

Maine Human Rights Commission

51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330

Phone (207) 624-6290 Fax (207) 624-8729 TTY: Maine Relay 711

www.maine.gov/mhrc

Amy M. Sneirson EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

INVESTIGATOR'S REPORT
MHRC Case No. H18-0496-A, B, C; HUD No. 01-19-1410-8
April 5, 2019

Terry Asselin (Portland)

v.

MPB Properties (Portland), Leonard Colello (Portland), & Burnham Towers LLC (Scarborough)

I. Summary of Case:

Complainant Terry Asselin rented who also managed by Respondents. Respondent Leonard Colello ("Manager") is a maintenance worker who also manages the property, and a third-party ("Landlord") owns and controls the building through the two named corporate Respondents. Complainant alleged that Respondents discriminated against her based on disability and her request to use an assistance animal when they ignored her request for an assistance animal. Complainant also alleged Respondents MSB Properties and Burnham Towers LLC retaliated against her for engaging in protected activity. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, requesting additional information, and holding an Issues & Resolution Conference ("IRC"). Based upon all of this information, the Investigator recommends the Commission find that there are reasonable grounds to believe Respondents discriminated against Complainant based on disability when they refused her an assistance animal and retaliated against her.

II. Jurisdictional Data:

1) Dates of alleged discrimination: November 27, 2018 through December 12, 2018.

¹ The parties sometimes conflated terms and referred to Complainant's request for a dog as a request for a "service animal." There is a critical distinction between assistance and service animals under the Maine Human Rights Act ("MHRA"). A <u>service animal</u> is, for public accommodation purposes, a dog that has been individually trained to perform work or tasks for an individual with a disability. 5 Maine Revised Statutes ("M.R.S.") § 4553(9-E)(B). An <u>assistance animal</u> is, for housing purposes, an animal that has been individually trained to perform work or tasks for an individual with a disability or that "has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician assistant, nurse practitioner or licensed social worker" or that has been "individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability" and includes animals providing emotional support. 5 M.R.S. § 4553(1-H). In their submissions, the parties also alternately referred to Complainant's request for an "assistance animal" as a request for a "therapy animal" or an "ESA," which are synonymous in use. According to the MHRA's housing statutes, the term "assistance animal" will be used in this report.

- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): December 27, 2018. Complainant amended her complaint on March 15, 2018.
- 3) Respondents are subject to the MHRA and the federal Fair Housing Act ("FHA"), as well as state and federal housing regulations.
- 4) None of the parties are represented by counsel.

III. Development of Facts:

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

Complainant, who suffers from decided to adopt a dog as an assistance animal at her
suggestion. She intended to have the dog live with her and her husband ("Husband") in the
apartment they rent from Respondents. Complainant's wrote her a letter which Complainant
brought to the apartment's property manager ("Respondent Colello") asking Respondents allow her to adopt
an assistance dog. Respondent Colello told Complainant that only Landlord could answer her request and
instructed Complainant to mail her letter to Landlord via physical mail. Complainant did so and
did not hear back from Landlord. Several weeks passed, so Complainant pursued Respondent Colello for
assistance relaying and confirming receipt of her request. Respondent Colello refused to help Complainant
by providing her with additional contact information for Landlord, stating he was not permitted to do so.
When pressed, Respondent Colello told Complainant: Landlord's answer would be forthcoming next week,
that her letter had been received, and that he anticipated Landlord was going to say "no" for a number of
reasons.

Complainant clearly communicated that she could not get her assistance dog unless the adoption agency ("Adoption Agency") was able to contact Respondents to confirm the dog would be permitted to live in the building. Complainant directed Adoption Agency to call Respondent Colello because she had no other contact information for Respondents; when he spoke to Adoption Agency, he simply told them "pet dogs" were not allowed. Because Respondents have been completely evasive, Complainant has been constructively denied from obtaining an assistance dog. When Complainant decided to assert her rights in a Commission complaint, Respondents responded with threats and retaliation.

2) Respondents provided the following in support of its position:

Respondent Colello is not Respondents' property manager, he is a maintenance person with no authority to grant requests for assistance animals. Complainant was directed to mail her letter to Landlord and had all the contact information she needed on the front page of her lease. Landlord never received any letter from Complainant; he has received Complainant's monthly rent checks at the lease address, as well as Complainant's most recently mailing stating that she and Husband did not wish to renew her lease. Landlord did respond promptly to this request to end her tenancy.

