

Intent Key In Discrimination Case

A recent legal decision, *Congdon v. Strine*, examined some of the issues apartment managers face when confronted with a handicap discrimination claim.

In this case, Congdon and his wife filed an action against their landlord, Strine. They alleged handicap discrimination due to recurring breakdowns of an elevator in their apartment building. The Congdons lived on the fourth floor and the husband required a wheelchair for mobility.

After being notified of the complaint by the Department of Housing and Urban Development, the landlord informed the couple that he would not renew their lease. Strine, however, did not require the Congdons to move, even after the lease expired. Instead, he offered to rent them a ground floor apartment in that building or a unit in another property he owned.

The Congdons rejected both offers and proceeded with their case against Strine.

They argued that Strine's refusal to provide reasonable accommodations - a reliable elevator - and then his threat to evict them were a denial of housing and, therefore, a violation of the Fair Housing Amendments Act.

The court disagreed. It said the landlord's actions did not fall within the purview of this section of the fair housing act because Strine did not "make available" or "deny" housing.

The court also rejected the claim that since the breakdowns created more hardships on Congdon than on non-handicapped residents, Strine's elevator maintenance practices were discriminatory. The couple could not prove that there was any discriminatory intent or motive by Strine in this regard.

The court then looked at several factors to see if there was any discriminatory impact on the Congdons even if there was no such intent. It stated the recurring breakdowns of the elevator did discriminate against the wheelchair-bound husband.

(The couple, if it so desired, could file another lawsuit against the landlord alleging discriminatory effect.)

But the court added that the landlord offered the Congdons occupancy in another apartment and merely maintained a service contract for the elevator. It felt Strine did not exhibit any intent to discriminate against the plaintiffs.

Further, said the court, Strine had no business gain by maintaining or having a faulty elevator that could cause him to lose residents frustrated by the elevator service.

Finally, the court stated there was no evidence that Strine provided the Congdons with a level of service inferior to that given to other tenants. Additionally, it was not appropriate nor within the

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court's purview to order Strine to install a new elevator or assure that the present model would always be trouble free.

It appears the key factor that weighed heavily in the court's decision favoring the landlord was his willingness to offer the residents an alternative apartment.

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