

Your resident has told you that she is disabled and needs to terminate her lease early. How do you respond?

Unfortunately the Fair Housing Act provides no clear-cut answers to this increasingly common scenario. Like most questions involving reasonable accommodation under the fair housing act, each request must be analyzed on a case-by-case basis, taking into account the particular factual circumstances involved.

What the fair housing act says is that it is unlawful discrimination for a housing provider to fail or refuse to provide an accommodation that is necessary to give a handicapped resident an equal opportunity to use and enjoy a dwelling. In this context an accommodation need not be provided if it creates an undue financial and administrative burden to the property.

Although accommodations are commonly limited to situations where they are necessary to enable a resident to continue to live in the dwelling, at least one federal court has held that there may be situations where it is reasonable to permit a disabled resident to terminate a lease and not charge the resident lease break fees or penalties. Whether or not those situations exist in particular circumstances is fact intensive and must be analyzed on a case-by-case basis.

Consider the example of a resident who lives on the second floor of an older property. The property has no elevator and the doors leading into the apartment and into the bedroom and bathroom are only 28 inches wide. The resident has just been in a terrible automobile accident and is now expected to be in a wheelchair for the rest of his life. Because of the resident's size, the resident uses a wheelchair that is 31 inches wide. If the resident returns to the property after leaving the rehab center where he is currently living, he will not be able to get to his unit, enter the front door, or use the bedroom or bathroom while he is living there. The resident has contacted you with a request to get out of his lease because his apartment is no longer usable by him.

On its face this appears to be a request for a reasonable accommodation, since it is unreasonable to expect a resident to continue to pay for an apartment that he can no longer use because of a newly acquired disability. But the resident has been a good tenant and you don't want to lose him, so there may be other alternatives to consider. Do you have a unit that would be accessible to him on the ground floor or on another property? In that situation it might be reasonable to offer him a transfer, without payment of a transfer fee, to the accessible unit instead of letting him out of the lease. If no other unit is available though, allowing him to terminate the lease without lease break fees may be the only accommodation that is possible under the circumstances and a failure to provide that accommodation will be a violation of the fair housing laws.

Similar situations can arise involving persons with mental impairments when, because of a disability, the person must have hands-on supervision and assistive care. In this example, it might be a reasonable accommodation for the person to have a live-in aide reside with her, but where a live-in aide does not provide sufficient supervision or assistance, breaking a lease may be the only reasonable accommodation available.

A common fallacy is that an inability to afford housing is not considered to be disability-related and therefore is not grounds for an accommodation. Until six years ago this was the usual presumption when courts were considering fair housing claims. In 2004 however, a federal appellate court held that when an applicant's low-income status was directly related to the person's inability to work because of a disability, the property had to make reasonable accommodations when those were necessary to allow the person to live at the property. The court did not say that the property had to lower or waive payment of rent because those are not considered reasonable; it did indicate, however, that a property had to make other changes to its rules, policies, practices and procedures in order to permit the applicant to live at the property. Although this same principle has not yet been applied in the case of a resident who wants to break a lease it is very likely that courts may consider this scenario reasonable under some circumstances.

Consider for example the resident described above who was in the automobile accident. As a result of his accident, he can no longer work, his current income is zero, and he anticipates that disability payments (when he receives them) will be a fraction of his earnings prior to the accident. As a result he can no longer afford to live in your property even if an accessible unit is available. In this case even though you have an accessible ground floor unit that you could transfer him into, he won't be able to continue to afford the rent because of his newly acquired disability. In this situation, the only reasonable accommodation may be to allow him to terminate the lease and move.

Practice Tips: When your resident makes this kind of request, there are several steps the property should follow:

1. Get documentation, if you don't already have it and it is not obvious, verifying that the resident is a person with a disability.
2. Determine why the person really needs to move – is there a nexus between their disability and the lease termination request?
3. Consider whether there are other accommodations that you may be able to offer.
4. Consult legal counsel.