



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 No. H18-0064-A, B; HUD No. 01-18-9113-8

May 9, 2018

Brent Frodyma (South Berwick)

v.

**Michael Desjardins (Kittery) &
135 Portland Street, LLC¹ (Kittery)**

I. Summary of Case:

Complainant alleged that Landlord² discriminated against him in housing by denying him the use of an assistance animal and then retaliated against him by attempting to evict him. Landlord stated that Complainant misrepresented his dog as an assistance animal; Landlord also stated that it sought to evict Complainant because his dog was a safety threat and because the dog violated the Landlord's no-pet policy. The Investigator conducted a preliminary investigation, which included reviewing all documents submitted by the parties, issuing requests for information to the parties, and holding an Issues and Resolution Conference ("IRC"). Based upon this information, the Investigator recommends that the Commission find that there are reasonable grounds to believe that Landlord discriminated against Complainant based on disability and unlawfully retaliated against him.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: January 2018.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): February 14, 2018.
- 3) Landlord is subject to the Maine Human Rights Act ("MHRA"), the federal Fair Housing Act ("FHA"), as well as state and federal housing regulations.
- 4) None of the parties are represented by counsel.

¹ Complainant listed the owner of the Property's name as "135 Portland Street, LLC" ("Owner"); Owner provided that its legal name is "135 Portland St., LLC". Because Complainant did not amend his complaint, the name he used has been retained.

² Though Complainant named two Respondents, it is apparent that Respondent Michael Desjardins ("Member") is the sole member of Owner and was the only individual from Owner who Complainant communicated with regarding his assistance animal. Additionally, Owner submitted a joint response to the Complainant on behalf of both named Respondents. Based on these facts – and for ease of reading – the Investigator will refer to Member and Owner together as, "Landlord" in this Report.

III. Development of Facts:

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

Complainant had mental disabilities and lived with a dog that is an assistance animal. Landlord requested that Complainant produce a note from a medical provider to prove the dog was an assistance animal. Complainant gave Landlord the requested note, but Landlord told him he had to vacate the unit the next day. Landlord told Complainant he could not stay because of the dog and because it disagreed with the validity of the note.

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

Landlord has a no-pet policy for the buildings it owns. Complainant moved in with his mother ("Mother") without seeking Landlord's permission and did not inform Landlord he had a dog. After Landlord texted Mother about the dog, Mother stated it could be an assistance animal. Over several months, Landlord repeatedly requested a note to prove the dog was an assistance animal. In early 2018, Complainant's dog was involved in an incident with another dog in the neighborhood. Complainant produced a note about the dog the next day which Landlord believed to be unreliable. Complainant knowingly misrepresented the dog as an assistance animal to avoid the no-pet policy.

- 3) The Investigator made the following findings of fact based on the information in the record:

- a) Complainant alleged that he had the mental disabilities of [REDACTED] [REDACTED] [REDACTED]. At the IRC, Complainant stated that he had suffered from these conditions since childhood and, at times, had been hospitalized because of the conditions. Complainant stated that he had been treated by various medical providers in Massachusetts prior to his move to Maine.
- b) In September 2017, Complainant moved into a unit his Mother rented from Landlord; Mother did not inform Landlord of the addition of Complainant as an occupant. Landlord maintained a policy prohibiting pets at the subject Property.
- c) On September 19, 2017, Landlord texted Mother about a report of a white truck parked in the driveway. Mother responded that it was Complainant's vehicle and stated that he had nowhere else to go. Mother³ also confirmed that Complainant had a dog with him. Landlord responded by texting, "I thought I was clear about that" and suggested they speak the next day.
- d) The following day, Mother texted Landlord the following: "Wanted to ask u [sic]. My son said he's [sic] dog will have papers for service⁴ dog. Can we stay? My son will help pay for rent." At some point shortly thereafter, Landlord increased the rent for the unit due to the additional occupant. Beginning on October 3, 2017 and continuing to late January 2018, Landlord repeatedly texted Mother and requested that Complainant produce a note showing that his dog was an assistance animal.

³ Much of the communications between Complainant and Landlord occurred through Mother, who was the original tenant on the lease.

⁴ In the context of housing, animals that live with a tenant are considered assistance animals; here, though Mother used the term "service" animal, it is apparent that Landlord understood her request as one for an assistance animal.

