



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

H14-0462

March 26, 2015

██████████ (Ellsworth)

v.

██████████, IV, Esq. (Ellsworth)

I. Complainant's Complaint:

Complainant ██████████ alleged that Respondent ██████████, IV, Esq. discriminated against her in housing on the basis of disability by denying her the reasonable accommodation of having a service animal. Complainant also alleged that Mr. ██████████ retaliated against her for her request to have a service animal by serving her with a notice to vacate.

II. Respondent's Answer:

Mr. ██████████ stated that he did not discriminate against Ms. ██████████. He asked her to provide additional information regarding her need for a service animal, and she never provided the additional information. Mr. ██████████ served Ms. ██████████ with a notice to vacate because her lease was ending and there were continuing problems with her as a tenant (noise from her apartment that disrupted his family and her continuing to smoke in her apartment).

III. Jurisdictional Data:

- 1) Date of alleged discrimination: December 2013 through March 29, 2014.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): August 29, 2014.
- 3) Respondent is subject to the Maine Human Rights Act ("MHRA"), as well as state housing regulations.
- 4) Complainant is represented by Mark C. Joyce, Esq. Respondent is representing himself.
- 5) Investigative methods used: A thorough review of the written materials provided by the parties, a Fact Finding Conference, ("FFC"), and a request for additional information from Respondent. This investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

IV. Development of Facts:

- 1) The parties in this case are as follows:
 - a) Ms. [REDACTED] was a tenant at 209 Main Street, Ellsworth, Maine, a three-unit apartment building ("the Premises") from April 24, 2013, through April 30, 2014.
 - b) Mr. [REDACTED] owns the Premises and resides on site.
- 2) Complainant provided the following in support of her position:
 - a) Ms. [REDACTED] has mental disabilities. Mr. [REDACTED] received Ms. [REDACTED]'s rent through a program called Shelter Plus Care in which he participated in as a landlord. This program "is designed to link rental assistance to supportive services for hard-to-serve homeless persons with disabilities." As such, Mr. [REDACTED] was aware that Ms. [REDACTED] was an individual with a disability.
 - b) On September 8, 2013, Ms. [REDACTED]'s mental health case manager ("Case Manager") sent Mr. [REDACTED] a letter asking him to waive his "no pet" policy so that Ms. [REDACTED] could have a small "therapeutic/service animal".
 - c) Mr. [REDACTED] did not respond to this request.
 - d) After the letter was sent, Case Manager spoke with Mr. [REDACTED] over the phone with Ms. [REDACTED] present. It was Ms. [REDACTED]'s understanding of the phone conversation that Mr. [REDACTED] was not going to allow her to have a service animal.
 - e) On December 13, 2013, Ms. [REDACTED]'s attorney sent Mr. [REDACTED] a letter asking that Ms. [REDACTED] be allowed to have a service animal in her apartment. Ms. [REDACTED]'s attorney provided supporting documentation, including a letter from Ms. [REDACTED]'s healthcare provider showing Ms. [REDACTED]'s need for a service animal.
 - f) Mr. [REDACTED] did not respond to this letter.
 - g) On January 3, 2014, Ms. [REDACTED]'s attorney called Mr. [REDACTED] about the December 13, 2013 letter. Mr. [REDACTED] told Ms. [REDACTED]'s attorney that he had not received the letter, but would review it if it was faxed to him. Ms. [REDACTED]'s attorney faxed Mr. [REDACTED] the letter.
 - h) Mr. [REDACTED] did not respond to this request.
 - i) On January 16, 2014, Ms. [REDACTED]'s attorney sent Mr. [REDACTED] a letter outlining his attempts to engage Mr. [REDACTED] in a discussion about Ms. [REDACTED]'s service animal request. In this letter Mr. [REDACTED] was asked to let Ms. [REDACTED]'s attorney know if he needed any additional information.
 - j) Mr. [REDACTED] did not respond to this letter.
 - k) On February 5, 2014, Ms. [REDACTED]'s attorney faxed Mr. [REDACTED] a copy of the January 16, 2014, letter and requested that Mr. [REDACTED] respond to the letter.

