



### **Does a disabled tenant have a right to terminate his lease early?**

**QUESTION:** I was recently contacted by the sister of a tenant who lives in an apartment I manage. She requested that her brother be allowed to terminate his one-year lease five months early. According to his sister, the tenant has long suffered from a mental illness, but that his condition recently worsened, as a result of which he has been hospitalized. She says that her brother's psychiatrist has determined that it would be unsafe for him to continue to live alone in the apartment. I know that the fair housing laws require me to provide a reasonable accommodation at the request of a disabled tenant, but would that include early termination of the lease without any penalty?

**ANSWER:** Possibly. According to a publication\* of the NC Department of Health and Human Services (NCDHHS):

“[a] tenant may develop a disability, or an existing disability may become so severe during the term of a lease, that he or she cannot meet the obligations of their lease. In cases in which there is no reasonable modification or accommodation that can remedy the situation, the tenant may have no choice but to find alternative housing. The tenant should request that the landlord permit an early termination of the lease, and the landlord should grant the request, if it is reasonable.”

**QUESTION:** How do I determine if a request to terminate early is reasonable or not?

**ANSWER:** Again, quoting the NCDHHS publication: “In determining reasonableness, the landlord may consider the following:

- likelihood of filling the vacancy given vacancy rates in the area/building;
- any particular characteristics of the dwelling that may it desirable or undesirable;
- the amount of time remaining on the lease term;
- the size of the owner's business; and
- the owner's overall resources.”

**QUESTION:** Are there any North Carolina court cases on this subject?

**ANSWER:** There are no North Carolina court cases cited in the NCDHHS publication, and we are not aware of any such cases. However, the NCDHHS publication does cite several relevant cases from other jurisdictions, including a Federal case from the District of Delaware that has facts very similar to your

\* [\*Fair Housing for Tenants with Disabilities: Understanding Reasonable Accommodations and Reasonable Modifications \(2008 Updated Edition\)\*](#)

situation. In that case, the tenant filed suit against the real estate company that managed the property after the tenant terminated his lease early and the real estate company refused to return his security deposit and presented him a bill for the remaining rent and cleaning charges. The tenant suffered from an undisclosed mental impairment, as a result of which he was unable to work and received Supplemental Security Income and social security benefits.

The real estate company asked the court to dismiss the case, but the Court refused, concluding that failure to allow for the early termination of a lease may constitute a failure to provide a reasonable accommodation. The Court was careful to note that the Court was not deciding the ultimate issue of whether the real estate company had failed to reasonably accommodate the tenant; rather, the Court decided that the tenant should be given an opportunity to prove at trial that the real estate company had failed to reasonably accommodate him in violation of the fair housing laws. *Samuelson v. Mid-Atlantic Realty Co.*, 947 F. Supp. 756 (1996).

**QUESTION:** Wow. Are there any other cases cited in the NCDHHS publication worth noting?

**ANSWER:** The Delaware case is the only one cited in the section on Early Termination of a Lease that actually involved early termination by the tenant. However, there are several other cases cited that involve either the landlord's early termination of a disabled tenant's lease for a violation of the lease or the landlord's refusal to accommodate a disabled tenant's request to violate the terms of their lease due to their disability. For example, in a case from Colorado, a mobile home park attempted to evict a tenant for failure to conduct maintenance of her yard. The tenant claimed that an illness prevented her from doing the work. She hired a caretaker to live rent-free in her home in exchange for doing maintenance. The park then sought to evict her for permitting a roommate not listed on the lease. The Colorado Court of Appeals upheld a finding that attempting to evict the tenant instead of allowing the alternative arrangement was a violation of the Fair Housing Act. *Boulder Meadows v. Saville*, 2 P. 3d 131 (2003).

The fact that a number of courts have concluded that a landlord or property manager violated the fair housing laws for failing to provide a reasonable accommodation to a disabled tenant under particular circumstances does not mean that all such requests must always be accommodated. Whether a landlord or property manager must reasonably accommodate a disabled tenant by waiving generally applicable fees or permitting the tenant to violate a provision of the lease is a highly fact-specific inquiry, requiring case-by-case determination. But these cases do make it clear that you must take into consideration a tenant's disability in making a decision whether to accommodate a request they may make.

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