Division of
Human Rights

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF HUMAN RIGHTS
on the Complaint of

INNA LIPKINA,

Complainant,

v.

LEEMAR MANAGEMENT CORP., MEGAN MCCONVILLE, ABINGDON OWNERS CORP., ABINGDON REALTY COMPANY, LLC, DEBORAH ROSENBLUM,

Respondents.

Federal Charge No. 02-19-1529-8

NOTICE AND FINAL ORDER

Case No. 10196763

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order ("Recommended Order"), issued on August 9, 2019, by Alexander Linzer, an Administrative Law Judge of the New York State Division of Human Rights ("Division"). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE ANGELA FERNANDEZ, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at

One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED: OCT 0 3 2019
Bronx, New York

ANGELA FERNANDEZ
COMMISSIONER

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RECOMMENDED FINDINGS OF FACT, OPINION AND DECISION, AND ORDER

Case No. **10196763**

SUMMARY

Complainant alleged that Respondents unlawfully discriminated against her based on her disability by refusing to allow her to keep a hypoallergenic combination washing machine and dryer in her apartment. Because Complainant did not meet her burden of proof, this case is dismissed.

PROCEEDINGS IN THE CASE

On July 30, 2018, Complainant's son-in-law, Yan Finkelshteyn ("Finkelshteyn"), filed a verified complaint with the New York State Division of Human Rights ("Division") on behalf of

Complainant, charging Respondents with unlawful discriminatory practices relating to housing in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondents had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

On January 22, 2019, the Division amended the verified complaint, pursuant to Human Rights Law § 297.4(a) and 9 N.Y.C.R.R. § 465.4, to name "Inna Lipkina" as the Complainant and remove Finkelshteyn from the caption.

After due notice, the case came on for hearing before Alexander Linzer, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held on April 17, 2019, and April 18, 2019.

Finkelshteyn appeared at the public hearing as Complainant's representative. Complainant did not attend the public hearing sessions and did not testify. Respondents Leemar Management Corp., Abingdon Owners Corp., Abingdon Realty Company, LLC, and Deborah Rosenblum appeared at the public hearing. Respondent Megan McConville did not appear at the public hearing. Complainant was represented by Sam Goldberg and Jessica Goldberg, Esqs., of Goldberg, Scudieri & Lindenberg, P.C. Respondents Leemar Management Corp., Abingdon Owners Corp., Abingdon Realty Company, LLC, and Deborah Rosenblum were represented by James A. Kasdon, Esq. At the public hearing, Complainant withdrew her claims against Respondent McConville. (Tr. 8)

Permission to file post-hearing briefs was granted. Complainant and Respondents timely filed post-hearing briefs. Complainant also filed an application for attorney's fees, which was opposed by Respondents.

FINDINGS OF FACT

1. Complainant resides at 1801 Avenue N, Apartment 5C, Brooklyn, New York (the "Apartment") with Finkelshteyn and his wife. (Tr. 14-15)

2. Complainant is sixty-nine years old and has asthma and bronchitis, which are exacerbated by multiple allergies. (Tr. 15-18; Complainant's Exhibits 1, 4, p. 3)

3. The building at 1801 Avenue N, which is a cooperative apartment building, has 54 apartments. (Tr. 332-33, 363-64)

4. Respondent Abingdon Realty Company, LLC ("Abingdon Realty") is the proprietary lessee of the Apartment from the Apartment's owner, Respondent Abingdon Owners Corp. ("Abingdon Owners"). (Respondents' Exhibits 14, 15)

5. Finkelshteyn has subleased the Apartment from Respondent Abingdon Realty since 2008. (Tr. 68-72; Respondents' Exhibits 2, 3, 4)

6. Respondent Leemar Management Corp. ("Leemar Management") manages the building. (Tr. 251-52, 274, 280-81; Respondents' Exhibits 2, 3, 4)

7. Respondent Deborah Rosenblum ("Rosenblum") works for Respondent Leemar Management as an administrative assistant, and she assists the building managers and "work[s] pretty much as the repairs department" for the building. (Tr. 243, 246)

