

IN THE MATTER OF THE *YUKON HUMAN RIGHTS ACT*

AND IN THE MATTER OF

Robin Friesen v Sternwheeler Holdings Ltd.

BOARD DECISION

Appearances

Robin Friesen Complainant

Susan Roothman Counsel for the Yukon Human
Rights Commission

Barbara LaChapelle Respondent
Sternwheeler Holdings Ltd.

Panel Members

Barbara Evans, Chief Adjudicator
Donna Mercier, Adjudicator
Michael Dougherty, Adjudicator

Heard: Whitehorse, Yukon

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I. What is this complaint about?

This human rights complaint is about whether Sternwheeler Holdings Ltd., the Respondent, discriminated against Robin Friesen, the Complainant, on the basis of her mental disability, Fetal Alcohol Spectrum Disorder (FASD), in terminating her tenancy and thus, failed to properly accommodate her mental disability.

Relevant sections of the Yukon Human Rights Act (Act) are:

7. It is discrimination to treat any individual or group unfavourably on any of the following grounds...

(h) physical or mental disability;
"mental disability" means any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, or learning disability;

8. (1) Every person has a responsibility to make reasonable provisions in connection with employment, accommodations, and services for the special needs of others if those special needs arise from physical disability, but this duty does not exist if making the provisions would result in undue hardship.

8 (2) For the purposes of subsection (1) "undue hardship" shall be determined by balancing the advantages and disadvantages of the provisions by reference to factors such as:

- safety;
- disruption to the public;
- effect on contractual obligations;
- financial cost;
- business efficiency.

9. No person shall discriminate

...

(d) in connection with any aspect of the occupancy, possession, lease, or sale of property offered to the public.

II. Who are the Parties?

Initially, there were two complaints referred to the Board of Adjudication: one by Mr. Justin Charlie and another by Ms. Robin Friesen, who at the time of the Complaints were common-law spouses with one child.

The Board received notice that Mr. Charlie withdrew his Complaint. This matter, therefore, recognizes Ms. Friesen as the sole Complainant. Ms. Friesen was not represented by independent legal counsel.

The Respondent was represented by Ms. Barbara LaChapelle, Manager of Sternwheeler Village apartments. Ms. LaChapelle was not represented by legal counsel.

The Yukon Human Rights Commission was represented by Ms. Susan Roothman carrying the Complaint referred to the Board of Adjudication for determination.

III. What are the circumstances giving rise to the Complaint?

The Complainant, Ms. Friesen, has been diagnosed with partial FASD. Ms. Friesen and Mr. Charlie participated in programs of the Fetal Alcohol Syndrome Society of the Yukon (FASSY). FASSY provides support workers to help their clients with the management of everyday living.

Initially, Ms. LaChapelle was contacted by Ms. Shirley McKay, the support worker helping the Complainant at the time, in regard to availability of an apartment for Ms. Friesen, Mr. Charlie and their child, on a short notice. They had decided to leave their previous residence after a tenancy of approximately six months.

Ms. McKay advised Ms. LaChapelle about the nature of the FASSY program. Ms. McKay assured Ms. Lachapelle that the Ms. Friesen and Mr. Charlie would be provided with ongoing assistance by FASSY in managing their daily life, including matters such as paying bills and booking appointments. This included the facilitation and support of the landlord-tenant relationship. Ms. LaChapelle, agreed to cooperate with the FASSY workers.

On December 1, 2005, the Complainant and her partner, Mr. Charlie, moved in to #64 - 96 Lewes Boulevard, a townhouse owned by the Respondent, Sternwheeler Holdings Ltd.

At the initial meeting, the tenants were provided a tenant package and asked to complete the lease agreement documents. They were also advised of the 'rules' which were posted in the manager's office where they met. The rules included:

- Bring any repair concerns to the attention of the Landlord immediately.
- No painting of any area, basement excepted.
- Rent to be paid on time, and any rent more than five days late was subject to a late rent fee.
- Report if they would be absent for more than 14 days from the apartment.

They agreed to complete and sign the lease documents and follow the rules as explained.

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At that meeting, Ms. Friesen made an attempt to do the paperwork when Ms. LaChapelle told her that she had an appointment. When Ms. Friesen advised that she would need help, Ms. LaChapelle responded she would assist her any day except a Monday night. Ms. Friesen did not contact her again for assistance.

