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# INVESTIGATIVE REPORT

## Edward Alexander v. Churchill House Realty Trust and Dean Lyon

### VHRC Case #HV18-0003 & HUD Case # 01-17-7525-8

**Complaint:** Housing–Disability - Reasonable Accommodation Request, Harassment, Retaliation

**Summary of Charge:** In his complaint of housing discrimination filed on September 8, 2017, Mr. Alexander alleged that Churchill House Realty Trust and Dean Lyon, Property Manager of Churchill House (Respondents) discriminated against him based on his disabilities. Mr. Alexander, an individual with physical and psychiatric disabilities, [redacted]

**Summary of Response:** On September 25, 2017, Rose-Marie Glen, Trustee for Churchill House Realty Trust and Mr. Lyon, by their Attorney, denied the allegations of Mr. Alexander's complaint of discrimination. [redacted] Finally, the Respondents stated that on May 15, 2017, Mr. Alexander was hand delivered a letter notifying him that his lease was terminating on August 31, 2017 and advising him to make the necessary preparations to vacate by 11:59 pm on that date, explaining that the letter was meant to provide notice [redacted]

## PRELIMINARY RECOMMENDATIONS

[redacted]

[redacted]

This investigation makes a preliminary recommendation that the Vermont Human Rights Commission (VHRC) find that there are **reasonable grounds** to believe that the Respondents discriminated against Complainant in the terms and conditions of rental of the dwelling when they failed to renew his lease based on his disability in violation of 9 V.S.A. §§4503(a)(1) of the Vermont Fair Housing & Public Accommodations Act.

## RELEVANT DOCUMENTS

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|---|---|
| **12/02/14** | |
| **08/08/16** | Warning Letter issued to Mr. Alexander to cease four actions |
| **05/15/17** | Notice of Lease Termination from Churchill Realty House, effective August 31, 2017. |
| **09/01/17** | Letter from Dr. Allision Christie detailing Mr. Alexander's disabilities. |
| **09/08/2017** | VHRC Complaint |

**09/08/2017** Journal submitted by Mr. Alexander, with complaint, documenting 32 months of Mr. and Ms. Lyon's behavior.

**09/25/2017** Respondent's Response to VHRC Complaint

**04/15/2018** Complainant's Letter from Department of Health and Human Services, Social Security Administration showing an award of Social Security disability benefits.

**INTERVIEWS**

**10/24/2017** – Respondent- **Edward Alexander**[1]

**11/09/2017** – Respondent- **Dean Lyon**

**11/09/2017** – Respondent- **Harriet Lyon**

**04/05/2018** – Respondent- **Edward Alexander**[2]

**05/01/2018** – Vermont State Housing Authority Field Representative, Section 8 Programs - **Pam Christie**

**05/05/2018** – Respondent - **Rose-Marie Glen**[3]

## ANALYSIS OF CLAIMS

### I. UNDISPUTED FACTS

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[1] This was a preliminary phone interview conducted with Mr. Alexander before his Attorney appeared on record.

[2] There was a two month delay in this investigation caused by a decision not to proceed with previously agreed on mediation of the case. Additionally, there was a delay in interviewing Mr. Alexander and Ms. Glen, owing to the availability of the parties and their respective Attorney.

Specifically, on or around November 20, 2017 both parties agreed to participate in mediation towards possible resolution of this complaint of discrimination in housing. Both parties were then informed of a date in late January 2018 for the mediation and asked to confirm their availability directly with the mediator. On or around January 23, 2018, this investigation had to contact each party to confirm their participation in the mediation, since the mediator attempted to do so, without success. On or around January 26, 2018, it became clear that the parties were no longer interested in mediation.

Further, on February 26, 2018, this investigation made a written request for an in-person interview with Mr. Alexander, without success. On March 5, 2018 this investigation submitted a follow-up, written letter, again requesting an interview. On March 8, 2018 this investigation heard from the Attorney for Mr. Alexander who requested possible dates for interview in early April of 2018. This investigation agreed on April 5, 2018.

[3] On April 10, 2018, this investigation made a request to do a phone conference interview with Ms. Glen and based on availability, May 5, 2018 was agreed on as the interview date.