Adoption Agency has never contacted Respondents, including Respondent Colello. In any case, Respondents should not have an affirmative duty to assist Complainant adopting a dog. After the filing of this complaint, Complainant and Respondents engaged in some discussions about the issue, but Respondents' actions cannot be considered retaliation.²

² The alleged retaliatory threats occurred during settlement discussions of a potential resolution of the complaint. Settlement discussions at the Commission are considered confidential, 5 M.R.S. § 4612(1)(A), and are generally

- 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) Complainant and Husband live in an apartment owned by Landlord without phone or email access to Landlord. The only contact information provided to them for Landlord is a physical mailing address where they mail their monthly rent check.
 - i. Respondent Colello performs all property management services as an independent contractor through his third-party business ("Maintenance Company"). This includes response to all repair requests, as well as organization of the the advertisements, showings, and actual leases for all apartments. According to testimony from both parties, Respondent Colello manages the properties well and has historically been very responsive to all maintenance/repair requests. Respondent Colello, however, holds himself out as lacking the authority to grant requests related to assistance animals.
 - ii. The sum total of contact information available to Complainant and other tenants for Respondents can be found on the front page of their lease. Landlord insists this document offers all information a tenant should need. The lease lists a phone number, a fax number, and a physical mailing address.
 - (1) The phone number connects directly to Respondent Colello and Maintenance Company.
 - (2) The fax number and physical mailing address are received by Landlord, but it is not Landlord's regular practice to respond to the mailings he receives.
 - iii. Prior to this investigation, Complainant and Husband had never met or had any contact with Landlord. In fact, Complainant only learned Landlord's identity through the formation of this MHRC complaint. Respondent Colello repeatedly refused to even provide Landlord's name.
 - b) Complainant is disabled and her medical providers recently recommended she obtain an assistance dog. Her transfer drafted a letter which Husband text messaged to Respondent Colello to ask what process Complainant needed to go through to make her reasonable accommodation request [See Exhibit A].
 - Respondent Colello replied to Husband, also via text message, to tell him Complainant needed to mail letter to Landlord at the mailing address provided in the lease. Respondent Colello was explicit that he could not be otherwise involved, although he was the only contact who knew Landlord's identity and contact information and also met with Landlord, personally, once or twice a week. [Exhibit A].
 - d) Adoption Agency Complainant was seeking to adopt from will not release an animal to an adoptive home unless they receive verbal or written confirmation the animal is permitted in the building. In the absence of other contact information, Husband forwarded Respondent Colello's phone number to Adoption Agency. On or around November 27, 2018, Adoption Agency spoke with Respondent Colello, who indicated there was a "no dog" policy in the building. Stuck in the middle of a communication breakdown, Adoption Agency could only advise Complainant to try and continue to reach Landlord and contact them again in the future.
 - i. Complainant put into evidence two emails [See Exhibit B] from Adoption Agency referencing a conversation they had with someone purporting to be a maintenance person for the building. According to the emails, this person responded that there was a "no dog" policy, although

inadmissible in court actions. See M. R. Evid. 408. Because the alleged retaliation was in the form of positions taken during settlement discussions, and because the Commission's reasonable grounds standard is based on whether Complainant has at least an even chance of succeeding on her claims in a court of law, her MHRA retaliation claim must fail. Complainant cannot support her claim with sufficient admissible evidence.

