

From Apartment Manager, August 2004

Q: We have a company-wide policy of two people per bedroom, with an exception for children under the age of two. So, before I showed the one-bedroom apartment to this woman, I explained that, asked the ages of their two kids, and suggested a two-bedroom apartment would be more appropriate. When she said she was looking for her and her husband as well as her nine-month-old twins, I said we wouldn't rent her a one-bedroom. That would be four people in a one-bedroom. And, I told her, when it comes renewal time next year, she wouldn't qualify, because the kids would then be over two. She left in a huff, saying that was illegal. Now, I suspect, I have more than my unfinished Christmas shopping to worry about. Am I correct?

A: Property management companies—like all businesses—want to reduce all aspects of operating the business to a tidy set of procedures and policies, because it make management easier. Real life, however, doesn't always comply. Occupancy standards, for instance, are tricky and reducing them to a simple sentence ignores the vagaries of

Oregon law defines a bedroom as a habitable room with at least 70 square feet “intended to be used primarily for sleeping purposes” with a fire exit. And federal fair housing law defines a family as “one or more individuals (who have not attained the age of 18 years) being domiciled with... a parent” or a designee of a parent or someone else with legal custody. And HUD has said unofficially—they never seem to say anything official—it generally won't pursue complaints about occupancy standards of two per bedroom.

That all would suggest you're on safe ground. But as I said, real life is more complicated. Two-persons-per-bedroom sounds simple, but what's a bedroom? Is it a space you think is designed for sleeping or is it a room someone else might consider just fine for sleeping? Even the persons is open to interpretation. For instance, you don't count kids under two. And what's a family? Sure, it's a parent with a child, but does it include second cousins, the parent's mother-in-law, or he child's spouse?

It's impossible to cover all these issues in the space of this column and you may not think it necessary, since you didn't ask for all that. I suspect you consider your question more narrow. So let's focus on that.

For good reason, many property managers carve out an exception for very young children. After all, I'm not the only person who once slept in a bureau drawer; it was once a common practice. So insisting that a young baby have half a room of its own doesn't make practical sense. The practicalities go beyond that. If you have a couple living in a one-bedroom apartment, what do you do when she comes to the office to announce, blushing with pleasure, that she's expecting? You want to say, Congratulations. Instead, adhering to company policy, you say, Well that means in nine months you'll have to move, since we don't allow families of three in our one-bedrooms.

Or, tackling your more immediate problem, do you tell someone whose child is approaching two, I'm sorry we can't renew your lease. We only allow families with children under two to live in our one-bedrooms and your child will be older than that if we renew your lease.

So an occupancy rule needs to address not only the number of people, but needs to define what happens when the family composition changes. If you except children under a certain age, it also need to address what happens when the child hits that magic age.

I've faced those problems and settled on rules that work for me. I apply an occupancy standard when a family moves in. I also except children under two. In fact, my standard is more explicit, excepting children under two. So if a mother of quintts wants to move into my one-bedroom, if they're young enough, I allow it. I also allow what I call natural changes in family composition. So if I rent to a couple, and they have a baby, they can stay. If I rent to a couple with a one-year-old, they can stay for as long as they want to; not just until the terrible two's arrive. I have found that the pressure to find larger space means the family will move before long. If I have a larger apartment, of course I offer it. If I don't, they will inevitably move. The point is, I let them determine when.

But you don't have to have that rule. You can insist that once the child hits the magic age, the family must move. You can refuse to renew an annual lease if the child will turn two during the lease term. Whatever the rule, though, you need to understand it. If your company's rule doesn't explain how and when to apply the occupancy standard, you're in an awkward position. So ask whoever is in charge of making those rules. In your case, you'd want to know whether the exception is for a child under two, or for children under two. You'd want to know if it applies at the time of the lease or all through the duration of the lease. It may well be that your responses comply with your company's policy. If so, great.

But one place where you erred was in considering the age of the children after maturity of the lease. You can't say, Well you fit our occupancy standard today but we won't be able to renew your lease in a year, so therefore we won't rent to you today. After all, that means you'd never allow a child under two, or even a pregnant woman, because eventually the child would be over the magic age. I'm not sure that constitutes a fair housing violation, however, since your occupancy standard complies with law. But it does show an inconsistency in applying the policy that is, at the least, unprofessional.

Earlier, I pointed to some complications arising from your simple occupancy standard. Your company has lots of company in stating a simple occupancy standard of two-per-bedroom. That, alone, can get you in trouble with HUD's fair housing investigators. That's because they believe—and I think a careful reading of law supports them—that an occupancy standard has to reflect the specific property. I suppose if you have one complex where each unit came out of the same cookie cutter, a blanket occupancy standard works. But multiple properties with different unit layouts will often lead to different occupancy standards. An occupancy standard for a specific dwelling should be based not only on the number of bedrooms, but on the layout of the place, the square footage of the rooms, and the square footage of the total home. Look carefully at the layout of the apartment before establishing an occupancy standard for it. Beware of blanket, simplistic rules.

My usual reminder: each circumstance is unique, so your case will be different. Before you act, be certain about what you do. Don't rely solely on this general advice; read the law and consult others as appropriate.