The following facts are not disputed by the parties:

1. Since September 1, 2014, Edward Alexander has lived at Churchill House, Apartment 3 at 359 Maple Street in Stowe, Vermont.
2. Churchill House contains 12 rental units.
3. Churchill House is owned by Churchill House Realty Trust, managed by Dean Lyon, with Rose Marie Glen as Trustee.
4. Mr. Lyon and his wife Harriet Lyon are also residents, of Churchill House located at 359 Maple Street in Stowe, Vermont.
5. [redacted]
6. On August 8, 2016 Mr. Alexander received a letter from Churchill Realty Trust, signed by Rose-Marie Glen, threatening him with eviction, in response to various complaints made by tenants and Mr. Lyon about Mr. Alexander.
7. [redacted]
8. On May 15, 2017 Mr. Alexander received a Notice of Lease Termination from Churchill Realty Trust, effective August 31, 2017.

## II. [redacted]

[redacted]

In order for Mr. Alexander to make a successful complaint of discrimination, he must establish a *prima facie* case by a preponderance of the evidence.[5]

**Mr. Alexander is a person with a disability under the law?**

The undisputed facts show that Mr. Alexander is a person with a disability under the Vermont Fair Housing and Public Accommodations Act (Vermont Fair Housing Act). The definition of "disability" under the Vermont Fair Housing Act includes individuals who have (A) a physical or mental impairment that limits one or more major life activities, or (B) individuals with a history or record of being disabled.[6] Here, there can be no question that Mr. Alexander is a person who suffers from physical and psychiatric disabilities that limit his major life activities. Mr. Alexander provided a letter dated September 1, 2017 from Dr. Allison Christie, M.D. which states that he suffers from a number of disabilities, including autism spectrum disorder, prosopagnosia, attention deficit hyperactivity disorder, post-traumatic stress

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[4]

[5] 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.")

[6] 9 V.S.A. §4501(2); "Disability," with respect to an individual, is defined as –(A) a physical or mental impairment which limits one or more major life activities; (B) a history or record of such an impairment; or (C) being regarded as having such an impairment.

disorder and dyslexia. The report states that these diagnoses were made by "qualified psychiatrists whose written evaluations I have reviewed."[7]

Further, the report explains in detail that Mr. Alexander's autism spectrum disorder is a challenge because it causes him to be extremely detail focused, have trouble intuiting other peoples' emotional states and that he may be loud in conversation, when he is excited, in a way that is uncomfortable to others.

Additionally, Mr. Alexander also has had use of a service dog, Vy, from 2014 to the present time who has been individually trained to perform tasks that help Mr. Alexander manage symptoms of a specific condition.[8] Mr. Alexander has also shared with this investigation information which shows he has been awarded Social Security benefits dating back to 1985.[9] Case law and U.S. Department of Housing and Urban Development (HUD) policy guidance state that a person who meets the definition of disability for the purposes of receiving Supplemental Security Disability Income (SSDI) or Supplemental Security Income (SSI), in most cases, also meets the definition of disability under the Fair Housing Act.[10] Given these undisputed facts, it is determined that Mr. Alexander qualifies as a person with a disability under the law.

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[7] Letter dated September 1, 2017 from Dr. Allison Christie, MD of the Morrisville Family Health Care concerning Mr. Alexander, who has been her patient since April of 2012.
[8] Mr. Alexander provided this investigation with a verification letter dated, December 2, 2014 from Dr. Allison Christie, M.D., which states that Mr. Alexander is her primary care patient and he works with a dog, Vy, who is of tremendous medical benefit. See *Arnal v. Aspen View Condominium Association*, Inc., 226 F.Supp.3d 1177, 1184 (D. Colo. 2016) 2016 WL 8609503 (giving deference to a Notice by the Housing and Urban Development agency that "[s]uch documentation is sufficient if it establishes that an individual has a disability and that the animal in question will provide some type of disability-related assistance or emotional support.")
[9] Social Security Award Certificate, From the Department of Health and Human Services, Social Security Administration, Dated October 15, 1985.
[10] *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 – footnote 13, May 17, 2004.