8. The sublease between Finkelshteyn and Respondent Abingdon Realty prohibits the use of personal laundry equipment, and specifically prohibits the use of a washing machine or dryer in the Apartment without written consent. (Tr. 84-85, 87; Respondents' Exhibit 3, ¶6, ¶27(8); Respondents' Exhibit 4, ¶6, ¶27(8))

9. Respondent Abingdon Owner's "House Rules" for 1801 Avenue N state that "No washers and dryers may be installed in the apartments." (Respondents' Exhibits 18, ¶13 and 19,

P13)

10. A washing machine that overflows and floods can cause extensive damage to a premises. (Tr. 302)

11. On February 27, 2018, Finkelshteyn purchased an LG Signature 17-Cycle combination washer and dryer ("washer/dryer") for the Apartment from Best Buy for the price of $2,879.99. (Tr. 44-45; Complainant's Exhibit 10)

12. Finkelshteyn purchased the washer/dryer because it was the only washing machine with an "allergiene" cycle that would remove allergens that might exacerbate Complainant's condition. (Tr. 19-20, 44-45)

13. Complainant did not request permission from Respondents to install the washer/dryer as a reasonable accommodation before it was installed and Respondents did not have prior notice that Finkelshteyn intended to have the washer/dryer installed in the Apartment. (Tr. 79-80, 272-73)

14. I do not credit Finkelshteyn's testimony that he telephoned Respondents multiple times about purchasing the washer/dryer several weeks prior to purchasing it, as Finkelshteyn did not remember the specific dates of the phone calls or the name of the people with whom he spoke. (Tr. 18-19, 74-80, 370-71)

15. The washer/dryer was delivered to the Apartment on March 20, 2018. (Tr. 47-48; Complainant's Exhibit 10)

16. Finkelshteyn hired a person named "Ramazan" to install the washer/dryer. Finkelshteyn did not know Ramazan's full name, phone number, email address, or physical address. (Tr. 51-52)

17. Finkelshteyn did not remember the date that the washer/dryer was installed. (Tr. 54)

18. Finkelshteyn thinks he paid $200 in cash to Ramazan to install the washer/dryer. (Tr. 58)

19. Finkelshteyn did not ask Ramazan for his plumbing license, insurance, or whether Ramazan had obtained a permit to install the washer/dryer. (Tr. 53)

20. On March 22, 2017, Respondent Rosenblum received an email from a tenant of 1801 Avenue N named Madine Yusupova ("Yusupova")[1], in which she stated,

> "Yesterday at night. . . i felt vibration and a loud vibrating spinning noise in our HOLE [*sic*] kitchen as if like a helicopter is hovering above me or construction going on. . . And my assumption is that our neighbors from upstairs #5C have a huge washing machine. And I assume that because I personally saw delivery people unloading large washing machine from their truck and delivering it to #5C. . . Please help us in this matter. . ."

(Tr. 243-46; Respondents' Exhibit 25)

21. Respondent Rosenblum forwarded the matter to Respondent McConville, who was an employee of Respondent Leemar Management at the time. (Tr. 245; Respondents' Exhibit 25)

22. On March 22, 2018, Respondent Leemar Management sent Finkelshteyn a letter stating that he had ten days to remove the washer/dryer from the Apartment. (Respondents' Exhibit 1)

23. By letter dated April 6, 2018, Finkelshteyn's attorney, Alan Goldberg, responded to the March 22, 2018, letter, stating, "Due to the fact that [Complainant] suffers from various medical impairments, and is in fact a senior citizen in declining health, she qualifies for accommodations under the Americans with Disability Act." (Tr. 36-37; Complainant's Exhibit 6)

24. The April 6, 2018, letter enclosed a letter from Dr. Evan Brathwaite, MD, which stated that Complainant "qualifies for accommodations under the Americans with Disability Act due to her various medical impairments requiring assistance." (Tr. 25; Complainant's Exhibits 2, 6)

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[1] In the transcript, Yusupova is incorrectly referred to as "Madena Usepova." (*See, e.g.*, Tr. 240, 243-46)

