

Addressing the Challenge of a Hoarding Tenant: An Advisory for Residential Landlords

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Our society has always been fascinated with hoarders. In the early to mid 1900s, people were obsessed with the fabled Collyer brothers who, over the course of several decades, filled to capacity their Fifth Avenue brownstone in Harlem, where they were eventually found dead in 1947, buried beneath all the clutter. More recently, television shows like the A&E series “Hoarders,” which follows extreme hoarders as they try to clean up their homes, have captured millions of viewers. Our intrigue with compulsive hoarding has helped the show remain popular after six seasons.

While compulsive hoarding fascinates the general public, landlords dealing with tenants who compulsively hoard are anything but fascinated. Hoarding tenants raise a host of complicated legal issues for landlords. Compulsive hoarding, by definition, is practically incompatible with the legal obligations associated with occupancy of leased residential property. Compulsive hoarding has three primary characteristics: (1) acquiring and failing to discard a large number of possessions that appear to be useless or of limited value; (2) cluttered living spaces that prevent activities in the spaces they were designed for; and (3) the hoarding causes significant distress or impairment. Psychologists estimate that 2-5% of adults suffer from compulsive hoarding.¹ Someone who hoards is considered a person with a disability because they meet the definition of disability under both state and federal fair housing laws. Because hoarding qualifies as a disability under federal and state anti-discrimination laws, landlords have an affirmative duty to first make a reasonable accommodation before resorting to other legal remedies such as eviction.

At a minimum, compulsive hoarding will likely result in conditions that violate the lease agreement. Additionally, compulsive hoarding may violate state sanitary, electrical, or building codes, local regulations, or animal care standards. Hoarding may also increase fire risks, present tripping or falling hazards, impair access by emergency workers, and contribute to the spread of contagious diseases through poor sanitation and related vermin infestations. In addition to breaching the lease agreement, these conditions may be in violation of various state laws, including obstruction of exits and passageways (105 C.M.R. 410.450-410.452), failure to maintain the dwelling in a clean and sanitary condition and free of garbage, rubbish, other filth or causes of sickness (105 C.M.R. 410.602), failure to properly dispose of garbage or rubbish (105 C.M.R. 410.601), lack of suitable space to store, prepare

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and serve foods in a sanitary manner (105 C.M.R. 410.100(a)), failure to eliminate insect infestations (105 C.M.R. 410.550), and lack of a shower or bathtub in good operating condition (105 C.M.R. 410.150(A)). Hoarding may also violate provisions of the State Building Code, 780 C.M.R., the State Fire Prevention Regulations, 527 C.M.R., the Uniform State Plumbing Code, 248 C.M.R. 10.04, or the State Electrical Code, 527 C.M.R. 12. If the hoarding tenant maintains animals in the dwelling, there may be a violation of M.G.L. c. 272, §77, which forbids unnecessarily failing to provide an animal with proper food, drink and a sanitary environment.

Even though these violations alone would otherwise seem to provide a strong basis for eviction, a landlord must first offer a reasonable accommodation to a hoarding tenant. The Massachusetts Supreme Judicial Court has found that reasonable accommodation is a waiver or change in policies, practices, procedures and services to provide equal access and opportunity in housing for persons with disability or for those associated with persons with disabilities that would not impose an undue hardship or burden on the entity making the accommodation. See *Peabody Properties v. Sherman*, 418 Mass. 603 (1994). A landlord who evicts a hoarding tenant without first attempting to accommodate him or her, or who rejects a request without attempting viable alternative accommodations, engages in unlawful discrimination. See *Roe v. Sugar Mills Assocs*, 820 F. Supp. 636, 640 (D.N.H. 1993). Notably, a landlord has no obligation to make an accommodation that a tenant actively resists. See *Blatch v. Hernandez*, 360 F. Supp. 2d 595, 634 (S.D.N.Y. 2005); see also 28 C.F.R. § 35.130(e)(1) (“[N]othing in this part shall be construed to require an individual with a disability to accept an accommodation or benefit provided under the [Americans with Disabilities Act] . . . which such individual chooses not to accept.”). If a compulsive hoarder refuses to declutter his or her home as part of a reasonable accommodation, the landlord has a strong case for evicting the tenant.

What is a landlord to do when faced with a hoarding tenant? Perhaps the most practical suggestion would be to make every effort to discover and to investigate potential hoarding as quickly as possible. This effort may require giving more prompt attention to complaints of other tenants concerning a particular unit, including odor, vermin, or cluttered access areas. A landlord should be wary of violating a tenant’s privacy in investigating such complaints. Therefore, it is good practice to include a provision in the lease agreement allowing the landlord access to a unit with reasonable notice to the tenant. Faced with a recalcitrant tenant who refuses entry, however, the landlord may need to seek assistance from the local board of health or fire department in order to access the unit.

Once the landlord has determined that there is a hoarding tenant, the landlord should offer the tenant reasonable accommodation, in writing, to address the situation, including a plausible plan to declutter the unit. At a minimum, a plausible plan should allow the hoarder sufficient time to clean the unit. A reasonable approach to this daunting task would be to break it into manageable pieces, allowing the tenant to become compliant over time. For example, the landlord could work with the tenant to prepare a written plan in which blocked access ways are cleared first by a date certain, to be followed by removing clutter from the kitchen or the bathroom by a later date, and so on. If the plan includes the code violations at issue, the tenant might better appreciate the seriousness of the problem. Such an approach would also provide further evidence that the landlord took every possible action before resorting to eviction. The landlord should also consider taking the extra step of encouraging the hoarder to get help cleaning the unit since hoarders will not clean on their own. Finally, the landlord should keep detailed records of actions taken to reasonably accommodate the hoarder, as well as of time and expenses. A landlord who can demonstrate that reasonable accommodation was made by giving the hoarding tenant time and a structured plan for cleaning the unit

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should be able confidently to proceed with eviction if the tenant refuses to comply.

¹ There are several psychological journals with information concerning compulsive hoarding including Rando O. Frost & Tamara L. Hartl, *A Cognitive-Behavioral Model of Compulsive Hoarding*, 34 Behavioral Research Therapy 341 (1996); Pertusa, A., Frost, R.O., Fullana, M. A., Samuels, J., Steketee, G., Tolin, D., Saxena, S., Leckman, J.F., Mataix-Cols, D. (2010); *Refining the boundaries of compulsive hoarding: A review*. Clinical Psychology Review, 30, 371-386; Frost et al., *Hoarding: A Community Health Problem*, 8 Health and Social Care in the Community, 229, 231 (2000).

This advisory was prepared by Jean Kampas, a member of the the Real Estate/Land Use and Environmental Litigation practice group. To learn more about this issue, please contact your Nutter attorney at 617.439.2000.

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