**Respondents knew of Mr. Alexander's disability or should have reasonably been expected to know?**

The Respondents state that they are without knowledge or sufficient information to form a belief that Mr. Alexander is a person with physical and psychiatric disabilities. Still, the Respondents admit that they have accommodated Mr. Alexander's use of a service dog.[11] A service dog is an animal that is individually trained to perform tasks for a person with a disability.[12] Moreover, Mr. Alexander informed this investigation that on numerous occasions he provided oral information to Respondent, Mr. Lyon, that he was training Vy, who was then a puppy, to be a service animal. In individual interviews with Dean Lyon, Property Manager and his spouse, Harriet Lyon, they each confirmed that Mr. Alexander referred to Vy as a service dog.[13] Additionally, there is email correspondence from Mr. Lyon to Rose-Marie Glen, Trustee of the property, wherein he stated, "I don't understand this thing about his neurological and physical disabilities."[14] Therefore, the Respondents knew or should have known that Mr. Alexander is a person with a disability.

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[11] Submission by the Attorney for the Respondents, Rose-Marie Glen, Trustee and Dean Lyon, Property Manager, in response to the Complaint of Discrimination in Housing dated September 25, 2017, paragraph numbered 1.

[12] *Notice of the Department of Housing and Urban Development – Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs,* pg. 4, April 25, 2013: "DOJ's revised ADA regulations define "service animal" narrowly as an dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability."

[13] On November 9, 2016, this investigation conducted individual interviews with Mr. and Ms. Lyon concerning the complaint of discrimination in housing.

[14] Email dated October 30, 2016 from Mr. Lyon to Ms. Glen referring to a "few odd things" Mr. Alexander has allegedly done. In the email Mr. Lyon explained that Mr. Alexander can "work in the garden, bike and walk all day long," so he does not understand the "neurological and physical disabilities that he says he has."
Additionally, in a letter to Ms. Glen dated October 14, 2016, Mr. Alexander stated that his neurological and physical disabilities and conditions make the production of a legible, coherent, logical response quite difficult."

[redacted]

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[redacted]

[redacted]

[redacted]

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## III.

but

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[redacted]

[redacted]

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## IV.

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[redacted]

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[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

## V. EVICTION, TERMINATION OR REFUSAL TO RENEW

The Vermont's Fair Housing and Public Accommodations Act (VFHPAA) prohibits a refusal to sell or rent based on protected status including disability. 9 V.S.A. §§4503(a)(1) states:

(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, gender identity, age, marital status, religious creed, color, national origin, or disability 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. [emphasis added].

The elements of a *prima facie* case under V.S.A. §4503(a)(1) are:

1. **Mr. Alexander is a member of a protected class;**
2. **Mr. Alexander was the Respondent's tenant;**
3. **The Respondents acted to terminate Mr. Alexander's tenancy, for example, by initiating an eviction, sending a notice to terminate, or refusing to renew the lease based on Mr. Alexander's disabilities.**
4. **The Respondents did not take similar action against a tenant of a non-protected class.**

**Mr. Alexander is a member of a protected class?**

As discussed before, Mr. Alexander has been medically diagnosed with autism spectrum disorder, prosopagnosia, attention deficit hyperactivity disorder, post-traumatic stress disorder and dyslexia. Therefore, Mr. Alexander meets the first element required to establish a *prima facie* case of a refusal to renew discrimination claim.

**Mr. Alexander was the Respondents' tenant?**

It is not disputed that the parties are in a landlord-tenant relationship or that on May 15, 2017, Mr. Alexander received a Notice of Lease Termination from Churchill Realty Trust, effective August 31, 2017. Mr. Alexander did not vacate the property on August 31, 2017 and remains at the residence pending resolution of the eviction action brought against him.

**The Respondents acted to terminate Mr. Alexander's tenancy, for example, by initiating an eviction, sending a notice to terminate, or refusing to renew based on Mr. Alexander's disabilities?**

It is not disputed that Mr. Alexander was issued a notice of lease termination on May 15, 2017 or that on September 6, 2017, a complaint for

ejectment was filed in the Superior Court Civil Division, Lamoille Unit.[59] To date, it is this investigation's understanding that the Respondent, Ms. Glen as Trustee, and Mr. Alexander, await the scheduling of a trial date for this matter.

There is evidence that would permit an inference that the decision to issue the May 15, 2017 Notice of Lease Termination, effective August 31, 2017, was made in consideration of the various complaints made by Mr. Alexander that are directly related to his disabilities. The record confirms that the Respondents were "alarmed,"[60] and "disturbed"[61] by Mr. Alexander engaging in behavior likely caused by his disabilities, or the result of his disabilities.

