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INVESTIGATIVE REPORT
HRC Case No.: HV12-0006
HUD Case No.: 01-12-0025-8

CHARGING PARTY: Rosemarie Brier

RESPONDING PARTY: Verne & Judy Duclos

CHARGE: Housing – disability/reasonable accommodation request

Summary of Charge: On October 10, 2011, Rosemarie Brier filed a housing discrimination charge alleging that Verne and Judy Duclos, the owners of the rental property where she is a tenant, discriminated against her. Specifically, she stated that the respondents denied her reasonable accommodation request for an assistance animal and attempted to evict her because she made a reasonable accommodation request to allow her assistance animal to live with her.

Summary of Response: On November 7, 2011, Verne and Judy Duclos denied that they discriminated against Ms. Brier. They stated that they have a "no pet rule" and that Ms. Brier did not inform them at the time she leased the property that her dog as an assistance animal. In addition, they stated that Ms. Brier never provided them with documentation regarding her need for an assistance animal. The Ducloses deny that they ever harassed Ms. Brier and state that they had many legitimate reasons to evict her.

Preliminary Recommendations: This investigation makes a preliminary recommendation that the Human Rights Commission find that there are **reasonable grounds** to believe that the Respondents violated 9 V.S.A. §4503 (1) when they issued Ms. Brier an eviction notice. This investigation also makes a preliminary recommendation

that the Human Rights Commission find there are **reasonable grounds** to believe that the respondents violated 9 V.S.A. §4503(10) (which is a refusal to provide a requested reasonable accommodation) of the Vermont Fair Housing and Public Accommodations Act

INTERVIEWS

01/19/2012 – Rosemarie Brier
01/20/2012 - Verne & Judy Duclos

DOCUMENTS

10/26/2011 – Charge of Discrimination
11/07/2011 – Verne and Judy Duclos' response to Charge - including rental agreement and application, reasonable accommodation request, and notice to vacate
11/03/2011 – Reasonable Accommodation Request documentation for an assistance animal
10/21/2008 – Reasonable Accommodation Request documentation for an assistance animal
10/07/2011 – Ms. Brier's Request for a Reasonable Accommodation for an assistance animal

9 V.S.A §4503 (1) & (10)

(a) It shall be unlawful for any person:

(1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(10) To refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common areas.

ELEMENTS OF PROOF

9 V.S.A. §4503(1) – Prima Facie Elements

1. Ms. Brier is a member of a protected class
2. Ms. Brier experienced an adverse housing action perpetrated by the respondents
3. The adverse housing action was due to her membership in a protected class

9 V.S.A. §4503(10) – Prima Facie Elements

1. Ms. Brier is a person with a qualifying disability under fair housing laws
2. Ms. Brier made a reasonable accommodation request
3. Ms. Brier's reasonable accommodation request was denied

FACTS

Undisputed Facts

On or about September 11, 2011 Ms. Brier and her partner Dennis Stambaugh submitted a rental application for a mobile home unit owned by Vern and Judy Duclos. The unit is located at 102 Willowbrook Drive, Braintree, Vermont. On or about that same day Ms. Brier, her partner and the Ducloses signed a rental agreement that stated, "No pets allowed without being approved by landlord." The rental agreement did not provide approval for Ms. Brier to have a pet. Both parties admit that there was discussion during the application/rental process regarding whether or not Ms. Brier's dog could move into the rental unit. Ms. Brier and her family moved in the next day without the dog.

The rental agreement set rent at $850 a month and stated that the "landlords can ask tenant to move with a 30-day or less notice for no apparent reasons."

On October 7, 2011, Ms. Brier sent the Decloses, via first class and certified mail, a formal reasonable accommodation request for her "therapy dog." The letter cited the Fair Housing Act regarding reasonable accommodations and states that a doctor has prescribed the dog to assist with her daily living. The letter also requests that the Ducloses respond to the reasonable accommodation request in writing within five days. The Ducloses never responded verbally or in writing to Ms. Brier's reasonable accommodation request.

On October 18, 2011, the Ducloses sent Ms. Brier and Mr. Stambough an eviction notice to vacate the property by 5:00 PM November 21, 2011. Beginning in November Ms. Brier withheld a portion of her monthly rent.

