

Reasonable Accommodations Demystified

The Tenant Perspective

Deena A. Zakim, Esq.

Greater Boston Legal Services

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WHY DO WE HAVE REASONABLE ACCOMMODATION PROTECTIONS?

- To provide equal access to housing to people with disabilities; full inclusion within communities
- Reasonable accommodation policy aims to balance rights of tenants with disabilities and the legitimate interests of housing providers.
 - See City Wide Assoc. v. Penfield, 409 Mass. 140, 142 (1991); Schaw v. Habitat for Humanity of Citrus County, Inc., 938 F.3d 1259, at 1265 (11th Cir. 2019) , citing S.E. Cmty. Coll. v. Davis, 442 U.S. 397, 412 (1979).
- Owners must accommodate if it is necessary to allow the tenant/applicant equal access to the housing and if the accommodation requested is reasonable

Requesting Accommodations

- **No “magic” words required to make a request.**
 - *See Boston Hous Auth. v. Bridgewaters, 452 Mass. 833, 847 (2009).*
- Tenant/ applicant just needs to make clear to the housing provider “that she is requesting an exception, change, or adjustment to a rule, policy, practice, or service because of her disability.”
 - *See HUD/DOJ Joint Statement at 10.*
- No set deadline, form, or mode in order to make a request. The request can be made orally or in writing, on specific forms or not.
- Foot-in-the-door RAs... Deadline approaching.
 - Requesting RA, Basics, will provide supporting documentation ASAP
- **BUT → → →**



BEST Practice in requesting accommodations

BE SPECIFIC: disability-related need; why necessary

- Person who needs RA, needs it now... best to provide all info up front to avoid delay.
 - Include documentation that the person has a disability (unless obvious or clearly known by Owner), explanation of how the disability is related to the accommodation, and why the accommodation is necessary to enable the tenant equal access to housing.
 - DO NOT need to include diagnoses. Sometimes tenant/applicant wants to because it makes it easier for owner to understand/process.
 - USE our example Certification of Need form

EXAMPLE

- Tenant facing eviction from subsidized housing for non-payment of rent (already received NTQ and S and C)
- Tenant has cognitive disabilities that make it difficult for her to remember to pay each month (--submit provider letter confirming this)
- Tenant owes 10k
- Tenant can request an accommodation that landlord cease/stay the eviction proceedings, permit her to arrange (or have a provider arrange) an automated payment system, apply for rental arrearage assistance to repay the amount owed/ or negotiate an affordable repayment plan
- Continue her tenancy and comply with rent payment requirements moving forward

Evaluating Owner Responses

- Owner Requests Additional Information

- Owner “should seek only the information that is necessary to evaluate if the reasonable accommodation is needed because of a disability.” (HUD/DOJ Joint Statement at 14) → Tenant only needs to provide that necessary information.
- If more is needed, should provide.

- Owner Proposes Alternatives

- Interactive process- Tenant not necessarily entitled to one specific RA (unless it is the only one that would allow her equal access). Must be flexible. Consider if proposal is reasonable and would work
- Opportunity for parties to work together
- Creativity

- Owner Requires Certain Forms

- If not too burdensome, fill them out
- If it will cause too much delay or to provide more info than necessary, oppose it
- With Pro Se tenants, may make more sense for them to permit access to providers.

- Owner Ignores Request

- Unreasonable delay can = discrimination

If Owner denies the request:

- Depending on housing type, may have administrative appeal rights (public/subsidized housing). APPEAL.
- If arises within Summary Process case → Options: 1) raise as Defense, 2) Ask Court to order Owner to accommodate/or continuance to permit/require further engagement in RA process
- File Discrimination Claims with HUD/MCAD

COMMON AREAS OF CONFLICT/LITIGATION THE EXCLUSIONS



--> ????

****DIRECT THREAT** to health or safety/ whose tenancy → subst damage to property = not protected

--BUT if the RA will “acceptably minimize the risk the tenant poses.” *Boston Hous. Auth. v. Bridgewaters*, 452 Mass. 833, 842 (2009), the accommodation must be granted.

--Individual assessment

-- “[I]nability to provide absolute assurance” does not render a proposed accommodation unreasonable. *See Moretalara v. Boston Hous. Auth.*, 99 Mass. App. Ct. 1,13-14 (2020).

--Burden regarding direct threat “is on the landlord.” *Boston Hous. Auth. v. Bridgewaters*, 452 Mass. 833, 843 (2009).

****CURRENT USE**-- People who currently use illegal substances or whose alcoholism prohibits them from being otherwise qualified

--BUT current use exception only applies if person seeking protection is doing so **solely** based on their current use.

--AND history of use of illegal substances= qualifying disability

COMMON AREAS OF CONFLICT/LITIGATION (CONTINUED)

- Deadlines -- Can be raised at the “proverbial last minute.” *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109, 1121 (D.C. 2005).
- Who is “Otherwise qualified”?- An individual who is able to comply with the program once an accommodation is provided is qualified.
- Is it necessary? T/A needs it to gain/maintain equal access to housing
 - Examples
- It is reasonable? (not undue fin/admin burden; not fund. alt.)
 - Examples