Fair Housing Tip of the Month

Tip # 9: Threatened Eviction Due to Tenant’s In-Home Caregiver

“A tenant in my building has recently moved in a ‘caregiver.’ When I spoke with the tenant she stated that she needs 24/7 caregiver care because of her disability. The coming and going of the caregiver throughout the day is annoying to her neighbors. Further, the tenant is the only person on the lease and her unit is a studio intended for one person. I want to evict her because she made these changes after we signed the lease. If she made these changes because of her disability, can I still evict her? What documentation can I demand of her?”

The law says: You are required to provide reasonable accommodations to tenants with disabilities who require caregivers. A caregiver, or a live-in aide, is a person who resides with the tenant and is: (1) essential to the care and well-being of the person; (2) not obligated to support the person; and (3) would not be living in the unit except to provide necessary support services. The tenant must show that the live-in caregiver is necessary to afford him or her equal opportunity to use and enjoy the premises. If, however, the caregiver causes an undue burden or fundamentally alters the nature of the tenancy, such as exceeding the occupancy standard for the unit, then you may refuse to allow the caregiver to live with the tenant.

What to do: Having a live-in caregiver is a form of accommodation that can be reasonable for a person with a disability. A tenant can request this type of accommodation even after a lease has been signed. To determine the reasonableness of the request, you should request proof of (1) the tenant’s disabled status, and (2) that the caregiver is essential to the care and well-being of the disabled tenant. This can be accomplished by requiring the tenant to obtain a note from his or her physician or treatment professional stating that he or she is disabled and needs this accommodation.

You may also require evidence that the caregiver is not obligated to support the tenant. The fact that the tenant’s request for the caretaker occurred after the initial lease is irrelevant because the tenant does not have to disclose to you that she is disabled. You are required to allow the caregiver to live with the tenant unless the caregiver’s actions are causing an undue burden to the point where you cannot provide reasonable accommodations.

Fair Housing: It’s the Law: A tenant with a disability may need an in-home caregiver as a reasonable accommodation to continue her tenancy. Landlords are obligated under fair housing laws to provide this kind of accommodation.

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1 See 24 C.F.R. § 982.316 (2013).

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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