

Property Management Essentials:

Dealing with Marijuana



Property management usually has more to do with 'grey' areas than it does with black and white. There is no more grey right now than with medical marijuana and outright legalization of marijuana through Amendment 64.

The big issue, of course, is that federal and state laws differ from one another. On the federal level, HUD enforces the federal Fair Housing Act (Amended, Title II of the Americans with Disabilities Act, and § 504 of the Rehabilitation Act of 1973, to be exact). HUD's viewpoint is that marijuana use, even for medical purposes, should not be allowed. HUD is against housing providers granting reasonable accommodation requests related to medical marijuana, even in states like Colorado that have a Constitution that allows it.

So where does this leave the landlord? General consensus is that as long as a landlord has an -enforced- policy in place that they disclose and follow consistently, they probably won't get into trouble for allowing or not allowing marijuana. The most conservative approach adopted by professional property managers is prohibition... marijuana use is prohibited even if the resident possesses a medical marijuana card or makes a reasonable accommodation request. The prohibition policy is legally defensible because marijuana use or possession is a felony under the federal Controlled Substances Act.



But how could a landlord get into trouble? A typical scenario would be someone with a pot card wants to rent from them. The tenant says "this card says I'm disabled, so under the American with Disabilities Act I'm asking for reasonable accommodation from you." This is a fair statement just as if someone in a wheel chair would ask for a wheel chair ramp, or someone with a seeing eye dog asks to bring their dog into a no-pet property. They are asking for the same accommodation. As long as you have a published policy (that you strictly enforce and never waiver on) that says you do not acknowledge the pot card, and do not allow the use of marijuana you're going to be safe. The problem arises when 1)

the applicant was never notified of this policy before their credit was run and/or before they moved in, or 2) the landlord allows tenant A to use marijuana (medical or not), and does not allow tenant B to use it. In this case, they have opened themselves up for a possible discrimination lawsuit.

The best way landlords can protect themselves from this potential outcome is to have their policy included in a published “rental applicant selection criteria” document. When someone fills out an application they need to communicate to the applicant what their selection criteria is for marijuana. Then, when they sign the lease, the landlord should reiterate their policy through a thorough Crime and Drug-Free Addendum which further details their policy on marijuana and helps to further protect against liability. Text such as the following will help the tenant understand your stance:

Not limiting the broadest possible meaning as defined in this Addendum or at law, Criminal Activity also means the manufacture, growth, sale, distribution, storage, use or possession of a controlled substance (as defined under Section 102 of the Controlled Substance Act (21 USC 802) and/or as defined under CRS 12-22-303, and/or as defined under any other law, and also includes the manufacture, sale, distribution, use or possession of marijuana, marijuana concentrate, cocaine, or any other illegal drug, regardless of amount, and regardless of whether or not manufacture, growth, sale, distribution, use or possession of said drug is considered a misdemeanor or felony under state law. NO MARIJUANA PERMITTED. Resident and Landlord agree that any Criminal Activity as defined in this Addendum or at law is an act which endangers the person and willfully and substantially endangers the property of Landlord, co-residents, and/or other Persons.

And most importantly:

VIOLATION OF THE ABOVE PROVISIONS SHALL BE CONSIDERED A MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AGREEMENT AND SUFFICIENT CAUSE FOR IMMEDIATE TERMINATION OF TENANCY.

We are not suggesting that landlords allow or disallow the use of medical marijuana or other consumables, but they do need to have a policy and follow it consistently... as with anything in property management.

Another area where landlords have to be very careful; if allowing growing on-premise, and it turns out that the renters are doing something illegally (or violating some form of code), the landlord might be brought into and legal proceedings, and held equally accountable. If you allow growing, know your stuff and seek legal advice in advance.

For more information on this and other property management topics, please visit <http://echo-summit.com/education>.
Special thanks to Tschetter Hamrick Sulzer for source materials in this article.