- e) On January 24, 2018, Mother texted Landlord a copy of a “Registered Emotional Support Animal” certificate; in response, Landlord again requested a note from a medical provider regarding the dog. On that same day, there was an incident where a neighbor accused Complainant’s dog of biting her dog (the “Incident”). Landlord sent various texts to Mother about the incident, including a text stating that he had been told⁵ “that [Complainant’s] dog did not bite.” Local authorities began an investigation into the Incident and ultimately determined that Complainant’s dog was not at fault.⁶
- f) On January 25, 2018, Complainant – through Mother – sent a copy of a note to Landlord from a [REDACTED] stating that Complainant required the use of an assistance animal (the “Note”). The Note was from a [REDACTED] licensed in New Jersey (“[REDACTED]”⁷); it stated that Complainant had the disabilities of [REDACTED], [REDACTED], and [REDACTED] and described, in detail, how the dog helped to alleviate symptoms associated with these disabilities.⁸ Landlord responded via text message stating the following: “Thank you. This is what I expected. We need to have a talk regarding this matter. I have made a decision going forward...”
- g) The next day, Landlord spoke to Complainant over the phone and informed him that he must vacate the Property within 30 days. At the IRC, Landlord explained that it viewed the Note as unreliable because it was produced a day after the Incident; Landlord suggested that Complainant obtained the note through an online service that sells such notes to consumers.⁹ Landlord did not discuss the deficiencies it perceived in the Note with Complainant or ask for additional evidence that the dog was an assistance animal. As a result, Landlord stated that it viewed Complainant to be in violation of the no-pets policy since Complainant failed to show that the dog was an assistance animal. Landlord also stated the it viewed the dog as a safety threat to others because of the Incident.
- h) Landlord has rented to at least one other tenant that utilized an assistance animal (“Tenant”). At the IRC, Landlord explained that it had no issues with Tenant’s use of an assistance animal because Landlord’s real estate agent had “vetted” Tenant and the animal during the application process.
- i) It is apparent that Complainant continues to reside at the Property with his dog. There is no indication in the record that Landlord has initiated formal eviction proceedings against Complainant.

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

⁵ Landlord did not witness the Incident.

⁶ By January 26, 2018, local authorities had determined that the neighbor’s dog had injured itself by sticking its nose under a sharp fence – not due to a bite from Complainant’s dog.

⁷ On April 20, 2018, the Investigator conducted an internet search and confirmed that, as of that date, [REDACTED] had an active license in the State of New Jersey.

⁸ The Investigator finds the Note, as well as the other information in the record, to be sufficient evidence that Complainant has a qualifying disability under the MHRA.

⁹ At the IRC, Landlord produced a printout from a website that offered to provide notes for assistance animals for a set fee, but failed to produce any evidence that [REDACTED] was associated with that – or any other similar – website.

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.

Assistance Animal Claim

- 2) An assistance animal for housing purposes 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 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) Here, Complainant established that Landlord refused to permit Complainant to use an assistance animal, with reasoning as follows:
 - a) There is no dispute¹⁰ that Landlord refused to recognize Complainant’s dog as an assistance animal and, as a result, held Complainant accountable for violating its no-pet policy. There is also no dispute that Complainant provided the Note to Landlord, which stated that Complainant required the use of an assistance animal because of his disabilities.
 - b) Landlord’s argument that it found the Note deficient and suspicious is not persuasive. To begin, the Note contains specific information about [REDACTED] credentials, Complainant’s disabilities, and why Complainant required the use of the dog. Though Complainant ultimately produced the Note the day after the Incident, this fact does not tend to suggest that the Note was inauthentic – particularly when Landlord had made *multiple* requests the *day before* for a note and information about the medical provider prescribing use of the dog.
 - c) While not dispositive to Complainant’s claim, the Investigator finds it telling that Landlord did not attempt to discuss the Note’s purported deficiencies with Complainant or seek additional medical information from Complainant about his need for an assistance animal. In fact, after it received the Note, Landlord immediately texted Mother, stating, “This is what I expected,” and indicating he had already made a decision about the dog before speaking with Complainant. This suggests the inference that Landlord had made up its mind regarding Complainant’s request before receiving the Note.
 - d) Similarly, and as described more fully below, Landlord’s argument that it found Complainant’s dog to be a safety threat is also not convincing when Landlord had no definitive evidence that the dog had actually harmed another dog.

¹⁰ Throughout the investigation, the parties accused one another of providing false information to the Commission. However, the Investigator relied heavily on information that was undisputed – or that was provided by Landlord – when making the recommendations set forth in this Report.