First, there is the fact that there were close to 42 police reports under Mr. Alexander's name for the period March 6, 2014 through October 15, 2017, approximately 23 of which were filed prior to the May 15, 2017 letter, and a number of which were filed against him.[62] Still a number of the reports filed against him concerned him having his dog off leash-[63] which is lawful,

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[59] The Respondents in their answer to the complaint, through their Attorney, dated September 25, 2017.

[60] In an interview with Ms. Glen dated May 3, 2018, when asked how she felt that Mr. Alexander had allegedly complained about smelling someone cooking methamphetamine or crack cocaine, when upon investigation by the police, it was learnt that a tenant had burnt chicken, she stated that she was "a little alarmed."

[61] In an interview with this investigation, Ms. Glen stated that there are approximately "42 reports" with the police that are linked to him, including reports made by him or against him. In a police report dated February 13, 2017, Mr. Alexander called about a recurring issue of a solvent smell in his apartment which he believed was coming from the next door neighbor in Unit #4. The report further stated that Mr. Alexander advised that he has called about suspicious smells in the past and we have responded without being able to locate anything. Additionally, when asked by this investigation how Mr. Lyon felt that Mr. Alexander made a number of police reports, Mr. Lyon stated that it was "a little disturbing."

[62] The record shows an incident history for Edward E. Alexander, DOB 09/08/1956 as having made 42 total police reports for the period 03/06/2014 through 10/15/2017.

[63] On March 28, 2015 Sherry Morrison of Maine stopped into the Stowe Police Department to report a dog off leash and a subsequent verbal exchange with the dog owner.
On July 6, 2015, Kyle Miller waved down Officer Neil Mogerley and informed him about a dispute with Mr. Alexander, who explained that his animal does not have to be on a leash. This interaction became heated with allegations of yelling, a possible fist fight and spitting on a person's face.

as long as the dog is under his control,[64] and therefore have no merit, nor should they suggest that Mr. Alexander is prone to arguments, because persons have opposed him having an off leash service animal. The reports are about incidents that have taken place, outside of the residence, therefore any consideration of the reports should be limited.

Moreover, any complaints apparently filed by Mr. Alexander, before the issuing of the May 15, 2017 Notice of Lease Termination, including one (1) on lost property, six (6) about found property, one (1) on intoxication and (1) on drugs, appear to be done, owing to his disability.

To be clear, Dr. Christie has confirmed that Mr. Alexander has a number of disabilities, including autism, which makes him "extremely detailed focused.[65] It is well-established that persons with autism are single-minded and become focused and obsessed on particular points. In addition, such individuals often have difficulty correctly interpreting the actions of others or the reactions of others to their behavior.[66] This investigation believes, for example, while many persons would turn in to a store clerk or bypass a lost Motorala pager found in the area of Stowe Hardware, Mr. Alexander, in an effort to fully resolve the issue, contacted the police and hand delivered the pager to an officer.[67] There is nothing threatening about such behavior.

Additionally, the record shows that Mr. Alexander made a number of complaints about smells from other tenants' apartments. On January 22,

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[64] In an email Thomas M. Kelly, Deputy State's Attorney for the Office of the Lamoille County State's Attorney stated that "In my judgment, criminal charges are not appropriate in these circumstances. I presume Edward Alexander was required by law to control his animal, whether a service dog or not."

[65] Letter dated September 1, 2017 from Dr. Allison Christie, MD of the Morrisville Family Health Care concerning Mr. Alexander, who has been her patient since April of 2012.

[66] Also Dr. Christie stated, in the letter dated September 1, 2017, that Mr. Alexander, due to his autism disorder is "extremely detailed focused, has a remarkably specific memory, and interprets communications and regulations entirely literally. He generally take[s] a very analytical approach to problems, often missing the forest for the trees."

[67] Law Incident Number: 16ST000784, Call Type: Lost Property and Primary Officer Scott Kirkpatrick.