- Respondent Colello had a copy of assistance animal letter in his possession. Adoption Agency stated it could not continue the adoption process at this time and advised Complainant to furnish more information about her request for an assistance animal.
- ii. Respondents argued no Respondent had ever spoken to any Adoption Agency. They were unable to explain the emails Complainant submitted from Adoption Agency referencing phone conversations with Respondent Colello.
- e) On November 28, 2018, Complainant mailed a physical copy of address.
- f) Several weeks passed in which Husband checked in with Respondent Colello via text and Respondent Colello only restated his lack of authority. While he was asked, repeatedly, Respondent Colello evaded questions about the status of Complainant's request. At one point, Husband objected, "I'm sorry you [Respondent Colello] have to be the middle man, but this is a very simple process and it feels like it's being strategically avoided." Husband also specifically cited the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973 to assert Complainant's rights.
- g) After 2-3 weeks of additional inquiry, Respondent Colello began to change his response to Husband to suggest he had spoken to (and/or intended to communicate further with) Landlord. This is reflected in a string of text message streams [Exhibit A]. When asked, Respondent Colello was unable to satisfactorily explain these exchanges.
- h) Despite suggestions in Respondent Colello's text messages and despite testimony Respondent Colello and Landlord met 1-2 times a week, Respondents testified that in the 2-3 weeks of Husband's persistent inquiries, they never once discussed Complainant's request for an assistance animal.
- i) On January 1, 2019, Complainant mailed Landlord notice or her intent not to renew her lease to the same P.O. Box address to which she had sent all other mailings. On February 21, 2019, Landlord wrote Complainant back to acknowledge receipt of notice and end of her tenancy.
- j) Notably, Landlord was unwilling to provide to the investigation why so little contact information was available to tenants. He did, however, state he no longer intended to allow his independent contractors to communicate via text message with tenants.
- k) While Complainant was making her assistance animal request, she also made a maintenance request to Respondent Colello to fix some pipes in her apartment. According to Complainant, Respondent Colello visited her apartment, but did not respond with an adequate fix. Complainant asserts this was done intentionally as an act of retaliation and provided video footage of an on-going leak. Respondents provided evidence that, in addition to Respondent Colello's response, a master plummer ("Plummer") also examined the pipes, left his contact information, and could not identify a continuing problem.³

IV. Analysis:

³ Complainant also argued Respondents' response to this maintenance request was retaliation. At the same time, Complainant provided this had been an issue since Complainant moved into her apartment, so Respondents' failure to provide a fix pre-dates her assertion of rights and cannot be causally connected. There will be no retaliation analysis in this report.

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 M.R.S. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

Denial of Assistance Animal and Interference Claims

- 2) Under the MHRA, it is unlawful for "any owner, lessor, sublessor, 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 permit the use of an assistance animal or otherwise discriminate against an individual with a physical or mental disability who uses an assistance animal at the housing accommodation unless it is shown by defense that the assistance animal poses a direct threat to the health or safety of others or the use of the assistance animal would result in substantial physical damage to the property of others or would substantially interfere with the reasonable enjoyment of the housing accommodation by others." 5 M.R.S. § 4582-A(3).
- 3) The assistance animal provision applies specifically to individuals such as Collelo, who is a "person having the right to sell, rent, lease or manage a housing accommodation" and who acted as the corporate Respondents' agent in this matter. Even if it did not, the MHRA also provides, as a standalone provision not limited to housing, that it is "unlawful for a person to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of the rights granted or protected by this Act", including the right to use an assistance animal. 5 M.R.S. § 4633(2)(emphasis added). These claims can be brought against individual respondents. See Roy v. Correct Care Solutions et al., Case No. 18-1313 (1st Cir. 2019).
- 4) Here, Complainant was able to show that Respondents discriminated against her on the basis of disability by denying her the use of an assistance animal, with reasoning as follows:
 - a) Complainant has a disability, as defined under the MHRA, and provided Respondents with a letter from her specifically stating that her condition was a disability and its symptoms would be ameliorated by the use of an assistance animal.
 - b) While Respondents argued that they never expressly refused the use of an assistance animal, this argument is unavailing: by refusing to provide a substantive response, Respondents effectively denied Complainant the use of an assistance animal. When the request was made, Respondent Colello only responded to say that he lacked authority to grant such a request, but also refused to forward it to Landlord. The corporate Respondents, run by Landlord, are effectively designed to be inaccessible to tenants for these type of requests which Respondents seemed to perceive as administratively burdensome. Respondents knew Adoption Agency would only release a dog with Landlord's permission (or permission from his agent, Colello). Respondents have no procedure in place to allow for

fundamental misunderstanding of the law concerning "assistance animals" and need for additional training.

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⁴ It is notable, Landlord provided he owned other buildings that housed a number of tenants with disabilities. He also submitted evidence he had worked successfully with a local housing authority ("Housing Authority") for nearly two decades. Landlord provided statements from inspectors and other tenants which showed he and Respondent Colello had an impressive record of being responsive to their tenants' maintenance requests. While this is commendable, these requests are not akin to reasonable accommodation requests (and, in particular, to requests to permit an assistance animal). Landlord's initial response to this MHRC complaint was to provide he knew the law and submit the MHRC's pamphlet concerning service animals in public accommodations as evidence; this only further demonstrates Respondents'

an interactive process to discuss these requests and have thus constructively denied a reasonable accommodation. ⁵

