

Maine Human Rights Commission

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INVESTIGATOR'S REPORT MHRC No. H17-0501/HUD No. 01-15-8370-8 February 27, 2018

Roberta Dalton (Bangor, ME)

v.

Sharon Knapp (Bangor, ME)

I. Summary of Case:

Complainant Roberta Dalton resided at 149 Third Street, #9, Bangor, Maine (the "Premises"), which is owned and operated by Respondent Sharon Knapp, from mid-October 2017 through early February 2018. Complainant alleged that Respondent discriminated against her based on her disabilities or perceived disabilities by denying her requests for a reasonable accommodation¹, making housing unavailable to her and ultimately evicting her. Respondent denied discriminating against Complainant; Respondent did not receive any reasonable accommodation requests, and Complainant was evicted based on her non-payment of rent, disturbance of the peace, and failure to follow the house rules. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, holding an Issues and Resolution Conference ("IRC"), and requesting additional information. Based upon all of this information, the Investigator recommends a finding that there are no reasonable grounds to believe that Respondent discriminated against Complainant based on her disability by denying her a reasonable accommodation and a finding that there are reasonable grounds to believe that Respondent discriminated against Complainant based on her disabilities when she made housing unavailable to Complainant.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: October 14, 2017 and ongoing.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): November 20, 2017.
- 3) Respondent is subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act ("FHA"), as well as state and federal housing regulations.

¹ Complainant also alleged that she was discriminated against based on her disabilities when Respondent treated her differently in the terms and conditions of her tenancy (failure to provide heat and electricity, fire alarms going off, and having brown water). Some of these issues were due to Complainant's behavior; for instance, Complainant was responsible for activating the electricity but failed to do so. Complainant also failed to establish how any of the complained-of terms and conditions were based on her disabilities. Accordingly, Complainant's terms and conditions claim is not analyzed further. Complainant also alleged that Respondent refused to accept her public assistance payment for rent at her apartment; Complainant did not allege that Respondent refused to rent to her because she received public assistance benefits. Therefore, those claims are not analyzed here.

4) Neither Complainant nor Respondent is represented by counsel.

III. Development of Facts:

1) Complainant provided the following in support of her claims:

Complainant suffers from disabilities and/or perceived disabilities.² Complainant worked with Respondent to rent the Premises. Within days after Complainant moved in, Respondent served her with several eviction notices and demanded payment of a pet deposit for her assistance animal. Complainant's therapist and attorney sent two accommodation requests to Respondent; Complainant felt that both requests were denied. Complainant was evicted.

2) Respondent provided the following in support of her position:

Complainant moved in without Respondent's permission. After she took possession of the Premises, Complainant engaged in a series of ongoing loud and disruptive behaviors which disturbed the other tenants in the building. Complainant did not follow the house/lease rules, did not sign a lease, did not pay rent, and caused damage to the Premises and the apartment building. Respondent took immediate steps to remove Complainant from the Premises.

3) The Investigator made the following findings of fact based on the documentation submitted by the parties and the information gathered at the IRC:

- a) On September 20, 2017, Complainant viewed the Premises with her case manager ("Case Manager"). Case Manager recalled Respondent introducing herself as a "psych nurse," and stating that she knew Complainant had a mental health diagnosis, but that she did not believe it would be an issue since most of the other tenants had mental health diagnoses.³ Complainant returned twice after the initial showing.
- b) On September 22, 2017, a local agency informed Complainant she was approved for funding to assist with her security deposit and a check would issue to Respondent on September 29, 2017. Respondent received and deposited the security deposit on October 2, 2017.
- c) At some point thereafter, Respondent decided to rent to Complainant and arranged for the apartment to be inspected so federal rent subsidy ("Section 8") payments could be used for its rental. On October 6, 2017, the Premises passed this inspection, and the parties agreed that Complainant would move in, but no lease was signed. Complainant obtained a key to the Premises that day.⁴

² Complainant provided medical documentation substantiating some of her alleged disabilities. The record reflects that Respondent perceived that Complainant had both physical and mental disabilities. Therefore, for the purpose of this report, it is assumed that Complainant has a qualifying disability under the MHRA.

³ Respondent provided that Case Manager did not mention Complainant's severe mental health diagnoses. Instead, Respondent believed that Complainant had a physical disability because she requested a first floor apartment and Complainant had difficulty with her [REDACTED] and walking. At the IRC, Respondent provided that she has been a "psych nurse" for 25 years working with people with mental disabilities.