Statement of Ms. Brier

Ms. Brier told this investigation that she is a person with emotional disabilities that include Post Traumatic Stress Disability (PTSD), anxiety disorder, borderline personality, and depression. She stated that she has had these emotional disabilities since she was a child. Ms. Brier stated that at this time she does not receive Social Security Disability Insurance (SSDI) but that she has recently applied for it. This investigation asked why she had not applied sooner if she has had these various disabilities since she was a child. She stated that she had hoped she would be able to "make it" on her own. Ms. Brier stated that her doctor, Johanna Goulding of Gifford Medical Center – Randolph, Vermont, first verified that she was a person with a qualifying disability who needed an assistance animal in 2008. At that time, Ms. Brier lived in a Vermont State Housing Authority mobile home park and made a reasonable accommodation request to have

her large assistance dog live with her.[1] VSHA granted her request. She resided at the park from 2006 until July 2011.

Ms. Brier stated that when she and the Ducloses were discussing her rental application, she told them that she had an assistance animal. She stated she would to get rid of her two cats but the dog she needed because of her disability. Ms. Brier said that she told the Ducloses that she could provide documentation from her doctor if they needed it. Ms. Brier explained that during their conversation Vern was very opposed to allowing her dog but that Judy thought they could work something out. Ms. Brier said she was very upset at the prospect of not being able to move in with her assistance dog and that she then left the room crying. She said Dennis, her partner, continued to talk with the Ducloses about the dog and that he eventually came out and told her that the Ducloses had agreed to allow the dog to visit her regularly.

However, when she returned to the room Mr. Duclos was still opposed to allowing her dog in the unit even if only to visit. He told her she needed to decide between housing and her dog. He said, "When it is raining out try sleeping under your dog." Ms. Brier said that because she needed housing "I just agreed" to move in without the dog. She said she told the Ducloses that she would send them a letter about the matter. Mr. Duclos allegedly told her that if he "ever saw the dog on the property he would kick their asses out."

Ms. Brier said she spoke with a fair housing organization and was told that she should make a written reasonable accommodation request for her assistance animal. She sent a reasonable accommodation request for her assistance animal to the Ducloses via

[1] Ms. Brier provided this investigation with copies of the most recent, November 3, 2011, reasonable accommodation documentation from her doctor and Tom Young from VSHA, provided a copy of the 2008 documentation from the same doctor.

regular mail and certified mail on or about October 7, 2011. She has the signed certified receipt that indicates the Ducloses received the certified letter. On October 18, 2011, the Ducloses sent her a notice to evict the property. Ms. Brier filed a discrimination charge with HRC on October 26, 2011.

She stated that one day Mr. Duclos came to drop off an electric bill and that a small dog that belonged to some of their visitors barked at Mr. Duclos when they opened the door.

She said she was having her dog visit her on weekends but never overnight. Ms. Brier stated that the Ducloses had met and petted her assistance dog. She explained that after she sent the Ducloses the reasonable accommodation request and never received a response she had the dog move in full time.

Statements of Judy Duclos

Ms. Duclos stated that she and her husband had been landlords for about 18 years, and that they owned six rental properties. She stated that because a previous tenant's dog had caused a large amount of damage to a rental unit, they instituted a "no pets" policy in the spring of 2011. She admitted that there were two pets that were "grandfathered in."

This investigation asked Ms. Duclos about the discussion they had with Ms. Brier prior to her signing the lease. Ms. Duclos indicated the following:

1) She and her husband did not disagree about whether or not Ms. Brier should be able to have the dog in the rental unit - they both said no to allowing the dog
2) Mr. Duclos never said anything like Ms. Brier "should try and sleep under her dog"

3) Ms. Brier never indicated that the dog was an assistance (service) animal
4) They did agree to work with Ms. Brier regarding paying the security deposit of a period of time

Mrs. Duclos acknowledged that they received Ms. Brier's reasonable accommodation request on or about October 8, 2011. She said they did not respond to the request. She admitted that at that time she knew Ms. Brier was claiming that her dog was an assistance animal. Mrs. Duclos said that Mrs. Brier never sent them the documentation to support that the dog was a "service" animal. Mrs. Duclos also admitted that they never asked for the documentation. She said that on or about October 17, 2011, she and her husband asked their attorney to send Ms. Brier a 30-day no cause eviction notice. Their attorney sent the notice on October 18, 2011. Mrs. Duclos stated that the lease gave them the right to evict tenants "for no apparent reason with 30-days notice."

This investigation asked Mrs. Duclos what her understanding was regarding assistance animals. She replied, "I don't know anything about it." Mrs. Duclos said she thought that if a tenant made a reasonable accommodation request she should "work with them."

