

## Tenant Had to Explain Need for Emotional Support Cat

*Furbee v. Wilson*, No. 19A-PL-1756 (Ind. Ct. App. Mar. 30, 2020)

**State and Local Legislation and Regulations:** The Indiana Court of Appeals held that a party requesting a disability accommodation under the Indiana Fair Housing Act and the federal Fair Housing Act to keep an emotional support animal must, at a minimum, inform the housing provider of the nature of the disability and the disability-related need for an emotional support animal.

In October 2016, Shelley Linder (Linder) entered into a lease with Furbee Properties, LLC (Furbee) for an apartment in Muncie, Ind. The lease specified that no dogs, cats, or other animals or pets were permitted on the premises. If a pet was discovered, the lease gave Furbee the right to charge a \$500 fine and evict the tenant.

In March 2017, Linder asked Furbee if she could keep an emotional support animal, and she provided a letter from a licensed family and marriage therapist stating that Linder had a disability and needed an emotional support animal to help alleviate her symptoms. The letter did not identify the disability or Linder's symptoms.

Furbee responded that it needed more information to enable Furbee to make an informed decision. Furbee said it needed to know Linder's disability. It also asked how many sessions Linder had with the therapist and how long each session lasted. Furbee asked for Linder's permission to send a questionnaire to the therapist and provided a copy of the proposed questionnaire. The questionnaire asked the therapist whether she had conducted a physical examination or interviewed Linder in person and to describe the nature of the mental or physical impairment and the major life activity with which the disability interfered.

Linder did not provide any additional information to Furbee or sign the consent authorizing Furbee to contact the therapist. As a result, Furbee took no action on Linder's request. In August 2017, Linder brought a cat into her apartment. Furbee imposed a fine and told Linder she had seven days to remove the cat or else face further fines or actions. Linder did not remove the cat. Furbee evicted Linder in December.

In July 2018, Linder sued Furbee, alleging discrimination on the basis of a disability in violation of the Indiana Fair Housing Act. Furbee moved for summary judgment (judgment without a trial based on undisputed facts), arguing that it was not provided with sufficient information to evaluate Linder's disability accommodation request. The trial court denied Furbee's request, finding that Furbee's questions about the extent of Linder's examinations exceeded the reasonable injury to which Furbee was entitled. Furbee appealed.

The appeals court noted that the Indiana Fair Housing Act contained similar language to the federal Fair Housing Act (act), so it examined the federal requirements and case law to evaluate Linder's claim. Under the act definitions, Linder must establish that she was disabled; that she requested an accommodation for that disability; that the requested accommodation was necessary to afford Linder an equal opportunity to use and enjoy the dwelling; and that Furbee refused to make the accommodation. Furbee denied that it refused Linder's request, stating that it could not even meaningfully review the request because it was not given sufficient information.

The appeals court noted that a housing provider's decision as to whether to grant or deny a requested disability accommodation necessarily includes the ability to conduct a meaningful review to determine whether the act requires the requested accommodation. Generally, housing providers need only the information necessary to inform them of the disability and the possible need for an accommodation. Guidance from the Department of Housing and Urban Development indicate that, in most cases, an individual's medical records or detailed information about the nature of the disability are not necessary to make an informed decision.

The appeals court determined that the act contemplated a dialogue in which both parties participated in good faith, and neither party should be able to cause a breakdown in the process. Linder's letter requesting the accommodation neither identified the disability nor explained the limitations or symptoms of the disability. At the very least, Furbee was entitled to know Linder's disability and the disability-related need for the cat. As such, Furbee was justified in trying to open a dialogue with Linder and requesting more information from her.

Linder claimed that she did not respond because Furbee's requests went well beyond what it was permitted to ask. She claimed that Furbee was the one being unreasonable by causing a breakdown in the process. The appeals court stated that, while Furbee's questions about Linder's sessions with the therapist may have been overbroad, its questions about Linder's disability were not. Linder could have answered the relevant questions and ignored the rest. The appeals court held that the overbreadth of Furbee's questions did not relieve Linder from providing the required information. Without such information, Furbee could not have meaningfully considered Linder's request.

Accordingly, the appeals court reversed the trial court's ruling and remanded the case with instructions for the trial court to enter summary judgment in Furbee's favor.