

BEYOND MESSY

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On March 21, 1947, a pre-dawn tipster alerted the New York City Police that a dead body lay inside a decaying Fifth Avenue mansion. The subsequent investigation stunned the city. Inside the mansion, police indeed found the corpse of an elderly Langely Collyer. But they also found the residence jammed wall to wall, floor to ceiling with such a collection of trash, artifacts, nick-nacks and oddities as have never been seen in a city that had seen it all. The cleanup took weeks of constant effort to remove the vast assemblage of material from the residence. At the bottom strata of the pile, workmen were further shocked to find the long dead body of Langely's brother, Homer Collyer.

Authorities pieced together the story that the two reclusive Collyer brothers had occupied the family dwelling their entire lives. During that time, they indulged a blazing obsession to hoard. Shying from human contact, their nocturnal forays netted over 100 tons of junk. The dwelling was so crammed with debris that movement was possible only through narrow passageways around the rooms. And that was Langely's undoing. A pile collapsed on him, pinned him to the floor and lead to his demise. Homer had suffered a similar fate years before.

Clinicians who have studied this event justifiably tag the hoarding

phenomenon as the Collyer Brothers Syndrome. I mention this sad story only because I have recently viewed several sets of apartment photos that, while not surpassing the Collyers' catastrophe, made a strong showing for second place. Packrats are in our midst and apartment owners and managers must be prepared. This article will discuss strategies for handling hoarders.

Before touching on the special case of Collyer-like hovels, managers should be well grounded on the basics of assessing housekeeping violations. There are really only a few rules to remember when conducting housekeep inspections.

THE RULES

Rule number one: Inspect. Simply make unit inspections a regular part of your management activities and you'll stop Collyer wannabes before the first stack of papers reaches the ceiling. Many of the critical conditions are seen by maintenance workers answering repair calls. Just keep in mind the 12 hour advance notice required by Florida law for routine inspections.

Rule number two: Assess the apartment by neutral, objective criteria. Stated in the reverse, do not judge the conditions of the unit by your own standards. A violation of the lease is not apparent when you cringe at the disarray of the unit and note on the inspection sheet, "I wouldn't make a dog live here." While conveying your emotional aversion to the tenant's style of life, your observation does not pertain to the nut of the problem: Does this chaotic state you see

endanger the physical state of the apartment or neighboring apartments? Better then to write down such things as excessive mold (I've seen mushrooms sprouting from baseboards), pet feces, open food containers, and so on. Evidence of pest and vermin activity should be noted indicating the degree of infestation.

Inspecting owners and managers should also be attentive to public code violations. Obviously an accumulation of Collyerian proportions easily violates municipal fire codes. (The New York police had to enter through the windows because the doorways were blocked) Also structural problems may arise when the dead weight normally seen in warehouses and libraries is placed in a residential dwelling by the tenant's junk collection. In sum, such things as disorder and clutter do not by themselves violate a lease. There must be current or imminent harm to the owner's or other tenants' interests. When harm is detected, the inspector should refer to neutral categories and descriptions to record housekeeping and code violations

Rule number three: Document your inspection. This means a written report should be generated but above all take photographs. In this sort of inspection, a picture is truly worth ten thousand words. The need for neutral, objective categories for noting the manager's observations has already been discussed. Photographs of non-compliant units however illustrate the story vividly.

Occasionally tenants will object, sometimes strenuously, to the management

taking pictures of the apartment. Managers should stand their ground. So long as photography is a customary practice during all inspections (and not used to target an individual tenant) there is a legitimate business need to accurately record the physical state of the dwelling. Managers should avoid snapping pictures focusing on personal items or occupants. Needless to say, the pictures should be filed away and viewing should be restricted to persons with a legitimate need.

Rule number four: Send the notices. Having inspected and documented a lease violation, managers should begin the legal process for removing the tenant. This means sending the proper notice to the tenant. Under Florida law, poor housekeeping is defined as a “curable” lease violation. This means the landlord must deliver a notice giving the tenant 7 days to correct the lease violation. If the mess is not cleaned within that time, the landlord may terminate the lease by delivering a notice of termination with a demand to vacate within 7 days. The notice of termination is then enforced with an eviction filed in court.

