



Maine Human Rights Commission

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INVESTIGATOR'S REPORT MHRC Nos. H18-0391-A&B/HUD No. 01-19-0898-8 January 22, 2019

Darleen Gray & Anthony Harmon, Jr. (Auburn)

v.

Stanley Hinds & Nancy Hinds (Greene)

I. Summary of Case:

Complainants Darleen Gray (“Gray”) and Anthony Harmon, Jr. (“Harmon”) reside at 13 Hutchins St., Unit 2, Auburn, Maine (the “Premises”), a property owned and managed by Respondents Stanley Hinds (“S. Hinds”) and Nancy Hinds (“N. Hinds”). Complainants alleged that Respondents discriminated against them based on Gray’s disability and Harmon’s association with a person with a disability by treating them differently in the terms and conditions of their housing (including requiring a pet deposit for an assistance animal) and retaliated against them for engaging in protected activity. Respondents denied discriminating or retaliating against Complainants and stated that they believed Complainants breached their rental agreement. 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 this information, the Investigator recommends a finding that there are reasonable grounds to believe that Respondents discriminated and retaliated against Complainants.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: September 30, 2018.
- 2) Date complaint filed with the Maine Human Rights Commission (“Commission”): October 15, 2018.
- 3) Respondents are subject to the Maine Human Rights Act (“MHRA”) and the federal Fair Housing Act (“FHA”), as well as state and federal housing regulations.
- 4) Complainants are represented by Patricia Ender, Esq. Respondents are not represented.

III. Development of Facts:

- 1) Complainants provided the following in support of their claims:

Gray is disabled and requires the use of an assistance animal to ameliorate the symptoms of her disability.¹ Complainants negotiated an oral month to month rental agreement with Respondents. Respondents requested \$1,800 as a security deposit and a \$500 pet deposit. Complainants paid a portion of the security deposit and moved in. After Gray moved in, she informed S. Hinds that her animal was an assistance animal and that she was not paying the pet deposit. S. Hinds immediately told Gray that he was going to evict them, serving Complainants with a notice to quit the next day and a second in November 2018.

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

Complainants needed a place to move into and Respondents negotiated with them. They previously had problems with animals and damage, so they charged Complainants a pet deposit of \$500 in addition to their \$1,800 security deposit. Complainants agreed and moved in. In late September, S. Hinds was at the Premises for other reasons and inquired about the remaining security deposit, including the pet deposit. Gray told him she would not pay the pet deposit (\$500) because her dog was an assistance animal. S. Hinds told her, "I'm going to evict you" because he believed she breached their contract. Respondents subsequently served Complainants with two notices to quit, one in October and one in November.

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) Gray is disabled and requires the use of an assistance animal.
- b) Gray recalled telling Respondents that her dog was an assistance animal when they first spoke.
- c) On September 4, 2018, Gray met with a local legal aid organization about renting from Respondents. A paralegal ("Paralegal") at that organization spoke with S. Hinds to negotiate Complainants' rent. Paralegal's notes reflect that the "[S. Hinds] says he'd like to charge a \$500 pet deposit as he's had lots of tenants whose animals have cause a lot of damage, but he says that if cl can't pull it together, he'll waive it."² Paralegal recalled she told S. Hinds that the dog was an assistance animal and that she needed to discuss the pet deposit with a staff attorney.
- d) On September 5, 2018, Complainants agreed to pay \$1,800 as a security deposit and a \$500 pet deposit, to Respondents to rent the Premises as a month to month lease.³ That same day, Complainants paid \$900 to Respondents and took possession of the Premises. An additional \$900 was held in escrow by Complainants' former landlord's attorney with the intent to transfer the \$900 to Respondents after Complainants vacated their former unit.

¹ Gray provided letters from two medical providers, one an M.D., dated 10/02/18, and one an LCPC, dated 08/14/18, regarding her assistance animal. For the purpose of this report it will be assumed that Gray has as disability under the MHRA.

² Paralegal provided an affidavit regarding her interactions with S. Hinds.

³ Respondents assert that they do not routinely enter into written leases with tenants. The prior tenant in Complainant's unit had a written lease and the tenants who moved into Unit 2 in early October also had a written lease.

- e) On September 30, 2018, S. Hinds was at the Premises for other reasons while Complainants were completing their move-in. S. Hinds inquired about whether Complainants were fully out of their former unit so he could get the remaining security deposit. Complainants acknowledged that they were. Gray told S. Hinds that she would not pay the additional \$500 because her dog was an assistance animal and gave him paperwork regarding her assistance animal, including a letter from a medical provider. S. Hinds responded, "I'm going to evict you."⁴
- f) On October 1, 2018, N. Hinds served Complainants with a 30-day notice to quit.
- g) On October 3, 2018, Gray gave Respondents an additional letter from a medical provider about her assistance animal. Respondents refused to waive the pet deposit.
- h) On October 5, 2018, Respondents signed a written lease with tenants for the unit next to Complainants. They had three dogs and Respondents did not charge a pet deposit. Respondents' rationale was that the tenants would provide an annual financial benefit to Respondents in excess of \$500 for performing such tasks as snow removal.
- i) On November 26, 2018, Respondents served Complainants with a second 30-day notice to quit.⁵

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

Assistance Animal Claim

- 2) An assistance animal is 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 that has been "individually trained to do work or perform tasks for the benefit of an individual with a physical or mental disability". 5 M.R.S. § 4553(1-H).
- 3) 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

⁴ Complainants provided multiple affidavits from individuals present when S. Hinds threatened to evict Complainants. Respondents provided that they made the decision to evict Complainants when Gray said she would not pay the rest of the security deposit. Respondents were frustrated that Gray did not tell them her dog was an assistance animal, despite having paperwork from mid-August, before they moved in.

