

Landlord Wins in Pooch-Related Eviction of Tenant by CD Publications

Hawaii: A tenant who claimed her Chihuahua dog was “medically necessary to her mental health” fails to prove her claim and is evicted after the court refuses to find a Fair Housing Amendment Act violation.

The tenant leases an apartment from her landlord pursuant to a lease agreement which contained a “no pets” provision. The tenant obtained a dog named “Biker” and the landlord terminated the lease, suing her for possession when she refused to remove the dog from her apartment. The tenant claimed she was entitled to keep the dog because it was an “emotional support animal” used to alleviate her mental illness.

The trial court disagreed and found in favor of the landlord, ruling the tenant could be evicted. The tenant appeals the decision, claiming the trial court erred by failing to find that the landlord violated the federal FHAA by disallowing the emotional-support animal to live in her apartment.

The appellate court affirms the trial court’s decision and agrees the landlord did not violate the FHAA by refusing to permit the tenant to keep the dog in her apartment. The tenant failed to prove the landlord violated the FHAA because she couldn’t prove the dog’s presence was “necessary to afford her an equal opportunity to use and enjoy her dwelling.”

The trial court concluded that the dog may have been “helpful” to her, but it was not a medical necessity “nor reasonably appropriate to create an exception to the no pet” rule set forth in the lease.

The trial court said there are exceptions to the “no pet rule” in cases where a dog is a “seeing eye, signal or service dog.” Biker did not fall into any of these categories. A landlord is required by the FHAA to reasonable accommodate a “handicapped” tenant. The courts use a four-prong test to determine whether a landlord’s actions violate the FHAA.

The tenant has the burden under the test to show that:

1. He or she suffers from a handicap as defined in the FHAA;
2. The landlord knew of the handicap or should reasonably be expected to know of it;
3. Accommodation of the handicap may be necessary to afford the tenant an equal opportunity to use and enjoy the dwelling; and
4. The landlord refused to make such accommodation.

The tenant failed to meet the third prong of the test because she did not show that the requested accommodation – e.g., allowing the dog to stay in the apartment – was necessary to afford her an equal opportunity to use and enjoy the apartment.

A doctor testified at the trial and said the dog was not a “reasonable or medical necessity” and the tenant’s illness was biologically-based and could be treated with medication – with or without the dog.

The appellate court also affirms the lower court’s decision to award the landlord its attorneys’ fees incurred in evicting the tenant.

Lesson: The landlord can evict the tenant because she failed to prove the pet was a medical necessity under the FHAA. Landlords are required to make reasonable

accommodations for handicapped tenants, but the burden is on the tenant to prove the reasonableness of the accommodation and prove it is medically necessary to allow equal use and enjoyment of the rental property.

Kilohana Resident Council, Plaintiff-Appellee, vs. Korena K. Justice, Defendant-Appellant and Conchita C. Somera, Defendant. 2007 Hawaii.

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