2017 he reported to the police that he thought his neighbors were "smoking marijuana and doing drugs;"[68] and on February 13, 2017 Mr. Alexander filed a report about a reoccurring solvent smell which he believed was coming from the next door neighbor.[69] The record also shows that Mr. Alexander has admitted to calling about solvent smells in the past.[70] Based on police follow-up, it appears that in one instance the source of the smell was burnt food.[71]

It therefore appears that the Respondents approach to dealing with Mr. Alexander, who was seemingly a difficult tenant because of the various aspects of his disabilities, was to refuse to give him the courtesy option of renewing or extending his lease, which is offered to other non-disabled tenants. In an email to Mr. Lyon on January 22, 2017, Ms. Glen stated, "So sorry this is happening again," followed by "I will do my best to make him go away,"[72] upon learning of Mr. Alexander's police report about smells. A solution would have been to be understanding that his complaints are triggered by his disabilities and to seek some common ground through an interactive process. Instead, they sought to "get him to go away", by issuing him the May 15, 2017, Notice of Lease Termination, without an option to renew, because of actions related to his disabilities. This raises the issue of whether the behaviors engaged in by Mr. Alexander and which were the subject of the warning letter indicate either threatening or health and safety concerns.

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[68] Law incident Number; 17ST0000367, Call Type: Suspicious Event.
[69] Law Incident Number: 17ST000649, Call Type: Suspicious Event.
[70] Law Incident Number: 17ST000649, Call Type: Suspicious Event.
[71] Law incident Number; 17ST0000367, Call Type: Suspicious Event.
[72] This investigation made a request for information from the Respondents for any and all email of all emails, memorandums, letters, reports and forms that mention Edward Alexander, his dog "Yy", and this VHRC investigation, sent to or from Mr. Lyon as Property Manager and Ms. Glen, in her role as Trustee. The email dated January 22, 2017 from Ms. Glen to Mr. Lyon was included in the email package.
See also email dated August 9, 2016 to Ms. Glen, Mr. Lyon began, "I would encourage you not to give him a new lease."

**Threat to Health or Safety of Tenants**

The issuance of a first warning letter dated August 8, 2016 calling on Mr. Alexander to cease four alleged actions that led to complaints from Mr. Lyon and other tenants[73] is not conclusive proof that he was a threat to health or safety, since a first warning usually serves as a signal to stop certain actions. Pursuant to statute and caselaw, a landlord is required to prove that a tenant or their assistance/service animal[74] poses a direct threat to the health and safety of other occupants that cannot be mitigated by a reasonable accommodation.[75] See Housing Discrimination – Law and Litigation, Robert Schwemm § 11D:3, pg. 28 citing to *Sinisgallo v. Town of Islip Housing Authority United States District Court, F.Supp.2d 307, 336-43, (E.D. NY 2012), appeal withdrawn, (2nd Circ. 12-1733) (Aug. 23, 2012)* (holding that a mentally disabled tenant- who had a fight with a neighbor- was likely to prevail in a reasonable accommodation claim for a period of probation that would allow him to show that medication and treatment would prevent him from being a direct threat, which would justify his eviction.)

Moreover, this investigation noted there was a lack of evidence in this case to show that there were fair grounds for the Respondents to issue Mr. Alexander the warning on August 6, 2016. In the warning there was mention of loud music playing, threatening other tenants, threatening to install

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[73] The actions included (1) playing loud music, (2) threatening other tenants and visitors with his dog, (3) threatening to install chickens on the property and (4) verbal abuse of passerby, tenants and Mr. Lyon.

[74] *Notice of the Department of Housing and Urban Development – Subject: Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs,* pg. 3, April 25, 2013: "The request may be denied if: (1) the specific assistance animal in question poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation."

[75] Borrowing from the public accommodations section, 9 V.S.A. §4502(h), the Respondent must show through an individualized assessment that individual poses a direct threat to the health and safety of others and establish through objective evidence the nature, duration and severity of the risk, the probability that the harm will actually occur and whether reasonable accommodations will mitigate the risk.

chickens and verbal abuse of a passerby.[76] It is to be noted that Ms. Glen issued this warning, primarily in reliance on Mr. Lyon's claims, without hearing Mr. Alexander's accounts,[77] which is not an objective position.

