination on the basis of race, ethnicity, family composition, gender and appearance.

The only exception to these guidelines occurs when a tenant has a conviction for the *manufacturing or distribution* of controlled substances. Here, a landlord may deny housing based on a conviction for drug manufacturing or distribution — though not based on a conviction for *possession* — without violating fair housing laws. [42 USC §3607(b)(4)]

### **Permitted screening practices**

Landlords may still factor in a prospective tenant's criminal history, but are required to review criminal records on a *case-by-case basis* and apply their screening process to all prospective tenants equally.

To lawfully reject a prospective tenant based on their criminal history, landlords are required to be able to prove their screening policy justifiably serves a substantial **nondiscriminatory interest**, e.g., when a prospective tenant's criminal conviction relates to activity which poses a demonstrable threat to fellow tenants. [24 Code of Federal Regulations §100.500]

The landlord needs to consider:

- the nature and severity of the activity leading to the conviction; and

- the amount of time that has passed since the crime occurred. [**Green Missouri Pacific R.R.** (1975) 523 F.2d 1290]

HUD recommends landlords also consider additional information about a tenant, such as:

- facts and circumstances surrounding the criminal conduct;
- the age of the tenant at the time of the crime;
- the tenant's rental history before and after the conviction; and
- evidence of rehabilitation.

Further, when evaluating the behavior or criminal activity of an existing tenant, landlords may adopt security measures or evict the tenant when the tenant's conduct creates a high level of **foreseeable harm** to others.

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