This investigation asked what the reasons were for the eviction notice they sent to Ms. Brier. Mrs. Duclos listed these reasons; that they were considering selling the unit; that they had received a very negative email from Ms. Brier's former landlord; that "we had received the letter about the therapy dog," and that Ms. Brier was not paying rent or the security deposit. This investigation pointed out to Mrs. Duclos that they had not received the negative email until October 28, 2011, after they sent the eviction notice. In addition, at the time they

issued the eviction notice Ms. Brier was not behind in rent and that the Ducloses had agreed to work with her regarding the security deposit. Mrs. Duclos responded, "We just wanted her out."[2]

Statements of Vern Duclos

Mr. Duclos stated that there were a couple of pets in his rental units that are "grandfathered in." He also said that since instituting the "no pet" policy they have allowed one new tenant with a very small dog to keep it in his rental unit. He said that he and his wife did not disagree about whether or not Ms. Brier could move in with her dog. Mr. Duclos reiterated that they had recently had serious damage to two rental units due to allowing large dogs in the units. Mr. Duclos admitted that he told Ms. Brier she should "try sleeping under her dog." He further stated that Ms. Brier was not insistent about the dog living with her though he does recall that she left the room during their discussions. He was not aware that she was upset.

He recalled that when he said, "no" to the dog, Ms. Brier said that she was going to bring the dog. He told this investigation, "I again said no and there was no discussion about maybe being able to work this out." He further explained that at the time of applying for the rental unit Ms. Brier never mentioned a need for a "service animal." This investigation asked him what he would have done if Ms. Brier had stated a need for an assistance animal. Mr. Duclos replied that he would have "encouraged her to go somewhere else." He stated that he never had received a reasonable accommodation request before Ms. Brier's request. He said they did not reply because "she was not to have an animal there."

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[2] Mrs. Duclos provided this investigation with a copy of a very negative email from Ms. Brier's last landlord and provided an accounting of what the Ducloses believe Ms. Brier now owes them. Ms. Brier disputes the amount of money the Ducloses say she owes them and what the lease required that she pay.

Mr. Duclos said that Ms. Brier had not told them during the lease signing that she had such bad credit that she could not get electricity in her own name. Therefore, they had to put the account for electricity in their name and collect the money from her each month – which according to them has not happened.[3]

Mr. Duclos also wanted to inform this investigation that they have many "long term renters." He stated that they have tenants of 10, 7, and 4 years. He stated that they have had close relationships with their tenants including babysitting for some of the children.

Investigative Impressions

This investigation heard two very different accounts of several aspects of this case - - the meeting when Ms. Brier was applying to rent the unit, how much money Ms. Brier now owes and the Ducloses behavior toward Ms. Brier and her family. This investigation found some inconsistencies in the Ducloses' statements relating to the initial meeting with Ms. Brier and her partner. This is not to say that this investigation found that the Ducloses are not credible. However, this investigation does find it hard to believe that a person who has had an assistance animal for many years would not have explained this when the Ducloses stated that because of their "no pet" rule they would not allow the dog to live with her. This investigation believes it is more likely than not that Ms. Brier attempted to explain that her dog was an

[3] Again, this was not an issue at the time the Ducloses issued the eviction notice and is not relevant to the reasonable accommodation request. However, the Ducloses believe these financial issues are part of the whole picture. Therefore, this information is included in this investigative report. Ms. Brier disputes that she owes the amount of money the Ducloses claim she does. The Ducloses also allege that Ms. Brier owes for propane. Ms. Brier contends that the cost of propane was not listed as an expense she was responsible for in the lease. This investigation reviewed the lease and it states that the tenant is responsible for "heat, electric, garbage and snow removal" – not propane for the stove.

assistance animal when applying for the rental unit. Ultimately, even if she had not told the Ducloses it was an assistance animal when she was applying for the rental unit, once she made a written reasonable accommodation request the Ducloses had notice that the dog was not a pet, but an assistance animal.

Both parties shared a number of financial issues that have arisen since Ms. Brier sent the October 7, 2011 reasonable accommodation request and since the Ducloses sent the October 18, 2011 eviction notice. Who owes who what is a landlord-tenant issue that is beyond the scope of this investigation. These issues are included in this report only as they pertain to fair housing issues.

ANALYSIS

Vermont's Fair Housing and Public Accommodations Act (FHPAA), 9 V.S.A. §4503 states:

It shall be unlawful for any person:

(1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, age, marital status, religious creed, color, national origin or handicap of a person, or because a person intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.

(10) To refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common areas.

