

HOTLINE HIGHLIGHTS

The rental housing industry has been busy dealing with issues of cosmic importance like rent control but landlords and property managers must also continue to deal with the more mundane issues which impact their day-to-day operations. That's where the Massachusetts Apartment Association's legal hotline comes into play. The advice which has been offered as a free member service during the past three months included these snippets:

Q. A tenant with a broken foot has requested a reasonable accommodation in order to retain access to his apartment via the outside deck. We've installed a temporary stairway with sufficient room to use a walker but he also wants a railing, which would be expensive because of the need for a concrete anchor at ground level. Are we expected to agree?

A. While temporary disabilities clearly need to be accommodated for the benefit of an employee, there's no definitive interpretation in the case of a tenant. Given, however, that only a reasonable accommodation is necessary in any event, the landlord should be able to argue that a railing would be disproportionately costly, particularly given that the apartment is accessible with a walker and the disability won't be permanent.

Q. A rental applicant with no source of income or credit history has asked us to accept a third-party guaranty of his obligations. Assuming the proposed guarantor is creditworthy, are we required to oblige?

A. No. Landlords are generally entitled to insist that their tenants have adequate financial resources and can be expected – on their own -- to honor their obligations. That said, it's unclear whether a handicapped tenant could insist on having a guarantor as a reasonable accommodation under the fair housing laws.

Q. May we charge a "lock-out" fee to tenants who have misplaced their key and can't get into their apartments?

A. Thanks to a recent Appeals Court decision, landlords are generally permitted to charge fees after the term of a lease has begun. However, the decision clearly suggests that the tenant must have agreed to any such fee in advance, so the fee needs to be recited in the tenant's lease.

Q. A tenant who has requested governmental rental assistance has asked that I send her a notice to quit, which will apparently give her priority on the waiting list. Am I obligated to go along?

A. No. Sending the notice doesn't appear to be a requirement of the subsidy program, meaning that this is not the type of accommodation required under the Massachusetts fair housing law.

Q. When a tenant fell behind in her rent, we contacted her mother, who we believed had signed the lease as a guarantor. However, the mother has told us that her signature was forged by the daughter. What recourse do we have?

A. The mother is clearly not liable for the unpaid rent but the landlord can take the position that the lease is null and void given that the tenant would not have been allowed to rent the apartment without a valid guaranty. Proceeding with an eviction on that basis may avoid the delays and complications which can be expected if the lease is terminated solely for nonpayment of rent.

Q. May emotional support dogs be barred from an exercise room in an apartment complex?

A. It's not clear whether the obligation to reasonably accommodate a disabled tenant under the fair housing laws would extend that far. Hopefully, the landlord can legitimately prohibit any animals from running free outside of the tenant's apartment.

Q. May tenants have more than one emotional support animal?

A. According to a 2020 advisory issued by the U.S. Department of Housing and Urban Development, reasonable accommodation requests may involve more than one animal if the tenant has a disability-related need for them or if two people living together each have a disability-related need for a separate assistance animal.

Q. Am I responsible for fixing a tenant's mailbox?

A. Yes, assuming it wasn't damaged by the tenant. U.S. Postal Service rules generally require landlords to supply functioning mail receptacles, failing which the tenant's mail will be kept at the local post office for retrieval.

Q. We own a multi-building complex. There was a fire in one of the buildings two months ago. A tenant in a different building wants to terminate her lease because she's worried about the possibility of another fire. Must we oblige?

A. No, assuming that the tenant's lease provides termination rights only in the case of casualties occurring in the specific building where the apartment is located.

Give us a call at 617-573-5822 whenever you need answers to your own legal questions.