CITY OF IOWA CITY
MEMORANDUM

Date: August 24, 2020

To: Iowa City Landlords and Rental Property Managers
From: Kristin Watson, Human Rights Investigator
Re: Iowa Supreme Court Decision Regarding Emotional Support Animals

Recently, the Iowa Supreme Court issued a decision concerning Emotional Support Animals (ESAs). The case is Iowa Supreme Court No. 18-2173, Cohen v. Clark and 2800-1 LLC.[1] This memorandum is meant to provide general guidance regarding this subject. If you have questions regarding topics addressed in this memorandum or your rights and responsibilities in general, please call the office at 319-356-5015.

What led the parties to filing suit?

A person with severe animal allergies moved into a no-pets building specifically because it was an animal-free environment. The person has such severe allergies to cats that she has to carry an EpiPen; she is slightly less allergic to dogs. The lease did say that the landlord would make reasonable accommodations for assistance animals. After she moved in, another tenant asked for an ESA as a reasonable accommodation and the landlord asked the Iowa Civil Rights Commission (ICRC) for advice. The ICRC informally advised the landlord that moving the tenant who had requested the ESA to another building would not be a reasonable accommodation and the landlord needed to try to accommodate both the tenant with allergies and the tenant who needed an ESA.

The landlord attempted to do so by sending a survey to all tenants of the building, asking if anyone had allergies. The original tenant responded affirmatively. The landlord attempted to reasonably accommodate both tenants by asking them to use different stairwells. The landlord also bought an air purifier for the tenant with allergies. In addition, the landlord obtained estimates for installing air-lock doors on each floor of the building to limit air transfer, but the cost of doing so was prohibitive—over $80,000.

What happened in the lower courts?

After a year, the tenant with allergies filed a small claims action for breach of the lease and implied warranty of quiet enjoyment of the property, alleging she had increased allergic reactions, was forced to greatly increase her medications, and had to limit her time at her own home due to the presence of the ESA. She filed the breach of lease action against the landlord, and the quiet enjoyment action against both the landlord and the tenant with the ESA. The landlord responded that Iowa law mandated it had to accommodate the tenant with the ESA and cross-claimed against the tenant with the ESA for indemnification if any damages were awarded to the filing tenant. The Small Claims Court dismissed the action and the tenant with allergies appealed. The District Court also dismissed the case, saying that the law was unclear, but that after a year of trying to work with the situation, the landlord should have denied the ESA. The tenant appealed to the Supreme Court, which issued a decision on June 30, 2020.

What does the Court's decision say?

The decision's major points are as follows: The Iowa Civil Rights Act's housing law is nearly identical to the federal Fair Housing Act (FHA). Both laws distinguish between service animals, which have training to do specific tasks, and ESAs, which provide therapeutic support but are not trained to do

[1] Formal publication data is not yet available.

specific tasks. Iowa law prohibits discrimination against a person with a disability in the terms, conditions, and privileges of a rental property because of that person's disability, and requires landlords to make reasonable accommodations if necessary to allow the person with a disability equal opportunity to use and enjoy the dwelling. Iowa law also allows a landlord to refuse a request for accommodation if the request is legally unreasonable; one of several definitions of "unreasonable" contained in the law is that the accommodation would constitute a direct threat to the health or safety of other persons.

A landlord must generally allow a request for an ESA if the person requesting the ESA has a disability and a disability-related need for the ESA. However, a landlord may generally refuse a request for an ESA if the specific animal poses a direct threat that cannot be eliminated or mitigated to an acceptable level. The well-being of one person, whether physical or mental, does not trump the well-being of any other person, so existing tenants are properly considered in balancing needs in the reasonable accommodation analysis. Therefore, the proper test is "first in time, first in right."

This test can only be used when there is no way to grant the reasonable accommodation of the ESA and the tenant with allergies has medical documentation regarding the allergy. In this case, the landlord could have moved the tenant requesting the ESA to a different building, unless the tenant somehow demonstrated that the particular apartment in which the tenant was currently living somehow alleviated the symptoms of the tenant's disability. The court noted that the ICRC's *informal* advice was not binding and the court did not agree with it—in this case, the proper solution would have been for the landlord to move the tenant with the ESA to another building.

Since the landlord granting the ESA in the same building was not a reasonable accommodation, the landlord did breach the "no pets" clause in the lease and the tenant did not have quiet enjoyment of her apartment. The court noted that breach of contract is absolute; the landlord's good faith effort to accommodate both tenants still resulted in a breach of the lease, regardless of intent. The court also noted the landlord might have raised Section 562A.21[2] of the Iowa Code as a defense, but since it did not, the court did not have that to work with.

What are takeaways for landlords regarding the decision?

First, this decision applies only to ESAs, *not* Americans with Disabilities Act Service Animals. Second, the decision puts landlords in a difficult place. If a landlord allows an ESA, the landlord may be faced with legal action from existing tenants, as the landlord was in this case. If the landlord refuses to allow the ESA, the landlord may be faced with enforcement action from HUD. However, a landlord in Iowa faced with HUD action might use this case as a defense and ask for a declaratory judgment regarding what should be done. Third, the decision leaves unclear how severe an existing tenant's allergy must be in order to evoke the "first in time" rule; while the decision says there must be medical documentation, it says nothing at all about the level of severity required before an allergy trumps an ESA. Fourth, the FHA was written when use of the word "handicap" was still acceptable. Therefore, court decisions discussing the law will still use the word. Remember that people with disabilities consider the word "handicap" offensive and it should not be used in any context except quoting the law.

The Office of Equity and Human Rights provides educational memos to landlords on areas of discrimination to assist in providing good outcomes for both landlords and tenants. Please send fair housing topics you would like to receive guidance on to humanrights@iowa-city.org.

[2] This section provides a "safe harbor" for landlords who have attempted to comply with terms of the lease but were legitimately not able to do so. It states, in part, "Except as provided in this chapter, the tenant may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or section 562A.15 unless the landlord demonstrates affirmatively that the landlord has exercised due diligence and effort to remedy any noncompliance, and that any failure by the landlord to remedy any noncompliance was due to circumstances reasonably beyond the control of the landlord."