

Property Owner Loses \$63,000 After Bout with Litigious Tenant Applicant by Gideon Kramer

A San Francisco rental property owner recounts a painful, costly experience that followed her cancellation of a lease after discovering that the new tenant had lied on his application.

Paragraph 31 of her Lease Agreement states: “... *Application Information: Any misrepresentation of any facts material to landlord’s decision whether to rent the premises to tenant... shall be considered a material breach of this agreement and shall subject tenant ... to eviction.*”

The common-sense interpretation of this clause is clear – if a tenant applicant lies or omits material facts on his rental application, the owner has the right to cancel the lease if he’s not yet moved in, or to evict him if he has. But, the following case underscores the fact that merely having the truth on your side may not be enough if you have the misfortune of crossing paths with an applicant who knows how to work the system. It’s a cautionary tale for all property owners. Here are the facts – (actual names have been changed).

In August of 2009, Angela Silvestri, a long time San Francisco property owner was seeking to fill a vacancy in her building. Richard Martins, an applicant, was ultimately chosen and a lease agreement executed. On his application, Martins stated that he had no animals.

But on August 26th, just days before the tenancy was to begin, he informed Silvestri by email that, in fact, he owned a service dog, justifying his failure to divulge it earlier out of fear of rejection. He also stated that he had concealed the fact because the dog did not always reside with him and he was not sure that it would reside with him in the new apartment.

Feeling deceived and defrauded by a deliberate omission of a material fact on his application, Silvestri immediately terminated the lease, returned Martin’s deposit and offered him \$1,000 in exchange for a mutual release. That should have ended the matter, but as became obvious very quickly, Martins was no ordinary applicant. He wanted to lease Silvestri’s gorgeous apartment AND wanted to keep his dog, but realizing that the owner did not allow pets, he devised a way to work the system – the “service dog scam” – to his advantage.

On September 1st, he informed the owner that her cancellation of his lease amounted to “blatant discrimination” on the basis of disability, in violation of federal and state law, by denying his request for a reasonable accommodation and allow him to have a service animal to resident in his rental unit.

Silvestri responded, “This has nothing whatsoever to do with discrimination but everything to do with your dishonesty. You even admit that this “service dog” has not been in your possession while living at your current address.”

Not only had Martins lied about having an animal; he then undermined his whole premise for needing a service dog by admitting that it was not with him most of the time. But the weakness of his legal case did not prevent him from trying to extract money from the

owner, figuring that if he couldn't have his way, at least he could force her to settle for a tidy sum just to "get the monkey off her back."

Martins served Silvestri with a lawsuit demanding \$200,000 for "damages and emotional distress." The case went to arbitration and was settled out of court with Silvestri very reluctantly agreeing to pay Martins \$13,000. Both parties paid their own attorney's fees. Martins walked away with a few thousand dollars, but Silvestri was out \$13,000 plus \$50,000 in attorney's fees. And although she carried wrongful eviction insurance, she received nothing because according to the insurance company, the tenant had never actually moved in so there was "no eviction". But worst of all, Silvestri was left with a profound sense of violation and cynicism about dealing with tenants in the future.

When asked what, if any, lesson she came away with from this experience, Silvestri said, "Martins had no case, yet was able to game the system and cause me great financial and emotional distress. For me, the moral of the story is that it's open season on landlords ... and we have to be extra careful to protect ourselves against unscrupulous tenants."

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