- l) Mr. [REDACTED] never responded.
 - m) Mr. [REDACTED] never asked Ms. [REDACTED] for additional information regarding her need for a service animal.
 - n) On March 29, 2014, Mr. Blasdell served Ms. [REDACTED] with a notice to quit asking her to vacate her apartment by April 30, 2014.
 - i. Ms. [REDACTED] stated that during her tenancy she had limited direct contact with Mr. [REDACTED]. The only communications he ever had with Ms. [REDACTED] regarding any substantive issues related to her tenancy were through three letters he sent to her about noise and smoking. One of the letters was placed in her mailbox while she was at home. Mr. [REDACTED] did not talk directly with Ms. [REDACTED] about the letters.
 - o) Ms. [REDACTED] stated that she had family and friends at her apartment but that she did not use it for "partying", as Mr. [REDACTED] claimed.¹ Ms. [REDACTED] stated that she did not drink in the early hours of the morning in her apartment.
 - i. The apartment was one where you could hear noises from the other units. On occasion Ms. [REDACTED] could hear Mr. [REDACTED]'s wife talking with her children.
 - p) Ms. [REDACTED] stated that she smoked in her apartment, but she began smoking outside after she received the December 12, 2013, letter. Ms. [REDACTED] did not have any other communication with Mr. [REDACTED] after the December 12, 2013, until she received the notice to vacate.
 - q) Ms. [REDACTED] stated that she left the window in her bedroom open because she has anxiety. She left the window open an inch to get air, and she kept her heat down to 60 degrees or lower.
- 3) Respondent provided the following in response to Complainant's allegations:
- a) Mr. [REDACTED] did not evict Ms. [REDACTED]. He chose not to renew her lease because of issues he had with Ms. [REDACTED] leaving her windows open in the middle of winter, late-night noise, smoking, and drinking at her apartment.
 - i. Mr. [REDACTED] has three young children who had been woken up on several occasions due to "partying" in Ms. [REDACTED]'s apartment.²
 - ii. At the FFC, Mr. [REDACTED]'s witness stated that Ms. [REDACTED] had parties that would go late into the night. The witness lived 30 to 40 feet away, and he could hear vehicles pulling in during the middle of the night.

¹ At the FFC, Ms. [REDACTED] stated that she had four or five people in her apartment at times, and she had people spend the night on occasion.

² At the FFC, Mr. [REDACTED] provided a witness who stated that he told Ms. [REDACTED] soon after she moved into her apartment that if she broke the house rules Mr. [REDACTED] would throw her out.

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- b) Mr. [REDACTED] sent Ms. [REDACTED] letters on May 31, 2013, September 25, 2013, and December 12, 2013, regarding the activities in Ms. [REDACTED]'s apartment, but the noise and partying continued.
- i. The May 31, 2013, letter discussed noise coming from the apartment late at night.
 - ii. The September 25, 2013 letter was listed as a second and final warning. In the letter Ms. [REDACTED] was reminded about the noise coming from her apartment as well as the fact that no smoking was allowed in the apartment or within 10 feet of the building. The letter stated that Ms. [REDACTED] should address the issues immediately to avoid eviction.
 - iii. The December 12, 2013, letter was listed as a final warning and addressed smoking in Ms. [REDACTED]'s apartment and windows being left open in the winter. The letter stated that the next communication from Ms. [REDACTED] would be an eviction notice if the smoking did not stop. Regarding the windows being left open, the letter stated that Ms. [REDACTED] would be personally liable for any pipes that froze or other damage that resulted from her windows being left open.
- c) Mr. [REDACTED] did not deny Ms. [REDACTED]'s request for a service animal. Mr. [REDACTED] received a request from Ms. [REDACTED]'s case worker asking that Ms. [REDACTED] be allowed to have a service animal.
- i. At the FFC, Mr. [REDACTED] stated that he did not receive the letter from Case Manager in September 2013. He also stated that he did not recall speaking to Case Manager, but spoke with a female case worker regarding why he was not renewing Ms. [REDACTED]'s lease. Mr. [REDACTED] told this individual that the lease was not going to be renewed because of the drinking and smoking in Ms. [REDACTED]'s apartment, and because his young children had been woken up, and he was not going to be putting up with it any longer.
- d) At the FFC, Mr. [REDACTED] stated that he received two different letters from Ms. [REDACTED]'s attorney regarding her request for a service animal. He received the first in early January. Mr. [REDACTED] did not respond to Ms. [REDACTED]'s attorney's letters.
- i. Mr. [REDACTED] stated that he did not respond to the letters because he thought it was sufficient to go through Ms. [REDACTED], although he probably should have gone through her attorney.
- e) Mr. [REDACTED] asked Ms. [REDACTED] on several occasions for additional documentation which showed what her diagnosis was, "and that the animal was determined to be **necessary** rather than a note that said she **might** benefit from a therapeutic pet."
- i. At the FFC, Mr. [REDACTED] stated that he spoke with Ms. [REDACTED] about needing additional information in January and February 2014. He asked Ms. [REDACTED] to provide concrete proof from her counselor that it was an absolute necessity that she have a service animal.
 - ii. Mr. [REDACTED] stated that he did not put his request for additional information in writing because it was his understanding that Ms. [REDACTED] was going to get him the additional information.
- f) Mr. [REDACTED] never received additional information from Ms. [REDACTED] or any of her caseworkers, so he did not make a decision on whether or not she could have a service animal.

