

## **Renters with Service Animals – “Dogs and Monkeys and Goats, Oh My!” by Robert L. Cain**

David Valentine needs his goats. He has two, Blessing and D.J. The trouble is that the zoning in Batavia, Ohio prohibits them inside the city limits. So after he got the goats, Batavia bureaucrats said “No way.” Dogs, cats, birds, mice, gerbils, ferrets, hamsters, minks, guinea pigs, fish, turtles, lizards, iguanas, snakes (less than six feet long) and pot-bellied pigs are perfectly okay. After the township too legal action against 13-year-old David’s parents, Mr. and Mrs. Valentine sued.

You see, David Valentine has an attention deficit hyperactivity disorder. David’s parents claimed that the goats should be allowed as a “reasonable accommodation” for David’s handicap.

Federal and State Fair Housing Laws define “handicap” as “a physical or mental impairment that substantially limits one or more of his or her major life activities such as seeing, hearing, walking, speaking, learning, breathing, eating or performing manual tasks.” In 2004, the US Department of Housing and Urban Development (HUD) and the Justice Department explained that “physical or mental impairments include, but are not limited to such diseases as ... emotional illness...” wrote Gary Poliakoff and JoAnn Nesta Burnett in their article “Prescription Pets.”

Poliakoff and Burnett further explain that “many of these conditions are not visible to the average person, but may nonetheless require a service or emotional-support animal.” Since Blessing and D.J., David’s goats, are service animals, the Batavia Ohio Township was required under the Fair Housing Act to make reasonable accommodation for David’s handicap and ignore their zoning codes, said the lawsuit. The judge agreed and approved a settlement that allows David to keep his goats “until he is 18, graduates from high school or no longer needs the goats for his medical therapy.”

As landlords, we are rarely called upon to allow a tenant to keep goats on our rental property, but we are called upon to allow other critters that are considered “assistance” or “companion” animals. HUD says “Assistance animals, often referred to as ‘service animals, support animals or therapy animals’ perform many disability-related functions, including but not limited to guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing minimal protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures or providing emotional support to persons with disabilities who have a disability-related needed for such support”.

### **Which Species?**

Any species of animal can be used as a service or assistance animal. That includes, as listed above, dogs, cats, birds, mice, gerbils, ferrets, hamsters, minks, guinea pigs, fish, turtles, lizards, iguanas, snakes and pot-bellied pigs. But that isn’t all. Monkeys and miniature horses are also used by the disabled.

Most landlords realize that they have to accept seeing-eye and hearing-ear animals. Monkeys and goats are an entirely different situation. As we have seen, goats can provide “emotional support.” But monkeys? They can be used by quadriplegics to fetch and retrieve things. “Typically capuchins, they “perform simple tasks”, such as getting something to eat or drink, retrieving dropped or out of reach items, assisting with audio cassettes, video cassettes, CDs and books, and operating lights,” explains “A Brief Information Resource on Assistance Animals for the Disabled,” published by the National Agricultural Library.

We know the damage undisciplined dogs can do. We can imagine the damage goats can do to a yard, but try to imagine monkeys! Monkeys can open doors, cupboards, closets and all manner of other things. They are very agile, smart and have very nimble fingers. Escaping out of a cage is a piece of cake for them. Make sure the cage is constructed of strong materials – don’t underestimate the strength or the intelligence of a monkey.

Monkeymaddness.com warns that the relatively docile youngster turns from play-aggression to the serious aggression of an adult. Proper management techniques go a long ways in coping. The larger the monkey, generally speaking, the bigger the problem. Yet it is hard to prepare someone for the onslaught of mature aggression in a monkey.

They further warn, “Most monkeys remain mischievous, and are not as trainable as dogs, birds or other animals. At their worst, when capuchin-sized or larger monkeys are loose in the house, they often seek out coveted personal items. The most meaningful objects to a monkey are often forbidden ones. At their worst, growing monkeys may pull down drapes, shred cloth, chew wood, spill drinks, steal food, take possession of articles and refuse to return them, damage house plants, torment other household pets, soil or stain furniture, tip chairs, break knickknacks, ink pens [sic] or dishes, tear books and papers, get into cleaning fluids or baking ingredients, open drawers, cabinets, unlock or open inside and outside house doors, open refrigerators and windows, remove window screens, open baby proof latches and lids, break glass, push large pieces of furniture over, urinated into television sets or other electronic equipment, etc.”

And you know what? If your tenant requests a monkey as an assistance animal, you may have to allow the monkey in your rental property. It’s not quite that simple, but almost. Section 504 of the Rehabilitation act and the Fair Housing Act provide that “A person with a disability is not automatically entitled to have an assistance animal. Reasonable accommodation requires that there is a relationship between the person’s disability and his or her need for the animal.” So, if your pot-smoking tenant decides to stop being a pot-smoking tenant and says he needs an assistance animal to help him cope, that doesn’t mean he can have a monkey. A dog, maybe, but only if your tenant gets a note from his doctor – maybe even from two doctors.