During the first month of tenancy, the Complainant was away from the apartment for a number of days visiting family. During the absence, someone broke into the unit and stole a number of items. A window was broken to gain access. Ms. LaChapelle advised the tenants that the cost to repair the window was their responsibility and the Complainant promised to pay the amount of \$60.00 for the broken window when she received her child tax rebate in February.

In January or February of 2006, the Kwanlin Dun First Nation (KDFN) became self-governing, and as a result, the Complainant lost her status as a dependant on her partner's social assistance. The Complainant then applied to the Department of Indian Affairs and Northern Development (DIAND) for rent supplements. DIAND would then pay half the rent (\$425 plus half utilities). KDFN would continue to pay the other half.

Early in the tenancy, Ms. Elaine Seier of FASSY gave Ms LaChapelle approximately \$425.00 as a deposit 'trust' to offset any late rental payments. In essence, half a month's rent was always pre-paid in expectation of late KDFN or DIAND rent payment.

The Complainant and Mr. Charlie purchased furniture and a computer from Easy Home Furnishings on a financed payment schedule, which they did not maintain. Easy Home Furnishings representatives contacted Ms. LaChapelle a number of times in attempts to either gain access to the apartment, or have her contact them when the tenants were at home.

On a number of occasions, Ms. LaChapelle requested:

- Signed lease documents which remained outstanding;
- Payment for the broken window, which had not been paid as promised; and
- That the tenants contact Easy Home Furnishings and ensure that she was no longer harassed by their phone calls.

During the first week of July 2006, Ms. LaChapelle called the Complainant and her partner, leaving a message on their voicemail saying Mr. Charlie's portion of the rent was late again, and that she was still waiting for the \$60 for a window that had been broken in the Complainant's unit. Ms. LaChapelle stated that she wanted to speak with Ms. Friesen and Mr. Charlie, not their FASSY worker. Ms. LaChapelle said: "If you guys can't deal with me directly, you're going to be moving."

The message was retained by the Complainant who took it to FASSY. A FASSY worker, Ms. Deanna Thick (Fred), advised the Complainant to report this to the Yukon Human Rights Commission. FASSY's Executive Director, Ms. Judy

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Pakozdy, contacted Ms. LaChapelle on July 14. Ms. LaChapelle indicated to Ms. Pakozdy that she was willing to meet with Ms. Friesen and Mr. Charlie with a FASSY worker present to resolve the outstanding issues. There is no evidence that such a meeting ever took place. It is unclear why no attempt was made to resolve the issues.

The Complainant received an eviction notice on July 30, 2006, indicating that the Complainant and her partner must vacate the premises by August 31, 2006 as follows:

“NOTICE OF TERMINATION OF TENANCY

Landlord/Agent for Landlord: Barb LaChapelle Phone # 867-667-6882

Tenants: Robin Friesen and Justin Charlie Address: 64-96 Lewes Blvd. Whse, YT

I, Barb LaChapelle hereby give notice that the above mentioned tenant(s) Give up vacant possession (move out) of the about mentioned address on or before the 31st day of August, 2006.

Reason(s): Failure to complete required lease documents and condition reports. Failure to look after financial obligations with Easy Home resulting in multiple phone calls to me asking if you still live here and if I can notify them when you do come home. Failure to return my phone calls. Failure to pay for a window broken by someone unlawfully entering your residence.

Signed and dated this 29th day of July, 2006.

(signature and typed name – Barb LaChapelle)”

IV. The Parties' Positions

There was no issue during the proceedings as to whether or not Ms. Friesen's FASD constituted a mental disability.

As well, there was no dispute over the duty to accommodate a person with special needs if those needs arise from a disability as envisioned in the Act. Specifically, while the Act notes 'physical disability', there is an implied responsibility to accommodate mental disability as well.

The Complainant alleges that by terminating her and her partner's tenancy instead of working cooperatively with the Complainant's FASSY worker, the Respondent breached its duty to accommodate persons with mental or physical disabilities, thereby contravening sections 7(h), 8, and 9(d).

The Commission acknowledged that it, with the Complainant, has the burden to prove a prima facie case of discrimination on a balance of probabilities, noting 'the

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Supreme Court of Canada in Ontario (Human Rights Commission) v. Simpsons-Sears, [1985] 2 S.C.R. 536 at paragraph 28 has defined a prima facie case of discrimination as, "one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent."

