

COMPANION ANIMALS AND HOUSING DISCRIMINATION



QUESTION:

Is the following example a form of housing discrimination?

Example: A man calls about an ad for an apartment which states “no pets allowed”. The man tells the landlord that he is disabled and has a companion animal with a doctor’s note. The landlord tells the man that he can keep the pet but he would be charged a \$400 pet deposit.

Answer: Yes.

The above example is a form of disability based housing discrimination because if a prospective tenant can show that their particular disability is linked to their need for having a companion animal then a landlord cannot charge a pet deposit to this tenant.

What is a reasonable accommodation?

A reasonable accommodation is where a home provider has a rule, policy or procedure and permits *a change* in their rules, policies or procedures to allow a person with a disability to more fully enjoy and use their premises. As stated in California Government Code Section 12927 (c)(1), housing discrimination includes refusal to make reasonable accommodations in rules, policies, practices, or services when these accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling. A companion animal, also known as an emotional support or therapy animal is not considered a pet. Therefore, rules that prohibit pets, require pet deposits, or limit size or weight of the animal do not apply. As the following paragraphs explain, denying a disabled person a reasonable accommodation of keeping their companion animal, when the person has a doctor’s note verifying the need for the animal, is a violation of California’s Fair Employment and Housing Act (FEHA).

QUESTION:

Can a landlord ever refuse the request of needing a companion animal as a reasonable accommodation?

Answer: Yes

As the term suggests any request for a reasonable accommodation has to be reasonable. If the request causes a financial or administrative burden to the home provider/landlord then the reasonable accommodation can be denied. An example of a financial burden created by requesting a companion animal would include the risk of the landlord losing their insurance policy because the landlord's policy had a rule that prohibited certain breeds of dogs on the property because these breeds are considered to have a higher propensity for attacking humans than other breeds. The landlord would be justified for refusing the request for reasonable accommodation of having a companion animal if the breed of the dog was prohibited on the property as cited in their insurance policy. The tenant/prospective tenant could ask the landlord to provide proof of the financial burden to make certain that the landlord was not just making excuses for the denial of the request.

The first time the California courts ruled on a disabled person being allowed to keep a companion animal as a reasonable accommodation was in *California Court of Appeal, Third District, Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Com'n California* 2004 WL 1888284 (Cal.App. 3 Dist.). In this case, a homeowners association refused to grant an accommodation from its "no dogs" rule to a couple who required a companion animal, a dog, to treat their clinical depression. This is the first case decided under California law (a violation of the Fair Employment and Housing Act, California Government Code, section 12927 (c)(1)) to hold that a homeowners association may have to modify its "no dogs" rule to reasonably accommodate a person with a mental disability by allowing that person to keep a companion animal in his unit. The plaintiff's doctor wrote a letter stating that the doctor recommended the home provider change their rule of "no dogs" to accommodate the plaintiff's disability. The court went on to state that we note that, currently, section 12955.3 explicitly states that "disability" includes "any physical or mental disability as defined in Section 12926."

The defendants in the above case tried to argue that the plaintiff's dog "Pooky" does not qualify as a service dog and therefore is not individually trained to the requirements of the individual with a disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items." (Civ. Code, § 54.1, subd. (b)(6)(C)(iii)). But the court stated that this was the wrong code, it was the Fair Employment and Housing Act that ruled this case and therefore, even if an animal does not qualify as a service animal, there is no basis for asserting that there is no duty to **reasonably accommodate non-service animals**. (*Janush, supra*, 169 F.Supp.2d at pp. 1135-1136.

In order to establish discrimination based on a refusal to provide reasonable accommodations, a party must establish that he or she (1) suffers from a disability as defined in FEHA, (2) the discriminating party knew of, or should have known of, the disability, (3) accommodation is necessary to afford an equal opportunity to use and enjoy the dwelling, and (4) the discriminating party refused to make this accommodation. (See § 12927, subd. (c); *Giebeler v. M & B Associates* (9th Cir. 2003) 343 F.3d 1143, 1147; *Janush v. Charities Housing Development Corp.* (N.D.Cal. 2000) 169 F.Supp.2d 1133, 1135 (*Janush*).)"

Even though the law, requires a landlord to reasonably accommodate a disabled person by allowing them to have a companion animal if they can prove the need for one, this does NOT mean that a landlord could not still write warnings or issue notices to any disabled person because the animal is creating too much noise; damaging property or threatening the safety of other tenants living in the same rental property.

The Human Rights/Fair Housing Commission requires that the tenant or prospective tenant request the reasonable accommodation and be denied before the commission will investigate a complaint based on the need for a reasonable accommodation. The Human Rights/Fair Housing Commission has Reasonable Accommodation request forms that may be obtained by calling the Commission at 916-444-6903.