⁴ The parties disagree on whether Complainant had permission to be in the Premises prior to signing the lease. Respondent provided that she did not give Complainant a key and did not intend to have Complainant move in before signing a lease; she stated that Complainant took the key off of a counter or table.

- d) On about October 8, 2017, Complainant began residing at the Premises. Respondent believed that Complainant let herself into the Premises, as no lease had been signed and no move-in date arranged.
- e) Over the next few days, Respondent several other tenants contacted Respondent about Complainant's behavior. Respondent was unaware that Complainant had moved herself into the Premises, and assumed the complaints were related to another tenant. Respondent received complaints from tenants that there were one-sided loud, screaming profanity-laced conversations happening in the building that disrupted the peace of other tenants both day and night.
- f) On October 14, 2017, Respondent was at the apartment building working when she heard screams coming from Complainant about demons raping her and hurting her. One tenant called the local police. Respondent called Case Manager. In Respondent's answer to Complainant's Commission complaint, she indicated that she called Case Manager "to inform him of [Complainant's] psychiatric decompensation and that [she] did NOT want [Complainant] to move into [the] apartment". That day, Respondent exchanged several text messages with Case Manager, excerpted below as follows (reproduced as written in original):

October 14, 2017

Respondent at 12:58 p.m.: "Right. Also I dont believe she has moved her furniture from her other apartment to here – so technically she can still stay there.

I would like her to go back to there and I will refund her Sec dep to [agency]

It would be easier for her than going to court.

Apparently this is the way she is and I feel my kindness was taken advantage of by renting to her. Also this isnt fair to my other tenants who have lived with me for years.

[Local police] is also knowledgeable of her and her mental illness."

Case Manager at 1:48 p.m.: "unable to live there then she can't. She did find this apartment on her own and asked me to go there with her. I can't really discuss diagnosis Things have changed because she is in crisis

She has moved from the other apartment. Things are frozen in place because of the weekend. Because of that the police are about the only path."

Respondent at 2:15 p.m.: " She desperate needs help

Disrupting the whole house and neighborhood and costing the tax payers money. Very sad situation – but should not have been dropped in my/my tenants hands."

October 15, 2017

Case Manager at 4:46 p.m.: "I can't bring up mental illness"

Respondent at 4:46 p.m.: "Good for you"

Respondent at 4:50 p.m.: "She needs hospitalization"

See Exhibit A (subset of original text messages).

- g) That same day and over the next few days, tenants continued to report similar behavior by Complainant to Respondent. The police and fire department were contacted several times to respond to concerns about Complainant's behavior.
- h) On October 18, 2017, Respondent spoke to the local housing authority, relaying the events of the previous few days. Respondent alleged that the housing authority told her to start the eviction process and not to sign a lease.

- i) Over the next few months until Complainant moved out, Respondent continued to receive similar complainants, sometimes multiple times daily, about Complainant's behavior. Respondent's tenants began to fear for their personal safety and some threatened to move out.⁵
- j) Respondent initially served Complainant with a 7-day notice to terminate her tenancy. Then on October 26, 2017, at the instruction of the local housing authority, Respondent served Complainant with a 30-day notice to terminate her tenancy. According to the notice, the eviction was based on noise that unreasonably disturbed other tenants and the failure to pay a pet deposit of \$200 for the cat Complainant claimed to have living with her.
- k) On November 3, 2017, Complainant's therapist, a Licensed Clinical Professional Counselor ("LCPC"), prescribed Complainant a therapy cat "to help alleviate the symptoms with [REDACTED] [REDACTED] [REDACTED]". Respondent acknowledged receipt of the letter sometime after that date.
 - i. Complainant's cat was with her when she moved in. Complainant was seen looking for her cat outside multiple times. Respondent stated that tenants and local emergency responders questioned if there was a cat because they never saw one; some local responders recalled Complainant looking for the cat multiple times over the years.
- l) On October 16, November 2, and December 5, 2017, Complainant paid Respondent some rent.
- m) On December 5, 2017, Complainant's attorney in her eviction action asked Respondent to dismiss the pending eviction action, accept Section 8 payments, and execute a lease with the local housing authority because Complainant had a treatment plan that would help to minimize her symptoms. The letter conveyed that Complainant was adjusting her medications with professional assistance, and was engaged in a treatment plan intended to minimize Complainant's symptoms and noise caused by the symptoms. Respondent did not respond to the letter; she pursued Complainant's eviction.
- n) In early February 2018, Complainant moved out in response to a court order.
- o) During the time Complainant resided at the Premises, she left her window open almost constantly because she smoked inside, despite requests to close her window. As a result, the pipes froze for the entire apartment building, requiring immediate attention. Thereafter, Complainant continued to leave the windows open despite repeated requests for her to close them. Complainant also risked an explosion by turning on a gas line that she had been specifically instructed not to use. After Complainant vacated the Premises, Respondent found the Premises with debris scattered in the unit, the thermostat left at 82 degrees, and the oven on at 450 degrees with the oven door open and shoes sitting on the oven door.

