

CAN A BREAKER BE BROKEN? - Reasonable Accommodations And Lease Break Fees

Reasonable accommodation requests come in all shapes and sizes. By now, you should know that you never deny a request without fully evaluating the request. Request for waiver of lease break fees may tempt you to break that rule. You may think that a resident's request to have their lease break fees waived can't possibly be a legitimate request for a reasonable accommodation. Perhaps surprising to some, a disabled resident's request for you to waive their lease break fees should be granted in some cases. Like all requests for a reasonable accommodation, whether you should grant a request for lease break fees to be waived depends on the facts and circumstances of each case.

Disabled residents usually ask for lease break waivers in two situations. The resident becomes disabled, or the resident's existing disability has become more severe. In both cases, the resident contends that the resident can no longer use and enjoy the premises on the same basis as a non-disabled resident. Some disabled residents just want out of their leases with no fees. Other residents may want to relocate. For example, the resident may want to move from the third floor to the ground floor.

Regardless of the facts, you should handle a resident's request for their lease break fees to be waived like any other request for a reasonable accommodation. You should first determine if the resident is disabled. If the resident is not disabled, as defined by the fair housing laws, the resident is not entitled to a reasonable accommodation. You do not have to waive lease break fees for any resident that is not disabled. Based on client inquiries, disability is rarely at issue. Residents asking for the lease break fees to be waived as a reasonable accommodation are almost always disabled beyond dispute.

What is at issue is the "necessity" of waiving the lease break fees. When a disabled resident requests you to waive lease break fees, the resident must also prove that this request is "necessary" because of their disability. The resident must show a

direct nexus or connection between the requested accommodation and the resident's disability. According to the HUD/DOJ Reasonable Accommodation Guidelines, to show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability. If there is no link between your lease break policy and a resident's disability, you have no obligation to make a reasonable accommodation by waiving lease break fees. Sounds great. But applying the "necessity" test to a real world reasonable accommodation request for lease break fees to be waived can be very difficult.

In applying the test, you should consider whether the disabled resident has provided you with any information that demonstrates that the accommodation request (waiver of the lease break fees) is necessary in any way to assist the disabled resident in dealing with the resident's disability. Would granting the request in any way mitigate the difficulties associated with the resident's disability? Has the disabled resident shown that if the lease break fees are not waived, the resident would likely be denied an equal opportunity to enjoy the full benefit of the resident's rented premises? Will a waiver of the lease break fee affirmatively enhance the disabled resident's quality of life by lessening the effects of the resident's disability?

Applying the necessity test to real world requests illustrates when requests should be granted and requests that can be properly denied. An elderly resident's son informs you that the resident has Alzheimer's, and is going to be relocated to an assisted living facility. The son requests for the community to waive the lease break fees. In this scenario, a waiver of the lease break fee is likely to affirmatively enhance the disabled resident's quality of life by lessening the effects of the resident's disability. Arguably, the resident's disability would make it impossible for him to use and enjoy the premises. We would recommend waiving the fees.

A resident relocates to Denver from somewhere. The resident has never had asthma problems. Within weeks the resident develops severe asthmatic symptoms. The resident's doctor writes you a letter stating that the Colorado climate is responsible for the resident's asthmatic symptoms, and the resident needs to move back to somewhere immediately. If the resident relocated, the resident's disability would be lessened. We

would recommend waiving the lease break fees. However, you could condition granting of the request upon receipt of adequate documentation demonstrating that the resident actually intends to move from Colorado back to somewhere.

A third floor resident's hip degenerates, requiring hip replacement surgery. The resident can no longer climb the stairs without agonizing pain. The resident asks for the lease break fees to be waived. If you offer to relocate the resident to a ground floor unit, but the resident refuses, you would not have to waive the fees. If you do offer to relocate, and your community charges relocation or other fees, you should waive these fees because the move was necessitated by the resident's disability. If you do not offer to relocate or have no available units, the safer course of action would be to waive any lease break fees.

A resident suffers from severe depression. The depressed resident loses his job because of the resident's depression. The depressed resident cannot pay the rent. The resident wants out of his lease because he is going to move back home. The resident wants to break his lease, and for you to waive all lease break fees. Generally, this type of request could be denied. The resident is probably going to be just as depressed at home. What the resident has really asked for is an accommodation to his financial circumstances. You have no obligation to accommodate a resident's financial circumstances. If a disabled resident who asks to be let out of his lease will be in the same adverse circumstances regardless of where he lives, this is a strong indication that the requested accommodation is not necessary, and may be, or probably is a request for a financial accommodation.

Similar to evaluating any request for an accommodation, you must have all of the facts to make an informed decision. The outcome of the depressed resident's case could change if the facts are different. For example, the depressed resident's doctor informs you that the resident needs to relocate to a mental health facility to be placed on suicide watch. Frequently, no single fact will determine whether the request should be granted. But an important part of any analysis is determining the direct benefit to the disabled resident. If you waive the lease break fees, will this directly help the disabled resident cope with their disability?

Many commentators take the position that requests to have lease break fees waived are always requests for an accommodation to financial circumstances. This is true in most circumstances. However, at least one court has ruled that circumstances may exist justifying the waiver of lease break fees as a reasonable accommodation. Thus, arbitrarily or routinely denying a lease break waiver request is risky. Risk analysis is a mandatory consideration in all reasonable accommodation requests. In close cases, risk analysis dictates that accommodations should be granted. It makes no financial sense to insist on collecting \$3,500.00 in lease break fees at the cost of having to spend \$20,000 defending a federal court fair housing discrimination suit.

Assuming that a resident is disabled and needs the lease break fees waived, the waiver of lease break fees must also be reasonable under the circumstances. Courts have set forth some key factors, among others, they will consider when determining whether the waiver of fees for disabled residents is reasonable. Courts will look at the amount of fees imposed, the relationship between the amount of fees and the overall housing cost, the proportion of other tenants paying such fees, the importance of the fees to the landlord's overall revenues, and the importance of the fee waiver to the handicapped resident. Based partially on this test, a court would be more likely hold that it would be reasonable for large owners and management companies to waive lease break fees.

Evaluating reasonable accommodation requests is not an exact science, and never will be because reasonable accommodation requests turn on the facts and circumstances of each request. Problems in evaluating lease break waiver requests are more likely to result when you don't have sufficient information to evaluate the request. If you deny a request for waiver of lease break fees, you should always inform the resident in writing of your understanding of the factual basis for the request, and why the request has been denied. For example, the resident hasn't provided sufficient, or any information regarding why a waiver of the lease break fee will affirmatively enhance the disabled resident's quality of life by lessening the effects of the resident's disability. Finally, when denying a request, you should always inform the resident that you are open to

further discussion of the issue, and would promptly consider any additional information that the resident provides.