



Landlord Letter

June 2017

Fair Housing & Assistance Animals

We regularly have landlords questioning what they can do when their tenants say they have an assistance animal. It seems that assistance animals and fair housing issues are experiencing a snowball effect and are growing more and more common.

When one tenant has a legitimate need for an assistance animal, other neighboring tenants take notice and suddenly are requesting their own assistance animals. It is important for landlords to take each request seriously and consider it thoroughly.

Under the law, the purpose of an assistance animal is to aid a person with a disability in a way that alleviates the symptoms of their disability. That requires that (1) the tenant has a disability

which substantially limits one or more major life function, and (2) the assistance animal helps alleviate the negative impacts of the disability (i.e. there is a nexus between the animal and the disability).

If the disability and the nexus are obvious (i.e. blind person with a seeing eye dog), then there's no need to request verification that the animal is allowed. However, a tenant cannot just claim to be disabled and get an assistance animal. If the disability or the nexus is not apparent, the landlord can request additional verification.

We recommend that assistance animal requests

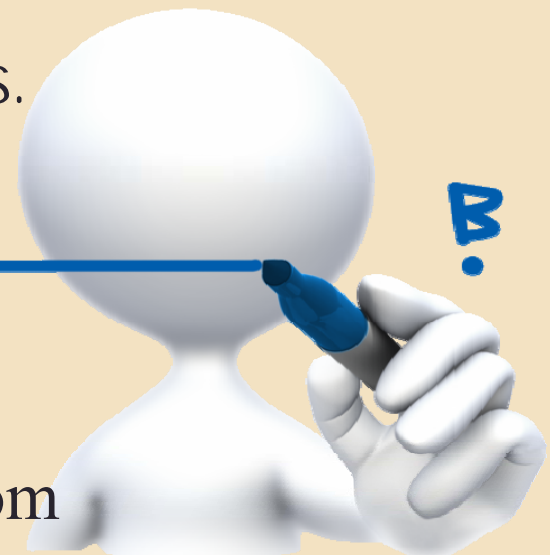
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Let us help you connect the eviction dots.

Contact us for a ***FREE*** **A**
15 minute

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Email: info@utahevictionlaw.com



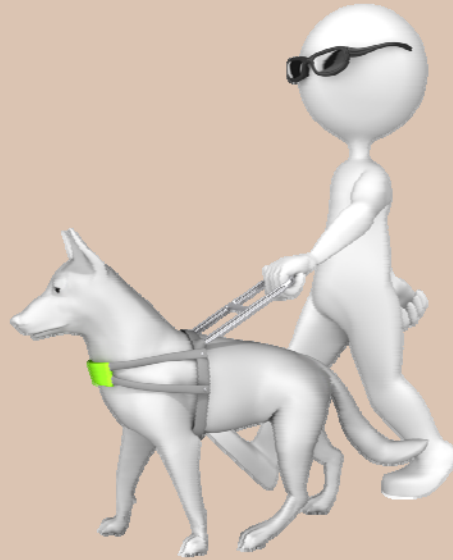
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be in writing so there is no confusion on what is being requested. The tenant should explain (1) who is making the request, (2) what specifically is requested, and (3) what health care professional is attesting to the disability and nexus.

A request for an assistance animal should normally be granted if a health care professional has adequate knowledge of the patient and attests that (1) they are disabled and (2) the animal is necessary to allow the tenant to fully use or enjoy the unit and common areas. There are limited circumstances which would justify denying a request for an assistance animal, but such a denial should be handled with care and under supervision of an attorney.

It is important to point out that an assistance animal is NOT a pet. A tenant with an assistance animal must be treated exactly like other tenants

without a pet. A landlord cannot charge a pet deposit, pent rent, or fees beyond what would be charged to the other tenants. But the tenant must be disabled, and the assistance animal helps overcome their disability.



Even if a tenant has a legitimate assistance animal, that does NOT give the tenant and the assistance animal free reign to do whatever they want. A landlord may still enact reasonable rules that apply for ALL animals (i.e. cleaning up after animals, keeping animals on a leash in common areas, etc.). The tenant may still be evicted for creating a nuisance or failing to control the animal (i.e. noise, nuisance or causing damage to the property).

Finally, whenever a tenant talks about or makes a request related to an assistance animal, it is always acceptable to say “I’m not sure, let me check.” Landlords do not have to have every answer to every question ready at all times. It is completely acceptable to say you need to check and then respond within a reasonable time.

Know Your Notice

• Declaration of Abandonment •

Purpose: Assists the landlord in re-taking possession when a tenant has abandoned the property.

The Declaration of Abandonment serves two purposes: (1) it declares the real property abandoned before the landlord re-takes possession, and (2) sets up the sale/donation of any abandoned personal property the tenant left behind.

