

# Housing Rights **ADVOCATE**

Austin Tenants' Council • Issue 90, Fall 2018

## Emotional Support Animals Aren't Pets

**N**ancy Valladares has a mental disability – she suffers from depression. She was prescribed an emotional support animal to help alleviate the symptoms of her disability and has had her support animal for 3 years.

Earlier this year, she applied for an apartment at Avesta Capella Apartments. When applying, she notified the leasing agent that she had an emotional support animal. In March of 2018, when she got her lease and was about to move in, she noticed that her emotional support animal was not listed on the lease, so she mentioned it to the assistant manager. The assistant manager told her that the property doesn't allow pets and she could be evicted. Then management started charging

her a monthly pet fee. Ms. Valladares called Austin Tenants Council (ATC) for assistance.

Fair Housing Specialist Cruz Garcia assisted Ms. Valladares with a reasonable accommodation request that asked management to allow Ms. Valladares to have her emotional support animal and waive all pet fees since an emotional support animal is not a pet. Ms. Valladares was allowed to keep her emotional support animal and she was reimbursed the pet fees that she had been charged. In addition, the property manager apologized to Ms. Valladares for the confusion.

According to the Federal Fair Housing Act as amended, pet free properties must al-

low disabled individuals to have support and service animals. Support and service animals are not pets; therefore, landlords cannot charge pet deposits, pet fees, or pet rent for the animals. Ms. Valladares stated, "Thank you so much for your help, I would not have been able to do this without the Austin Tenants Council."

If you have an emotional support animal or service animal and are being charged a fee or feel you are not being allowed to keep the animal, please call our telephone counseling line at: 512-474-1961. A counselor will listen to your story and refer you to our fair housing department where a fair housing specialist will respond to you within 24 - 48 hours to review the facts and determine next steps, if any.

## Unfortunate, But A Reality of Life

**I**n early August Wanda Nieves called ATC on behalf of her elderly, disabled mother Altagracia Sanchez. Ms. Sanchez is legally blind and had recently become sick and was hospitalized. Unfortunately, after being released from the hospital, she was unable to return to her apartment – she had to go to a nursing and rehabilitation center because she was no longer able to live on her own due to her medical condition. Ms. Nieves notified her mother's apartment complex, but was told that they would still be responsible for the rent, for the balance of the lease contract and that they would have to pay a reletting fee.

Fair Housing Specialist Cruz Garcia assisted Ms. Nieves and her mother with asking for a reasonable accommodation – in this case Ms. Sanchez needed to be released from the lease contract without penalty because she could no longer use and enjoy the dwelling due to her disabilities. Management of the property agreed to release Ms. Sanchez from the lease contract without penalty. Ms. Nieves and her family were faced with an unfortunate reality of life – as we age, we can't always remain in our own homes. That is a very difficult reality for families to accept and it is made even more difficult when they face problems with trying

to help their aging family members with housing issues. Ms. Nieves was very appreciative of ATC's assistance and stated, "Thank you very much for all your help and support."

## Are You Registered to Vote?

**T**his year the United States General Election will take place on Tuesday, November 6, 2018. The last day to register to vote is Tuesday, October 9, 2018. Check if you're registered to vote by visiting: [www.votetexas.gov](http://www.votetexas.gov) and clicking on "Am I Registered to Vote" in the scroll bar at the top of the page.

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# I Regret to Inform You That Your Security Deposit Will Not Be Returned

**T**ime and time again tenants call Austin Tenants Council (ATC) to ask why their former landlord is not returning their security deposit. Security deposit disputes are among the most common complaints tenants bring to ATC counselors on a daily basis.

*"I left that place in better condition than I found it."*

*"I hired a cleaning service after I moved out. I have the receipt to prove it."*

*"The entire place was spotless when I left and he's charging me for damages I never caused!"*

These are among the most common descriptions of a tenant's final days of their tenancy and move-out. Texas Property Code, Subchapter C, §92.101 – §92.109 provides protections for a tenant seeking a refund of their security deposit. The challenge for these tenants is almost always a question of enforcement. How, as a practical matter, does a tenant enforce their right to the return of their security deposit? In the following article, we review the basic obligations of both the tenant and landlord with respect to the treatment of a security deposit and provide some practical guidance for tenants to consider.

## FIRST, THE TENANT'S OBLIGATION

The law places two initial requirements upon the tenant before a landlord has the obligation to return any portion of the security deposit. First, a tenant must surrender the dwelling. The law does not define the term "surrender." ATC counsels clients that in order to consider the property formally surrendered, the landlord must have the keys to the property. In other words, a tenant has to move out and hand over the keys.