25. Thereafter, Alan Goldberg submitted an undated "application for a reasonable accommodation" to Respondent Leemar Management requesting that Complainant be allowed to keep the washer/dryer in the Apartment. (Tr. 29-31; Complainant's Exhibit 4)

26. The application attached a letter dated April 27, 2018, from Dr. Brathwaite stating that Complainant has asthma and bronchitis exacerbated by multiple allergies and that she "needed & benefitted from using a hypoallergenic washing machine!" (Tr. 31; Complainant Exhibits 1, 4, p. 3)

27. On May 15, 2018, Respondent Rosenblum sent a letter to Finkelshteyn on behalf of Respondents Leemar Management and Abingdon Realty confirming that the reasonable accommodation request had been received and scheduling an inspection of the washer/dryer and plumbing in the Apartment for May 30, 2018. (Tr. 89-90; Respondents' Exhibit 5)

28. On May 30, 2018, a representative of Respondents Leemar Management and Abingdon Realty inspected the installation of the washer/dryer in the Apartment. (Tr. 31-32, 88; Respondents' Exhibit 5)

29. On June 27, 2018, Respondent Rosenblum, on behalf of Respondents Abingdon Realty and Leemar Management, sent Finkelshteyn a letter requesting that he provide the license of the master plumber who installed the washer/dryer, the New York City Department of Buildings ("DoB") permits that were obtained in order to install the washer/dryer, and a copy of the master plumber's insurance. (Tr. 38-39, 98; Complainant's Exhibit 7)

30. Respondent Rosenblum also stated, "While we would be willing to grant you a reasonable accommodation, it also must be approved and done under any applicable contracts, rules and laws. You are responsible for the costs that will accompany and be associated with this special installation of a washing machine inside the apartment. To allow for this

accommodation, we will require a separate damage deposit in the amount of $1000.00. Additionally, there will be a monthly charge of $15.00 per month for the additional costs associated with this accommodation. . . . We will also require a separate $1000.00 deposit to ensure that the apartment is returned to its original condition." (Tr. 38-39; Complainant's Exhibit 7)

31. On July 5, 2018, Finkelshteyn hired Highland Plumbing & Heating, LLC ("Highland Plumbing") to inspect the installation of the washer/dryer. (Tr. 32-33, 35; Complainant's Exhibit 5)

32. Highland Plumbing replaced certain pipes and told Finkelshteyn that there was no need to reinstall the washer/dryer because it was "up to code." (Tr. 33, 35, 103; Complainant's Exhibit 5)

33. A DoB permit was not obtained in connection with the installation of the washer/dryer. (Tr. 132, 135)

34. Finkelshteyn refused to remove the washer/dryer from the Apartment. (Tr. 157)

35. On or about July 26, 2018, Respondent Abingdon Realty served Finkelshteyn with a 10-day notice to cure demanding the removal of the washer/dryer from the Apartment. (Complainant's Exhibits 3, 9, p. 7)

36. On or about October 11, 2018, Respondent Abingdon Realty served Complainant, Finkelshteyn, and his wife with a notice of termination. (Tr. 39-40; Complainant's Exhibits 8, 9, P7)

37. On November 19, 2018, Respondent Rosenblum, on behalf of Respondents Abingdon Realty and Leemar Management, wrote to Finkelshteyn asking again that he provide the documents requested in her letter dated June 27, 2018, and informing Finkelshteyn that an

inspection of the washer/dryer had been scheduled for December 4, 2018, to confirm that the installation of the washer/dryer was in compliance with DoB rules, and New York City and State law. (Tr. 134-35; Respondents' Exhibit 12)

38. Finkelshteyn did not allow Respondents or their agents access to the Apartment on December 4, 2018. (Tr. 135-36)

39. On December 4, 2018, Respondent Abingdon Realty commenced a holdover proceeding seeking to evict Complainant, Finkelshteyn, and his wife from the Apartment. (Tr. 132-33, Complainant's Exhibit 9)