- c) Respondents argued that Respondent Colello was just a maintenance worker and therefore lacked decision-making authority to grant tenant requests that were more substantive than simple repair requests. At the IRC, Respondents' own testimony revealed Colello is, in practice, Respondents' property management agent. Respondent Colello has been purposefully positioned by Landlord as a screen for liability, which constitutes an interference with Complainant's housing rights.
- d) It is not credible Respondent Colello and Landlord never discussed Complainant's repeated requests, where they met 1-2 times each week, Husband was writing Respondent Colello regularly for 2-3 weeks, and Respondent Colello texted Husband assurances such as, "I will get [Landlord's] response by next week."
- e) Landlord testified it was common practice for all non-maintenance requests to by-pass Respondent Colello and come to Landlord directly by mail, and stated he was always responsive. At the same time, Landlord was unable to provide any other examples of requests he had received and responded to similar to Complainant's. When pressed, Landlord did provide another tenant had mailed a request to break a lease, which he granted. But a request to end a lease is fundamentally different than an accommodation request related to disability. In failing to provide adequate contact information, Respondents remain free to pick and choose what tenant requests they ignore.
- f) Respondents did not provide evidence that Complainant's assistance animal would pose a direct threat to the health or safety of others, would result in substantial physical damage to the property of others, or would substantially interfere with the reasonable enjoyment of the housing accommodation by others. Respondents commented that they were concerned about potential allergies and damage by dogs generally, but these unsubstantiated concerns are insufficient to meet Respondents' burden on defense.
- 5) It is found that Complainant was unlawfully denied the use of an assistance animal.

V. Recommendation:

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

1. There are **Reasonable Grounds** to believe that Respondents MPB Properties, Leonard Colello, and Burnham Towers LLC discriminated against Terry Asselin on the basis of disability by denying her the use of an assistance animal, and this claim should be conciliated in accordance with 5 M.R.S. § 4612(3).

⁵ Respondent cited the fact another tenant in Complainant's building ("Neighbor") kept a cat she first adopted and later documented was an assistance animal. There is mixed testimony concerning Neighbor's process for securing her assistance cat and what her experience was contacting Respondents. Ultimately, this is not relevant where Neighbor's assistance animal was a cat and not a dog. Respondents permitted several other cats who were pets in the building already. Respondent Colello admittedly apologized to Complainant for her difficulty obtaining an assistance dog and stated, "Maybe if you had wanted a cat, things could have been different."

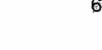
⁶ In addition to maintenance work, Respondent Colello advertises Landlords' apartments, decides what tenants will fill them, and closes all lease agreements, for multiple buildings, with authority to sign for Landlord.

2. There are **No Reasonable Grounds** to believe that Respondents MPB Properties and Burnham Towers LLC retaliated against Terry Asselin for engaging in MHRA-protected conduct, and this claim should be dismissed in accordance with 5 M.R.S. § 4612(2).

Jenn Corey Meehan, Investigator

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Fri, Nov 23, 7:46 AM

Hi Lenny, hope you had a wonderful thanksgiving! I wanted to let you know that Terry qualifies for a service animal under the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act of 1973, and we have recently begun looking into this. We wanted to give you a heads up, you may be receiving a call from an adoption agency soon! If you've got any questions, want to see her paperwork, or want us to give you some resources we have on this, let us know! Enjoy your weekend!

Tue, Nov 27, 11:09 AM



Tue, Nov 27, 11:09 AM



We can send you a hard copy, if you have any questions we

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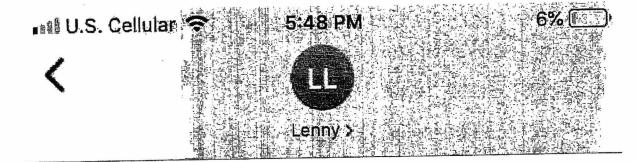
We can send you a hard copy, if you have any questions we can give you any resources or information you might need.

That is a decision for the owner. Please mail with You are a request. I'm not sure how it works in a multiunit building. Thank you very much

Tue, Nov 27, 4:46 PM

The owner's number is not on the lease. Can you give me a number to call?