IV. Analysis:

- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("M.R.S.") § 4612(1)(B). The

⁵ Respondent provided copies of text messages, statements, and letters from other tenants and others summarizing Complainant's behaviors and their concerns for their safety. At least some of these appear to have been solicited by Respondent, but all corroborate Complainant's disruptive behaviors.

Commission interprets the “reasonable grounds” standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

Reasonable Accommodation Claim

2) The MHRA makes it unlawful:

For any owner, lessee, sublessee, managing agent or other person having the right to sell, rent, lease or manage a housing accommodation or any of their agents to refuse to make reasonable accommodations in rules, policies, practices or services when those accommodations are necessary to give a person with physical or mental disability equal opportunity to use and enjoy the housing.

5 M.R.S. § 4582-A(2).

3) The MHRA and the Commission’s housing regulations state that it is unlawful “for any owner... [of] a housing accommodation or any of their agents to refuse to permit the use of an assistance animal...” 5 M.R.S. § 4582-A(3); 94-348 C.M.R. Ch. 8, § 8.06(E). A “assistance animal”, for the purposes of housing accommodations, includes “[a]n animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician’s assistant, nurse practitioner or licensed social worker.” 5 M.R.S. § 4553 1-H.

4) To establish a prima-facie case of failure to accommodate, Complainant must show that:

- (1) She has a “physical or mental disability” as defined by the MHRA;
- (2) Respondent knew or reasonably should have known of the Complainant's disability;
- (3) Complainant requested a particular accommodation;
- (4) The requested accommodation is necessary to afford Complainant an equal opportunity to use and enjoy the housing;
- (5) The requested accommodation is reasonable on its face, meaning it is both efficacious and proportional to the costs to implement it; and
- (6) Respondent refused to make the requested accommodation.

See 5 M.R.S. § 4582-A(2); *Astralix Condominium Ass’n v. Secretary, U.S. Dept. of Housing and Urban Development*, 620 F.3d 62, 67 (1st Cir. 2010) (interpreting similar provision in Fair Housing Amendments Act, but seemingly placing burden on Complainant to show accommodation was reasonable); *compare Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001) (interpreting ADA) (holding that plaintiff need only show requested accommodation was feasible “on the face of things”).

5) If Complainant makes this showing, Respondent can defeat the claim by showing that the proposed accommodation was unreasonable, meaning “it imposes undue financial or administrative burdens or requires a fundamental alteration in the nature of the program.” *Oconomowoc Residential Programs*, 300 F.3d at 784.

6) Here, Complainant was unable to show that Respondent discriminated against her on the basis of disability by denying her the accommodations she sought with reasoning as follows:

a) Request for an Assistance Animal:

- i) In early November, Complainant asked for an assistance animal, and provided Respondent with a letter from her therapist, an LCPC. As noted above, the MHRA specifically lists the types of providers whose determination that an animal is necessary to mitigate the effects of a physical or mental disability will be accepted for determining whether an animal is an “assistance animal”. Those providers are: physicians, psychologists, physician’s assistants, nurse practitioners, and licensed social workers. Because Complainant’s letter was written by an LCPC, she did not establish that her cat was an assistance animal within the meaning of the MHRA.⁶
- ii) Even so, Respondent did not state that she would not permit Complainant to have a cat. The record is unclear as to the cat’s existence. No other tenants nor Respondent observed the cat and the record seems to indicate that Complainant’s cat may have been missing for some time. Therefore, even though the provider is not one covered under the MHRA, Respondent’s actions are nondiscriminatory because she permitted the requested accommodation – to have the cat.

b) Request to Halt Eviction:

