

Questions and Answers: Evictions and Lease Terminations

Q: I rent a unit in a complex with a no-pets policy. I have lived there for many years without a pet. Recently, my doctor recommended I get an assistance animal due to my disability. I submitted a reasonable accommodation request for an assistance animal but my landlord never responded to my request. A few months after I submitted my accommodation request, I received a notice that my lease was being terminated. Is this a violation of my fair housing rights?

A: The Fair Housing Act makes it unlawful to refuse to make reasonable accommodations to rules and policies when the request is necessary – and reasonable – to afford a person with a disability an equal opportunity to the use and enjoyment of a dwelling. An accommodation request may be deemed necessary when there is a nexus – or significant relationship – between the accommodation request and the person’s disability.

By immediately responding with a notice of termination of tenancy, the landlord may have violated the Fair Housing Act in two areas. First, the landlord failed to consider the reasonable accommodation request, and instead opted to terminate the lease. The landlord did not decide on the issue and also did not engage in the interactive process in finding an alternative solution. Second, terminating the tenancy under the circumstances may be considered retaliatory. A retaliation claim requires showing that the resident has 1) engaged in activity protected by the fair housing act, 2) the landlord or community association has taken adverse action against the resident, and 3) a nexus between the protected activity and the adverse action. In this instance, the termination of tenancy might be considered retaliatory.

Q: I received a letter from my landlord citing noise complaints from my neighbors. The letter stated I have ten days to resolve the noise issues or face eviction. I have been trying my hardest to keep the noise down, but my child has a disability that results in loud, violent outbursts. Can I be evicted even though the violation is related to my child’s disability?

A: A tenant may be evicted for repeated violations of house rules, including noise violations. Since the noise violations appear to be connected to the child’s disability, a reasonable accommodation request of the house rules regarding noise levels may be an appropriate measure. It may be unreasonable to allow for an indefinite exemption from the building’s noise policy. However, requesting time – and therefore a temporary exemption from the noise policy – to develop a treatment plan for the disability would likely be reasonable under the circumstances. Under these circumstances, the interactive process would be an important component in finding a reasonable accommodation that would be viewed favorably by both sides.

Q: We live in a housing complex that has a limit of six occupants in a four-bedroom unit. I currently have four young children, but my wife is pregnant and we are expecting another child in the coming months. Can we be evicted for violating the complex’s occupancy limits?

A: In the fair housing context, it is unlawful to develop over-restrictive occupancy standards, especially as applied to children. An overly restrictive occupancy limit may be considered discrimination on the basis of familial status. As a general guideline, the Department of Housing and Urban Development states that two persons per bedroom is considered reasonable. Note that this is a general guideline since other factors such as room size and age of occupants may also be considered. Therefore, whether an occupancy limit violates a tenant’s fair housing rights may depend on factors such as room size, total living area, age of children, and other factors such as capacity of existing infrastructure.