40. The holdover proceeding is currently stayed and Complainant still resides in the Apartment. (Tr. 13-15)

41. On April 2, 2019, Respondent Rosenblum, on behalf of Respondents Abingdon Realty and Leemar Management, sent Finkelshteyn a letter advising him that Respondents wished to access the Apartment on April 10, 2019, to "make an assessment" of the washer/dryer. (Tr. 111; Respondents' Exhibit 9)

42. Respondents' representatives arrived at the Apartment on April 10, 2019, and knocked on the door, but were not allowed to access the Apartment. (Tr. 111-12, 119, 270-72, 335; Respondents' Exhibits 30-34)

43. The New York City Administrative Code prohibits the installation of a clothes washing machine in a residential apartment without first obtaining a permit from the DoB. (Tr. 214-16, 218-21, 294-96, 298-99; Respondents' Exhibits 22, pp. 1, 3, 4, and 23, p. 5)

44. New York City Administrative Code § 28-105.1 provides, in pertinent part, "It shall be unlawful to . . . erect, install, alter, repair, remove, convert or replace any gas, mechanical, plumbing, fire suppression or fire protection system in or in connection therewith or to cause any

such work to be done unless and until a written permit therefore shall have been issued by the commissioner in accordance with the requirements of this code, subject to such exceptions and exemptions as may be provided in section 28-105.4." (Respondents' Exhibit 22, p. 1)

45. New York City Administrative Code § 28-105.4 does not exempt the installation of a washing machine from requiring a permit. (Tr. 214-16; Respondents' Exhibit 22, pp. 1, 3, 4)

46. If a DoB permit is not obtained before installing a clothes washer, the installation is illegal and the DoB can issue a formal violation with a penalty. (Tr. 224-25)

47. The installation of the washer/dryer violated the New York City Administrative Code because a DoB permit was not obtained. (Tr. 132, 214-16, 238, 294-96; Respondent's Exhibits 22, pp. 1, 3, 4, and 23, p. 5)

48. Pursuant to New York State Division of Housing and Community Renewal ("DHCR") Operational Bulletin 2005-1, when an owner of a rent stabilized apartment permits a tenant to install a washing machine, the owner may collect a monthly surcharge of $20.76 when the tenant pays for electricity or $22.23 when the landlord pays for electricity. (Tr. 260-62; Respondents' Exhibit 27)

49. The Apartment is not rent stabilized. (Tr. 262)

50. On April 11, 2019, Respondents obtained estimates from a master plumber for the cost to legally install a washing machine in the Apartment, and the cost to legally remove a washing machine from the Apartment. The estimate to install a washing machine in the Apartment was $2,400 plus sales tax. (Tr. 263-65; Respondents' Exhibit 28)

51. The estimate to remove a washing machine from the Apartment was $1,000 plus sales tax. (Tr. 265; Respondents' Exhibit 28)

OPINION AND DECISION

As an initial matter, Complainant withdrew her claims against Respondent McConville, and, accordingly, Complainant's claims against Respondent McConville are dismissed.

N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.18(1) makes it an unlawful discriminatory practice "for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right of ownership of or possession of or the right to rent or lease housing accommodations . . . [t]o refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied . . . if the modifications may be necessary to afford the said person full use and enjoyment of the premises, in conformity with the provisions of the New York state uniform fire prevention and building code except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted."

Human Rights Law § 296.18(2) also makes it an unlawful discriminatory practice "for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right of ownership of or possession of or the right to rent or lease housing accommodations . . . [t]o refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling . . ."

Claims under the Fair Housing Act and the Human Rights Law are evaluated under the same framework. *Stalker v. Stewart Tenants Corp.*, 93 A.D.3d 550, 551, 940 N.Y.S.2d 600, 602 (1st Dept. 2012); *Mitchell v. Shane*, 350 F.3d 39, 47 n. 4 (2d Cir. 2003).

Complainant, by requesting permission to keep the washer/dryer, has requested both a reasonable accommodation and reasonable modification, as the installation of the washer/dryer constituted a modification of the Apartment, and Respondents' rules and policies prohibit tenants from having personal washing machines.

