

Fair Housing Reasonable Accommodations – How Far Does it Go?
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April 11, 2008 marked the 39th anniversary of the enactment of the federal Fair Housing Act. The Act has gone through some significant changes and has been the subject of important litigation to interpret and enforce the spirit and letter of the law. In 1988 amendments to the Act added handicap and familial status and protected classes. The Act defines “handicap” as:

1. Any physical or mental impairment that substantially limits one or more of a person’s major life activities.
2. A record of having such an impairment; or
3. Being regarded as having such an impairment

The law requires a landlord to make reasonable accommodations in rules, practices and policies when necessary to afford such a personal equal opportunity to use and enjoy a dwelling. Failure to do so constitutes discrimination. The question landlords may have is “What is reasonable accommodation and how far does it go?”

Assume that a renter has a handicap and receives his social security income between the 10th and 14th of each month. Rent is due on the first day of each month under the terms of his written rental agreement.

As a result, the resident wants to pay his rent late and contends that he should not be subject to the late-charge provision of the lease, since this qualifies as a reasonable accommodation. He argues that this is a reasonable accommodation in the rules, practices and policies of the landlord to allow him equal opportunity to use and enjoy the dwelling.

The landlord does not agree. The issue is then whether the Fair Housing Act mandates acceptance of the late rent without late fees agreed to in the contract.

Traditionally, reasonable accommodations have included things such as allowing an assistive animal in a community with a no pet policy; allowing a resident who uses a wheelchair to widen a doorway or make other physical modifications to the apartment; or to provide a parking space closer to the renter’s apartment. All of these accommodations allow the individual to enjoy the dwelling.

Reasonable accommodations have typically not included financial benefits afforded to the handicapped person that management does not afford to other residents. For example, all renters whether handicapped or not, must financially qualify for approval of residency. Additionally, the lease requires a handicapped person to maintain the rental property in a reasonable manner to the same extent as a non-handicapped person, and all renters must act in a way that will not create a health or safety hazard to other residents.

In addressing the issue of whether a handicapped resident is immune from late charges as a reasonable accommodation because he does not receive his Social Security check in time to pay the rent in a timely manner, the answer is most likely no. Anyone's ability to enjoy the use of the premises is contingent upon the compliance with his or her financial obligations under the terms of the lease. The argument that a handicapped resident should receive financial benefit because of a disability is simply not the intent of the law. If that was the case, one could then argue that since a disabled person does not receive sufficient income to pay the rent, a landlord shall charge him or her less than another resident with a similar apartment so the disabled person can have an equal opportunity to use and enjoy a dwelling.

Lastly, the reasonable accommodation must be related to the disability. In the question raised above, failure to pay rent on time is not related to the disability, but to the timing of the receipt of the disabled person's income or the budgeting of the individual. It is not the disability that causes the delivery of the payment on any particular date, but the government agency that chooses when to send it.

Issues of reasonable accommodations are complex and management should carefully consider them with the advice of an attorney. Compliance with the Fair Housing Act is the goal and regardless of the request, you must examine the situation before allowing or disallowing a requested accommodation. It is wise to consult with your attorney even for issues that appear to be simple.

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