1. Loud Music Playing

An objective examination of problems associated with Mr. Alexander shows, firstly, that the playing of loud music is not a criminal act, since there is no noise ordinance in the town of Stowe nor was the one complaint to the police substantiated.[78] Therefore it is difficult to understand how loud music playing could be used as a factor towards determining Mr. Alexander was jeopardizing the peace and tranquility of tenants,[79] when loud music playing is not considered an action that is harmful to the Stowe community, including the tenants at the residence and there is no objective evidence that it occurred. Further, close living arrangements, especially in a multifamily house, with twelve units,[80] can be challenging and there will be tenants who make more noise than others through slamming of doors or playing a television or radio loud. These noises are common, and an

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[76] Letter dated August 8, 2016 which served as a first warning that Mr. Alexander's behavior may be in violation of the lease.

[77] In the letter dated August 8, 2016, Ms. Glen stated that "Mr. Lyon is my trusted agent in all things concerning this property and he has my full support in decisions concerning said property." A number of the police reports involving Mr. Alexander and Vy stem from Mr. Alexander having Vy off leash, in public settings, which is permissible as long as Vy is under his control.

[78] On 06/04/2017, an anonymous caller called the Stowe Police and complained of a noise disturbance at 359 Maple Street, specifically that a fellow tenant of the building was playing loud music in the driveway to the residence. Officer Ryan responded to the area but could not hear any music coming from the area. Officer Ryan called the complainant back and explained that there is no noise ordinance in the town of Stowe. However, Officer Ryan stated that if the complainant continued to hear music into the night that PD would return and speak to whoever was playing the music. See Law Incident Number: 17ST002277.

[79] In an email dated August 9, 2016 Mr. Lyon in an email titled "this is what I have so far" stated that one of the tenants stated that Mr. Alexander has "a r[a]dio on his bike on and went inside for a while. The tenant[']s window was open next to the bike."

[80] Respondents answer to the complaint dated September 25, 2017 stated that Churchill House has nine (9) one-bedroom apartments, one (1) two-bedroom apartment and two (2) studio apartments.

inevitable part of group living arrangements. In fact, what was considered as music not at a reasonable level by Mr. Lyon in the summer of 2016,[81] was described by an anonymous caller as merely loud,[82] which does not support the Respondents' claim for Mr. Alexander posing a threat to the health or safety of tenants, by breaching the peace, which usually applies to excessively loud noise.

2. Threatening other tenants

Further, the warning letter of August 6, 2016 stated that Mr. Alexander was being warned about threatening other tenants. The record shows that a single tenant, David Agrell, in an email dated January 24, 2017, documented three neighbor on neighbor problems with Mr. Alexander.[83] Two took place, on or around June and July 2016, when it is alleged that Mr. Alexander knowingly threw a ball for his dog in the direction of Mr. Agrell's girlfriend, Leota, and that Mr. Alexander ignored Mr. Agrell when he told him to call for his dog. Mr. Agrell stated that the incident was "nerve wrecking"[84] and he and his girlfriend "shook for a half an hour,"[85] adding that an altercation almost took place as a result.

It appears that the complaints by Mr. Agrell were generally handled by Mr. Lyon with an automatic belief that Mr. Agrell was telling the truth in full,

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[81] In an email dated August 9, 2016 from Mr. Lyon to Ms. Glen, Mr. Lyon encouraged Ms. Glen not to give Mr. Alexander a new lease, identifying a number of problems associated with Mr. Alexander. On the subject of loud music playing, Mr. Lyon stated that "[t]his summer Ed[d] has gotten into running a radio loudly when he is riding his bike and gardeninig [sic]. Of course it is not at a reasonable level. When asked to turn it down he would holler and say that it wasn't any louder than a lawn mower or a chain saw and call us names."

[82] On 06/04/2017, an anonymous caller called the Stowe Police and complained of a noise disturbance at 359 Maple Street, specifically that a fellow tenant of the building was playing loud music in the driveway to the residence.

[83] In an email dated January 24, 2017, from David A [mailto:dvdgrll@hotmail.com] to Ms. Glen.

[84] In an email dated January 24, 2017, from David A [mailto:dvdgrll@hotmail.com] to Ms. Glen.

[85] In an email dated January 24, 2017, from David A [mailto:dvdgrll@hotmail.com] to Ms. Glen.

and Mr. Alexander was at fault, since this investigation is unaware of any follow-up with Mr. Alexander to determine what likely took place. Additionally, it is understandable that Mr. Agrell's girlfriend would want Mr. Alexander to "hold his dog"[86] as Vy was "scaring Leota."[87] This is particularly true where Mr. Alexander appeared focused on desensitizing Leota to her phobia of dogs, admittedly on three occasions,[88] seemingly not comprehending that while Vy may be a best friend to him, for others a dog can cause extreme distress.