To establish a violation of the Human Rights Law for failure to provide a reasonable accommodation or modification in housing, Complainant must demonstrate that: (1) she has a disability; (2) the accommodation or modification "may be necessary" to afford her an equal opportunity to use and enjoy the apartment; and (3) Respondents refused to make such accommodation or permit the modification. *Lindsay Park Housing Corp. v. New York State Div. of Human Rights*, 56 A.D.3d 477, 478, 866 N.Y.S.2d 771, 773 (2d Dept. 2008), *citing One Overlook Ave. Corp. v. New York State Div. of Human Rights,* 8 A.D.3d 286, 777 N.Y.S.2d 696 (2d Dept. 2004); *see also Hollis v. Chestnut Bend Homeowners Ass'n*, 760 F.3d 531, 541 (6th Cir. 2014) (applying the same standard to claims of reasonable modification and reasonable accommodation in the context of the Fair Housing Act). However, the requested modification or accommodation must be reasonable. *See* Human Rights Law §§ 296.18(1) and (2).

The Human Rights Law defines the term "disability" as "a physical, mental or medical impairment . . . which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or . . . a condition regarded by others as such an impairment." Human Rights Law § 292.21. The evidence established that Complainant has a disability, as she was diagnosed with asthma and bronchitis exacerbated by multiple allergies. Complainant also established that a washing machine with an allergen cycle may be necessary for her to use and enjoy the Apartment, and that Respondent did not permit her to keep the washer/dryer in the Apartment without legalizing the installation.

However, Complainant's request that Respondents allow her to keep the washer/dryer, which was installed without Respondents' permission and without obtaining the appropriate DoB permit, is not reasonable and imposes an undue hardship on Respondents. The Human Rights Law does not require Respondents to permit a modification or accommodation that violates New York City law, particularly given that the Human Rights Law specifically provides that a reasonable modification be performed "in conformity with the provisions of the New York state . . . building code. . ." Human Rights Law § 296.18(1). Indeed, the illegal installation of the washer/dryer could subject Respondents to a formal DoB violation and penalty.

That the DoB had not issued a violation as of the date of the public hearing is irrelevant; committing an unlawful act and not getting caught does not make the act any less unlawful. Because the washer/dryer was not legally installed, Respondents did not violate the Human Rights Law by refusing to permit it unless the installation was legalized. *See Weiss v. 2100 Condo. Ass'n, Inc.*, 941 F. Supp. 2d 1337, 1345–46 (S.D. Fla. 2013) (granting summary judgment to defendants under the Fair Housing Act for not constructing an accessible ramp because of plaintiffs' "refusal to participate with Defendants and to obtain the proper plans, permitting, and payment. . . .").

Complainant also alleged that the monthly fee and refundable deposits requested by Respondents were unreasonable. However, the $15 monthly fee requested by Respondents for water and electricity is reasonable; even though the Apartment is not rent-stabilized, the requested fee is less than the monthly fee permitted by the DHCR for allowing washing machines in rent-stabilized apartments. Furthermore, the requested monthly fee is consistent with the wording of the Human Rights Law (". . . at the expense of a person with a disability . . ."). Human Rights Law § 296.18(1).

Concerning the refundable deposits, the requested amounts were reasonable considering the potential for damage to the building because of flooding and the estimated cost to remove the washer/dryer at the conclusion of the tenancy. Furthermore, the Division has held that a landlord may charge a reasonable refundable fee where a tenant, without first obtaining permission, makes a modification to a premises in order to accommodate a disability. *See Walker v. East Meadow Knolls Redevelopment Company Owners Corp.*, SDHR Case No. 10121068 (December 10, 2009) (holding that a landlord's assessment of a $1,000 refundable fee for the cost of repairing cabinets that Complainant had removed without permission as an accommodation for her disability was "not unreasonable."). However, I note that, as a general rule, housing providers may not require an increased security deposit as the result of a request for a reasonable modification. *See Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications Under the Fair Housing Act* at ¶ 21 (March 5, 2008).

Accordingly, this claim is dismissed.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that the complaint be, and the same hereby is, dismissed.

DATED: August 9, 2019
Bronx, New York

Alexander Linzer
Administrative Law Judge