Fair Housing Tip of the Month

Tip #8 (revised): Emotional Support Animals

“My tenant of three years was recently reported to me by her neighbor as having a new pet dog. I sent her a letter reminding her that her lease does not allow dogs. She responded with a letter from her doctor saying that she needs the dog to help with her disability. Do I have to let her keep the dog even though this is a pet free residence?”

The law says: You must make reasonable accommodations to tenants with disabilities when such accommodations are necessary to afford them equal opportunity to use and enjoy a dwelling.1 A “no-pet policy” cannot apply against dogs or other animals that are necessary as a reasonable accommodation to support a tenant with a disability.2 The support animal does not need to have any training; rather, the animal only needs to provide emotional support that alleviates one or more of the identified symptoms or effects of a tenant’s disability.3 A note from the tenant’s doctor or other treatment professional must state that at least one aspect of the tenant’s disability will be helped by the possession of the animal.4

If the specific animal (1) poses a direct threat to the health or safety of others or would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation, (2) poses an undue financial or administrative burden, or (3) fundamentally alters the nature of the landlord’s operations, then you may refuse to accept the animal.5 A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal’s actual conduct.6

What to do: First, you should check the treatment professional’s note and see whether it states that the animal will alleviate some aspect of the tenant’s disability.7 If so, then in the case of a dog, you should assess the dog’s conduct and determine whether the dog is unsafe or dangerous to other tenants or the property and cannot be made safe through a reasonable accommodation.8 If the dog is safe and the need supported by the treatment professional, you must allow the dog.

Fair Housing: It’s the Law: You must allow tenants with disabilities to keep a dog or other animal if a treatment professional suggests it, so long as the animal will not cause substantial physical damage or harm to others.

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2 24 C.F.R. § 5.303(a) (2013).
3 U.S. Dep't of Hous. and Urban Dev., Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-funded Programs, http://portal.hud.gov/hudportal/documents/huddoc?id=servanimals_ntfoheo2013-01.pdf (the “HUD Notice” at page 2, 3-4);
6 HUD Notice at page 3.
7 See generally Majors, 652 F.2d 454.
8 HUD Notice at page 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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