FRIENDS AND FOES

This month's legal entanglements feature a tenant's diabetic boyfriend and a landlord who sought to have a tenant evicted without going the normal summary process route. In both cases, for better of worse, the relevant statutory provisions were applied fairly liberally.

The tenant in *Fortin v. Marty Green Properties, LLC* rented an apartment in Northbridge. In 2015 she started a relationship with a boyfriend who moved in one year later. The landlord's property manager didn't seem to care; there's no indication that the boyfriend submitted a rental application or was otherwise screened. The manager did object, however, after becoming aware that the boyfriend had brought along a dog notwithstanding the building's policy prohibiting animals.

The boyfriend suffered from diabetes and claimed that the dog had a natural ability to detect changes in the boyfriend's blood sugar level, nudging the boyfriend and whimpering repeatedly to signal the possible need for medical intervention. His doctor issued a letter making the same assertion. The tenant, on behalf of the boyfriend, requested that the dog be allowed to remain as a reasonable accommodation under the fair housing laws, given that a diabetic is considered a disabled person entitled to special dispensation. Instead, the landlord sought to have the tenant evicted, citing a violation of the building's policy as well as nonpayment of rent. The boyfriend departed, taking the dog with him, and the eviction case was settled, allowing the tenant to remain in occupancy.

Before the landlord commenced the eviction case, the tenant and the boyfriend had filed a complaint with the Massachusetts Commission Against Discrimination against both the landlord and the property manager. There was a three-day hearing in 2022, replete with seven witnesses and 41 exhibits. One key witness was a service dog specialist who debunked the idea that a dog without special training could be born with the innate ability to smell blood sugar on someone's skin or breath. Moreover, the hearing officer wasn't convinced by the doctor's letter, which had been written without any personal interaction between the doctor and the dog. All things considered, there was no basis to conclude that the dog served any medical purpose justifying a waiver of the rule prohibiting animals.

Nonetheless, as the rental housing industry has become painfully aware, medical necessity isn't the sole criterion when it comes to assessing a reasonable accommodation request. In this particular instance, the dog served as a placebo, providing emotional support by letting the boyfriend believe, *however inaccurately*, that his diabetes was being monitored. There was no credible evidence to suggest that the dog posed a health or safety risk to other residents.

What about the fact that the boyfriend wasn't a full-fledged tenant? It didn't matter. The applicable section of the state fair housing law was worded so as to protect disabled *persons*, not just disabled tenants. The hearing officer went one step further and concluded that the tenant herself could also pursue a fair housing claim given that the landlord and the property manager had impaired her right to live with her disabled boyfriend. They were also liable for unlawful retaliation because the eviction action was brought in reprisal for the MCAD complaint and the continuing presence of the dog. While it may have been true that the rent was in arrears, the tenant was habitually late with her payment, which hadn't bothered the landlord in the past.

Damages and fines were levied in the total amount of $47,500 and both the landlord and the property manager were ordered to undergo at least four hours of fair housing training.

Dacey v. Burgess was an unusually favorable decision by the Massachusetts Supreme Judicial Court. After receiving a notice to quit for nonpayment of rent, a tenant took the initiative and sued the landlord, complaining about a bedbug problem and seeking a temporary restraining order to delay any eviction. The parties agreed to mediate and reached a settlement, which the judge also signed. By its terms, the tenant dismissed the complaint, received one free month's rent and agreed to leave the apartment within six months. When he failed to do so, the landlord persuaded a Housing Court judge to enforce the settlement and order the tenant to vacate.

The issue on appeal was whether the landlord should have been required to undertake a full-blown summary process eviction action in order to force the tenant out. Several tenant organizations filed friend-of-the-court briefs in support of the tenant but to no avail. The justices unanimously ruled that this was one of those "limited circumstances in which a landlord's recovery of possession of a leased property may arise outside the context of summary process." Where the parties reach a settlement on their own or with the assistance of a mediator, a judge may enter the settlement agreement as a consent judgment, fully enforceable in accordance with its provisions. In settling, "the parties make a free, calculated and deliberate choice to submit to an agreed upon decree rather than seek a more favorable litigated judgment. Were we to permit the parties to challenge their settlement agreement, which already has been approved by a judge, we would eviscerate the efficacy of the mediation process."

Tenant advocates have contended that *Dacey* will have a "chilling effect" on tenants who bring suit seeking repairs and leave the courthouse with an order to vacate. In their view, the judge who approved the settlement agreement should have warned the tenant (who was unrepresented by an attorney) that he was effectively waiving his right to a summary process hearing. Perhaps, but if the tenant really didn't understand what he was signing, that certainly wasn't the fault of the landlord. The court is to be commended for sparing at least one property owner from prolonged and unjustified litigation.