

# **AFTER THE FACT PET REQUEST ILLUSTRATES KEY REASONABLE ACCOMMODATION RULES**

Betty and her dog Rover have lived at your pet friendly community for several years. Like many residents, Betty spends a lot of time on the Internet. Based on her Internet research, Betty tells you that she needs Rover for emotional support. Betty is not obviously disabled. Betty also tells you that the law does not allow landlords to charge pet fees, deposits, or rent for companion animals. For this reason, Betty asks you to refund all money she has paid for Rover over the last two years. Betty has paid \$1,200 in pet rent, a \$250 pet fee, and a \$250 pet deposit since becoming a resident.

Do you have to consider this request? Yes. As all Tschetter Hamrick Sulzer fair housing class attendees know, you must always consider (evaluate) every reasonable accommodation request. This is the golden rule of handling reasonable accommodation requests. You don't have to grant every request, but you must evaluate every request. Betty's after the fact request also illustrates three other key reasonable accommodation rules. One, requests for reasonable accommodation can come at any time. Two, reasonable accommodation requests do not have to be made in any particular way. Three, reasonable accommodation requests apply to almost every aspect of your relationship with a resident.

If you don't break the golden rule (always evaluate every request), you won't automatically deny a request because of the timing of the request. From a fairness perspective, Betty should have told you that Rover was a companion animal when she applied. However, Betty (a disabled resident) has no obligation to make reasonable accommodation requests upon application. Further, Betty's failure to previously make a request does not establish lack of disability or need. Betty may not have known that she was entitled to make a request. In responding to a reasonable accommodation request, what a resident did not request in the past is irrelevant. You must always evaluate requests at the time they are made. You must determine at the time of the request whether the resident is disabled (meets the definition of disability under fair housing laws), whether the request is necessary, and whether the request is reasonable.

Based on countless discussions with our clients, some clients have the mistaken impression that reasonable accommodation requests have to be in writing. This mistaken impression can lead to the fatal error of not evaluating reasonable accommodation requests unless they are in writing. While it is preferable for residents to make reasonable accommodation requests in writing, the law is clear that residents are not obligated to make reasonable accommodation requests in writing, nor are they obligated to fill out your forms. A resident makes a valid reasonable accommodation request when they put you on notice that they are seeking an exception because of their disability. Because reasonable accommodation requests do not have to be made in any particular form, residents may make oral reasonable accommodation requests. If you follow the golden rule (always evaluate every request), you won't deny a request because a resident did not make the request in writing.

Disabled residents are entitled to reasonable exceptions to rules, policies, practices, and services. Rules, policies, practices, and services cover almost everything. This means that a resident may ask for an exception to almost any aspect of your relationship with them. The most common mistake is to automatically deny a request because it sounds far fetched. For example, denying a resident's request to have pet fees and deposits refunded, and pet rent refunded when the resident has lived at your community for two years, paid the entire time, and never said a word. When you want to summarily deny this or any other far fetched sounding request, refer to the golden rule. Never deny a resident's reasonable accommodation request, without knowing all the facts, and a thorough evaluation.

Betty's request should be evaluated the same as all requests for reasonable accommodations. First, is Betty disabled as defined by fair housing laws? Second, does Betty need the accommodation? Third, is Betty's request reasonable? Because Betty is asserting that Rover is a companion animal, Betty's disability is likely to be based on a mental impairment that is not obvious. Assuming this to be the case, you may request documentation regarding both Betty's disability and need for Rover. Assuming that Betty can provide appropriate documentation on these issues, the only remaining issue would be the reasonableness of Betty's request. Remember, while in

most cases documentation will be from a medical provider, under fair housing laws Betty can provide non-medical provider documentation.

If Betty documented disability and need, we would advise to at least grant part of the request, and, depending on the circumstances, to consider granting the entire request. Because Betty is disabled and needs the request (remember for purposes of our discussion she provided documentation of disability and need), Betty clearly would have been entitled to have the pet deposits and fees waived if she had made the request when she first applied. In other words, you could not have charged the fees and deposits then, so you can't make them stick now. Thus, the pet fees and pet deposits should be refunded. Betty is still responsible for damages to the unit caused by Rover. Additionally, you may require Betty to execute an Assistive Animal Addendum. Under this Addendum, a resident is responsible for damages caused by the animal, agrees that the animal won't disturb other residents, and agrees to pick up after the animal.

Whether the two years of pet rent should be refunded is a more complex issue. Many factors may be relevant. When the resident first leased, was the resident made aware that the resident had an opportunity to make a request? Some resident applications specifically ask whether a resident requires any "special accommodations". This language has been approved by the Colorado Civil Rights Division. You may not ask on an application if the resident is disabled, or requires any reasonable accommodations because that would be the same as asking if a resident is disabled. Does your leasing criteria address the issue? Leasing criteria addresses a host of issues, including financial and credit requirements, but can also state that you are a dedicated fair housing provider, and you consider all disability requests. Your lease may contain similar language.

Is there a dispute about when the resident first asked for the accommodation. In Betty's case, there is no dispute. However, in many cases factual disputes exist about when a resident initially made a reasonable accommodation request. To avoid disputes, your teams need to be properly trained on handling reasonable accommodation requests. Our advanced fair housing class trains on-site personnel on

how to handle requests.

Assuming the opportunity to make the request, no dispute about when the request was made, and a substantial amount of pet rent, it would not be reasonable to refund Betty's pet rent. However, if there was a dispute about when the request was made, the closer the disputed date was to when the resident moved in, the more likely we would be to recommend refunding the rent. If the resident had paid a small amount of pet rent, we would also lean to refunding the pet rent, based on economics and risk analysis. See, *The Economics of Reasonable Accommodation Analysis*, in last month's Landlord News. This discussion further illustrates that reasonable accommodation requests can and often involve many specific facts that must be properly evaluated before reaching a determination. Once again, illustrating the need to always follow the golden rule to stay clear of trouble when dealing with resident reasonable accommodation requests.