Elements of Fair Housing Legal Analysis

To prevail in her discrimination charge Ms. Brier must prove her allegations by a preponderance of the evidence. (See In re Smith, 169 Vt. 162, 168 (1999) ("Our case law provides that a preponderance of

the evidence is the usual standard of proof in state administrative adjudications.") Additionally, Vermont's Supreme Court has stated that it looks to the federal Fair Housing Act (FHA) in construing Vermont's Fair Housing and Public Accommodations Act (VFHPA.) Human Rights Commission v. LaBrie, Inc., 164 Vt. 237, 243 (1995). The Supreme Court of the United States has held that the FHA's language should be construed broadly. Trafficante v. Metro life Ins. Co., 409 U.S. 205, 209 (1972), City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 731 (1995).

9 V.S.A. §4503(1) – Prima Facie Elements (adverse housing action)

1. Ms. Brier is a member of a protected class
2. Ms. Brier experienced an adverse housing action perpetrated by the respondents
3. The adverse housing action was due to her membership in a protected class

Whether Ms. Brier is a member of a protected class?

Ms. Brier is a member of a protected class based on her disability. For purposes of federal fair housing law, if a person is a recipient of SSDI or SSI he or she is considered a person with a qualifying disability.[4] Ms. Brier is not yet a recipient of either of these programs. However, Ms. Brier self-reports that she is a person with a

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[4] Case law and Housing and Urban Development (HUD) have stated that a person, who meets the definition of disability for the purposes of receiving SSDI or SSI, in most cases, also meets the definition of disability under the Fair Housing Act. Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999), Joint Statement of the Department of Housing and Urban Development and The department of Justice – reasonable Accommodations Under the Fair Housing Act, pg. 13 – fn 10 May 17, 2004.

number of emotional/psychiatric diagnoses and she provided this investigation with two letters verifying this from her physician, Dr. Goulding, one dated October 2008 and another more recently dated November 2011. These notes state that Ms. Brier is a person with a disability who needs an assistance animal to help her cope with her disability.

Whether Ms. Brier experienced an adverse housing action perpetrated by the respondents?

Ms. Brier and her family received an eviction notice from the Ducloses on or about October 18, 2011. This is an adverse housing action.

Whether the adverse housing action was due to her membership in a protected class?

This investigation believes that the Ducloses caused Ms. Brier to experience an adverse housing action due to Ms. Brier's membership in a protected class and that Ms. Brier has proven all the elements of a *prima facie* case. A "Plaintiff's burden of proof in the prima facie case is minimal. . . . The Court of Appeals for the Second Circuit has repeatedly called it 'de minimis.'" Boulton v. CLD Consulting Engineers, Inc., 175 Vt. 413, 421 (2003) *citing*, Carpenter v. Cent. Vt. Med. Ctr., 170 Vt. 565, 566, 743 A.2d 592, 595 (1999).

Once the charging party has proven a *prima facie* case, demonstrating differential treatment, a presumption/inference of illegal discrimination is created and the burden shifts to the respondent "to articulate some legitimate, nondiscriminatory reason" for his/her treatment of the charging party. McDonnell Douglas Corp. v. Green,

411 U.S. 792 S. Ct. (1973).[5] If the respondent "articulates a clear and reasonably specific" nondiscriminatory reason for his/her action the initial inference of discrimination disappears and the burden shifts back to the charging party to present evidence of the pretexual nature of the respondent's stated reason. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253, 258 (1981). The charging party must convince the fact finder that it is more probable than not that the respondent's adverse housing action(s) was motivated by an illegal discriminatory factor(s). *Adapted from* U.S. Postal Services Bd. Of Governors v. Aikens, 460 US 711 (1983).

The Ducloses issued Ms. Brier an eviction notice within 10 days of Ms. Brier making a written reasonable accommodation request. The Ducloses contend that they did not need a reason to evict Ms. Brier. While it may be true that a tenant can be evicted "without cause," or for no reason, a tenant cannot be evicted for a discriminatory reason. In the Ducloses' response to this discrimination charge, they stated that they had many legitimate reasons to ask Ms. Brier to vacate the rental unit. These reasons included unpaid rent, unpaid damage deposit, unpaid propane gas bill, unpaid electric bill and violation of their no-pet policy. The Ducloses' attorney sent Ms. Brier the eviction notice on October 18, 2011. At that time according to the Ducloses, own accounting[6] except for a small disputed amount of rent, $126.95, there was no other unpaid rent. Additionally, both parties admit that the Ducloses had agreed to allow Ms. Brier to pay the security deposit over time and that there was no specific agreement regarding what

[5] In evaluating fair housing cases based on circumstantial evidence, the courts have applied the McDonnell Douglas model developed by the Supreme Court under Title VII (employment) cases. Robert Schwemm, "Housing Discrimination – Law and Litigation" §10:2 (2008).