No that's why I said please write your request and Mail to same address that you mail rent check to. Thanks. Those



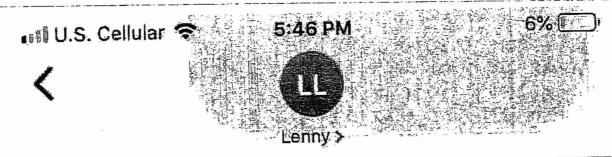
I totally understand It is not my building and I am not the owner. That's why I asked you to send written request. I just do not have the authority to say

yes or no. Thanks

I've sent the service animal confirmation letter to the landlord, so we are all set that way. Because you are the only phone contact we can give an adoption agency, we ask that you confirm with them that she is allowed to have an animal, which she legally is. It's not regarding authority, it's the law.

understand all that

it is

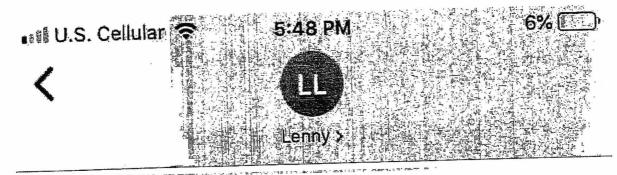


No that's why I said please write your request and Mail to same address that you mail rent check to. Thanks. Those kind of requests as stated in lease under the

should be dealt with directly with owner. And best way to do that is to write letter of request and mail. Thank you very much

clause Permission and invalidity. And Must get written permission by owner. Thanks. This is a request that I have never received in the past, so I believe it

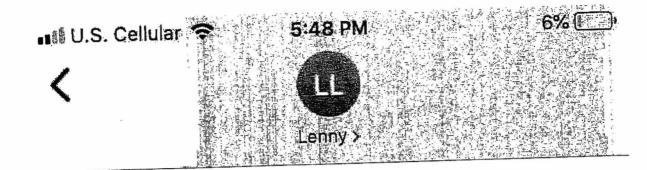
Ok. Should I write him about the pipes also?



I understand all that it is just not my position to say yes or no. And it's always been a no pet policy so For me to make that call I feel is not within my

bounds but the owners. Thank you very much

The adoption agencies cannot contact the landlord, you are the only one with a phone. A no pet policy does not legally include service animals. If the landlord had a cell phone, we would not have to go through you. As it stands though, they need someone to call- the Americans with Disabilities Act prohibits hindrance of securing a service animal.



This is simple please just let The owner receive your letter of request. And then let him tell me how he wants to handle it. This is a first time I've ever

had a service pet request. I understand what you're saying about you saying it's the law. It's just not my building I don't have that authority they can call

me but the best way is to do what you did which is ask for written permission. Which is what you did with that letter. Thank you

What we're saying is we don't

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Lenny >

What we're saying is we don't need written permission, they need a person to speak with and provide verbal confirmation that we live here and a pet can, too.

I can see if a letter from the landlord would suffice but most likely they will need to speak to an actual person

The owner will send back written permission or the owner will Have me to call and say OK. Thanks

That is fine once I have the authority from the owner-I will call and say OK but I can't do that until the owner received your letter. And then get kills

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	landlord would suffice but most likely they will need to speak to an actual person

The owner will send back written permission or the owner will Have me to call and say OK. Thanks

That is fine once I have the authority from the owner I will call and say OK but I can't do that until the owner received your letter. And then get kills me the

permission to call. Thank you

Okay, please let us know as soon as the landlord confirms with you that you can speak to the agency. Thanks.

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Fri, Nov 30, 12:51 PM

Hello Lenny, we've sent the letter about the dog to the landlord and they should have it by now. It's not a matter of asking for permission, as Terry is legally entitled a dog-so when an adoption agency calls, all you have to say is "Yes, are permitted Terry and to have a pet" because we are under the fair housing act, the Americans with disabilities act, and the rehabilitation act of 1973. Let us know if you have any questions!

I totally understand It is not my building and I am not the owner. That's why I asked you to send written request. U.S. Cellular S 5:50 PM

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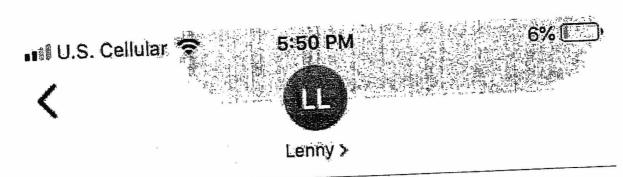
Hello Lenny, checking in to see if you've had a conversation with the landlord about the dog- either way we need a person that's able to be called by the adoption agency!

