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June 13, 2023

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VIA: E-MAIL

City of La Crosse Human Rights Commission
c/o La Crosse City Clerk
400 La Crosse Street
La Crosse, WI 54601

RE: Kenzie McCoy Discrimination Complaint

Dear Human Rights Commission,

This law firm represents Three Rivers Rentals, LLC ("Three Rivers") regarding the discrimination complaint that was filed by Kenzie McCoy. Please consider this letter to be our written reply. At the hearing on June 14, 2023, we can provide clarifications and answers to questions regarding our position.

The Human Rights Commission ("Commission") should not make a probable cause finding because (1) the Complainant did not allege that Three Rivers violated any of the prohibited practices outlined in La Crosse Ordinance 22-25(a); and (2) the Complainant incorrectly states that she is not liable by law for damages caused by an Emotional Support Animal ("ESA").

I. The Commission does not have jurisdiction.

The Complainant alleges that she was discriminated against when her security deposit was withheld to pay for damages caused by her ESA. The City's Declaration of Policy (Ordinance 22-22) says, in part, that the goals of the Ordinance are to:

- Provide equal opportunities in housing;
- Prevent denial of equal opportunity in housing; and
- Provide adequate safeguards against discrimination in housing.

In support of the Declaration of Policy, La Crosse City Ordinance 22-25 (a), which is entitled "Housing Discrimination Prohibited" provides specific prohibited acts, none of which are applicable to this situation:

(a) Except in the individual home wherein the renter or lessee would share common living areas with the owner, lessor, manager or agent, it is unlawful for any person to discriminate:

- (1) By refusing to sell, lease, finance or contract to construct housing or by refusing to discuss the terms thereof.*
- (2) By refusing to permit inspection or exacting different or more stringent price, terms or conditions for the sale, lease, financing or rental of housing.*
- (3) By refusing to finance or sell an unimproved residential lot or to construct a home or residence upon such lot.*
- (4) By publishing, circulating, issuing or displaying, or causing to be published, circulated, issued or displayed, any communication, notice, advertisement or sign in connection with the sale, financing, lease or rental of housing, which states or indicates any discrimination in connection with housing.*
- (5) For a person in the business of insuring against hazards, by refusing to enter into, or be exacting different terms, conditions or privileges with respect to, a contract of insurance against hazards to a dwelling.*
- (6) By refusing to renew a lease, causing the eviction of a tenant from rental housing or engaging in the harassment of a tenant.*
- (7) In providing the privileges, services or facilities that are available in connection with housing.*
- (8) By falsely representing that housing is unavailable for inspection, rental or sale.*
- (9) By denying access to, or membership or participation in, a multiple listing service or other real estate service.*
- (10) By coercing, intimidating, threatening or interfering with a person in the exercise or enjoyment of, or on account of such person having exercised or enjoyed, a right granted or protected under this article, or with a person who has aided or encouraged another person in the exercise or enjoyment of a right granted or protected under this article.*
- (11) By otherwise making unavailable or denying housing.*

The stated purpose of this statutory scheme is to prevent discrimination against individuals, which is a straightforward and legitimate purpose for this Commission. Nowhere in the City's Declaration of Policy does it indicate that the Commission was created to adjudicate relatively common security deposit disputes after the conclusion of a tenancy.

The Complainant's facts, even if true, would not authorize this Commission to act because none of the alleged actions fall within Ordinance 22-25(a)(1)-(11). The Complainant seeks to have this Commission resolve security deposit disputes. The Commission is not authorized to conduct such an inquiry or hearing under the City's authorization in the Ordinance.

In this case, the Complainant's lease had expired and she had moved out of the premises before a dispute arose. The Complainant was not evicted or otherwise barred from housing opportunities. While residing at Three Rivers, the Complainant was allowed to have an ESA, was not charged a pet deposit for the ESA, and was not evicted for having an ESA.

The Commission should dismiss the Complaint because none of the allegations, if true, would be a violation of Ordinance 22-25(a).

II. Even if the Commission did have jurisdiction, the Complainant is responsible for damages caused by her ESA during her tenancy.

Three Rivers believes the Commission should dismiss the Complaint for the reasons submitted above. However, my client does not want the Commission to leave with the impression that Three Rivers engages in unlawful discrimination and merely seeks a technical defense. The Complainant's claim also has no merit pursuant to Wisconsin law.


The Complainant writes without citation to legal authority that "it is illegal to charge for wear and tear, including the smell of an ESA." This is incorrect.

Wis. Stat. § 106.50(2r)(bg)3 says unequivocally that a landlord is able to charge a tenant for damages caused by an ESA, including sanitation damages, such as odors. Similarly, landlords can deduct from a security deposit for wear and tear caused by the tenant (a landlord is not allowed to deduct for *normal* wear and tear). In this case, the wear and tear caused by the Complainant's ESA was in excess of normal wear and tear.

For the reasons stated above, the Commission should dismiss this Complaint.

Very truly yours,

JOHNS, FLAHERTY & COLLINS, S.C.


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cc: La Crosse Assistant City Attorney Ellen Atterbury