

PROPERTY COMPLIANCE REPORT

A MONTHLY PUBLICATION ON LOW-INCOME HOUSING TAX CREDIT COMPLIANCE

June 2001, Volume IV, Issue VI, Published By Novogradac & Company LLP

Fair Housing Act Protection Does Not Extend to Abusive Tenants

By Michael Kotin, Kay-Kay Realty Corp.

Few things instill fear in a property manager as quickly as the threat of a fair housing complaint. Ask anyone who has been initiated: Guilty or innocent, dealing with the complaint is a long, grueling and often expensive undertaking. It is therefore not surprising that many companies roll over at the first hint of litigation. Worse yet, our industry now faces the possibility of a loss of tax credits in the event of an unfavorable determination.

Kudos, therefore, to the management company in South Dakota that decided that the inmates should not run the prison. Ditto for the South Dakota Supreme Court, which upheld the right of a landlord to terminate the lease of a disabled tenant who posed a health and safety risk to the other tenants at the community.

The case centered around a disabled man who had received brain surgery some 23 years before moving to the property. Shortly after moving in, the tenant was cited for not following the property's parking rules, which required that tenants park in their garages and leave outside spaces available to guests. The tenant repeatedly violated the parking rules, claiming that the effects of his brain surgery made it difficult for him to get out of his vehicle when it was parked in the garage. He also repeatedly blocked open the security door, asserting that hand tremors made it difficult for him to use the door in its intended fashion.

Concurrently, management received several complaints about the tenant's behavior from other residents of the property. A variety of grievances surfaced: Women complained about his harassment (including hiding in the bushes and stalking), while other neighbors reported his abusive and threatening behavior.

The landlord made the determination to evict the tenant, who asserted a defense that because he was handicapped, the landlord was obligated to provide a reasonable accommodation under the Fair Housing Amendments Act (FHAA). The landlord countered that the tenant was not entitled to a reasonable accommodation because he posed a direct threat to the health and safety of other residents.

At trial, the court determined that the tenant was disabled under the FHAA. They also determined that his behavior did indeed pose a direct threat to the safety and rights of the other tenants of the property. Additionally—and of criti-

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Fair Housing

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cal importance—the landlord demonstrated that no feasible accommodation to the tenant’s handicap could reasonably diminish the threat he posed to the other residents, which was not a proximate consequence of his disability.

Under the FHAA, discriminatory conduct may include “refusal to make accommodations in the rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.” That said, however, the FHAA is not a get-out-of-jail-free card. The FHAA does not “require(s) that a dwelling unit be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals.”

Clearly, the word “reasonable” leaves room for debate. Fortunately or unfortunately, this leeway often forms the basis of fair housing actions. In this case, however, the appellate court agreed with the trial judge and found that the landlord had shown that no reasonable accommodations could be made. The tenant was not evicted *because* he was handicapped nor as a *proximate result* of his handicap. He was evicted because he was a jerk.

The travesty is that it took a state supreme court ruling to affirm the obvious. We can only applaud the management company for its principles and thank our lucky stars that the case wasn’t financed by our checkbooks.❖

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