



DISORDER IN THE COURT

For whatever reason, those of us who counsel landlords didn't get complaints about hoarding until relatively recently. One can only wonder what suddenly caused so many tenants to start amassing an excessive collection of stuff which they refuse to discard.

There can be little doubt that hoarding has consequences which extend well beyond the apartment where it occurs. Large stacks of combustible materials can create a fire hazard. If garbage is mixed in, offensive odors and vermin can easily find their way to neighboring units. Hoarders also tend to object whenever landlords wish to inspect their apartments, preventing smoke detectors and other life-safety equipment from being properly serviced.

Any number of provisions in the standard lease forms published by the Rental Housing Association can easily be construed to prohibit hoarding. Moreover, the State Sanitary Code provides that tenants are responsible for maintaining all means of egress free from obstruction while keeping their apartments in a clean and sanitary condition.

In *Ciriello v. Fortin*, a 2016 decision by the Appellate Division of the District Court, hoarding was considered a valid motivation for a landlord's decision to evict an Everett tenant. The tenant had complained about the condition of her apartment to a local building inspector. After taking a look, he issued a citation directing the landlord to fix a leaking kitchen faucet and various other code defects. While he was there, he noticed that the tenant was a hoarder, reporting his findings to the fire department and apparently telling the landlord as well. The tenant alleged that the landlord's subsequent attempt to evict her was a form of illegal retaliation given her earlier complaint to the building inspector; because the tenancy was terminated within six months after the complaint, there was indeed a legal presumption of reprisal. The court rejected this defense,

finding that the landlord was legitimately concerned about the tenant's hoarding as well as her harassment of other residents in the building.

It has been suggested that hoarding is often a symptom of obsessive compulsive disorder or some other form of mental illness. That raises the possibility that a tenant who hoards may claim to be legally disabled and entitled to reasonable accommodations under the federal and state fair housing laws. The hope had been that the courts would conclude otherwise. In a 2007 decision, the Massachusetts Appeals Court held that a tenant who had been convicted of a brutal assault on another resident was not entitled to any accommodation whatsoever, even where mental disabilities such as bipolar disorder were allegedly to blame. The "kind and quality" of the tenant's behavior deprived him of any right to stave off eviction. Could not the same be said of a tenant who exposes fellow residents to the risk of fire, infestation and other harms?

Apparently not, at least according to the July 31 decision of the District Court's Appellate Division in *Falmouth Housing Corporation v. Flynn*. In 2012, the landlord notified the tenant that her apartment had failed an inspection because of hoarding. She was instructed, at the risk of eviction, to create no less than three feet of access to all windows and doors. The tenant requested assistance. Her rent was subsidized through the federal Disabled Individual Alternative Living program, and the landlord was apparently aware that she suffered from a major depressive disorder, including phobias that impaired social interaction. In the words of the court, "there is no question that Flynn suffers from a disabling condition that creates a causal link between the disability for which she sought a reasonable accommodation and the conduct that is the subject of her eviction."

During the next five years and before commencing eviction proceedings, the landlord spent \$1,700 for specialists to help the tenant remove the clutter and debris from her apartment. Two agencies and three individuals were provided to assist in the effort. The tenant would not allow some of these people into the apartment and also rejected offers of individual counseling and group therapy. Eventually, she stopped answering her door and returning telephone calls. On this basis, the court concluded that the five-year delay in proceeding with eviction, together with the other steps taken by the landlord, was "exactly the type of accommodation that fits within the meaning of the applicable law." The tenant's rejection of assistance "resulted in behaviors that posed a direct threat to the other tenants in the complex."

We're left with no way to gauge just how much a landlord needs to do in cases like this. Would a three year delay have been sufficient? How about spending only \$1,500? What's reasonable, like beauty, is often in the eye of the beholder and the beholder will be a judge empowered to find a landlord at fault. Do keep in mind that a tenant is not entitled to receive a reasonable accommodation unless he or she requests one. There is no reason to presume that hoarding is necessarily the result of a mental disorder. Furthermore, nothing in the *Falmouth* opinion suggests that landlords may not invoke the assistance of a local building inspector, like the one who proved so useful in *Ciriello*. Finally, given the fact that the person most at risk from hoarding is the tenant, the landlord may wish to request assistance from any emergency contact whose name is on file. While some hoarders may deserve our sympathy, landlords must focus primarily on the safety and well-being of the entire tenant community.

