Fair Housing Tip of the Month

Tip #6: Request for Reasonable Modifications

“I have a tenant who takes medication that makes her sensitive to heat. She has asked that I install an air conditioning system for her apartment. Modifying her apartment to be fully air conditioned is very expensive. This request does not seem reasonable. Can I deny the request?”

The law says: A landlord must permit a tenant with a disability to make necessary changes to her unit that will allow full use and enjoyment. ¹ A change to the physical structure of a building to ensure equal access to housing for a person with a disability is called a reasonable modification.² Similar to reasonable accommodations, a tenant must show a connection between the disability and the requested modification. Generally, the tenant is responsible for the costs of making the modification and for the reasonable costs of restoring the unit to its original or rentable condition.³ A landlord is permitted to hold in an escrow a payment from the tenant based on a reasonable estimate of the cost of restoring the unit to rentable standards.⁴

The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by her. If a modification is made to a common or public area that is normally maintained by the landlord, then the landlord is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by the landlord, then the landlord has no responsibility to maintain the modification.⁵ However, in housing that receives federal financial assistance structural changes needed by an applicant or resident with a disability must be paid for by the landlord unless providing them would be an undue financial and administrative burden, a fundamental alteration of the program, or unless landlord can accommodate the individual’s needs through other means.⁶

What to do: First, a landlord should establish, as with reasonable accommodations, a uniform procedure for responding to reasonable modification requests by tenants. In this case, the tenant is not asking for a reasonable accommodation but rather a modification of the unit. Because there is a connection between the tenant’s disability and the request for a modification, the landlord must permit the modification but the tenant bears the cost of installation. However, if there is a policy prohibiting, for example, window-based air conditioning units the request to place one in the apartment may function both as a request for a reasonable accommodation and a reasonable modification, whereby the landlord allows a window unit as an accommodation and the unit is purchased and maintained by the tenant as a modification. If window units or full scale air conditioning installation are unfeasible, the landlord could alternatively provide a reasonable accommodation by allowing the tenant to move to a unit which is less sunny and cooler.

Fair Housing: It’s the Law: A landlord must permit modifications to units and public spaces which are necessary for a tenant with a disability. In non-federally subsidized housing, the costs of the modification are borne by the tenant but depending on the nature of the modification the costs of maintenance could be borne by the landlord.

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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