[6] The Ducloses provided this investigation with an accounting of monies they allege Ms. Brier owes them.

that meant. With regard to the unpaid propane bill (for the stove), the Ducloses did not provide this investigation with a date that they received the bill for the propane so it is unclear when that amount was first due. In addition, Ms. Brier contends that the lease does not indicate that she has to pay for the propane for the stove. The lease, in fact, does not say the tenant has to pay for propane. The unpaid electric bills that the Ducloses referred to were not past due until November, after the Ducloses issued the eviction notice.

Given that the majority of these issues did not exist on October 17, 2011 (the date the Ducloses decided to ask their attorney to send Ms. Brier an eviction notice), this investigation does not believe the above-mentioned reasons that the Ducloses offered for evicting Ms. Brier were the real reasons they issued an eviction notice.

In addition, it is undisputed that the Ducloses did not want to allow Ms. Brier to have a dog in the unit. The Ducloses sent Ms. Brier an eviction notice less than 10 days after they had received Ms. Brier's written reasonable accommodation request. During the investigative interview, Ms. Duclose stated and then retracted that one reason for wanting to evict Ms. Brier was that they had received the reasonable accommodation letter. Mr. Duclose told this investigation that even if he had known Ms. Brier's dog was an assistance animal at the time she was applying, he would have encouraged her to go somewhere elsewhere.

Given these facts, this investigation believes that it is more likely than not that the eviction notice on October 18, 2011 was due to Ms. Brier's membership in a protected class; specifically, that the eviction notice was issued because Ms. Brier was pursuing her right as a person with a qualifying disability to have an assistance animal in her home.

9 V.S.A. §4503(10) – Prima Facie Elements (reasonable accommodation request)

1. Ms. Brier is a person with a qualifying disability under fair housing laws
2. Ms. Brier made a reasonable accommodation request
3. Ms. Brier's reasonable accommodation request was denied

Whether Ms. Brier is a person with a qualifying disability under fair housing laws?

As stated above Ms. Brier is a person with a qualifying disability. She offered to provide the Ducloses with a letter from her doctor that verified this fact; however, the Ducloses never requested that information as required under fair housing laws.[7]

Whether Ms. Brier made a reasonable accommodation request?

The Ducloses denied that Ms. Brier told them her dog was an assistance animal when she applied for the rental unit. Ms. Brier stated that she had told them several times during that conversation that her dog was an assistance animal, not a pet. This

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[7] "A housing provider may not ordinarily inquire as to the nature or severity of an individual's disability . . . However, in response to a request for a reasonable accommodation, a housing provider may request reliable disability-related information that 1) is necessary to verify that the person meets the Act's definition of disability, (*e.g.,* has a physical or mental impairment that substantially limits one or more major life activities) 2) describes the needed accommodation, and 3) shows the relationship between the person's disability and the needed accommodation. Joint Statement of the Department of Housing and Urban Development and The department of Justice – reasonable Accommodations Under the Fair Housing Act, pg. 13 – May 17, 2004.

investigation finds it hard to believe that a person with a disability, who has made a reasonable accommodation request in the past for a service animal, would not raise that issue in a situation where a landlord was denying her request to move into a rental unit with her assistance dog.

Even if Ms. Brier had not mentioned that her dog was an assistance animal at the time she was applying for the rental unit, all parties acknowledge that on or about October 10, 2011, Ms. Brier sent the Ducloses a written reasonable accommodation request to allow her to have her assistance animal live with her.

Whether Ms. Brier's reasonable accommodation request was denied?

The Ducloses did not respond to Ms. Brier's reasonable accommodation request. "A provider has an obligation to provide prompt responses to reasonable accommodation requests. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation." Joint Statement of the Department of Housing and Urban Development and The department of Justice – reasonable Accommodations Under the Fair Housing Act, pg. 11, May 17, 2004. Rather than reply to Ms. Brier's reasonable accommodation request the Ducloses issued an eviction notice to Ms. Brier and her family within approximately 10 days of receiving Ms. Brier's request.

PRELIMINARY RECOMMENDATION:

This investigation report recommends that the Human Rights Commission find that there are **reasonable grounds** to believe that the Ducloses discriminated against Ms. Brier in violation of 9 V.S.A. §4503(1) &(10) of Vermont's Fair Housing and Public Accommodations Act (adverse housing action and reasonable accommodation request, respectively.)

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Ellen T Maxon, Investigator **Date**

Approved by:

_____ _____

Robert Appel, Executive Director **Date**