- i) In early December, Complainant asked, via her attorney’s December 5, 2017 letter, for Respondent to dismiss the pending eviction action and execute a lease for Complainant. Respondent admitted that she did not reply to the accommodation request because she did not want to stop the eviction; she did not want Complainant as a tenant. Respondent did not perceive Complainant’s request to be reasonable because stopping the eviction process would mean that Respondent would agree to accommodate Complainant’s disruptive behavior (even if caused by daily mental health crises).
- ii) The accommodation request to stop the eviction process was feasible because Respondent could stop the process, however, Respondent did not believe this was a reasonable request based on the impact Complainant had on the other tenants (tenants threatening to move, heat shut off for the building, gas-related issues).⁷ Respondent did not perceive that Complainant proposed an accommodation to mitigate her symptomatic behaviors and outbursts at the Premises. The record reflects that during Complainant’s time living at the Premises that she caused several hundred dollars’ worth of damage and that she likely would have continued to do so if she had been permitted to remain at the Premises; Respondent also would likely have lost other tenants. Respondent did not act in a discriminatory manner based on the undue financial burden she would experience if Complainant became a tenant. In addition, it appears from the record that allowing Complainant to remain would have fundamentally altered Respondent’s business, given the disruption caused to her other tenants and the safety risk posed by Complainant’s behaviors such as turning on an unsafe gas line.

7) It is not found that Complainant was unlawfully denied a reasonable accommodation for her disability.

⁶ Complainant alleged that Respondent required a pet deposit. Under the MHRA, the use of an assistance animal may not be conditioned on the payment of a fee or security deposit, even when a fee or deposit is charged for keeping a pet on the premises. The individual with a physical or mental disability is liable for any damage done by their assistance animal to the same extent that all tenants are liable for damage done to their housing. 5 M.R.S. § 4582-A(3). The record reflects that Respondent’s October 26, 2017 Notice of Termination of Tenancy references a nonrefundable pet deposit. This notice was served before Respondent received Complainant’s therapist’s November 3, 2017 note that her cat was an assistance animal. After Respondent received the therapist’s note, she did not pursue the pet deposit. Therefore, the claim is not analyzed further here.

⁷ Respondent did not engage in the interactive process in good faith, however, failure to engage in the interactive process is not a basis for a stand-alone housing discrimination claim.

Making Housing Unavailable/Eviction Claim

- 8) The MHRA provides, in part, that any person has the right to rent housing without discrimination on the basis of disability. 5 M.R.S. § 4581-A(1)(B); 94-348 Code of Maine Regulations (“C.M.R.”) Ch. 8 8.04(a)(1).
- 9) Because this case does not involve direct evidence⁸, Complainant establishes a prima-facie case of unlawful housing discrimination by proving (1) she was a member of a class protected under the MHRA; (2) Respondent was aware of Complainant’s membership in that class at the time she made housing unavailable/evicted Complainant; (3) Complainant was willing and qualified to enter into a lease and continue renting her apartment; and (4) Respondent refused to permit Complainant to lease and continue to rent the apartment. *See Radecki v. Joura*, 114 F.3d 115, 116 (8th Cir. 1997).
- 10) Once Complainant has established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondent to articulate a legitimate, nondiscriminatory reason its action. *See United States v. Grishman*, 818 F. Supp. at 23; *HUD v. Blackwell*, 908 F.2d at 870; *Doyle v. Dep’t of Human Servs*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse housing action. *See id.* Complainant’s burden may be met either by the strength of Complainant’s evidence of unlawful discriminatory motive or by proof that Respondent’s proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet her overall burden at this stage by showing that (1) the circumstances underlying the articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16. In order to prevail, Complainant must show that she would not have suffered the adverse action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See Maine Human Rights Comm’n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979).
- 11) Complainant has established her prima-facie case. Complainant is a member of a protected class based on her disability. Complainant has proven that Respondent was aware of her disability and/or perceived her to be disabled at the time Respondent decided not to execute a lease with Complainant and to evict her, and that Respondent refused to permit Complainant to lease/rent the Premises. For purpose of the prima-facie case, it is assumed that Complainant was willing and qualified to lease and rent the Premises, because Respondent had decided to accept her as a tenant, and payment only became an issue when Respondent refused to sign a lease in order to enable the housing authority to make rental payments.
- 12) Respondent has articulated legitimate, nondiscriminatory reasons for making housing unavailable to Complainant, stating that it did not want to rent to her because of her screaming about demons. With regard to the eviction, Respondent provided that Complainant did not pay rent, she disturbed the peace for other tenants, and was in violation of several lease and/or house rules.

⁸ “Direct evidence” consists of “explicit statements by an employer that unambiguously demonstrate the [Respondent]’s unlawful discrimination. . . .” *Doyle v. Dep’t of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6 (employment). Here Respondent made some direct statements about her perception of Complainant’s disabilities which could be considered direct evidence. Nonetheless, it is not entirely clear that the statements illustrate unlawful discriminatory intent. Because the result is the same under either analytical framework, only the traditional burden-shifting analysis has been applied here.