*ADVICE: Turn in the keys and get a receipt. You should be able to prove that you don't have possession of the property.*

Second, the tenant must give the landlord a forwarding address. The law actually states, in part, that a "landlord is not obligated to return a tenant's security deposit ...until the tenant gives the landlord a written statement of the tenant's forwarding address..."

However, the law also states, in part, that a "tenant does not forfeit the right to a refund of the security deposit...merely for failing to give a forwarding address to the landlord."

*ADVICE: If you initially forgot to give your landlord a forwarding address, ATC strongly advises you to write your landlord a physical letter providing the forwarding address. Send the letter certified mail and keep a copy.*

## SECOND, THE LANDLORD'S OBLIGATION

Now that the tenant has surrendered the property and provided a forwarding address, so long as no rent is owed, the obligation shifts to the landlord. Within 30 days upon the tenant's surrender of the dwelling and providing a forwarding address, the landlord must either: (1) provide the tenant with a "written description and itemized list" of the deductions and any portion of the security deposit not being withheld or (2) provide a full refund of the security deposit.

The obligation to provide a "written description and itemized list" of the deductions may be found in Sec. 92.104. RETENTION OF SECURITY DEPOSIT; ACCOUNTING. ATC counsels tenants that a "written description and itemized list" of the deductions actually means a physical letter delivered to the tenant.

*ADVICE: If you have a lease that explicitly allows the landlord to communicate with you via electronic notice (i.e. email) an email may satisfy the legal requirement for "written notice." It is unclear how a judge would rule regarding the use of email to deliver the security deposit letter to the tenant. Because there is no mention of electronic notice in the law itself, this is a question that can only be answered by a judge through a lawsuit.*

## 30 DAYS PAST AND I HAVE RECEIVED NOTHING FROM MY LANDLORD

If you have satisfied your obligations under the law, it has been more than 30 days since you surrendered the property and given your forwarding address, and your landlord has failed to return your security deposit or to give you a letter explaining why your deposit is not being returned, then we strongly recommend that you mail one last letter certified mail and signature return request. This letter should clearly state (1) the date (2) who you are (3) your former address (4) the fact that more than 30 days have past since you surrendered the dwelling and (5) the following statement: "Unless I receive my security deposit, totalling \_\_\_\_\_, within 10 days of receipt of this letter, I will use the legal remedies available under Section 92.109 of the Texas Property Code." close the letter by providing a current address.

If the landlord refuses to comply with your demand you may be entitled to \$100, three times the amount of the deposit which was wrongfully withheld, reasonable attorney's fees, and court costs if the tenant can show the landlord acted in bad faith. Before you consider a lawsuit, always consult an attorney. Call ATC with questions: 512-474-1961.

# Los animales de apoyo emocional no son simples mascotas

**N**ancy Valladares tiene una discapacidad mental: sufre de depresión. Se le aconsejó un animal de apoyo emocional para ayudar a aliviar los síntomas de su discapacidad y tiene un animal desde hace tres años.

Hace unos meses ella solicitó una unidad en Avesta Capella Apartments. Al hacer la solicitud, avisó al agente de rentas que tenía un animal de apoyo emocional. En marzo de 2018, cuando obtuvo la unidad y se disponía a mudarse, se dio cuenta que no se mencionaba a su animal de apoyo en el contrato, y se lo comunicó al gerente auxiliar.

Éste le dijo que la propiedad no permitía mascotas y que podría ser desalojada. Después la administración empezó a cobrarle una mensualidad extra por tener

mascota. Valladares pidió asistencia en Austin Tenants Council (ATC).

La Especialista en Vivienda Justa Cruz García asistió a la Srta. Valladares con una solicitud de 'adaptación razonable', pidiendo a la administración del complejo que permita a Valladares tener su animal de apoyo emocional sin cobrarle extra, ya que un animal de apoyo emocional no es considerado como mascota. Nancy Valladares logró quedarse con su animal de apoyo emocional y se le reembolsó el gasto extra que pagó. Además, el gerente de la propiedad se disculpó con Valladares por la confusión.

Según el Acta Federal de Vivienda Justa, como está enmendado, las propiedades que no permiten animales deben hacer excepciones con personas discapacitadas que tengan animales de apoyo o servicio.

Los animales de apoyo y servicio no son mascotas --por lo tanto, los propietarios no pueden cobrar depósitos ni gastos extras por estos animales. La Srta. Valladares declaró: "Muchísimas gracias por su ayuda, no podría haberlo logrado sin el Consejo de Inquilinos de Austin".

