



## Reefer Madness

by Zachary Lawrence JD

Country music star Kenny Rogers recorded a song called "The Gambler". The chorus reminds us that ...

"You've got to know when to hold em', know when to fold em', know when to walk away and know when to run".

The landlord-tenant relationship often takes on the character of a high-stakes poker game - each side wanting something from the other and each side counting on the other to hold, fold, or walk away.

This brand of poker is most evident when it comes to a tenant's rights to smoke medical marijuana on the premises.

### Medical Marijuana

Proposition 215, the California Compassionate Use Act, was enacted by the voters

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and took effect on November 6, 1996 as California Health & Safety Code 11362.5.

This law makes it legal for patients and their primary care givers to possess and cultivate marijuana for their personal medical use, given the recommendation of a California-based physician.

Physicians have since recommended marijuana for hundreds of indications, including insomnia, PMS, post traumatic stress, depression and substance abuse.

Under Prop 215, patients are entitled to possess whatever amount of marijuana is necessary for their personal medical use. However, patients can be arrested if they exceed reasonable amounts.

As of January 1, 2016,

qualified patients can cultivate up to 100 square feet for personal medical use. Primary caregivers, with five or fewer patients are allowed up to 500 square feet.

A landmark State Supreme Court decision, *People vs. Mower*, holds that patients have the same right to marijuana as to any legally prescribed drug.

The US Department of Housing and Urban Development allows local housing authorities to determine their own policies regarding medical marijuana use in HUD housing. Many don't allow it.

SB 420 bars marijuana smoking in no smoking zones, within 1,000 feet of a school,

marijuana. The problem here is twofold. One, most people who smoke pot don't have a disability and two, the landlord may not evict a tenant for having a disability.

Your daughter, Talia can argue that the landlord's refusal to evict the pot smoker constitutes a "constructive eviction" and gives her (Talia) the right to break her lease, as she is now exposed to a nuisance and a health hazard.

The landlord is now legally between a rock and a hard place. He has a tenant that is dealing with a nuisance, but he must also obey the ADA, (the American with Disabilities Act), because the pot smoking

tenant has this "disability".

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### Now What?

My 25 year old daughter just rented her first apartment. Only days after moving in, I received a phone call: "Dad, the girl next door is always smoking pot. I smell it coming from her unit and I smell it on her. This odor permeates my apartment. Now my place smells

like pot. What can I do?"

**Zac:** Does The ADA recognize medical marijuana as a legal drug?

**Block:** They do in the state of California. And even though the ADA is a federal statute, it can be used in California courts against California landlords. The Landlord, however, still has options. Although he must provide reasonable accommodations to the pot smoking tenant, he has no duty to make unreasonable accommodations, which may cause health problems to tenants like your daughter.

Thus, the landlord may play the following card, by approaching the pot smoking

tenant and say:

I shared this question with attorney Dennis P. Block, and his daughter Madison Block, (who is studying law and is the same age as my daughter) on our weekly "Landlord-Tenant Radio" podcast.

**Madison Block:** "If, in fact, the pot smoking tenant has a disability, which can be verified by a licensed physician, the tenant that is bothered by the smoke may not have a legal basis for breaking his or her lease".

**Dennis:** Anyone can get a doctor's note stating that they have a disability and need a prescription for medical mari-

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juana.

1. Your pot smoking must be confined to one room in your unit, a room in which your smoking will not disturb your neighbors, or
2. Rather than smoke your marijuana, you must use an edible form, which will not disturb your neighbors, or
3. The pot smoking tenant may use a "vaporizer", which will reduce the smell and carcinogens associated with smoking pot.

**Zac:** Madison, you are the pot smoking tenant's lawyer. You've just heard Dennis' legal arguments in favor of the

landlord. May I have your arguments in favor of your pot smoking client?

**Madison:** I don't think that a lawyer, or anyone other than a doctor, has the right or qualifications to tell another how they should dispense their medication. Also, the pot smoking tenant may have allergies, precluding him or her from taking this drug in any other form.

**Dennis:** Her point is well taken, however, the atmosphere (no pun intended) must be one where the pot smoking tenant and the landlord are acting reasonably. The non pot smoking tenants have an absolute right to the use and

quiet enjoyment of the premises. So we have competing accommodations here. As the landlord's attorney, I'm playing the "reasonableness" card. That is, I'm going to give the pot smoking tenant those reasonable options stated above, which will allow him to medicate and allow my other tenants to live in a habitable unit.

### **Conclusion**

Both the landlord and tenant have legal duties to act reasonably. When a tenant has a prescription to smoke marijuana, the landlord must offer reasonable accommodations to treat this "disability". However, such an accommo-

dation may not interfere with the use and enjoyment of the premises by other tenants. This issue is indeed a balancing act between competing interests. If both landlord and tenant approach the issue with consideration and common sense, then both parties may come out of this poker game smelling like a rose, rather than a weed. ■■■

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