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HUMAN RIGHTS AUTHORITY-NORTHWEST REGION

REPORT 13-080-9007
ROCKFORD HOUSING AUTHORITY

Case summary: a violation of a service dog's access was substantiated but immediately remedied. The Authority's case findings follow.

INTRODUCTION

The Human Rights Authority (HRA) of the Illinois Guardianship and Advocacy Commission opened an investigation after receiving complaints of possible rights violations at the Rockford Housing Authority. The complaint alleged that a tenant's service dog is not allowed in a vending machine room, the tenant's rental rate was increased without adequate notice and consultation, she was made to sign a lease renewal without a recalculated rent amount entered and her requests to file a grievance and hold an eviction hearing have been ignored. Substantiated findings would violate protections under the Housing and Urban Development Regulations (HUD) (24 C.F.R. 960 and 966).

The Rockford Housing Authority maintains nearly two thousand public housing units for the city's low-income individuals and families. Included are four high rises for seniors and people with disabilities, one of which is the subject of this review.

The HRA visited administrative offices and discussed the issues with housing authority representatives. Relevant policies were reviewed as were sections of the tenant's file with written authorization.

COMPLAINT SUMMARY

It was said that an apartment manager will not allow a tenant's service dog to accompany her in a vending machine room on the building's main floor area. The dog alerts people nearby whenever the tenant has a seizure. The same tenant's rental amount has been significantly increased from a percentage of her income to a flat rate, and the housing authority reportedly arrived at the new amount without consulting with her. The complaint states further that a manager threatened her with eviction if she refused to sign a new lease without the recalculated rent entered. She asked to file a formal grievance on the matter and then requested an eviction hearing but was ignored.

FINDINGS

A tenant's service dog is not allowed in a vending machine room.

The housing authority's attorney clarified in a letter to us that this incident was a simple misunderstanding. The dog was brought into a community room as a meal was being served, and not knowing it was a service dog, an assistant manger asked her to remove him after another tenant complained. A superior talked with the tenant later that day and said it was a mistake and that the dog could go anywhere she did, so the problem is resolved. We verified this account with the property manager during our visit. She said this particular site has as many as twenty service dogs that walk alongside their owners anywhere in the building and on grounds and that the staff are usually aware of this. Tenants who use these dogs are only required to provide a medical statement of need, which was previously done in this case. She too believed the one-time incident was corrected.

Documentation from the tenant's file showed that she had written permission from the housing authority to keep her service dog. We checked the U.S. Service Dog Registry and found this tenant and her dog listed.

CONCLUSION

The housing authority's pet policies state that assistance animals are those that support or provide service to a person with a disability. They perform a variety of functions, including alerting persons to impending seizures. The use of a service animal is not an automatic entitlement; rather, it depends upon the relationship between a tenant's disability and his need. Service animals are not considered pets and are therefor not subject to general pet policies relating to designated and restricted pet areas. Owners must however, ensure that their service animals do not pose a direct threat to the health and safety of others or cause damage to property. (Chapter 10, Part I).

HUD conditions for pet ownership do not apply to animals that assist persons with disabilities and housing authorities cannot enforce them. The rights of persons with disabilities may not be limited or impaired although a housing authority may regulate service animal use as appropriate under federal, state or local laws. (24 C.F.R. 960.705). Section 504 of the Rehabilitation Act as well as the Fair Housing Act allow for reasonable accommodations of persons with disabilities in public housing, provided they do not constitute an undue burden or fundamental alteration. (29 U.S.C. 794; 42 U.S.C. 3601 et seq.).

Here a property employee mistakenly prevented the tenant's service dog from joining her in an unrestricted community room, not specifically a vending machine room, which was a substantiated violation. The error was immediately remedied, and we find no further violations of this tenant's right to reasonable accommodations.

The tenant's rental rate was increased without adequate notice and consultation and she was made to sign a lease renewal without a recalculated rent amount entered.

Representatives explained to us that all tenants and families are invited in writing to a recertification or reexamination meeting to review income and family composition and to adjust rental amounts accordingly. A staff member typically provides the written notice by sliding it under their apartment doors. The assistant manager sets the meeting schedules but they can be changed as tenants need.

