Fair Housing Tip of the Month

Tip #12: Requests for Reasonable Accommodation upon Three-day Notice to Cure

“I operate a large apartment building, and have a tenant about whom many neighbors have complained. Some have threatened to leave the building. They are frustrated because the tenant has a disability that causes him to make a lot of noise. He talks loudly to himself and sometimes yells, disturbing the neighbors. The downstairs neighbors are very frustrated. I gave the tenant a three-day notice to cure this nuisance or vacate the premises. He responded by giving me a letter from his therapist and a request for a reasonable accommodation. What accommodation is possible? Is this reasonable when I may lose my other tenants because of the noise? What about their right to quiet enjoyment of their units? What should I do?”

The law says: Fair housing laws require that housing providers make exceptions to their rules, policies, practices or services when they are both reasonable and necessary to allow a person with a disability to live in, use, and enjoy a dwelling. These exceptions are called “reasonable accommodations.” The law states that a tenant may request an accommodation when necessary to have equal access to housing. Once this request has been made, the landlord must grant the request, unless it is too difficult or expensive (called an “undue burden”) or it would be completely outside the normal course of business (called a “fundamental alteration”). However, a landlord cannot refuse an accommodation merely because the landlord has traditionally done business in a certain manner. Fair housing laws require that changes be made to the landlord’s regular rules if necessary for a tenant with a disability to have equal access to and enjoyment of his unit.

Reasonable accommodation requests must be considered at any time during the tenancy, including during threatened termination of a tenancy.

What to do: Once your tenant has given you a request for a reasonable accommodation in response to your three-day notice, you cannot simply proceed to eviction. You must engage in an interactive negotiation process to determine if there is a reasonable accommodation that will enable the tenant continued access to his housing. Since you run a large apartment building, you might consider providing the tenant the option to move to a different apartment where intrusions from noise he makes will be minimized. If oral noise is a problem, it might be reasonable for you and the tenant to enter into a negotiation for some reasonable modification of the structure, e.g., adding insulation, if the tenant is willing to undertake that expense. See Tip No. 6 on reasonable modifications for more information about this.

Fair Housing: It’s the Law: When a tenant creates a noise or an alleged nuisance, you may not simply give a three-day notice to cure or vacate and proceed to eviction if the tenant provides you with a request for reasonable accommodation. You must engage in an interactive process to see if a reasonable accommodation or reasonable modification can be identified to enable the tenant to maintain his housing.

1 42 U.S.C. § 3604(f)(3)(B)
2 45 C.F.R. § 84.12; Giebeler v. M & B Associates, 343 F.3d 1143, 1148 (9th Cir. 2003); Schwartz v. City of Treasure Island, 544 F.3d 1201, 1220 (11th Cir. 2008). See also 42 U.S.C. § 3604(f)(9)

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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