CURVE AHEAD

Armed with these rules, a landlord can confidently press forward in any dispute over a tenant’s housekeeping. Indeed, a simple 1-2-3-4 will end the occupancy of even a wildly hoarding tenant. But hoarders have rights, too. And when I mentioned that there is a clinical diagnosis of the Collyer Brothers Syndrome, some readers may have already seen the faint outline of a Fair Housing

complication.

Yes, it's true. A packratting renter can claim that they are unable to comply with the housekeeping duties due to a mental penchant for hoarding. This psychic malady is currently classified under Obsessive-Compulsive Disorders. While this may strike some readers as ludicrous, I have witnessed the intense anguish that a hoarder suffers over the mere mention of, say, discarding a 20 year old phone book. Throwing away last year's coupons would be like losing a friend to a true scavenger. The psychiatric diagnosis then simply confirms what the scene at the apartment shouts- "This tenant is beyond messy. This tenant is mentally ill."

So the landlord must be aware that the Fair Housing Act may come into play at some point in the old 1-2-3-4. "May" is the important word though. The FHA is not automatically a part of every housekeeping dispute, even serious ones. Since the FHA is the tenant's friend, the tenant must invite that law into the disagreement. If the massively messy tenant does not raise the issue of disability, the landlord can assume the hoarder does not wish to push for some leniency. As such, there is no Fair Housing impediment to the normal steps for removal. So even the hyper-hoarding renter must first officially trigger their rights under the FHA, and notify the landlord of their claim.

IT REALLY MEANS "REASONABLE"

The Fair Housing notice comes in an oral or written request for a

“reasonable accommodation.” The phrase “reasonable accommodation” can cause panicky sweat among some rental professionals, particularly when dealing with a packrat. Remember, the request asks in effect that the landlord give the disabled tenant a break in obeying the lease when a disability hinders the tenant’s chances of complying. The request cannot demand “unreasonable” concessions by the landlord. Normally, the accommodation cover such “reasonable” changes as installing hand rails, ramps, and other devices to allow disabled tenants to reside in their apartments. Occasionally, the accommodation seeks time for treatment of previously undiagnosed mental illnesses, such as the Collyer Brothers disorder.

To allay the landlord’s long standing fears that a request for reasonable accommodation permanently prevents the removal of a tenant, let’s examine a typical obsessive hoarder case. Let’s say the request for accommodation comes after the notice of termination (it can come at anytime before removal). The tenant, a family member or the tenant’s attorney, customarily want time to diagnose the obvious mental illness and seek treatment that will enable the tenant to stay in their apartment. Without going into the specifics, the landlord can then make a limited inquiry into the disability and, after some negotiation, the landlord typically agrees to delay the eviction to allow the tenant to seek medical help to overcome the disability.

Please note that the landlord can be accommodating in reaching this

decision because, during this delay in the eviction, the tenant *must* be in compliance with the lease. This means the renter's Collyerian collection of junk must be carted away. The accommodation in this instance is to allow the tenant to make personal changes. The accommodation does not change the terms of the lease, or the landlord's standards for assessing housekeeping violations.

This new, negotiated regime of cleanliness is an ongoing obligation for the tenant. To continue qualifying for the accommodation for medical treatment, the apartment must pass scheduled inspections. Therefore a long term arrangement should be included in the negotiated accommodation. Without restricting the options that may be considered, one reasonable accommodation given by the landlord to benefit the hoarder-tenant may be to alert a third party family member or mental health professional to a failed inspection before the landlord begins the final steps of the eviction. In effect, the landlord agrees to a second chance after a failed inspection. This will permit the tenant's allies to bring in a cleaning crew and tidy up until such time as therapy and medication allow the tenant to perform these tasks himself. Similar "reasonable" changes in rental procedure can be proposed and negotiated by the landlord throughout tenant's treatment period.

An exhaustive treatment of the implications of a hoarding tenant cannot be addressed in this article. I have written simply to alert the landlord to establish neutral, objective standards for judging the housekeeping of a renter. I have also

urged that the landlord promptly act on any violations through documentation and notification. Finally, I have attempted to calm landlords who see the Fair Housing Act as a weapon used to force them into “unreasonable” concessions in favor of an obsessively collecting tenant. Instead, the landlord or the landlord’s attorney should engage in serious negotiations aimed first at allowing the tenant to obtain professional help in overcoming the infamous Collyer Brothers Syndrome. The landlord can be relieved that his interests also will be protected under the Fair Housing Act during any accommodation period.