The Commission submitted that 'it is not necessary to establish that the prohibited ground was the sole factor or even the preponderant factor for a complaint to be accepted (See Pelletier v. Canada (Canadian Armed Forces), [1997] C.H.R.D. No. 10 at paragraph 76).' They stated that to make a prima facie case, they need only establish that the Complainant had a disability, was treated unfavourably, and show that it was reasonable to infer that her disability played a role in the unfavourable treatment.

The Commission referred to the Ontario Superior Court of Justice (Divisional Court) in ADGA Group Consultants Ltd. v. Lane, [2008] O.J. No. 3076. [Para. 94 to 96: it is not necessary or appropriate to conduct a comparative analysis between treatment of disabled and other persons to establish that conduct is prima facie discriminatory. The reason for this is that a Complaint on the ground of disability brings with it a particular and individualized situation. Once it is established that the unfavourable treatment was because of, or in part because of the Complainant's disability, the Complainant has established a prima facie case of discrimination.

The Commission suggested that in this specific case, the burden actually rests with the Respondent to 'defend their tenancy policy, rules or standards in question as bona fide requirements by fitting it within the framework provided by the Supreme Court of Canada in Meiorin'.

The Respondent submitted that it has proven that a prima facie case had not been made by the Complainant or the Commission, and could not since the Complainant's eviction was not based on her partial FASD. The eviction was based on non-compliance with the rules and regulations for the complex, to be followed by all of the tenants, including those with other types of disabilities.

It is further the position of the Respondent that the tenants would not have lost their accommodations if:

- FASSY followed through with their commitment and ensured their clients' paperwork was properly filed at the beginning of the tenancy
- FASSY had assisted with the paperwork submission after repeated requests
- FASSY had followed up on the phone call to the office regarding Easy Home's harassment
- any of her numerous messages to FASSY's workers had been returned
- the Complainant had paid for the window as promised
- there would have been no reason to terminate the tenancy

Ms. LaChapelle stated that on numerous occasions she contacted FASSY asking for help with the tenants and her issues, including bringing them into compliance with the tenancy agreement, and there were either no responses or ineffective responses.

As a result, FASSY's failure to communicate led Ms. LaChapelle to believe the phone call she made to the Complainant stating there were some things she needed to deal with directly with the Complainant was not only justified, but necessary. Further, no one at FASSY had clarified to her that FASSY was not truly an advocate for its clients in all cases and that "if the client does not want us to talk to you then we cannot talk to you" or act on their behalf in any way, unless specifically directed.

V. Discrimination and the Duty to Accommodate:

Generally, discrimination relates to 'differential treatment because of a prohibited ground' which imposes a burden on or denies a benefit from an individual. There is also a social component to the concept of 'disability'. The Supreme Court of Canada recognizes that society's response to disability may, in fact, cause the handicap — e.g. a Landlord refuses to install a handrail in shower, which then results in a person's inability to live independently. Here, the handicap is not caused by the disability, but instead is caused by the absence of accommodation, not dealing with the social and physical barriers that prevent independent and inclusive living.

The goal of accommodation is to try to make 'different' people fit into existing systems [Meiorin]. Accommodation seems to mean that we do not change procedures or services, we simply 'accommodate' those who do not quite fit. The duty to accommodate means that structures, policies, rules, must ensure that every person is able to fully enjoy equal benefit, equal treatment, equal rights and equal access with respect to housing, in a reasonable and acceptable timeframe. There is also the requirement that a person who needs an accommodation must request such accommodation.

VI. Case Law

The Commission submitted the case decided by the British Columbia Human Rights Tribunal when it dealt with a similar matter in *Alexander v Pal Vancouver*, [2006], B.C.H.R.T.D. No. 461. There, the Tribunal adapted the *Meiorin* test for tenancy complaints by considering the following questions:

- Did the Respondent adopt the standards in question for a purpose rationally connected to the operation of the Apartment?
- Did the Respondent adopt the particular standards in question in an honest and good faith belief that they were necessary to the fulfillment of a legitimate purpose related to the operation of the Apartment?
- Were the standards reasonably necessary to the accomplishment of those legitimate purposes? To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individuals sharing the characteristics of the claimant without imposing undue hardship upon the Respondent.