A West Virginia district court in 2001 went so far as to say that it is reasonable, in situations where the disability is not apparent, to insist upon a second concurring opinion

from a qualified physician selected by the housing provider to confirm the need for a service animal.”

Incidentally, Section 504 of the Rehabilitation Act applies only to housing that is in some way “federally subsidized.” That includes, of course, local housing authority housing but it also includes privately owned Section 8 housing.

You do not have to tolerate a misbehaving animal no matter what, though. You can refuse to allow the animal or require the tenant to get rid of the animal under any one of four situations:

1. The animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by a reasonable accommodation. That means that Dog-Fighting Joe, who needs the pit bull so he can relieve stress by entering his “service animal” in dog fights can be both denied the right to have the animal in the rental housing and required to get rid of it after the issue becomes apparent.
2. The animal would cause substantial physical damage to the property of others. So, if Susie’s assistance monkey got out of the apartment, went into Jennifer’s apartment, tore up the drapes, urinated on the TV set, took Jennifer’s daughter’s doll and refused to give it back and went out on the balcony and began throwing things at passersby, you could make Susie get rid of the monkey.
3. The presence of the assistance animal would pose an undue financial and administrative burden to the housing provider. This one is the most difficult to prove. Only if the animal met one of the two previous conditions could an “undue financial burden” be proved.
4. The presence of the assistance animal would fundamentally alter the nature of the provider’s services. Obviously, barking dogs and misbehaving monkeys are not going to be appropriate in an assisted-living home with full-time nursing care.

The problem is we may not require an additional deposit for a service animal. Collecting for damage comes after the damage is done. If the tenant does not pay, we have the option of evicting the tenant. Still, considering the tenant is disabled and possibly living on some kind of public assistance, good luck collecting anything.

The important thing to remember is you can screen disabled applicants the same way you screen non-disabled ones. You can ask previous landlords if the applicant’s service animal was ever a problem. You can ask if the applicant’s unit was left damaged or otherwise inhabitable. You can ask if the tenant paid the rent on time and was a good neighbor. Just because a tenant is disabled does not absolve him or her of the responsibility of being a good citizen.

#### What to Do if a Tenant Asks for an Assistance Animal

If the need is obvious, such as your applicant or tenant is blind, a seeing-eye dog is appropriate and you would probably not need to require any kind of doctor’s approval for the dog. Just have the tenant, or someone who can see to write, fill out a service-animal agreement.

If the need is not obvious, require your tenant or applicant to submit evidence that the service animal is required to alleviate “one or more of the symptoms or effects of that person’s disability.” (Fair Housing Act) Once you are satisfied that the need for the animal is defensible, have your tenant fill out a service-animal agreement.

An assistance animal may have to be trained, but how? The Fair Housing Act says an assistance animal is “any animal that is individually trained to do work or perform tasks for the benefit of a person with a disability.” Here is the problem. There is no objective measure for training. Some animals are professionally trained. Guide dogs are one example. Without professional training, chances are a guide dog would not be of sufficient help to a blind person. But none of the training needs to be done by a third-party professional. If the animal’s owner does it him or herself, then that is considered sufficient. In some cases, no training is required at all. After all, Muffy is just here as a companion animal to make Julie feel all better, all Muffy has to do is be there and make Julie feel all better.

Regardless of the situation, ask what kind of training the animal has. It is perfectly appropriate to ask. Chances are your applicant or tenant will tell you.

The service-animal agreement is important. If you have the signed agreement, your tenant cannot, after the animal bites another tenant or trashes the unit, say, “I didn’t know!”

While virtually all of us have empathy for people with an obvious need for a service animal, we cannot forget our other tenants’ right to quietly enjoy their homes and our right to maintain our properties in good condition. Under no circumstances allow a service animal to be disruptive to or do damage to your rental property and screen disabled applicants as thoroughly as you do non-disabled applicants.

### Service Animal Regulations

- You must, under US and state fair housing laws, permit tenants with disabilities to use a service animal despite “no pet” rules. Service animals are not considered to be pets under the Fair Housing Act. A person with a disability uses a service animal as an auxiliary aid, similar to that of a cane, crutches or wheelchair.
- You may be asked to allow more than one service animal per tenant, and while that is rare, it is allowable under the Fair Housing Act. Dogs are the most common service animals, but other species are used as well – cats, birds and pot-bellied pigs, for example. Service animals may be any breed, size or weight.
- You cannot charge a pet deposit for a service animal. You can, however, charge for damages done by the animal. Everyone, regardless of handicap, can be charged a normal security deposit.

- You can set rules of conduct for the service animal. Regardless of the disability, a tenant with a service animal is responsible for the animal's care. The tenant should observe leash laws, properly dispose of animal wastes, ensure the animal behaves well around other tenants and does not break any tenancy rules, such as those concerning noise.
- You may require that the service animal be licensed.
- You may not require that the service animal be visibly identified. No special collar or harness is needed. Nor may you require that the animal have any documentation, such as a license, training certification or identification papers.
- Never mention the tenant's disability who has the service animal. If you are asked by another tenant why the disabled tenant is allowed the animal in the face of a "no pets" policy, simply reply that you are complying with the fair housing law.

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