

## **Case Addresses Reasonable Accommodation**

A recent case in the South Dakota Supreme Court illustrates a landlord's challenge in accommodating a disabled resident who poses a health and safety risk to other renters.

In this case, the disabled individual suffered a brain injury approximately 23 years before his residency at the property. Shortly after moving in, other renters and staff members noticed that he refused to follow the community's parking rules. These required residents to park their vehicles in assigned parking garages so other spaces would be open for guests and maintenance personnel.

The resident claimed that he could not park in his garage because the effects of his injury made it difficult for him to get out of his vehicle when parked in the single-stall garage. He also repeatedly blocked open the security door and stated that he could not unlock it because of hand tremors.

Additionally, management received complaints from female residents who said the individual harassed them in various ways. This included a provocative sign hung in his window and continually staring at certain female residents.

Management also received complaints that the individual engaged in abusive and threatening behavior towards other residents. This included beating on his ceiling and yelling profanities and waving his arms in a hostile manner during a confrontation with another renter.

The landlord decided to evict the individual. The renter asserted that management must provide a reasonable accommodation of his handicap under the Fair Housing Amendments Act (FHAA) before evicting him. Management argued that it was not entitled to provide him with a reasonable accommodation because he posed a direct threat to the health and safety of others.

At trial, the court determined that the resident suffered from a disability under the terms of the FHAA. However, it also found that the individual posed a direct threat to the health and safety of other renters at the property. It stated that management proved that no reasonable accommodation would eliminate or acceptably diminish the risk that he posed, and that it did not have to show that it attempted to reasonably accommodate the resident.

Under the FHAA, discriminatory conduct can include "a 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..."

However, "nothing in [the Fair Housing Amendments Act] requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health and safety of other individuals..."

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Consequently, the appellate court determined when a landlord's duty to accommodate arises. It concluded:

“Therefore, if a handicapped tenant is a direct threat to the health and safety of other tenants, the landlord is obligated to either reasonably accommodate the tenant's handicap or show that no reasonable accommodation will eliminate or acceptably minimize the risk posed by the handicapped tenant. When the landlord shows that no reasonable accommodation will curtail the risk, its duty to accommodate ceases.”

In this case, the appellate court agreed with the trial judge and found that the landlord showed that no reasonable accommodation would diminish the health and safety risk posed by the resident. Under such circumstances, the court found that it was unnecessary for the landlord to try to accommodate the individual's disability.

If a landlord faces a situation where a handicapped resident poses a threat to the health and safety of other renters, the landlord must show: that he or she either attempted to reasonably accommodate the disability; or that no reasonable accommodation will eliminate or acceptably minimize the risk posed by the handicapped individual.

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