The Ontario Superior Court of Justice in *Eagleson Co-Operative Homes Inc. v. Theberge*, [2006], 274 D.L.R. (4th) 359 at paragraph 2 found that evicting a person for failing to perform a requirement of continued tenancy due to disability constituted discrimination. The Court said that "the *Ontario Human Rights Code* must be considered and applied by the Co-op and by the Court hearing an application for a writ of possession under the *Co-Operative Corporations Act*, before evicting a resident with a disability for reasons related to the disability."

The same argument is applicable to tenancy complaints pursuant to the Yukon Act for reason that the Yukon *Human Rights Act* is paramount pursuant to section 39 of the Act when it states: "This Act supersedes every other Act, whether enacted before or after this Act, unless it is expressly declared by the other Act that it shall supersede this Act."

VII. Issue before the Board

According to the Commission, the issue before the Board is whether the Complainant's eviction was based on the fact that she has a mental disability. The Commission submitted that her mental disability was clearly a factor in her eviction.

Ms. LaChapelle knew that the Complainant has FASD when she moved into the apartment. Ms. McKay, the Complainant's FASSY worker at the time, made the arrangements with Ms. LaChapelle for the Complainant and told Ms. Friesen about this. Ms. LaChapelle at first presented to the Board that she was not that well informed by Ms. McKay about what FASD is all about, but admitted under cross-examination by the Commission that she was fairly well informed. These both conform with previous statements made to the Commission's investigator, contained in the various interview notes which were entered before the Board as Exhibit 1, Tabs 4, 5 and 6.

When the arrangements were made by Ms. McKay with Ms. LaChapelle for the Complainant to lease the apartment, Ms. LaChapelle agreed to work with FASSY to accommodate the Complainant's disability. This meant that any problem experienced during the tenancy could be brought to FASSY's attention and that FASSY would assist the tenant and landlord to solve the issue.

Ms. Pakozdy, the former FASSY Executive Director, stated that "People with FAS are not good tenants, they don't understand the rules, have poor judgment, let people in who victimize them emotionally, financially, physically. This is not an isolated incident. Of our 50 clients about 20 have these issues every year. They get evicted every three or four months. Very few stay a full year in any place."

According to the evidence of Ms. Pakozdy, an issue that usually results in the eviction of tenants with FAS is non-payment of rent. This issue in the case of the Complainant however was effectively addressed by FASSY worker Ms. Seier when she provided financial coverage to Ms. LaChapelle in the event of rent being late. Late rent was a factor in the Complainant's case because the rent was paid by DIAND and administrative problems on their side caused delays. The rent was, however, guaranteed and default payment was not a problem. Late rent was also not a noted reason for the eviction.

Problems between the Ms. LaChapelle and the Complainant evolved around the completion of the lease agreement package, payment for a broken window and telephone calls by Easy Home Furnishings to the landlord. Ms. LaChapelle insisted that the Complainant should address

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those issues with her personally and not through the FASSY worker. She left a voicemail message in this regard for the Complainant. Ms. LaChapelle gave evidence that tenants were expected to pay for damages to their apartments. The broken window in the Complainant's apartment was caused by a break-and-enter while she was visiting family in Haines Junction. Despite the fact that the *Landlord and Tenant Act* says that tenants are only responsible for damages caused by willful or negligent conduct by the tenant, the Complainant agreed to make restitution of \$60.00. Ms. McKay said in her testimony before the Board that it was hard on the Complainant to expect payment for the window from her, or to expect her to have insurance since she had scarcely enough money to buy food.

Ms. LaChapelle could not give any explanation why she was not able to solve those issues through the FASSY worker except for alleging that FASSY never returned her calls. Ms. Seier gave evidence that FASSY will never ignore a phone call from a landlord due to the fact that housing is a serious problem for people with FAS and that housing issues are a priority to FASSY. She also said that FASSY has an answering service, that all FASSY workers have cell phones and that the cell phone numbers are provided to landlords, including Ms. LaChapelle. Messages on the answering service are written in a message book that is checked regularly by all FASSY workers.

Evidence was also led that FASSY workers stand in for one another, that regular meetings are held to discuss problems. Under cross-examination by the Respondent, Ms. Seier said that it is possible for some messages to slip through the cracks, but that it is not possible for all messages to do so. The Commission submits that Ms. LaChapelle's evidence about how many times she called FASSY and that none of her calls were returned cannot be accepted against the preponderance of evidence to the contrary.