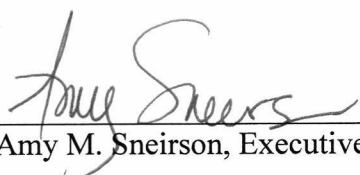
- 13) At the final stage of the analysis, Complainant has demonstrated that Respondent's reasons were false or irrelevant and that unlawful discrimination was the reason the housing was made unavailable to her, with reasoning as follows:
- a) Respondent's statement in response to the Commission complaint - that on October 14, 2017 she "inform[ed] [Case Manager] of [Complainant's] psychiatric decompensation and [said] that [she] did NOT want [Complainant] to move into this apartment" – shows that after observing a single incident from Complainant, Respondent decided that she did not want Complainant residing at the Premises and would not execute a lease and rent to her. The actual refusal occurred after Respondent met with Complainant several times, decided to rent to her, and the Premises passed the necessary inspections. After Complainant occupied the Premises, before the lease was signed, Respondent heard Complainant's screams and told Case Manager that she would not accept Complainant because of her mental state. The record establishes a direct correlation between Complainant's disability and Respondent's decision not to finalize her status as a leaseholder.
 - b) Over the next several months, Respondent continued to take steps to make housing unavailable to Complainant, ultimately evicting her. In particular, by refusing to enter into a lease and telling the housing authority that she would not rent to Complainant, Respondent made it impossible for Complainant to pay the rent. The record is clear that Respondent based that decision on Complainant's mental health.
 - c) With regard to the eviction, by the time Complainant was evicted she had engaged in a number of unsafe and disruptive behaviors which justified her eviction. In particular, she had refused to close her window, causing pipes to freeze, and had risked an explosion by turning on an unsafe gas line after being instructed not to do so. While Complainant's actions were concerning and dangerous, at the time that Respondent initially revoked her decision to lease to Complainant and decided to evict her, Respondent's decision appears to have been the direct result of her assessment of Complainant's mental disability and a desire not to rent to someone she believed needed hospitalization.

14) Discrimination on the basis of disability is found.

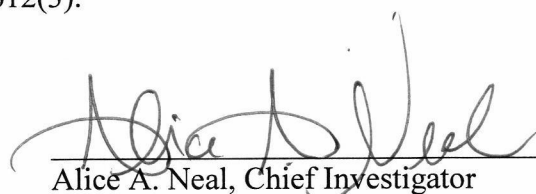
V. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following findings:

1. There are **No Reasonable Grounds** to believe that Sharon Knapp discriminated against Roberta Dalton on the basis of disability in the terms and conditions of her housing by denying her a reasonable accommodation, including the use of an assistance animal, and that portion of the complaint should be dismissed in accordance with 5 M.R.S. § 4612(2); and
2. There are **Reasonable Grounds** to believe that Sharon Knapp discriminated against Roberta Dalton on the basis of disability when it made housing unavailable to her, and that portion of the complaint should be conciliated in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



Alice A. Neal, Chief Investigator

New Message

Cancel

To:



still stay there.
I would like her to go
back there and I will
refund her Sec dep to

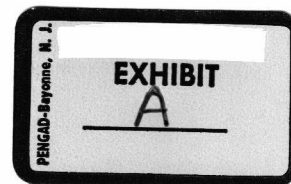
It would be easier for
her than going to court.
Apparently this is the
way she is and I feel my
kindness was taken
advantage of by renting
to her. Also this isnt fair
to my other tenants who
have lived with me for
years.

12:58 PM

is also
knowledgeable of her



Text Message



New Message

Cancel

To:

She desperate needs help
Disrupting the whole house and neighborhood and costing the tax payers money. Very sad situation- but should not have been dropped in my/my tenants hands.

2:15 PM

Btw - No fire

2:22 PM

Sun, Oct 15, 4:46 PM

I checked on RD around noon She was calm



Text Message



New Message

Cancel

To:

I checked on RD around noon. She was calm then. As for screaming fire tenants at front told me the fire alarm was going off and the [redacted] arrived. This was not

4:46 PM

dropped on you RD has a right to ask to rent apartment and I can't bring up mental illness

4:46 PM

Good for you

4:46 PM

There was no alarm going off

4:46 PM



Text Message



New Message

Cancel

To:

My maintenance man was there

4:47 PM

She needs hospitalization

4:50 PM

Wed, Dec 6, 5:04 AM

Questioned "She needs hospitalization"

5:04 AM

Tue, Dec 12, 11:37 AM

Well [redacted] called and said she flipped g out again and he no heat. I'm here. Oil company is



Text Message