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- g) Mr. [REDACTED] has warned other tenants regarding noise levels and smoking in the apartment.
 - i. In 2005-2006, one tenant received two letters related to noise and smoking in a unit. The second letter was a final notice to the tenant. This tenant was not evicted, but she did end her tenancy prior to end of the lease.
 - h) At the FFC, Mr. [REDACTED] stated that he did not have any further conversations with Ms. [REDACTED] after the December 13, 2013 letter because he was done [with things] by that point.
 - i) Mr. [REDACTED] currently has a tenant who is an individual with a disability. He has rented to other individuals with disabilities in the past with no problems.
- 4) Mr. [REDACTED] does not have a process or policy regarding how tenants can ask for reasonable accommodation for a disability.
- 5) Part of the text of Complainant's letter from her healthcare provider related to her need for a service animal provides the following:

"... once [Ms. [REDACTED]] is in a safe and affordable place to live, that her anxiety, and depression might be addressed through a therapeutic pet; through emotional support, and necessary to mitigate the effects of her mental disabilities..."

V. 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 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.
- 2) The MHRA provides, in part, that any person has the right to rent an apartment without discrimination on the basis of disability. 5 M.R.S. § 4581-A(1)(B); 94-348 C.M.R. Ch. 8, § 8.04(a)(1).
- 3) The MHRA also provides, in part, 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", 5 M.R.S. § 4633(2), or to "evict... any tenant of any housing accommodations because of physical or mental disability." 5 M.R.S. § 4581-A(1)(E).
- 4) The Commission's housing regulation, which interprets § 4633(2), provides that it is "unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of" their housing accommodation. Unlawful conduct includes "[t]hreatening, intimidating or interfering with persons in their enjoyment of a dwelling" due to their disability. 94-348 C.M.R. Ch. 8, § 8.09.
- 5) Here Complainant alleged that she was discriminated against in housing on the basis of disability because she was denied a reasonable accommodation, and she was retaliated against when Respondent chose not to renew her lease. Respondent has denied any discrimination occurred, and stated that he asked Complainant for additional information related to her need for a service animal and she never provided it. Additionally, Respondent stated that he did not renew Complainant's lease due to noise, smoking, and because she left her windows open in the winter.

Disability Discrimination: Reasonable Accommodation Claim

6) The MHRA makes it unlawful:

For any owner...managing agent or other person having the right... 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).

7) The MHRA and the Commission's housing regulations state that it is unlawful "for any owner... managing agent or other person having the right to... rent, lease or manage a housing accommodation or any of their agents to refuse to permit the use of a service animal..." 5 M.R.S. § 4582-A(3); 94-348 C.M.R. Ch. 8, § 8.06(E).

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

- (1) Complainant has a "physical or mental disability" as defined by the MHRA;
- (2) Respondent knew or reasonably should have known of the 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); *Astralis 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); *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 783 (7th Cir. 2002) (plaintiff's burden is only to show reasonableness "on its face"). *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").

9) 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.

10) The evidence in this case supports Complainant's claim that Respondent denied her a reasonable accommodation.

- a) Complainant has mental disabilities.
- b) Respondent was aware that Complainant had a disability.
- c) Complainant made several requests to have a service animal in her apartment.

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- d) The accommodation request was reasonable and was necessary to afford Complainant an equal opportunity to use and enjoy her property.
 - e) Based on the record, Respondent denied Complainant's request for an accommodation. While it appears that Respondent did not receive some of the correspondence from Complainant's representatives related to her request for a service animal, the record shows that Respondent received at least two letters regarding Complainant's request for a service animal in early 2014. Respondent stated that he orally requested additional information from Complainant in order to make a decision about her request. Complainant denied that Respondent ever requested any additional information from her or her case workers regarding her need for a service animal. Complainant in this instance is credible, and her version of events is supported by the record of communication between the parties.
 - i. Respondent did not speak with Complainant regarding the issues that arose during her tenancy. During the tenancy, Respondent presented Complainant with correspondence about those issues. As it relates to Complainant's request for a service animal, Respondent stated that he spoke with Complainant about the need for additional information, even though his other significant communication with Complainant during her tenancy was in writing. This does not seem likely.
 - ii. Respondent did not put his request for additional information to Complainant in writing even though Complainant's attorney contacted him in writing on two occasions regarding Complainant's need for a service animal, and requested that Respondent let him know if he needed additional information about Complainant's request/need for a service animal.
 - iii. While Respondent alleged that he wanted additional information to show that a service animal was necessary, the letter from Complainant's healthcare provider stated that, "... once [Ms. ██████████] is in a safe and affordable place to live, that her anxiety, and depression might be addressed through a therapeutic pet; through emotional support, and necessary to mitigate the effects of her mental disabilities..." This language provides Respondent with sufficient information to show Complainant's need for a service animal.
 - iv. Respondent chose not to respond to the multiple requests made by Complainant's representatives regarding her request for a service animal. These actions constituted a denial of Complainant's request for a reasonable accommodation.
- 11) Respondent did not provide any evidence to show that permitting Complainant to have a service animal would be an undue burden.