⁵ In Respondent's Response to a Request for Information received on December 27, 2018, Respondents acknowledged that they withdrew the eviction action and that they agreed to waive the \$500 pet deposit while admitting no wrong doing and in consideration of S. Hinds's health.

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)

- 4) 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 same the extent that non-disabled individuals and individuals with pets are liable for such damage. 5 M.R.S. § 4582-A(3).
- 5) Here, Complainants have shown that Respondents discriminated against them by charging a pet deposit for reasoning as follows:
 - a) Complainant established that her M.D. prescribed an assistance animal for her disabilities.
 - b) Respondents charged a \$500 pet deposit of Complainants. After learning that Gray’s dog was an assistance animal, they did not stop pursuing the fee. They believed that the nonpayment of the deposit was a breach of contract. Whether or not Respondents’ believed there was a breach of contract, the pursuit of the pet deposit once they learned Gray’s dog was an assistance animal was unlawful.
 - c) Complainant did not have a duty to disclose that her dog was an assistance animal as part of the application process. Once Respondents learned of the dog’s status, they should have stopped pursuing the pet deposit.
 - d) It was only shortly before the record closed in the matter that Respondents said they would waive the pet deposit. This late in the game waiver of the deposit was not because Respondents’ realized it was unlawful to charge a pet deposit, it was in consideration of S. Hinds’s health. Up until this time, Respondents did not stop their pursuit of the pet deposit.
 - e) The record reflects that Respondents had tenants move in less than a month after Complainants who had three dogs who were not charged a pet deposit. Respondent’s rationale was that the new tenants were providing other services that gave Respondent’s a financial benefit in excess of the value of \$500 for the pet deposit. In less than one month, Respondents appeared not be concerned about the potential damage done by three dogs, the stated reason for the fee, merely because of other financial gain they would receive.
 - f) This disparate treatment of Complainants makes little sense when S. Hinds indicated to Paralegal that he would waive the fee if Complainants’ could not afford it. Instead, S. Hinds’s immediate response was to threaten Complainants with eviction because she said she would not pay the unlawful pet deposit.
 - g) Harmon’s claim arises out of his association with Gray and the requirement and pursuit by Respondents to recover a pet deposit. Harmon was impacted because of his co-tenancy.
- 6) Discrimination on the basis of disability or association with a person with a disability is found for requiring a pet deposit for Gray’s assistance animal.

MHRA Retaliation Claim

- 7) The MHRA makes it 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” and “discriminate against any individual because that individual has opposed any act or practice that is unlawful under this Act or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Act.” 5 M.R.S. § 4633(1)&(2).
- 8) In order to establish a prima-facie case of retaliation, Complainants must show that they engaged in statutorily protected activity, they were the subject of a materially adverse action, and there was a causal link between the protected activity and the adverse action. *See Doyle v. Dep’t of Human Servs.*, 2003 ME 61, ¶ 20, 824 A.2d 48, 56 (employment case); *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006) (same). The term “materially adverse action” covers actions that are harmful to the point that they would dissuade a reasonable person from making or supporting a charge of discrimination. *See Burlington Northern*, 126 S. Ct. 2405. One method of proving the causal link is if the adverse action happens in “close proximity” to the protected conduct. *See id.*
- 9) The prima-facie case creates a rebuttable presumption that Respondents retaliated against Complainants for engaging in statutorily protected activity. *See Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondents must then produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action. *See Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondents make that showing, Complainants must carry their overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See id.*
- 10) Complainants have established a prima-facie case by showing that they told Respondents that Gray had an assistance animal and Respondent’s continued to pursue a pet deposit and served them with two eviction notices – the first the day after Gray said she would not pay the pet deposit. Respondents stated a legitimate nondiscriminatory reason for their actions, namely that they believed Complainants breached their contract with Respondents.
- 11) At the final stage of the analysis, Complainants have shown that they have at least an even chance of establishing that there is a causal connection between their protected activity and the materially adverse action they experienced:
 - a) On September 30 and October 3, 2018, Gray provided copies of medical providers letters to Respondents. After S. Hinds was told by Gray that she would not pay the pet deposit and handed him paperwork about her assistance animal, he immediately told her that he would evict her. The very next day Complainants were served with their first 30-day notice to quit the Premises. Further, Respondents acknowledged that they made the decision to evict Complainants when they said they would not pay the pet deposit. Later on, in November, Respondents served Complainants with a second notice to quit. The causal connection between Gray’s assertion of her right to have an assistance animal without being charged a fee and the immediate threat of eviction could not be clearer. The threat of eviction was, in fact, based on Gray engaging in protected activity.
 - b) Harmon’s retaliation claim stems from his association with a person with a disability, Gray, since he was also served with eviction notices based on Gray’s protected activity. Based on the reasonable grounds standard, the facts in the record reflect that Complainants have an even chance of prevailing in a civil action.
- 12) Retaliation in housing in violation of the MHRA is found.

V. Recommendation:

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

1. There are **Reasonable Grounds** to believe that Stanley Hinds and Nancy Hinds discriminated against Darleen Gray and Anthony Harmon, Jr. on the basis of disability or association with a person with a disability in the terms and conditions of their housing by charging a pet deposit for an assistance animal;
2. There are **Reasonable Grounds** to believe that Stanley Hinds and Nancy Hinds retaliated against Darleen Gray and Anthony Harmon, Jr. for asserting their rights under the Maine Human Rights Act; and
3. The complaint should be conciliated in accordance with 5 M.R.S. § 4612(3).



Alice A. Neal, Chief Investigator