I have not. But I do know that he will not be back in until Friday. And will discuss with him then, and by then he will have received your request. Thank you

I will check back in Friday, then! Thanks

You're welcome

Fri, Dec 7, 8:37 PM



Sounds good. Have you talked to the landlord about the service animal situation?

I told him that you were mailing a request.

I mailed a request to that address almost two weeks ago. Has it not arrived?

Like I've said, we are legally not required to ask permission. We are just asking for a contact to give verbal confirmation that we live here. I've done my part, it is up to you and the landlord to cooperate now.

I will get his response by next

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I have not received anything from the landlord yet. I sent him the letter 2 and a half weeks ago. I'm sorry you have to be the middle man, but this is a very simple process and it feels like it's being strategically avoided.

be no. One reason is he is and also he is taking into consideration that other tenants could be and I wish I was but I'm not. I did do some investigating and research about comfort pets etc. in multiunit buildings and I printed off a copy for you as well. and there are clauses that also give all tenants in multi unit

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Lenny >

multiunit buildings and I printed off a copy for you as well, and there are clauses that also give all tenants in multi unit buildings considerations for their needs as well. Any further issues about this please just direct them all to the owner in writing because I have no say whatsoever about it. I love animals too. If if you were renting a single-family house the situation could be different. He has to take all tenants into consideration in these matters. I do not want this to come between you and I and our relationship. I want to keep our relationship on good terms. Please understand I am not the owner and I cannot give permission without his

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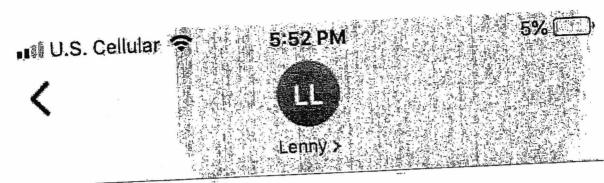


Lenny >

We know the law, and we know it's not your fault. The issue is a moot point because there are multiple cats in this building and my wife is

This has yet to present a problem. Again, I feel as though the landlord is avoiding this issue, but I am done talking about it now. Thanks.

And that is why he has made it a no pet building. So all the new leases that we have done for the last year or two. I have had people initial where it says no smoking and no pets just as you did, so as those people with cats move out it will become a completely animal free building. And ever since



And that is why he has made it a no pet building. So all the new leases that we have done for the last year or two I have had people initial where it says no smoking and no pets just as you did, so as those people with cats move out it will become a completely animal free building. And ever since I've had anything to do with any of his buildings it has always been a no dog policy. You can only imagine what it would be like if every tenant had a dog. And insurance does not cover dogs in hallways / building. if it ever bit somebody. I do not know any multiunit buildings where landlords allow dogs we had a tenant just moved to a more expensive Place because U.S. Cellular 🗢

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Lenny >

had a tenant just moved to a more expensive Place because she wanted to have a dog, please whatever landlord does or decides I do not want to have any bearing on our relationship I am a subcontractor just like the plumber or electrician. That's why I have to carry my own insurance and why I have absolutely no say how he wants to run his buildings.

I need a contact number for whichever wris/ operates this building please.

The only way to contact him is in writing. And mail it to the same address that you mailed

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Lenny >

please whatever landlord does or decides I do not want to have any bearing on our relationship I am a subcontractor just like the plumber or electrician. That's why I have to carry my own insurance and why I have absolutely no say how he wants to run his buildings.

> I need a contact number for rowns/ whichever operates this building please.

The only way to contact him is in writing. And mail it to the same address that you mailed rent to. Thanks

Never mind, I found it online.

2/15/2019



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Theresa A

Re: Website Form Submission: Adoption Questionnaire (

Adoptions Team <

@gmail.com>

Tue, Nov 27, 2018 at 9:20 AM

Hi!

We spoke with your landlord's worker/maintenance person. He said there is a no dog policy and that if you wanted approval you would need to write a letter requesting for approval from your landlord. If you can do that and get approval from your landlord then we can move forward.

All the best,

[Quoted text hidden]



Theresa A

Re: Website Form Submission: Adoption Questionnaire (2018-11-26 03:07:25)

To: Theresa A

@gmail.com>

Tue, Nov 27, 2018 at 2:35 PM

Your landlord has said they do not allow dogs unless they are service dogs. So as of now we aren't able to approve your application. If you want to give them a call maybe you can work something out with them and then we can call them back to confirm!

and the adoptions team

[Quoted text hidden]

ASK US ABOUT OUR OPEN ADOPTION HOURS!