12) It is found that Respondent denied Complainant a reasonable accommodation for a disability.

Retaliation Claim

- 13) The MHRA provides that "[a] person may not 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).
- 14) The Commission's housing regulations further provide, that "[e]victing tenants because of...physical or mental disability of a tenant's guest," is prohibited. 94-348 C.M.R. Ch. 8, § 8.04(B)(2)(e).

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- 15) In order to establish a prima-facie case of retaliation, Complainant must show that she engaged in statutorily protected activity, she was 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.*
- 16) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in statutorily protected activity. *See Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent 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 Respondent makes that showing, Complainant must carry her overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See id.*
- 17) Complainant has met her prima-facie case for her retaliation claim. Complainant has shown that she engaged in protected activity by repeatedly requesting a reasonable accommodation for a service animal. Complainant was also subjected to a materially adverse action when she was served with a notice to vacate, rather than allowed to stay in her apartment on a month-to-month basis. Finally, Complainant has also shown that there was a causal link between her protected activity and the materially adverse action she experienced due to the fact that she engaged in protected activity in early 2014 and the adverse action followed a couple of months later.
- 18) Respondent has stated a legitimate non-discriminatory reason for not allowing Complainant to remain in the apartment, namely due to the noise from Complainant's apartment, smoking going on in the apartment, and the fact that Complainant left her window open in the winter.
- 19) At the final stage of the analysis, Complainant has shown that she has at least an even chance of success in court with her retaliation claim and that there is a causal connection between her protected activity and the materially adverse action she experienced.
 - a. While Respondent has presented information to show that Complainant's tenancy was creating some concerns for him regarding his family's enjoyment of their housing, the record shows that Complainant's request for a service animal also probably played a part in Respondent's non-renewal of Complainant's lease. Respondent sent Complainant a letter in December 2013 stating that if Complainant did not correct the issues identified in the letter she would be evicted. Complainant stated that she stopped smoking in her apartment after this letter. Respondent did not send Complainant any other letters regarding issues of noise, smoking or otherwise regarding her tenancy prior to presenting her with a notice to vacate in March 2013.
 - b. By law, Respondent was free to end the tenancy as long as it was not for a discriminatory purpose. However, Respondent did not respond to Complainant's request for a service animal, and ending the tenancy was a way for him to avoid addressing the issue regarding Complainant's request for a service animal.
 - c. Respondent stated that he orally requested additional information from Complainant regarding her need for a service animal, and never received it so he did not make a decision about the request. However,

as described above, Complainant credibly provided that she was not asked to provide additional information regarding her request for a service animal.

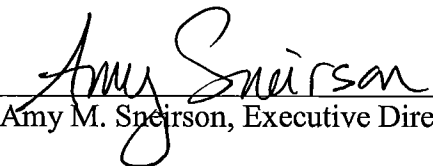
- d. Furthermore, more than one of Complainant's representatives contacted Respondent on multiple occasions, and Respondent essentially rebuffed their inquiries regarding whether or not Complainant could have a service animal. A reasonable inference follows that Respondent's decision to end Complainant's tenancy would prevent him from having to allow Complainant to have a service animal.
- e. Respondent had one other tenant in the past who engaged behavior similar to Complainant. This tenant was not evicted, but chose to end the tenancy early.
- f. The facts in the record support a finding that Complainant has at least an even chance of showing that her tenancy was ended due to her request for a service animal.

20) Retaliation in housing in violation of the MHRA is found.

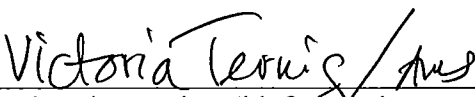
VI. Recommendation:

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

1. There are **Reasonable Grounds** to believe that Respondent [REDACTED], IV, Esq. denied Complainant [REDACTED] a reasonable accommodation of a therapy animal;
2. There are **Reasonable Grounds** to believe that Respondent [REDACTED], IV, Esq. retaliated against Complainant [REDACTED] by not renewing her lease due to her protected activity in violation of the MHRA; and
3. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Amy M. Swirson, Executive Director



Victoria Ternig, Chief Investigator