However, under the law, Mr. Alexander has the right to have a service animal that is off leash to perform specific tasks, as long as the animal is under his control. It does not matter whether other persons lack comfort with the animal. Based on this investigation's perception of Vy, she is a well-behaved service animal. There is also no evidence that Vy is not under the control of Mr. Alexander, nor does the record show any arrest or charges laid against him for criminal activity. Therefore, there appear to be no grounds for the Respondents to use these two incidents to show that Mr. Alexander with his service animal, Vy presents a threat to the safety of tenants.

Further, there is no evidence that Vy was objectively likely to cause harm or injury or that Respondents engaged in an interactive effort to determine whether a reasonable accommodation could ameliorate the "problem."

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[86] n an email dated January 24, 2017, from David A [mailto:dvdgrll@hotmail.com] to Ms. Glen.

[87] In an email dated January 24, 2017, from David A [mailto:dvdgrll@hotmail.com] to Ms. Glen.

[88] Journal submitted to this investigation by Mr. Alexander, which contain details in support of his claim of discrimination in housing based on his disability. See Section One, titled "Pro Forma Response," Part V, B: Refute Charge Two: "Threatening other tenants and their visitors with your dog," Mr. Alexander stated that he offered to help desensitive Leota with her phobia, and on two occasions, Mr. Agrell thanked him and said "she's not ready." The third occasion, Mr. Alexander stated that Mr. Agrell stated in a drunken tone, "you scare her on purpose."

3. Threatening to install chickens

In the warning letter dated August 6, 2016, the Respondents stated that Mr. Alexander was being written to owing to "threats to install chickens." The use of the word "threatening" suggests that Mr. Alexander repeatedly indicated to Mr. Lyon that he would cause pain or injury, or commit a hostile action if Mr. Lyon did not allow him to have chickens on the property. The use of the word is not consistent with the record. In an email to Ms. Glen on August 9, 2016, Mr. Lyon stated that Mr. Alexander has "tried to get me to agree to chickens."[89] In the same email, Mr. Lyon later stated that on August 8, 2016, Mr. Alexander brought up the subject of chickens, to which Mr. Lyon replied in the negative. Mr. Lyon goes on to state that Mr. Alexander replied, "not the [r]ight answer," to which Mr. Lyon responded that Ms. Glen stated no.[90] The repeated attempts by Mr. Alexander to get Mr. Lyon to allow him to have the chickens, show that he was persistent, but not threatening, nor did Mr. Alexander ever "install" the chickens.

4. Verbal Abuse of Passerby, Tenants and Mr. Lyon

Ms. Glen relies on Mr. Lyon's account to determine that Mr. Alexander verbally abused a passerby.[91] The problem with this approach is that it fails to take into account another perspective, specifically Mr. Alexander or another's, about what happened with the passerby. In fact, on July 24, 2016, Mr. Alexander contacted the Stowe Police to make them aware of an

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[89] In an email dated August 9, 2016, from Mr. Lyon to Ms. Glen titled "this is what I have so far."
In his journal, Section III titled "Mr. and Ms. Lyon: Patterns of Harassment and Hypocrisy," VI, F, it is noted that on or around August 5, 2016 in a sudden burst of hysteria, Mr. Lyon repeatedly stated "Not gonna happen...not gonna happen" when Mr. Alexander said "wouldn't it be nice to have fresh eggs here?"

[90] Mr. Lyon also noted that he did not hear what additional remarks Mr. Alexander made on the subject of chickens.

[91] In the letter dated August 8, 2016, Ms. Glen stated that "Mr. Lyon is my trusted agent in all things concerning this property and he has my full support in decisions concerning said property."

incident in front of his house where a middle-aged male veteran walking down the street began yelling at him about how he treats his service animal. Given that Mr. Alexander contacted the police about the matter, the objective evidence appears to support Mr. Alexander, yet Ms. Glen, by default, without any apparent investigation of the matter determined that Mr. Alexander had verbally assaulted a passerby. In fact, Ms. Glen declined a written offer by Mr. Alexander to give his account of all the actions identified in the warning letter.[92] Moreover, this investigation is unaware of any evidence of verbal abuse of tenants or Mr. Lyon, which led to the issuance of the August 8, 2016 letter.

