

# Assistance Animals in Rental Housing

Scenario: LL has filed a summary ejectment action against a tenant for breach of a lease condition prohibiting pets. The tenant admits having a dog, but claims the dog is not a pet but is instead an emotional support animal prescribed by a doctor to assist tenant with the symptoms of a disability. How do you evaluate this defense?

**The Rule:** Both the federal and state Fair Housing Acts require a landlord to make reasonable accommodations when necessary to permit an individual with a disability to use and enjoy a home in a manner equal to that available to individuals without disability. An *accommodation* is a modification or waiver of rules, policies, practices, or services.

**Step #1:** Determine whether either statute applies to the rental housing before you:

Both statutes exempt from coverage owner-occupied residences of four units or fewer.

The federal FHA also exempts single family homes rented by owner without use of broker.

**Note:** When the ground for summary ejectment is not breach of a lease condition based on the tenant's possession of an animal, the law requiring reasonable accommodations will generally have no relevance. If a defendant argues that an eviction is retaliatory under GS 42-37.1(a)(4), however, the Fair Housing Act becomes potentially relevant even if the asserted ground for summary ejectment appears unobjectionable on its face.

**Step #2:** Has tenant introduced evidence establishing at least a *prima facie* defense? The elements of such a defense are:

-The tenant has a disability (termed a *handicapping condition* in the statute), defined as "A *physical or mental impairment that substantially limits one or more major life activities.*" Major life activities are broadly defined, with examples including walking, lifting, learning, communicating, and self-care.

-The tenant has a disability-related need for an assistance animal, in that the animal works, assists, or performs tasks for person with disability, or provides emotional support that alleviates (i.e., makes less severe) one or more identified symptoms or effects of the disability.

**Step #3:** Is the landlord able to rebut this showing by the tenant, either by

-evidence that the tenant is not disabled, or that the animal does not meet a disability-related need, or

-demonstrating one of the following:

-the requested accommodation would be an undue financial and/or administrative burden,

-the requested accommodation would fundamentally alter the nature of the landlord's services,

-the specific assistance animal would be a direct threat to the health or safety of others.

-the specific assistance animal would cause substantial physical damages to the owner's property.

If the magistrate concludes that the tenant is entitled to an accommodation under fair housing laws, the landlord is not entitled to a judgment for possession based on breach of a lease condition. A landlord who refuses to make a reasonable accommodation is potentially liable under both state and federal law, but a civil action based on violation of fair housing laws is unlikely to appear on a small claims docket. For this reason, this document does not address legal requirements and restrictions related to actions taken by landlords other than those directly related to a summary ejectment action.

## Other Things You Should Know

Because a service or assistance animal is not a "pet," it is not permissible for a landlord to charge a pet fee, nor may a landlord require a tenant to pay additional fees as a condition of making a reasonable accommodation.

A landlord may, however, require a tenant to cover the costs of any necessary repairs for damage caused by the animal to the rental premises (subject to the usual exception for normal wear and tear).

A landlord may require a tenant to follow rules applicable to other tenants with pets, such as lease requirements and cleaning up animal waste materials. If a tenant's disability interferes with this – for example, a mobility disorder makes it difficult for the tenant to bend over to pick up waste – the same law applies as to any other rule or policy: the landlord must make a reasonable accommodation upon request.

A tenant's right to an assistance animal applies to the entire premises. If a tenant has an assistance animal to alert to a seizure, for example, the tenant is entitled to be accompanied by the animal when using a complex common room or library, thus enabling the tenant to enjoy these areas in the same manner as other tenants.

An assistance animal differs from a service dog (or miniature horse) in that an assistance animal is not specifically trained to perform a particular task. The Americans with Disabilities Act regulates access to public places by individuals with disabilities, and it applies only to service animals. The Fair Housing Act applies to assistance animals in residential housing, and its provisions apply to any animal who meets the disability-nexus-requirement.

There is no official state or national registry for assistance animals, and the certificates (along with the vests and other paraphernalia) available on the internet are legal nullities.

Tenants are not required to disclose a disability to a landlord, nor do they forfeit their right to a reasonable accommodation if they fail to follow landlord-prescribed procedures for requesting an accommodation. They are entitled to do so at any time and in any manner that effectively communicates their request. A landlord has no obligation to provide an accommodation until a tenant asks for one.

Useful resources:

2014-2015 NC Real Estate Commission publication, *Selected Property Management Issues*, General Update Course, pp. 6-16, found at <https://www.ncrec.gov/Pdfs/genupdate/PropMgmt2014.pdf>.

*Fair Housing for Tenants with Disabilities: Understanding Reasonable Accommodations and Reasonable Modifications*, 2018 Updated Edition, NC Housing Finance Agency, found at [https://www.nchfa.com/sites/default/files/page\\_attachments/RAGuide.pdf](https://www.nchfa.com/sites/default/files/page_attachments/RAGuide.pdf).

*Animals and the Fair Housing Act*, pub'd by Disability Rights NC, found at <https://www.fairhousingnc.org/wp-content/uploads/2017/02/DRNC-SelfAdvocacyPacket-Animals-in-Housing-ACC-06.pdf>

*Fair Housing and Reasonable Accommodation*, 2016 online PowerPoint presentation by NC Human Relations Commission, found at [https://files.nc.gov/ncdoa/documents/files/FairHousingANDReasonableAccommodation\\_Presentation.pdf](https://files.nc.gov/ncdoa/documents/files/FairHousingANDReasonableAccommodation_Presentation.pdf)

*Right to Emotional Support Animals in "No Pet" Housing*, Bazelon Center for Mental Health Law 2017, found at <http://www.bazelon.org/wp-content/uploads/2017/04/2017-06-16-Emotional-Support-Animal-Fact-Sheet-for-Website-final.pdf>

Joint Statement of HUD and DOJ, *Reasonable Accommodations under the Fair Housing Act*, 2004, found at <http://www.fairhousingnc.org/wp-content/uploads/2012/03/HUD-DOJ-Joint-Statement-on-RA.pdf>

Eichstaedt, Marley J., *Assistance Animals in Housing – New HUD Guidance Regarding Assistance Animals*, Northwest Fair Housing Alliance