Fair Housing Tip of the Month

Tip # 4: Competing Requests for Reasonable Accommodation

“Sometimes I have more than one tenant who has a disability and requests to move into the next open first floor unit in order to accommodate their disability. What do I do? In one case, one tenant has varicose veins and it is painful to use stairs. The other has a son who uses a wheelchair and cannot negotiate steps. Who gets priority?”

The law says: Landlords must make reasonable accommodations to tenants with disabilities when the accommodations are necessary to provide equal opportunity to use and enjoy a dwelling, unless granting the request would be impossible or impose an undue burden. “Accommodations” include making exceptions to rules, policies, or services, where treating persons with disabilities exactly the same as others denies them equal opportunities.\(^1\) Where two or more valid requests compete for an accommodation with limited availability, priority may be established by procedures you have adopted to handle such requests, as long as procedures are applied fairly.\(^2\) The law does not prioritize one disability over another, and therefore it is necessary to apply reasonable accommodation policies equally to all requesters. For example, creating a waiting list which gives each tenant’s request a fair opportunity to be granted in the order it was requested is a legal solution.

What to do: First, adopt formal objective procedures for processing accommodation requests to minimize the risk of misunderstandings. Then create a written record to show that requests are processed pursuant to the landlord’s procedure, such as in the order received. Care should be taken to ensure that evaluation of the disability and the reasonableness of the requested accommodation is promptly and properly conducted. Landlords with multiple requests should take steps to ensure that any non-obvious disability (e.g., varicose veins) or request is supported by adequate documentation. This will allow landlords to ensure that they do not grant an accommodation for an unqualified request. Where a landlord has competing yet qualified requests, priority policies must be objective so that the landlord is not required to make subjective decisions between tenants. Here, providing one tenant with the first available unit as a reasonable accommodation would limit granting an accommodation to the second tenant. Considering both requests are reasonable, the landlord should establish a waiting list for the next available, appropriate unit and offer the accommodations based on when the accommodation was requested. All accommodation requests should be evaluated in the same manner.

Fair Housing: It's the Law: To avoid problems when a landlord has multiple accommodation requests, he should establish formal objective procedures for processing accommodation requests to minimize the risk of misunderstandings, and establish a record to show that requests are processed pursuant to these procedures. Landlords must make sure that they comply with their own procedures for evaluation of the disability and the reasonableness of the requested accommodation to ensure fair application and prompt response.

\(^1\) 42 U.S.C. §3604(f)(3)(A) & (B)
\(^2\) See, e.g. 24 C.F.R. § 100.202(c)(1-3).

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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