Tenants choose an income-based rent at a percentage of their monthly incomes minus allowances or a flat rent at a current $400 for the elderly and persons with disabilities. This tenant's rent is income-based. Leases are renewed annually. Renewed lease documents are not provided or required; the initial lease follows every year and contains the same specifics on rules and agreements. Changes to lease agreements such as for rental redeterminations are provided as separate notifications. A notice of review determination is the actual renewal on the lease. In this case we were told, the tenant was notified of her recertification meeting months in advance and that the notice included the date, time and specific income information that she was to bring. She attended that meeting where a recalculated rental amount was identified. According to the property manager, the assistant manager held the meeting and said that she believed the tenant understood the recertification process, what was expected of her and what she was signing.

The claim of whether the tenant was made to sign a new lease absent a rent amount was baffling to them and they had never heard of this complaint before. We mentioned that we were given three reports of similar claims, one from a social agency attorney, one from another tenant's guardian and one from this tenant, all without proof however of what document was specifically at issue. It was offered that first there are no renewed leases and subsequent lease and reexamination materials are typically pre-printed, including new rent amounts. The CEO expressed concern for the potential but was also puzzled about it. He agreed to look into the matter, and we followed up later on his findings.

We looked to the tenant's file for supportive documentation of how she was notified and consulted about her recertification. Included was the initial lease signed by the tenant and property management in March of 2012, and there was no new lease for 2013 as we were advised. An October 2012 letter notified the tenant that a recertification interview was scheduled for November and listed the types of income sources and expenses she was to provide. A new rent amount was not yet determined. A rent calculation acknowledgment form following that meeting designated the income-based rent amount and was signed by the tenant and the assistant manager. The rent amount was not pre-printed but handwritten. A notice of review determination came in January, which informed the tenant that the same rent amount identified in November would be effective in March of 2013. We also looked at the documentation of how her new rent was determined. Employment incomes, unemployment and social security benefits were tallied, minus allowances and thirty percent of the adjusted monthly income to arrive at the rent amount.

CONCLUSION

The housing authority's policy for reexaminations states that they are required to monitor income and family composition over time and to adjust rent accordingly. The process begins approximately one hundred-twenty days in advance of the scheduled effective date. Tenants or heads of households are required to participate in the annual reexamination interview. Notification will be sent by first-class mail and will include the date, time and location of the interview and the information related to income and expenses that must be provided. Increases in rent as a result of the reexamination require at least a thirty-day notice and takes effect on the anniversary date. (Chapter 9, Part I).

Under HUD regulations, those who choose to pay income-based rent shall be subject to income and family composition reexaminations at least annually. Adjustments will be made upon consultation with the tenant or family and verification of the information gathered. (24 C.F.R. 960.257). Leases shall have a twelve month term. The lease shall specify the initial amount of rent at the beginning of the initial term and the housing authority shall give written notice of any change in the amount and when the change is effective. (24 C.F.R. 966.4).

In this case the housing authority provided written notice of a reexamination interview that was scheduled approximately one hundred-twenty days before the initial lease's anniversary and included a list of needed income and expense documentation as required by policy and regulations. The tenant acknowledged by signature the rent amount determined at that meeting and a notice of the review determination was provided at least thirty days before the effective date, also pursuant to policy. A violation of the tenant's right to notification and consultation is unsubstantiated.

We were neither provided nor found evidence that this or any other tenant has been made to sign lease renewals without rent amounts entered or otherwise be evicted. Although the allegation is rather vague, one document, namely the rent calculation acknowledgment form that results from the reexamination interview, includes a handwritten entry. The designated type of rent and amount could be entered any time, before or after the tenant is asked to sign. This case has potential: the first document about the new rent amount shared with the tenant was the rent calculation acknowledgment form done in November with a handwritten amount entered; the second document included a pre-printed amount and came in January, a few days before she had a heated exchange with an office worker about her rent. Implications are that she may have indeed been asked to sign the first acknowledgment form with the amount space blank and became angry upon learning of the amount later, but that remains speculative. The housing authority followed up later and informed us that although the allegation is still disputed, they have revised its rent calculation process to include rent choices, flat or income based, and acknowledgment of having discussed the options and amounts by signatures from both parties. Staff are directed to be sure that rent differences are explained and that copies of the acknowledgment form are only given once they are completed. This part of the complaint is also an appropriate notification issue, and with the available evidence and subsequent revisions made as a safeguard against error, a rights violation is unsubstantiated.

SUGGESTIONS

1. Although sliding notices under tenants' doors seems practical and inexpensive, policy calls for them to be mailed first-class. Perhaps the policy can include this preferred option along with some form of documented completion and save any dispute from a tenant who says he never got it.
2. Ensure that tenants with disabilities understand all agreements and forms they are asked to sign.

