



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 # H16-0372, HUD # 01-16-4388-8

December 21, 2016

Justin Engstrom (Bangor)

v.

D & L Apartments¹ (Hampden)

I. Summary of Case:

Complainant alleged that Respondent discriminated against him in the terms and conditions of the housing application process based on disability when Respondent said that it did not accept dogs, including assistance animals. Respondent, the owner of the property Complainant inquired about renting, denied discrimination. The Maine Human Rights Commission Investigator conducted a preliminary investigation, which included a thorough review of the materials submitted by the parties and telephone interviews. Based on this information, the Investigator recommends that the Commission make a finding that there are reasonable grounds to believe Respondent discriminated against Complainant in housing on the basis of disability.

II. Jurisdictional Data:

- 1) Date of alleged discrimination: June 10, 2016.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): August 2, 2016.
- 3) Respondent owns 33 residential housing units located at six properties and is subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act, as well as state and federal housing regulations.
- 4) Respondent is represented by Joshua Tardy, Esq. Complainant is not represented by counsel.

III. Development of Facts:

- 1) Complainant provided the following in support of his claims:

¹ Complainant named D & L Apartments as the Respondent in his Complaint; Respondent provided that its legal name is D & L Apartments, Darrell Sproul. As Complainant did not amend his Complaint, Respondent will continue to be named here as D & L Apartments.

Complainant called Respondent in response to an advertisement he saw online for a housing unit. Respondent stated that no dogs were allowed, and when Complainant asked whether federally protected, certified or registered service dogs were allowed, Respondent stated that no, it did not matter, no dogs were allowed.

- 2) Respondent provided the following in support of its position:

Respondent recalls that Complainant stated that he had or might get a therapy dog, and Respondent told him that he seldom rents to people with pets. Respondent's lease states that no pets are allowed without his written consent. He does not have an assistance animal policy but would evaluate requests on a case by case basis. He has never had any prospective tenants request assistance animals in the past. Complainant didn't actually submit any application for tenancy so Respondent did not revisit the issue.

- 3) The Investigator made the following Findings of Fact:

Complainant stated that Respondent told him "the answer is no" when he inquired about whether assistance animals were allowed. When Respondent was asked by the investigator whether this allegation was true, Respondent stated, "basically that is my first response."

V. Analysis:

- 1) The MHRA requires the Commission 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 Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA makes it unlawful for an owner or manager of rental property to discriminate against any individual because of disability in the "price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations." 5 M.R.S. § 4582.
- 3) The MHRA provides that 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. The use of an assistance animal may not be conditioned on the payment of a fee or security deposit, although the individual with a physical or mental disability is liable for any damage done to the premises or facilities by such an assistance animal.

5 M.R.S. § 4582-A(3).

- 4) For housing, the MHRA defines "assistance animal" as "an animal that has been determined necessary to mitigate the effects of a physical or mental disability by a physician, psychologist, physician assistant,

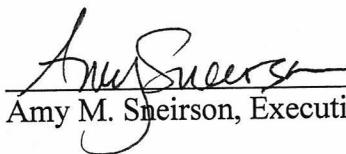
nurse practitioner or licensed social worker” or as “an animal individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals who are deaf or hard of hearing to intruders or sounds, providing reasonable protection or rescue work, pulling a wheelchair or retrieving dropped items.” 5 M.R.S. § 4553(1-H).

- 5) Here, Complainant was able to show that Respondent discriminated against him in the housing application process by stating that he would not accept the presence of an assistance animal in the housing unit. Reasoning is as follows:
- a) As stated above, Respondent acknowledged that when Complainant asked about whether assistance animals were allowed, Respondent stated no. Respondent's statement is discriminatory, as it would dissuade a person that uses an assistance animal for a disability from applying for a housing accommodation. This constitutes discrimination in the terms and conditions of housing based on disability.
 - b) Respondent stated that Complainant did not apply for the available unit, so Respondent did not deny him housing. Complainant did not apply because he felt that doing so would be futile, given Respondent's statement that he would not accept even a federally-protected, certified or licensed service animal.² Respondent admitted that his first response to inquiries about dogs is always to refuse. With regard to service and assistance animals, this response is unlawful.
- 6) Disability discrimination was found.

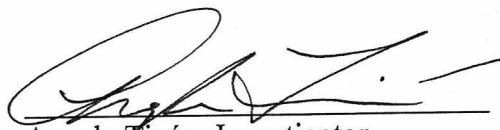
VI. Recommendations:

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

There are **Reasonable Grounds** to believe that D & L Apartments discriminated against Justin Engstrom in the terms and conditions of housing based on disability, and conciliation of the charge should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Sheirson, Executive Director



Angela Tizon, Investigator

² The use of assistance animals (including trained service animals) in housing is protected under both state and federal law, without any requirement of a special license or certification for the animal.