

## Don't Assume At Handicap Requests

A recent U.S. Circuit Court of Appeals decision sheds some light on how an apartment manager should deal with a handicapped resident who requests a parking space close to his or her unit.

In *Jankowski Lee & Associates v. Cisneros*, the resident had multiple sclerosis (MS), but the symptoms were lessening and the disease had not been apparent for several years.

The person previously experienced paralysis from the waist down, loss of bodily functions, temporary blindness, slurred speech and anxiety attacks. At certain times he suffered from relapses of these conditions. However, he tried to do everything within his ability to avoid allowing others to observe his disabilities.

When moving into the apartment community six year earlier, he indicated on the rental application that he suffered from MS. He acknowledged that vehicle parking spaces were on a "first come, first serve" basis.

He had difficulty in locating a parking spot close to his apartment because both the handicapped and regular spaces usually were occupied. He also needed a larger space than normal since his illness made it hard for him to get in and out of his vehicle.

Six years into his tenancy, he requested a handicap space near his apartment or that a "sufficient" number of handicapped spaces be allocated at the community to accommodate his disability. The on-site manager denied his request because she had seen him walking to and from his car without any apparent impairment. She later testified that she and the management company did not know the degree to which his disease affected his mobility.

However, shortly after the resident filed his complaint with the Department of Housing and Urban Development, management increased the number of handicapped parking spaces to four from two at each building and added a van-accessible handicapped parking space in front of the complainant's building.

The court did not find these arguments persuasive. It cited the Fair Housing Act, which prohibits discrimination against handicapped individuals.

It specifically criticized management for failing " to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford (a handicapped) person equal opportunity to use and enjoy a dwelling."

By the resident informing management that he required a parking space close to his apartment because of his handicap, the landlord, said the court, had a duty to make a reasonable accommodation.

If management was not sure of the extent of the resident's disability, it had an obligation to seek additional information, continued the court. "If a landlord is skeptical of a tenant's alleged

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disability or the landlord's ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialog.”

Management argued that by increasing the number of assigned handicapped spaces it showed “reasonable accommodations.” The court said that in determining this issue, one must examine the particular circumstances. In this case the appeal court let stand the lower court ruling that two additional handicapped spaces were “not a reasonable accommodation.”

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