

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 07-16-69236
HUD# 07-16-4708-8

PARTIES TO THE SETTLEMENT AGREEMENT

RESPONDENTS

JACK L. IRWIN
Highridge Court Apartments
921 Highridge Road - Office
Carroll, Iowa 51401

LUCILLE LEITING
Highridge Court Apartments
921 Highridge Road - Office
Carroll, Iowa 51401

COMPLAINANT

SHAINA MADSEN

and

IOWA CIVIL RIGHTS COMMISSION

400 East 14th Street
Des Moines, Iowa 50319

Description of the Parties:

Complainant alleges Respondents refused to accept her licensed mental health counselor's note and permit her assistance animal to be with her in her dwelling. She alleges such refusal constitutes a failure to make a reasonable accommodation and resulted in different terms and conditions of rental based on disability. Complainant also alleges Respondents terminated her tenancy in retaliation for exercising her right in requesting a reasonable accommodation for her disability. Respondents deny having discriminated against Complainant, but agree to settle this claim in the underlying action by entering into this Predetermination Settlement Agreement. The subject property is a 42-unit apartment complex, known as Highridge Court Apartments, located at 911 High Ridge Road, Carroll, Iowa 51401.

Terms of Settlement:

A complaint having been filed by Complainant against Respondents with the Iowa Civil Rights Commission (hereinafter referred to as the Commission) under Iowa Code Chapter 216 and there having been a preliminary inquiry, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

1. Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against Complainant or any other person for filing a charge under the “Iowa Civil Rights Act of 1965” (ICRA); because of giving testimony or assistance, or participating in any manner in any investigation, proceeding, or hearing under the ICRA; or because of lawful opposition to any practice forbidden by the ICRA. Iowa Code § 216.11(2).
2. Respondents agree the ICRC makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, on account of the person having exercised or enjoyed, or on account of the person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 216.8, 216.8A, or 216.15A. Iowa Code § 216.11A.

Respondents agree the Fair Housing Act (FHA) makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of this title. 42 U.S.C. 3617.

3. Respondents acknowledge the ICRA makes it unlawful to refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status of such person. Iowa Code §§ 216.8(1)(a) and 216.8A(3)(a).

Respondents acknowledge the federal Fair Housing Act (FHA) makes it unlawful to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, national origin, or disability. 42 U.S.C. 3604(a) and (f)(1).

4. Respondents acknowledge the FHA and ICRA make it unlawful to discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability. 42 U.S.C. 3604(f)(2); Iowa Code § 216.8A(3)(b).

5. Respondents acknowledge the FHA and ICRA make it unlawful to refuse to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling. 42 U.S.C. 3604(f)(3); Iowa Code § 216.8A(3)(c)(2).
6. Respondents acknowledge their obligation under the FHA and ICRA to allow assistance animals as a reasonable accommodation when necessary to permit an individual with a disability equal opportunity to use and enjoy a dwelling.

Assistance animals are often referred to as service animals, emotional support animals, therapy animals, companion animals, or support animals. Under the FHA and ICRA, an assistance animal is “not a pet. It is an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates one or more identified symptoms or effects of a person's disability. Assistance animals perform many disability-related functions, including but not limited to, guiding individuals who are blind or have low vision, alerting individuals who are deaf or hard of hearing to sounds, providing protection or rescue assistance, pulling a wheelchair, fetching items, alerting persons to impending seizures, or providing emotional support to persons with disabilities who have a disability-related need for such support.” *Service Animals and Assistance Animals for People with Disabilities in Housing and HUD-Funded Programs*, U.S. Department of Housing and Urban Development, FHEO Notice: FHEO-2013-01, April 25, 2013, at 2.

After receiving a request, housing providers must consider the following:

- (1) Does the person seeking to use and live with the animal have a disability – i.e., a physical or mental impairment that substantially limits one or more major life activities?
- (2) Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person’s existing disability?

A request for accommodation can be denied if the accommodation would impose an undue financial and administrative burden or if it would fundamentally alter the essential nature of the housing provider's services. “The determination of undue financial and administrative burden must be made on a case-by-case basis involving various factors, such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's disability-related needs.” Joint Statement of the Department of Housing and Urban Development and the Department of Justice, *Reasonable Accommodations Under The Fair Housing Act*, May 17, 2004, at 7.