**The Respondents did not take similar action against a tenant of a non-protected class?**

On May 15, 2017, Mr. Alexander was issued a notice that his lease agreement for the premises expired on August 31, 2017, with a request for him to make necessary arrangements to vacate the premises and have all of his belongings out by 11:59 pm.[93] As stated previously, Ms. Glen confirmed that tenants are notified of the expiration of their lease between 45 days to as much as 3 months prior to lease expiration. In addition, Ms. Glen stated that "most"[94] notices include a provision for renewal of lease for one year. When asked to give a numerical percentage as to what she meant by the word "most," Ms. Glen confirmed 90 percent.[95] Under this practice, 10 percent of the tenants are not given the option to renew their lease. These

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[92] Letter dated October 19, 2016, Ms. Glen stated that I am in receipt of your letter dated October 14, 2016 and there is no need to respond to my August 8, 2016 letter.
[93] Copy of letter dated May 15, 2017 signed by Rose-Marie Glen, Trustee of Churchill House Realty Trust, with a carbon copy to Barr Law Group and Vermont Housing Authority.
[94] On May 3, 2018 this investigation did a conference call interview with Ms. Glen who had Counsel present on the call. Ms. Glen was scheduled for a telephone interview since she lives in Hawaii and an in person interview did not appear possible.
[95] On May 3, 2018, Ms. Glen stated "probably 90 percent" when asked to state the percentage of notices of lease termination which include a provision for renewal of lease.

tenants are asked to leave, effective the lease termination date, due to several reasons, including consideration of what is best for the safety of all tenants. Of the 10 percent, when asked, Ms. Glen confirmed that none but for Mr. Alexander had a disability.[96]

While a landlord is not prohibited from evicting a tenant for "no cause," if the underlying reason for the eviction is related to protected status, the eviction would be unlawful. If, as Respondent alleges, the reason for non-renewal of her tenants' leases is "what is best for the safety of all tenants" (i.e. a legitimate non-discriminatory reason) [97] the Respondent is required to prove that the tenant presents such a threat. The Respondent has failed to meet this burden.

**Conclusion**

The available evidence indicates that the Respondent does not renew the leases of tenants who present safety risks for other tenants but otherwise offers lease renewals in this 12-unit complex. The evidence also indicates that the behaviors engaged in by Mr. Alexander, which constitute the alleged safety concerns, are more likely than not based on his disabilities. There is no evidence that the behaviors alleged by the Respondent were objectively threatening to the health and safety of other residents versus annoying. For these reasons, this investigation concludes

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[96] In the interview, Ms. Glen was asked approximately 3 to 4 times by this investigation to account for why there is no provision to renew leases in 10 percent of the leases. The Attorney for Ms. Glen repeatedly interrupted this investigation attempting to clarify Ms. Glen's response, although early in the interview, this investigation stated that he would have a chance to ask clarifying questions towards the end, to ensure candid answers from Ms. Glen and the free flow of information. When notified that the record would reflect the failure of Ms. Glen to answer the question and the interruptions by Counsel, Ms. Glen then stated that "it could be for a range of reasons. Each case is different. It has to do with safety of all tenants."

[97] On May 5, 2018, after several interruptions by her Attorney, Ms. Glen finally confirmed this in an interview with this investigation.

that the eviction is more likely than not based on Mr. Alexander's disabilities and that he is being treated differently than other non-disabled tenants.

## PRELIMINARY RECOMMENDATIONS

This investigation makes a preliminary recommendation that the Vermont Human Rights Commission (VHRC) find that there are **reasonable grounds**

to believe that the Respondents discriminated against Complainant in the terms and conditions of rental of the dwelling when they failed to renew his lease based on his disability in violation of 9 V.S.A. §§4503(a)(1) of the Vermont Fair Housing & Public Accommodations Act.

Ayn Lee Sing (RWR) 6/1/18

**Ayn Lee Sing, Investigator** **Date**

**Approved by:**

6/1/18

**Karen Richards, Executive Director & Legal Counsel** **Date**