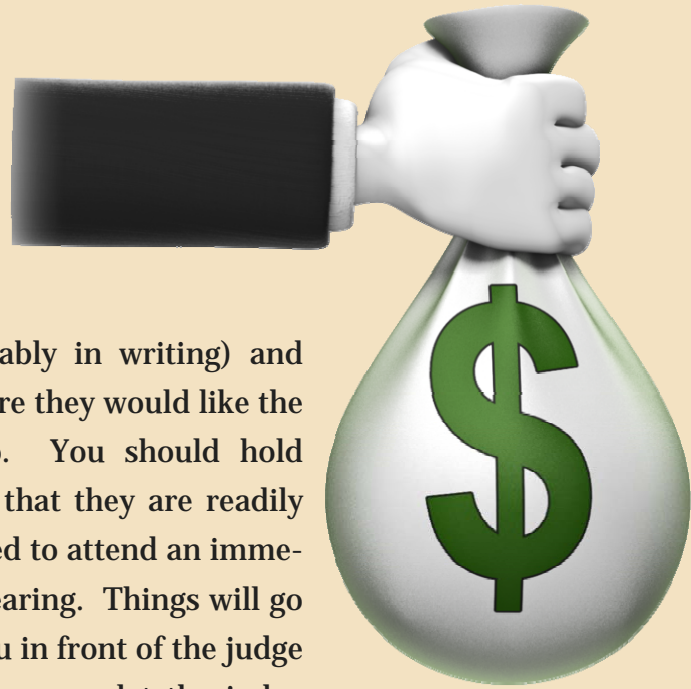
There is no notice requirement in order to declare a property abandoned, but prior to selling or disposing of any personal property the landlord must give a Declaration of Abandonment and store the items for a minimum of 15 days.

Once the 15 days has expired, the landlord may sell/donate the items. However, the landlord must give written notice of the sale at least five (5) days before the sale.

Be cautious... A Declaration of Abandonment is a necessary and useful tool, but if a judge later determines the property was NOT abandoned, the landlord may be responsible for treble damages.

Dear Attorney,

Q: *What do I do if a tenant makes a payment after service of the Summons & Complaint?*



A: Occasionally, after you have filed the eviction with the court on an issue involving non-payment, the tenant will attempt to make a payment by depositing some amount into the landlord's bank account, hoping it will stop the eviction or at least give the tenant an argument that the eviction should stop. In order to avoid any potential issue with the eviction case and any confusion with the court, the best thing to do is immediately notify the tenant that the payment

is rejected (preferably in writing) and ask the tenant where they would like the funds returned to. You should hold onto the funds so that they are readily available if you need to attend an immediate occupancy hearing. Things will go much better for you in front of the judge at the hearing if you can let the judge know that the payment was made after the eviction was filed, that you notified the tenant the payment was not accepted and that the funds are available to be returned if the court so orders.



DOs & DON'Ts of Maintenance & Repairs



DO

- Address all maintenance requests in a timely matter.
- Document maintenance requests & repairs (date, time, description, etc)
- Communicate with your tenant to keep them in the loop.



DON'T

- Ignore requests, even if you decide "no action" is appropriate.
- Charge tenants for repairs based on normal wear & tear.
- Show up unannounced. Make sure to give proper inspections notices.

Courtroom Chronicles

How many times does a tenant need to be locked out before they understand they were evicted? Sometimes way too many. Recently we obtained an eviction order and had the tenant locked out. Later that evening, the tenant broke back into the property and resumed living there as though nothing happened. The police were called the following day and instructed them to leave. They left and a few hours later returned. The police were called again, and waited while the tenants removed motor homes and vehicles and the property was secured. Later that same evening, the tenants broke back into the property and resumed

living in there as though nothing happened. Finally, our attorney and the landlord, accompanied by 5 police officers, arrived at the property the following morning and the tenants were arrested for trespassing. Even while they were cuffed, they continued to argue that they were not evicted and they should still be allowed to reside in the home. Our attorney and the officer explained that they were going to jail for trespassing and could no longer return to the property. These tenants still don't understand why they are not living there, but luckily it didn't take a 5th lockout to drive the point home.

Parting Thoughts

- We're working to build our readership, tell your friends to subscribe to this FREE newsletter. Send us an email at info@utahevictionlaw.com.
- Have an eviction question? Email it to us for a future newsletter!
- Help us build our online presence! You can "Like" our Facebook page (www.facebook.com/utahevictionlaw).
- You can also give us a Five Star Google Review (search "Utah Eviction Law Reviews" and click on our link).



Calendar of Events

- June 9—UAA Multi City Good Landlord Class
- June 14 — Flag Day
- June 18 — Father's Day
- June 21 — Summer Solstice
- June 27—UAA Provo General Membership Meeting