“The request may also 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, or (2) the specific assistance animal in question would cause substantial physical damage to the property of others that cannot be reduced or eliminated by another reasonable accommodation. Breed, size, and weight limitations may not be applied to an assistance animal. A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct — not on mere speculation or fear about the types of harm or damage an animal may cause and not on evidence about harm or damage that other animals have caused. Conditions and restrictions that housing providers apply to pets may not be applied to assistance animals.” FHEO-2013-01 *at* 3.

Respondents acknowledge they will consider each tenant or prospective tenant's situation and accommodation request individually to determine if the requested accommodation is reasonable. The parties acknowledge that if the disability is not known or obvious, Respondents may make a reasonable inquiry and request documentation from a health care provider that verifies the tenant/prospective tenant's disability, without seeking or collecting information regarding the nature of the disability.

In addition, Respondents may make reasonable inquiry and request documentation from a health care provider that verifies the tenant or prospective tenant's need for the accommodation, i.e., the relationship between the person's disability and the need for the requested accommodation.

Respondents acknowledge that assistance animals cannot be subjected to monthly pet fees or pet deposits since they are not considered pets under the FHA or ICRA. Respondents also acknowledge that housing providers cannot require special tags, equipment, certification or special identification for assistance animals.

Voluntary and Full Settlement

7. The parties acknowledge this Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.
8. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in her complaint are not fully meritorious.
9. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.

10. Respondents agree the Commission may review compliance with this Agreement. And as part of such review, Respondents agree the Commission may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the Commission.
11. The parties acknowledge, if the Commission or the U.S. Department of Housing and Urban Development (HUD) has reasonable cause to believe that Respondents have breached this Agreement, the Commission may refer the matter to the Iowa Department of Justice - Office of the Attorney General, and HUD may refer the matter to the U.S. Department of Justice.

Disclosure

12. Because, pursuant to Iowa Code §216.15A(2)(d), the Commission has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. *See* Iowa Code §22.13.

Release

13. Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were or might have been alleged as charges filed with the Iowa Civil Rights Commission, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Jessie Boken, identified by Complainant as an aggrieved party, hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were or might have been alleged as charges filed with the Iowa Civil Rights Commission, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Mr. Boken agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Fair Housing Training

14. Respondents Jack Irwin and Lucille Leiting agree to receive training on the requirements of State and Federal Fair Housing Laws within 90 days of their receipt of a Closing Letter from the Commission. The training will address all aspects of fair housing law, but will emphasize the law regarding how to handle requests for reasonable accommodations from tenants and prospective tenants with disabilities and laws that prohibit retaliation, interference, coercion and intimidation. The training shall be conducted by a qualified person, approved by the Commission or the U.S. Department of Housing and Urban Development.

Respondent also agrees to send documentation to the Commission, verifying the fair housing training has been completed, within ten (10) days of completing the training.

Relief for Complainant

15. The parties agree Complainant and Jessie Boken received a demand from Respondents for \$810 (\$590 rent, \$200 pet fee, and \$20 fees), filed with Carroll Area Victim Services (CAVS), payment due by September 21, 2016. Upon receipt of this signed Agreement, Respondents agree to use the \$800 security deposit paid by Complainant and Mr. Boken to make an \$800 payment to CAVS on Complainant's behalf, on or before September 21, 2016. Complainant agrees to then make a \$20 payment to Carroll Area Victim Services on or before September 21, 2016 to pay the balance owed for the \$810 demand plus a \$10 processing charge.

Respondents agree to dismiss all claims for back rent, pet fees, late charges, other fees, and extra charges against Complainant and Mr. Boken.

Complainant and Mr. Boken agree not to pursue recovery of their \$800 rental deposit in small claims court or in any other process or proceeding.

Respondents agree not to pursue recovery in small claims court or in any other process or proceeding for any or all of the amount, \$2,174.24, they claim Complainant owes them for cleaning and repairing the damage to the subject rental dwelling.

Respondents agree and acknowledge that upon executing this Agreement, Complainant and Mr. Boken's current account statement will reflect a \$0.00 balance.

Within seven days (7) days of receiving a Closing Letter from the Commission, Respondents will send a letter addressed to Complainant to the Commission verifying that Complainant's Tenant Ledger Report reflects a \$0.00 balance. The Commission will then send a copy of the letter to Complainant.

