

Tenants with Disabilities and the Right to an Assistance Animal

by: Kelli Howard

You probably know about guide dogs for the blind. But what about dogs that can anticipate their owners' seizures? Dogs that can open doors and carry laundry or dirty dishes? Animals that assist the deaf by alerting their owners to the sound of a doorbell or a fire alarm? Dogs, cats, birds, and other animals prescribed by their owners' doctors to provide emotional support due to the owners' mental disabilities?¹

People with disabilities use many different kinds of assistance animals (also known as service or support animals) to live successfully in the community. However, many landlords are not aware that the Fair Housing Act and other disability rights laws protect a tenant's right to keep an assistance animal. As a result, these landlords deny tenants with disabilities valuable resources to make their housing accessible. An advocate, with some knowledge of these laws, can assist a tenant with a disability to enforce these important rights.

The basic tool for enforcing a tenant's right to an assistance animal is a request for a reasonable accommodation of the tenant's disability. A landlord can only deny a request for a reasonable accommodation if the landlord can show that the accommodation would be an undue burden or a fundamental alteration of the housing being provided. The refusal of a landlord to grant a reasonable accommodation amounts to illegal discrimination under fair housing laws. Some forms of illegal discrimination with regard to assistance animals include: denying the tenant's request to waive a

"no pets" policy for the tenant's assistance animal, requiring the tenant to pay a pet deposit, requiring the tenant to provide proof that the animal is professionally or otherwise trained to assist the tenant, and placing different and more onerous restrictions on the animal's presence than those used for other animals.²

As an advocate, you should tailor the reasonable accommodation request to the needs of the tenant. For example, if you are advising a tenant who wishes to have an assistance animal live in her rental housing, but the landlord does not allow animals, the tenant should request a waiver of the "no pet" policy as a reasonable accommodation of her disabilities under the Fair Housing Act.³ (A written request is not required but is always a good idea.) If the tenant lives in public or federally subsidized housing, Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act ("ADA") will also provide them with this right.⁴

¹ For some amazing stories about assistance animals and the independence they provide to people with disabilities, see the webpage of The Delta Society, <http://www.deltasociety.org>.

² See, e.g., *Bronk v. Ineichen*, 54 F.3d 425 (7th Cir. 1995) (deaf tenant's need for hearing dog is per se reasonable under Fair Housing Act when balanced against landlord's economic or aesthetic concerns in having "no pets" policy). For a thorough and substantive legal discussion about tenants' rights regarding assistance animals, see "Right to Emotional Support Animals in 'No Pet' Housing," published by the Bazelon Center for Mental Health Law at <http://www.bazelon.org/issues/housing/infosheets/fhinfosheet6.html>.

³ See *Joint Statement of The Department of Housing and Urban Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act*, May 17, 2004, page 6, Example 3 (landlord must allow tenant who is deaf to keep assistance animal that alerts him to sounds, such as the smoke detector or knocks at the door).

⁴ See, e.g., *Majors v. Housing Authority of the County of DeKalb*, 652 (5th Cir. 1981) (As required by Section 504, landlord should have made exception to "no pets" policy

Similarly, you could request on behalf of a tenant that a landlord waive a pet deposit requirement.⁵

When a tenant with disabilities makes a reasonable accommodation request to live with their assistance animal, it is advisable to include a letter from the tenant's health care provider explaining that the provider has prescribed the animal to assist the tenant because of the tenant's disabilities. The letter should clearly explain the connection between the tenant's disability and the tenant's need for the animal. However, this does not mean that the tenant's health care provider has to reveal extensive information about the tenant's medical history.⁶

The key to legal representation of a tenant who wants to live with their assistance animal is understanding that this animal is not a pet. When HUD defines assistance animals for its subsidized housing programs, "the question is whether or not the animal performs the assistance or provides the benefit needed as a

reasonable accommodation by the person with the disability."⁷ There is no requirement in federal law that the animal be certified to perform any particular service, although this is a common misconception of the different types of assistance animals and the different reasons why they might be prescribed as part of a person's medical treatment. That is why a supporting letter from the tenant's health care provider who has prescribed the assistance animal can be very important to the advocate. This is true not only when requesting a waiver of "no pet" policies, but also when landlords illegally discriminate in other ways, such as denying a pet based on its size limit, or requesting a pet deposit or higher security deposit from a tenant with a disability.⁸

Kelli Howard is a staff attorney on the Housing Law Team of Texas RioGrande Legal Aid's Austin office. She can be contacted at: khoward@trla.org.

for tenant who needed companionship of her dog as treatment for her mental disability).

⁵ See *Joint Statement*, page 9, Example 2 (Landlord cannot require tenant with assistance animal to pay fee or security deposit as condition of having animal; however, tenant can be charged for any damage caused if that is the landlord's standard practice for all tenants with animals); See also *HUD v. Purkett*, FH-FL ¶ 19,372 (HUDALJ July 31, 1990) (Landlord cannot charge deposit for service dog).

⁶ For example, HUD's Handbook for subsidized multifamily programs explains that a tenant should not be required to document need for an assistance animal if the disability or need is "readily apparent or already known." HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs (2003), 3-28. See also *Joint Statement*, page 13-14 (Example 2: Landlord can request information regarding applicant with wheelchair's need for assistance animal as need is not readily apparent; such information can be provided via proof of receiving disability benefits, or information from provider such as "a doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party ... in most cases, medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.")

⁷ HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs (2003), Glossary. This definition of "assistance animals" also states that "Some, but not all, animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners themselves and, in some cases, no special training is required." See also 4350.3, 2-44 *Assistance Animals as a Reasonable Accommodation* ("Assistance animals are not pets... A housing provider may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training."); See also 24 C.F.R. 5.303(a).

⁸ See, e.g., Public Housing Occupancy Guidebook, Part 1, Chapter 1, Page 19 (example is given of tenant who needs large seizure alert dog; the public housing authority may not refuse to allow this assistance animal, even though the PHA generally limits pet size); See also Notice PIH 97-56, published by HUD (sample public housing lease states that the housing authority shall not charge a higher security deposit for tenants with disabilities who use wheelchairs or have service animals); See Footnote 5.