

# Questions Corner

by Deborah Thrope, NHLP Staff Attorney

**Q: My client received a three-day notice to quit or cure because of the condition of his apartment. I went to see the apartment and it was obvious that my client has a severe hoarding issue. The landlord has already given my client several chances to improve the condition of his unit, yet he continues to fail the landlord's inspections. Can I request that the landlord rescind the three-day notice and allow my client even more time to clean his apartment?**

**A:** Yes, as a reasonable accommodation. However, your success in requesting more time will depend on your client's plan to improve and maintain the condition of his apartment.

The federal Fair Housing Amendments Act (FHAA)<sup>1</sup> protects individuals with disabilities from discrimination and makes it unlawful for landlords to refuse to make reasonable accommodations in rules, policies, practices, or services when it is necessary to allow a person with a disability an equal opportunity to use and enjoy a dwelling.<sup>2</sup> In order to receive a reasonable accommodation the tenant must (1) experience a disability, (2) request a specific accommodation, and (3) show a nexus between his disability and the requested accommodation. In hoarding cases, the request is typically to rescind a termination of tenancy notice and allow the tenant more time to comply with the lease and local housing codes. In addition, you and your client should provide the landlord with a concrete and long-term plan to clean up and maintain the condition of the apartment, even if the client's former efforts have failed.

## Making the Request

First, the tenant must disclose the presence of a disability when requesting an accommodation, although the tenant need not state his specific diagnosis. The federal definition of disability includes "individuals with a physical or mental impairment that substantially limits one or more major life activities."<sup>3</sup> Whereas hoarding behaviors used to be considered a symptom of various mental health disabilities and most often associated with obsessive-compulsive disorder (OCD), "hoarding disorder" is a separate diagnosis in the most recent version of the Diagnostic and

Statistical Handbook for Mental Disorders (DSM V).<sup>4</sup> Diagnostic criteria include difficulty discarding items, accumulation of possessions that compromise the intended use of living areas, and significant impairment in important areas of functioning.<sup>5</sup> Given the distress associated with compulsive hoarding and its recognition as a disorder in DSM V, individuals who hoard likely have a qualifying disability for purposes of the FHAA.<sup>6</sup>

In some cases, a landlord may demand verification of a tenant's disability in consideration of a request for an accommodation. However, when the disability and the need for the accommodation are obvious or apparent, such as in most hoarding cases, landlords should not require a tenant to produce medical documentation.<sup>7</sup>

In addition, the tenant must make a direct and specific request for an accommodation to his landlord.<sup>8</sup> The words "reasonable accommodation" are not required, but the tenant should convey that he is requesting a change to the regular rules because of his disability. In addition, the request can be made orally or in writing.<sup>9</sup> There is no limit to the amount of accommodations a tenant may request, although the number of requests and the amount of time that has elapsed will factor into the "reasonableness" analysis, explained in more detail below.

<sup>4</sup>AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL HANDBOOK FOR MENTAL DISORDERS § 300.3 (F42) (5th ed. 2013).

<sup>5</sup>*Id.*

<sup>6</sup>Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant "Hoarding" Under the Fair Housing Act*, 46 Suffolk U. L. Rev. 79, 94-95 (2013) (discussing fair housing protections for individuals who hoard and strategies for successfully requesting reasonable accommodations).

<sup>7</sup>Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations Under the Fair Housing Act, at 12 (2004) [hereinafter Joint Statement], available at: <http://www.hud.gov/offices/fheo/library/huddojstatement.pdf>.

<sup>8</sup>Colon-Jimenez v. GR Mgmt. Corp., 218 F. App'x 2 at \*2 (1st Cir. 2007); Wallace H. Campbell & Co., Inc. v. Maryland Comm'n on Human Relations, 33 A.3d 1042, 1053, (Md. App. 2011).

<sup>9</sup>Powers v. Kalamazoo Breakthrough Consumer Hous. Coop., 2009 WL 2922309 at \*7 (W.D. Mich. Sept. 9, 2009).

<sup>1</sup>42 U.S.C. § 3604(f)(3)(B).

<sup>2</sup>Along with the FHAA, the obligation to reasonably accommodate people with disabilities arises from a variety of sources including the Americans with Disabilities Act, 42 U.S.C. §§ 12131, *et seq.*, and the Rehabilitation Act of 1973, 29 U.S.C. § 794. Federally assisted housing is subject to all three laws, while private housing is subject to the FHAA and the ADA. State law may provide similar protections.

<sup>3</sup>42 U.S.C. § 3602(h).

