

EVERYTHING YOU NEED TO KNOW ABOUT AID ANIMALS

*By Jim Straub, Acorn Property Management
(Reprinted from ROA Bulletin, August 2010)*

The question I get most often about aid animals is whether one has to allow them, especially if you have a “no pet” policy in place. Of course, once you have aid animals in your rental properties, there’s even more to know. Many landlords decide not to allow any animals in their rentals and then aren’t quite sure about their rights when along comes a tenant with an aid animal. In fact, many landlords even think that an aid animal doesn’t change their “no pet/ no animal” policy? If you think that, you may need to think again.

Aid animals, companion animals, assistance animals – they all practically mean the same thing, and as long as your tenant has authorization from a care provider, they all mean you generally have to allow them. If your tenant contacts you to say they have an aid animal, your first step is to get the legal authorization, and the courts have been fairly generous about who can write that authorization: physicians, psychologists, psychiatrists, social workers, case managers. (If you have questions about whether someone qualifies to provide the authorization, call your local rental owners association for clarification.) Then make sure you have the tenant and care provider sign two ORHA forms: ORHA #53 Reasonable Accommodation Request and Verification and ORHA #46 Assistance Animal Agreement.

Generally speaking, if the proper authorizations are presented, you have to accept the animal. Because it is an aid device (just like a wheelchair), you can’t charge for it like a pet. That means no extra deposits or increased rent. If you’re in doubt about accepting the animal, just insert the word “wheelchair” into whatever statement you’re about to make. “I don’t accept (wheelchairs)” or “I charge extra for (wheelchairs)” may make it all a little clearer in your mind.

The one caveat to all this is reasonableness. In a very few instances it might be acceptable to contact the care provider in writing for clarification. I recently spoke to a landlord whose tenant wanted to bring five (yes, five!) aid animals into a studio apartment. It might be appropriate to contact the care provider to confirm. You don’t want to ask “why” they need the animals (that’s confidential medical information) or “if” they need an aid animal (they’ve already said they did). You could write, though, and find out if it absolutely needs to be five animals in such a small space. The same could go for a breed you usually don’t allow, say a pit bull.

You could write and say that you know that the tenant is allowed an aid animal but ask if it has to be THAT animal. If the care provider says yes, you are probably stuck with it. Always weigh carefully, though, the risks of being accused of discrimination against writing to the care provider. Make sure you only write to the care provider in cases that appear to be very reasonable cases to question. **Definitely call your local rental owners association first if you want to use this option. The financial risk of misusing it is too great!**

Finally, just like a wheelchair, owners are responsible for damage done by their aid animals. If a wheelchair did damage to your carpet, the tenant would be responsible. The same principle applies to aid animals. Do your inspections and if there is damage, bill the tenants. If they won't pay or the damage doesn't stop or is severe enough, you can even serve ORHA #38 – Notice of Termination with Cause, meaning the tenants pay for the damage and make sure it doesn't happen again or the animal has to leave the property. The law says you must allow the animal as a reasonable accommodation, but you don't have to allow the damage caused by the animal. You also don't have to risk losing other tenants if the aid animal is barking incessantly or acting in a threatening way to others. If this happens, a warning notice or a Notice of Termination with Cause would be applicable in this situation as well. In other words, while you might have to allow the animal, you don't have to give the animal or tenants cart blanche for their behavior. You still have rights as a landlord, so don't be afraid to exercise them.