- e) It is also apparent that Landlord viewed Complainant's request to use an assistance animal with skepticism from the outset – in fact, at the IRC, Landlord stated it viewed the dog as a “pet” until it received the Note, despite the fact that Mother notified Landlord the dog was not a pet as early as September 20, 2017. Further, Landlord repeatedly implied that Complainant sought to circumvent its no-pet policy by moving in without notifying Landlord about the dog; Landlord contrasted Complainant's behavior with Tenant, who was “vetted” prior to moving in. However, there is no requirement that a tenant receive permission to use an assistance animal, or be vetted, *prior* to renting a unit; rather, a tenant need only show – if asked by a landlord – that the assistance animal has been prescribed. While not determinative, these facts tend to suggest that Landlord sought to limit or restrict Complainant's use of an assistance animal.
- 5) It is found that Landlord discriminated against Complainant on the basis of disability by refusing to permit him the use of an assistance animal.

*Retaliation Claim*¹¹

- 6) 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).
- 7) In order to establish a prima-facie case of retaliation, Complainant must show that he engaged in statutorily protected activity, he 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.*
- 8) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in statutorily protected activity. *See Wyrwal 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 his overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See id.*
- 9) Here, Complainant established a prima-facie case of retaliation by showing that he made a request to use an assistance animal, and Landlord told him to vacate the Property just one day after Complainant provided a note from his psychologist. Landlord provided a legitimate, nondiscriminatory reason for the eviction notice, namely, that Complainant's dog violated its no-pet policy and that the dog was a safety threat.
- 10) Ultimately, Complainant was able to establish that Landlord retaliated against him by seeking to evict him, with reasoning as follows:

¹¹ Complainant alleged that he was evicted because of his use of an assistance animal, but did not specifically characterize this conduct as retaliation. Arguably such a claim could be construed as an eviction based on Complainant's disability status. However, the Investigator has chosen to analyze the claim as retaliation claim; the results would be the same under either analysis.

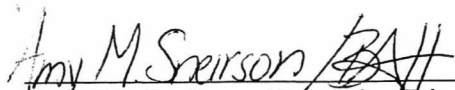
- a) As discussed above, Landlord did not have a legitimate basis for disputing the validity of Complainant's assertion that his dog was an assistance animal. Complainant produced the Note that indicated that his dog was an assistance animal and the he required the use of such an animal for his disabilities. Under such circumstances, Landlord's insistence that the dog was a pet, not an assistance animal, was not a reasonable position. It therefore follows that Landlord's argument that he sought to evict Complainant because he had violated the no-pet policy is also unreasonable and unconvincing. It is especially unconvincing since Landlord did not decide to remove Complainant and his dog during the weeks that he was awaiting the Note, but only made the decision after receiving the Note.
- b) There is no persuasive evidence in the record that Landlord genuinely perceived Complainant's dog to be a safety threat. Complainant's dog had not been involved in any violent encounters or disturbances prior to the Incident. Further, immediately after the Incident, Landlord acknowledged via text that he was aware that Complainant's dog had not bitten the other dog. At the IRC, Landlord also stated that it knew the local authorities had ultimately determined Complainant's dog not to be at fault – though Landlord argued that the authprities' conclusion was based on a "belief" about the dogs' behaviors, not definitive evidence. Based on these facts, it strains credulity to believe that Landlord would have perceived Complainant's dog as a safety threat to others.
- c) Overall, and as discussed more fully above, there is sufficient evidence in the record to conclude that Landlord held an animus toward Complainant because he requested the use of an assistance animal. It is apparent that Landlord would not have given Complainant an eviction notice but for his request to use an assistance animal. It is telling that Complainant was not given the opportunity to remain at the Premises without his dog; if Landlord legitimately doubted the Note, he could have requested additional documentation or asked for the animal to be removed, but instead sought to evict Complainant.
- d) It should be noted that this claim, while similar, is distinct from Complainant's request to use an assistance animal. In this case, Landlord not only denied Complainant's request for an assistance animal, but took the additional step of telling Complainant he had to vacate the Property.

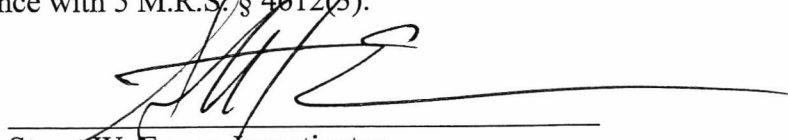
11) It is found that Landlord retaliated against Complainant in violation of the MHRA.

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 Michael Desjardins and 135 Portland Street, LLC discriminated against Brent Frodyma on the basis of disability by denying him the use of an assistance animal;
- 2) There are **Reasonable Grounds** to believe that Michael Desjardins and 135 Portland Street, LLC retaliated against Brent Frodyma in violation of the MHRA; and
- 3) Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).


Amy M. Sneirson, Executive Director


Stuart W. Evans, Investigator