## QUESTIONS CORNER continued

Lastly, the tenant must show a nexus between the disability and the requested accommodation. In hoarding cases, the nexus is clear. The hoarding behaviors (difficulty in discarding possessions resulting in clutter and emotional distress) caused the tenant to breach his lease by failing to maintain his apartment in a clean and sanitary condition, and by violating local housing codes.

### Reasonableness of the Accommodation Request

Once the tenant has properly requested an accommodation, a landlord can only deny it on limited grounds. Whether or not the landlord is required to grant the accommodation depends on the reasonableness of the request and whether the tenant has provided sufficient assurances that the unit will not present a direct threat to the health and safety of other tenants. Both of these issues will turn in the tenant's favor so long as he has a concrete plan to clean the clutter from his unit and keep the apartment clean.

A request for an accommodation is unreasonable when it presents an undue financial and administrative burden or fundamentally alters a housing provider's services or policies.<sup>10</sup> In hoarding cases, it is important to specify that the tenant will be responsible for cleaning the unit, and therefore the landlord bears no financial burden. Some landlords will argue that an accommodation is a financial burden because of the risk of being cited or fined by a local code enforcement officer. Or, if the tenant has a Section 8 Housing Choice Voucher, a housing authority inspector may fail the unit for Housing Quality Standards violations and abate the rent. Neither of these scenarios presents a financial burden to the landlord, however, because both code enforcement and the housing authority, in addition to the landlord, are required to provide the tenant more time to clean his apartment as a reasonable accommodation of his disability.<sup>11</sup>

An undue burden might arise if the tenant has already requested additional time to comply with the lease and bring his apartment up to code. Perhaps the client was already granted several accommodations and failed at each attempt before coming to your office. Although analyzed on a case-by-case basis,<sup>12</sup> at a certain point, a request for more time becomes unreasonable.<sup>13</sup> In this case, advocates should focus on what has changed between the last request and the

present. What types of new assurances are the tenant able to provide? If the tenant has previously failed in his efforts to comply with the lease, why is he more likely to succeed now?

### "Direct Threat" to the Health and Safety of Other Tenants

Landlords are also not obligated to accommodate a tenant when the hoarding is so severe that it creates a "direct threat" to other tenants' health and safety.<sup>14</sup> In *Douglas v. Kriegsfeld Corporation*, a landlord tried to evict a tenant for failure to maintain the apartment in a clean and sanitary condition.<sup>15</sup> The tenant experienced a mental health disability that affected her ability to perform housekeeping duties. The tenant requested an accommodation for more time to comply with her landlord's demands and was referred to a government agency that would help her clean her apartment. The court overturned the lower court's ruling that the tenant's behavior created a direct threat to the health and safety of other tenants such that the landlord was not obligated to provide her a reasonable accommodation. The court decided that the tenant provided adequate assurances that the apartment would be cleaned with the help of the government agency, thereby alleviating any potential threat to other tenants' health and safety. In addition, the court ruled that the landlord did not sufficiently explore the accommodation offered and therefore the denial was premature. Other courts have agreed that evidence of a threat does not relieve the housing provider of its obligation to consider a request for an accommodation.<sup>16</sup> In fact, housing providers must consider accommodation requests that eliminate or mitigate a potential threat.<sup>17</sup>

### Creating a Concrete Plan to Address a Hoarding Issue

A concrete, realistic, and long-term clean-up plan will make your client's request reasonable and will demonstrate how to alleviate a potential threat to health and safety. A concrete plan will make it more likely that the landlord will grant the accommodation request, improving the tenant's chances of remaining housed.<sup>18</sup> This is true even if multiple accommodations

<sup>10</sup>Joint Statement at 7.

<sup>11</sup>Americans with Disabilities Act, 42 U.S.C. §§ 12131, *et seq.*; Rehabilitation Act of 1973, 29 U.S.C. § 794 (2012).

<sup>12</sup>Joint Statement at 7.

<sup>13</sup>Wiesner v. 321 West 16th Street Assocs., 2000 WL 1191075 at \*6 (S.D.N.Y. Aug. 22, 2000).

<sup>14</sup>24 C.F.R. § 9.131.

<sup>15</sup>*Douglas v. Kriegsfeld Corporation*, 884 A.2d 1109, 1137 (D.C. 2005) (Clearinghouse No. 55,984).

<sup>16</sup>*Roe v. Hous. Auth. of Boulder*, 909 F. Supp. 814, 822-23 (D. Colo. 1995); *Roe v. Sugar River Mills Assocs.*, 820 F. Supp. 636, 640 (D.N.H. 1993).

<sup>17</sup>*Cornwell & Taylor, LLP v. Moore*, 2000 WL 1887528 (Minn. Ct. App. Dec. 22, 2000).