Evidence of Ms. Pakozdy, Ms. Thick (Fred) and Ms. McKay all confirmed that a person with FASD will get physical with peers but will shy away from a person in authority when they are contacted directly about a problem. They described this as 'fight or flight' response and that this behavior is typical of the Complainant. Ms. Thick (Fred) and Ms. McKay gave evidence that the Complainant will hide away, not answering the door or the telephone and not returning calls, saying she completed the forms when she in fact hadn't, all because of her disability. Those are the reasons why it was important for the landlord, Ms. LaChapelle, to work with FASSY workers to facilitate the tenancy agreement. This was seen as the necessary accommodation plan expected from her as the landlord.

While the voicemail message from Ms. LaCapelle clearly indicates that she expected the Complainant to work directly with her without FASSY's mediation, a later call from Ms. Pakozdy noted that Ms. LaChapelle was willing to have a FASSY worker in attendance at a meeting in July 2006 with the Complainant and Mr. Charlie. Ms. LaChapelle did not decline to honor her informal agreement with FASSY.

The FASSY workers involved with the Complainant all gave evidence before the Board that their role as FASSY workers with a client having FASD is that of an outreach advocate and support for clients in their daily living. As outreach advocates, they help doctors, lawyers, landlords and others to understand what FASD is all about. In their support role, they do hands-on work with their clients and are on call 24 hours a day. The FASSY workers described themselves as the 'go betweens' between a landlord and a tenant with FASD.

The allegation was that the Complainant was treated unfavourably by the Respondent when the Respondent evicted her for the reasons set out in the Notice of Termination of Tenancy (see Exhibit 1, Tab 1). None of the reasons provided in the said Notice is mandated by the *Landlord and Tenant Act*, nor do they reflect any of the tenancy rules set out in Schedule "A" to the Respondent's Residential Tenancy Agreement (see Exhibit 1, Tab 2). The landlord, Ms. LaChapelle admitted during cross-examination by the Commission that the Complainant was not in breach of any of the provisions of the *Landlord and Tenant Act* or the tenancy rules at the time the Notice of Termination of tenancy was served on the Complainant.

Other issues were brought forward by the Respondent: for example, the condition of the apartment and painting being done without consent. She conceded after evidence of various FASSY workers about the condition of the apartment that the apartment was clean when the Complainant moved out and that she had to have the carpets "professionally" done despite the fact that the Complainant with assistance of FASSY workers steam-cleaned the carpets. The Rental Condition Report with respect to the apartment was entered as Exhibit 2 before the Board and confirms that initial allegations of the Respondent about the condition of the apartment were untrue and exaggerated. The parties agreed to amend the report, which resulted in a number of comments that were not applicable to the Complainant's rental of the apartment.

Further, Ms. LaChapelle only became aware of the painting that the Complainant had done after the Complainant was evicted. She admitted that the painting issue is the only tenancy rule that the Complainant did not abide by. Her evidence was that there was

repainting done in the bathroom and that the kitchen cupboard doors had to be removed for stripping paint and repainting. Ms. Seier gave evidence that the painting done by the Complainant was an improvement and that she was assisted by a FASSY worker with the painting job. The Complainant gave evidence that the bathroom walls were covered by mould and the only solution was to paint it.

Ms. LaChapelle gave evidence that she covered all damages to the apartment from the deposit paid by KDFN on behalf of the Complainant. She was required to produce proof of damages by the Commission and the Board directed her to provide it, but neither the Commission nor the Board received it. Ms. LaChapelle confirmed that she had not paid the balance of the deposit to KDFN.

Ms. LaChapelle gave evidence that she follows the *Landlord and Tenant Act* strictly in all her dealings with tenants. The Commission submits that the *Human Rights Act* is paramount. In this regard, the Commission referred to the decision of the Ontario Superior Court of Justice in *Eagleson Co-Operative Homes Inc. v. Theberge*. The Court found that evicting a person for failing to perform a requirement of continued tenancy due to disability constituted discrimination.

From the evidence before the Board that is Exhibit 7 [Handwritten note of Ms. Pakozdy and typed notes of Ms. Thick (Fred)], there was contact between FASSY and Ms. LaChapelle on July 14, 2006. In it, Ms. LaChapelle agreed to meet with Ms. Friesen and Mr. Charlie with a FASSY worker present. The Complainant received the notice of termination of tenancy over two weeks after this contact was made. No evidence of a meeting to address the issues was provided.