The tenant's requests to file a grievance and hold an eviction hearing have been ignored.

Hearings are part of the grievance process according to the representatives we interviewed. The property manager said that the tenant complained about an incident in January when she had an exchange with an office worker about her rent amount. She submitted her complaints in writing and they set up a meeting between her and the manager's supervisor to discuss them. The supervisor cancelled the first scheduled meeting and the tenant was a no-show for the second one. The manager told us that she personally went to the tenant's apartment on the morning of the second meeting to remind her and the tenant said she would not attend. Nothing was scheduled after that and the tenant's complaints were not addressed since she chose not to meet with them. The attorney wrote in his initial letter to us that these meetings were not a grievance hearing pursuant to policy. We were also told that the housing authority is seeking eviction because of the tenant's behavior during this incident. The HRA will not review the eviction matter specifically since an eviction hearing is underway and the tenant has an attorney to support her interests.

An email print out from the file detailed the January incident. An office worker wrote to the property manager that the tenant approached her about a returned check and objections about her rent amount. The office worker reported that the tenant called her a liar, used profanity and told her to "watch out". An attached complaint/resident dispute form completed by the tenant described something else. She reported that the office worker physically threatened her as the worker stood over with her hand pulled back as if she was going to hit her. She went on to say that she immediately went to the main office downtown to file a grievance. An employee there could not find the right form and she went back to the apartment building where the office worker met her, threw a form at her and yelled at her for complaining about her. The tenant concluded her complaints by adding that she was coerced into signing a new contract with the rental amount blank. She was told she would be served an eviction notice effective immediately if she refused--she had no choice but to sign.

The housing authority's CEO and the attorney said they were unaware of these complaints in such detail.

A comments sheet chronologized what played out over the next four or five weeks. Another office worker wrote that the tenant came to the office and was verbally abusive to a coworker--a letter was sent to invite the tenant to a meeting with the supervisor regarding the complaint she filed downtown--the meeting was cancelled as the manager was out sick--a

reschedule letter was sent--the tenant was a no show at the meeting--a thirty-day [eviction notice] was served. Copies of the two letters referenced were also in the file. One acknowledged the tenant's filed complaints and arranged a meeting and the other scheduled a replacement meeting. The eviction notice cited lease violations in that the tenant called the office worker vulgar names and threatened her.

CONCLUSION

Housing authority policy defines grievances as any dispute which a tenant may have with respect to a housing authority action or failure to act per the lease or regulations that adversely affect the tenant, the tenant's rights, duties, welfare or status. Any grievance shall be presented orally or in writing. An informal meeting is supposed to be arranged to discuss the grievance and attempt to settle them without a hearing. A summary is prepared at the conclusion of these meetings along with advisement of how to request a hearing if the complainant is not satisfied. (Grievance Procedures, Appendix B).

HUD regulations require housing authorities to adopt grievance procedures that afford opportunities for hearings. Grievances include: "…any dispute which a tenant may have with respect to PHA [public housing authority] action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status." (24 C.F.R. 966.53 and 966.53).

The question is whether the tenant's requests to file a grievance and to hold an eviction hearing were ignored. We found that separate instances of each occurred. First, the tenant had an exchange with an office worker whom she described in a formal written complaint as being aggressive with her. Although an employee at the main office could not supply the form she needed to file, he apparently alerted the site's office and the tenant was given her chance to file her grievances per policy and regulations. A meeting was arranged, she was notified of the meeting and a second had to be scheduled, also as required by policy. The tenant ultimately chose not to attend. The housing authority chose to seek eviction because of the tenant's behavior with the office worker; the tenant requested a hearing and a hearing is underway, which we were able to verify. Her requests were not ignored, and the complaint is unsubstantiated.

COMMENTS

The housing authority told us that tenants who use service dogs are only required to provide a medical statement of need. Although this is not spelled out in the policies provided to us, the stated practice may exceed ADA and Fair Housing Act limitations on inquires and we encourage the housing authority to address its policies according to 28 C.F.R. 36.302 (c): "A public accommodation shall not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal." And, according to the Fair Housing Act with regard to service animals under 42 U.S.C.

3601, only 3 tests must be met: the person must have a disability, the animal must serve a function directly related to the person's disability, and the request to have the service animal must be reasonable. There is no stipulation for proof of disability or service dog need to make reasonable accommodations.