<sup>18</sup>Liam Garland, *A New Framework for Evaluating the Fair Housing Amendment Act's "Direct Threat" Cases*, March-April 2008 Clearing-

## QUESTIONS CORNER continued

have already been granted.

Coming up with a solid plan in a hoarding case is often challenging because of the difficulty in modifying the behavior of a person who compulsively hoards and the lack of resources available. One effective way to modify hoarding behavior is to set specific goals with a timeframe in which to complete tasks, both for the initial clean-up and ongoing housekeeping duties.<sup>19</sup> Goals should include detailed instructions instead of vague demands. For example, if the landlord cited “no pathways” as a violation, an advocate should look up the local housing code with respect to pathways and convey to the client exactly how many inches are required throughout the home. Then, discuss a plan to minimize clutter in a way that complies with the code.

A concrete plan must also identify individuals that can provide ongoing support to the person who is hoarding. A family member, social worker, case manager, or in-home support services worker can often provide assistance with cleaning and/or offer help locating additional resources. Mental health treatment and therapy are an additional assurance that your client’s plan is realistic and long-term. Support groups specifically for individuals who hoard, where available, present a great opportunity to demonstrate to the landlord that the tenant is serious about remaining in compliance with the lease. Some communities have a hoarding task force that has already identified resources available to help the client succeed. Lastly, working with a legal services advocate can be an important part of your client’s plan and represents a change in his circumstances that makes a new accommodation plan reasonable.

### Conclusion

In sum, an advocate may request a reasonable accommodation on behalf of a client for more time to comply with the lease when the tenant experiences hoarding behaviors. The landlord’s obligation to grant the request will depend on the nature of the client’s plan to comply with housing codes and minimize the risk of future violations. ■

---

house Rev. 594, 597 (2008) (The tenant is more likely to win an eviction “direct threat” case when the tenant engages in a “high-intensity intervention” after a lease violation such as when the tenant agrees to a behavioral plan or other concrete action).

<sup>19</sup>Christopher C. Ligatti, *Cluttered Apartments and Complicated Tenancies: A Collaborative Intervention Approach to Tenant “Hoarding” Under the Fair Housing Act*, 46 Suffolk U. L. Rev. 79, 103 (2013) (discussing fair housing protections for individuals who hoard and strategies for successfully requesting reasonable accommodations)

## Recent Cases

The following are brief summaries of recently reported federal and state cases that should be of interest to housing advocates. Copies of these opinions may be obtained from sources such as the cited reporter, Westlaw, Lexis, Google Scholar,<sup>1</sup> FindLaw,<sup>2</sup> or, in some instances, the court’s website. NHLP does not archive copies of these cases.

### FEDERAL CASES

#### Project-Based Section 8: HAP Contracts

*Greenleaf Ltd. P’ship v. Illinois Hous. Dev. Auth.*, 2013 WL 4782017 (N.D. Ill. Sept. 6, 2013). Project-based Section 8 owners sued their state agency contract administrator, which then filed a third-party complaint against the Department of Housing and Urban Development (HUD), seeking relief if it was found liable to the owners. The owners’ suit claimed several breaches of the Section 8 Housing Assistance Payments (HAP) contract and sought damages and increased contract rents. HUD then moved to dismiss several of the state agency’s claims, asserting that the agency had no valid Administrative Procedure Act (APA) claim, no contractual basis for its indemnification claim, and no standing to seek a declaratory judgment. As background, in 2009, after the court had previously granted HUD’s motion to dismiss for lack of jurisdiction, the litigation proceeded without HUD to summary judgment, and both parties then appealed. While the appeal was pending, the parties settled the owners’ claims and the agency also settled its third-party damage claims against HUD, so the owners dismissed their appeal. During the pendency of the agency’s appeal of the dismissal order, the Solicitor General determined that one of the statutory waivers of sovereign immunity relied on by the trial court, 42 U.S.C. § 1404a, indeed waived sovereign immunity for the breach of contract claim, so the agency’s third-party complaints were remanded. Back in the trial court, HUD then moved for dismissal of all other claims, including that for indemnification. On the APA claim, the court found that the reinstated breach of contract claim constituted another adequate judicial remedy, thus precluding APA review under 5 U.S.C. § 704, rejecting the agency’s attempt to distinguish it from the APA and contract claims. The court declined to dismiss the implied indemnification claim, due to the sparse development of the record on the parties’ relationship. The court also permitted the declaratory judgment claim to proceed, but only for those involving the suits and contracts at issue.

---

<sup>1</sup>scholar.google.com.

<sup>2</sup>www.findlaw.com.