The Commission submitted that it is clear from an analysis of the evidence that the Complainant was evicted for reasons closely connected to her mental disability. It is further submitted that the only accommodation required from the Respondent's landlord was to work with FASSY to facilitate the tenancy agreement. The Commission submits that this was an uncomplicated accommodation and did not pose any undue hardship for the Respondent.

The Respondent held that the Complainant had not met the terms of tenancy that are held for all tenants, even other tenants who have disabilities as defined in the *Yukon Human Rights Act*. She stated that she treated the Complainant fairly and leniently, as evidenced by not taking action for several months as she tried to get help with the lease agreement. She said that FASSY led her down the garden path and left her without the assistance they promised.

A. The Issues

The Board identified the issues to be decided in this case are:

- i) Are the actions of the landlord discrimination? Those actions are identified in this case as the termination of the tenancy.
- ii) Did the Respondent take reasonable steps to accommodate the Complainant at all times, to the point of undue hardship?

B. Finding on Discrimination

The Commission has the initial burden of establishing a prima facie case that there is credible evidence to support Ms. Friesen's claims of discrimination and, if shown, that the Landlord failed to accommodate her to the point of undue hardship.

The Respondent must then reasonably explain that their conduct was not discriminatory as intended in the Yukon *Human Rights Act* and that they acted within their rights and responsibilities as the landlord.

- i) Are the actions of the landlord discriminatory? The action is identified in this case as the termination of the tenancy.**

To make this determination, the Board reviewed the evidence regarding the causes and reasons given for the eviction. Evidence was led that there was money owing for damage to a window, that the legal contract between the tenant and landlord had not been signed, that actions or non-actions resulting from a contract with a furniture company by the Complainant led to harassment to the Landlord and the Complainant failed to contact the landlord when requested.

Constructive discrimination exists where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member.

When issuing a Notice of Termination of tenancy, it is unnecessary to provide reasons if sufficient notice is provided. Ms. Lachapelle, however, testified that she provided reasons so FASSY and the Complainant knew why the tenancy was ending.

Further, the Complainant had been identified as a member of a group identified by a prohibited ground of discrimination at the time of taking tenancy. This fact then demanded that rules, policies or practices of Sternwheeler Holdings Ltd. must accommodate Ms. Friesen to the point of undue hardship in reference to factors such as safety, disruption to the public, effect on contractual obligations, financial cost and business efficiency. They clearly did not.

On a balance of probabilities, the Board finds it is reasonable to assume that the disability was a factor in the termination of the tenancy. Ms. Friesen's eviction therefore was a discriminatory act.

It is also trite law that even if a rule is neutral on the face of it, it will be discriminatory if it adversely affects a specific group characterized by a prohibited ground. The Commission submits that the rule of the landlord expecting direct contact between landlord and tenant discriminates against tenants with FAS and denies them the only accommodation they require, and that is facilitation of the landlord-tenancy relationship by FASSY.

ii) Did the Respondent take reasonable steps to accommodate the Complainant at all times, to the point of undue hardship?

It should be noted that the Yukon *Human Rights Act* specifies that the duty to provide for special needs is limited to needs which "arise from physical disability". The Board does not believe that a landlord's responsibility for accommodation is limited to physical disability. Certainly, case law would hold that accommodation is required for all disabilities.

Undue hardship in the Yukon *Human Rights Act* can be determined by balancing the advantages and disadvantages of the provisions by reference to factors such as safety, disruption to the public, effect on contractual obligations, financial cost and business efficiency.

Guidance provided by current case law suggests that the questions to be answered include:

- Did the Respondent adopt the standards in question for a purpose rationally connected to the operation of the apartment?
- Did the Respondent adopt the particular standards in question in an honest and good-faith belief that they were necessary to the fulfillment of a legitimate purpose related to the operation of the apartment?
- Were the standards reasonably necessary to the accomplishment of those legitimate purposes? To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individuals sharing the characteristics of the Claimant without imposing undue hardship upon the Respondent.

In this matter, the Board finds the reasons stated for the eviction to be relatively trivial. The reasons given by the landlord do not pass the test as set out in the *Alexander v. Pal Vancouver* case that is the last or third part of the test that it was impossible to accommodate the Complainant without incurring undue hardship.

The accommodation requested in this matter was uncomplicated. Ms. LaChapelle was asked to accept the facilitation of the landlord-tenant relationship with Ms. Friesen by FASSY. The landlord simply had to contact FASSY to assist her with the Complainant. The Board notes that Ms. LaChapelle did offer to meet once to address the issues resulting in the eviction; however, this was not sufficient.