Si usted tiene un animal de apoyo emocional o de servicio, y le cobran extra o no le permiten tener al animal en la propiedad de renta, llame por favor a nuestra línea de asesoría: 512-474-1961. El asesor escuchará su caso y lo transferirá a nuestro departamento de Vivienda Justa, donde un especialista en vivienda justa le responderá dentro de 24 a 48 horas para revisar el caso y determinar los próximos pasos, de haber alguno.

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## Es lamentable, pero una realidad de la vida

**A** principios de agosto, Wanda Nieves llamó a ATC en nombre de su madre Altagracia Sánchez, que es anciana y discapacitada. La Sra. Sánchez es legalmente ciega, y recientemente se enfermó y fue hospitalizada.

Desgraciadamente, después de salir del hospital no pudo regresar a su apartamento, sino que tuvo que ir a un centro de enfermería y rehabilitación porque ya no podía vivir sola debido a su condición médica. La Srta. Nieves avisó al complejo de apartamentos de su madre, pero le di-

eron que igual debía pagar la renta hasta el fin del contrato y que tendría que pagar también un cargo extra por volver a rentar.

La Especialista en Vivienda Justa Cruz García asistió a la Srta. Nieves y a su madre, solicitando una 'adaptación razonable' --en este caso, la Sra. Sánchez debería ser liberada del contrato de renta sin multas, porque ya no podía usar la vivienda debido a sus discapacidades. La administración de la propiedad aceptó liberar a la Sra. Sánchez del contrato, sin ninguna multa.

La Srta. Nieves y su familia viven una lamentable realidad de la vida --al envejecer, a veces no podemos seguir viviendo en el mismo lugar.

Ésta es una realidad difícil de aceptar para muchas familias, y se hace aún más difícil cuando enfrentan problemas al tratar de ayudar a sus familiares ancianos en el tema vivienda. La Srta. Nieves se mostró muy agradecida por la asistencia de ATC y exclamó: "Muchísimas gracias por toda su ayuda y apoyo".

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## ¿Está registrado para votar?

**E**ste año las Elecciones Generales de Estados Unidos tendrán lugar el martes 6 de noviembre, 2018. El último día para registrarse como votante es el martes 9 de octubre, 2018. Compruebe si ya está registrado para votar en el sitio: <http://www.votetexas.gov/es/index.html>, pulsando en "¿Estoy registrado para votar?" en la barra de desplazamiento de arriba.

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This service is certified as a lawyer referral service as required by the State of Texas under Chapter 952, Occupations Code.

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**Fair Housing Program / Programa de Vivienda Justa** This program helps any person in the Austin metropolitan area who has been discriminated against in the rental, sale, financing, or appraisal of housing. FHP investigates complaints and coordinates legal services to assist victims of discrimination when their rights under state and federal fair housing laws have been violated. Este programa ayuda a cualquier persona en el area metropolitana de Austin que se ha enfrentado con discriminación en la renta, compra, financiamiento, o evaluación de vivienda. El FHP investiga las quejas y coordina servicios legales para las victimas de discriminación cuando sus derechos están violados bajo las leyes estatales y federales de vivienda justa. Call / llame al 512-474-7006.

**Telephone Counseling / Consejos por Telefono** Trained counselors answer tenant-landlord questions and make appropriate referrals. However, ATC offers no legal advice. Consejeros contestan preguntas acerca de inquilinos-propietarios y hacen referencias necesarias. Sin embargo, ATC no ofrece consejos legales. Call / llame al 512-474-1961.

**In-House Counseling / Consejos en la Oficina** Counseling information and materials are provided to clients in need of more in-depth assistance. Se provee información y materiales a los clientes que necesitan mayor información. Call for an appointment / llame para una cita al 512-474-7006.

**Crisis Intervention / Intervencion Crisis** Counselors mediate on behalf of tenants to resolve emergencies that threaten their housing. Consejeros median en nombre del inquilino a resolver una emergencia que amenaza su vivienda. Call / llame al 512-474-1961.

**Rental Repair Assistance / Ayuda con Reparaciones en su Vivenda** The Renters' Rights Assistance Program helps low-income renters enforce their rights for repairs through advocacy and mediation. El Programa de Asistencia con los Derechos de Inquilinos ayuda a los inquilinos de bajo ingreso da fuerza a sus derechos para reparaciones por medio de negociación y mediación. Call / llame al 512-474-7006.

**Lease Forms / Contratos** ATC sells lease packets and brochures describing landlord and tenant rights and responsibilities to landlords for a small fee. ATC vende paquetes de contratos y folletos, por una cuota nominal, describiendo los derechos y las responsabilidades del propietario y del inquilino. Call for more information / llame para mayor información al 512-474-7006.

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