Fair Housing Tip of the Month

Tip #10: Fair Housing and the Right to Quiet Enjoyment

“I manage an apartment complex and one of my tenants has a serious mental health disability. I am concerned about her ability to take care of the unit. Sometimes she creates a lot of noise. It is helpful to know what is going on in the tenant’s unit. Is it a problem if I go into the unit once or twice a month to check things out?”

The law says: A landlord may enter the dwelling unit only where (1) there is an emergency; (2) to make necessary or agreed-upon repairs, decorations, alterations or improvements, or to provide agreed upon services; (3) when the tenant has abandoned or surrendered the premises; or (4) pursuant to court order.¹ Landlords and tenants are permitted to agree on additional visits by the landlord. A landlord’s concern for whether a tenant with a disability can properly take care of the unit is not a valid reason for landlord to enter the unit without prearranged consent. In this situation, fair housing laws require that the landlord treat all tenants equally. To enter the unit of a tenant with a disability without a lawful reason, even if just to “check to make sure” that the tenant is taking care of the unit, deprives the tenant of a basic housing right and violates fair housing laws.² Even when a landlord is permitted to enter the premises, the landlord must give reasonable notice to the tenant and must do so during business hours unless a prior, different agreement is reached with the tenant.³ Reasonable notice is generally considered 24 hours.⁴ Notice is not required if the tenant is present and consents to the entry at the time of entry.⁵ However, a landlord may not use a permissive reason to enter for illegal purposes, e.g. a landlord may not feign an emergency or make an unnecessary repair in order to check on the upkeep of the unit.⁶

What to do: Without one of the four permissible reasons identified above, the landlord must receive prior permission from the tenant to enter the tenant’s unit. If the tenant and landlord agree to more frequent visits or contact, it is suggested that the agreement be written down and signed.

Fair Housing: It’s the Law: The laws that apply to any tenant should be applied equally to tenants with disabilities.⁷ You cannot enter the housing unit of a tenant with a disability without a lawful reason which is unrelated to your concerns about the tenant’s disability or behavior. However, you are permitted to make prior arrangements with the tenant to visit the unit.

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¹ Cal. Civ. Code §1954(a)
² Cal. Civ. Code § 1954(c); see also Cal. Gov’t Code §1297 (c)(1)
⁴ Id.
⁵ Cal. Civ. Code §1954 (e)(2)
⁶ Cal. Civ. Code §1954(c)(1)
⁷ 42 U.S.C.A. § 3604

Disclaimer: The Fair Housing Tip of the Month program is for educational purposes only and does not constitute legal advice. If you have a legal question, please contact MHAS or another attorney of your choice.

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