Based on these questions, the reasons stated by Ms. LaChapelle in her Notice of Eviction of July 29, 2006, cannot be seen as having provided for the needed level of accommodation of Ms. Friesen. Clearly, an accommodation was not made for her disability to the point of undue hardship.

VIII. The Yukon Human Rights Board of Adjudication's Conclusions

Constructive discrimination refers to rules, policies or practices which may not be intentionally discriminatory, but which may have a discriminatory effect on a group that is protected under the Act. Intent is, in this case, not relevant. Rules, policies or practices must accommodate persons with a known disability to the point of undue hardship. Under the Act, this is determined by this Board balancing the advantages and disadvantages of the provisions" of the accommodation in reference to factors such as safety, disruption to the public, effect on contractual obligations, financial cost and business efficiency.

Ms. LaChapelle knew that Ms. Friesen had FASD. Ms. LaChapelle and FASSY had an informal agreement to work with Complainant to accommodate her needs. Ms. LaChapelle held that the eviction was based on non-compliance with the rules and regulations for the complex, to be followed by all of the tenants, including those with other types of disabilities. The duty to accommodate extends beyond treatment of all tenants equally. Rather, it requires that every individual who is known to have special needs receives appropriate accommodation to ensure that the person does not suffer unfair treatment and, further, addresses any action needed to assist the person in independent and inclusive living.

The reasons stated in the eviction notice given to Ms. Friesen do not demonstrate to this Board that Ms. LaChapelle accommodated Ms. Friesen to the point of undue hardship. Therefore, the Board finds that Sternwheeler Holdings Ltd. did discriminate against Ms. Friesen by failing to accommodate her mental disability. This failure resulted in her eviction.

IX. Damages and Remedy

In the evidence before the Board on the impact of the eviction on the Complainant, Ms. Friesen stated that "it was not a good feeling at all." Ms. Friesen said she was pregnant at the time and she was worried. When asked she wanted from Ms. LaChapelle, Ms. Friesen told the Board she wanted an apology and the repayment of the balance of the damage deposit to KDFN.

This Board has no difficulty ordering this relief, and does so.

The Board notes that the Ontario Superior Court of Justice said in the *ADGA Group Consultants Ltd. v. Lane* case that there is a presumption in favour of the making of an award of damages in human rights cases and the Yukon Legislature has indicated the desirability of compensatory financial losses resulting from discriminatory practices.

This Board is not inclined to award any further compensation or costs to the parties involved.

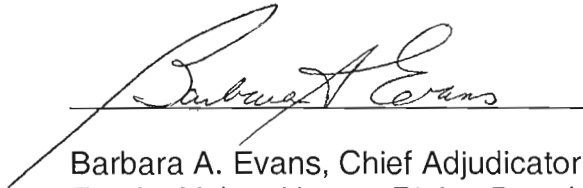
Awarding compensation should be the applicable norm except if some good reason for it not to be awarded can be proven. In this case, Ms. Friesen's disability demanded the active intervention of an advocate. Evidence was given that well before the eviction in response to a voicemail message, all parties knew a crisis was at hand. The Commission was even involved prior to the discriminatory act at the behest of Ms. Friesen and FASSY. While Ms. LaChapelle agreed to meet with Ms. Friesen with a FASSY worker present, no evidence was presented that such a meeting ever took place or any other attempt was made to resolve the outstanding issues before or after an eviction notice was given to Ms. Friesen.

This lack of advocacy in mitigating the potential harm of an eviction led to a cycle being played out that is all too often experienced by FASSY workers and their clients. No one at FASSY had clarified to Ms. LaChapelle that FASSY was not truly an advocate for its clients, that they are bound by the wishes of their clients. In all cases "if the client does not want us to talk to you then we cannot talk to you" or act on their behalf in any way, unless specifically directed.

Yukon Human Rights Board of Adjudication

The failure to provide the needed intervention breached the informal accommodation asked for and agreed to by the Parties. Therefore, in the estimation of this Board, Ms. LaChapelle consequently cannot bear the full burden usually imposed in such matters.

Decided this 28th day of September 2009 at the City of Whitehorse in the Yukon



Barbara A. Evans, Chief Adjudicator
For the Yukon Human Rights Board of Adjudication