

**NORTHWEST TERRITORIES HUMAN RIGHTS ADJUDICATION PANEL**

**BETWEEN:**

**Elizabeth Portman**

**Complainant**

**-and-**

**Midwest Property Management**

**Respondent**

**-and-**

**Northwest Territories Human Rights Commission**

**Party**

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**Reasons for Decision**

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**Before:** Paul Parker, Adjudicator, Human Rights Adjudication Panel

**Hearing Dates:** May 25, 27, 31, 2021; June 1, 11, 2021; October 21, 2021

**Hearing Location:** Yellowknife, Northwest Territories

**Appearances:** Elizabeth Portman, the Complainant

Samantha Kernahan, Counsel for the Respondent, Midwest Property Management

Roger Wah Shee, Counsel for the Northwest Territories Human Rights Commission

**Authorities Considered:**

*Human Rights Act*, S.N.W.T. 2002, c. 18

*United Nations Convention on the Rights of Persons with Disabilities*, 13 December 2006,  
U.N.T.S. 2515

*Universal Declaration of Human Rights*, 10 December 1948, GA Res. 217A(III)

*Hughes v. Elections Canada*, 2010 CHRT 4

*Moore v. British Columbia (Education)* 2012 SCC 61

*Council of Canadians with Disabilities v. VIA Rail Canada Inc.* 2007 SCC 15

*British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3

*Québec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron*,  
2018 SCC 3

*Central Okanagan School District. No. 23 v. Renaud*, 1992 CanLII 81 (SCC), [1992] 2 S.C.R. 970

*Walsh v. Mobil Oil Canada* 2008 ABCA 268 at paras. 65-91

*Virk v. Bell Canada (Ontario)*, 2005 CHRT 2

**Date Issued:** July 28, 2022

**Introduction:**

[1] This decision addresses a human right complaint against Midwest Property Management. The case is about whether the respondent discriminated against the complainant on the basis of disability.

[2] The complainant alleges she is a person with a disability and requires accommodation with respect to accessing the apartment building where she has lived since 2010. She makes allegations of discrimination related to four main areas: the main entry way to the apartment building, the external and internal doors of the building, access to the building's laundry facilities and the removal of household garbage.

[3] The complainant has also made a complaint of retaliation against the respondent.

[4] The evidence in this hearing consisted of documents submitted by each party and testimony from three witnesses, including the complainant. Each party submitted written submissions and then gave further oral submissions.

**Decision:**

[5] The evidence establishes a *prima facie* case that the complainant was discriminated against by the respondent. The complainant has a characteristic protected from discrimination, namely a disability in the form of progressive multiple sclerosis (MS). The respondent operated and maintained an apartment building that functioned in a way that adversely impacted the complainant's ability to access her home in the manner customarily available to the public. The complainant's disability was a factor in the adverse impact.

[6] The respondent did accommodate the complainant's disability to a certain degree. The respondent did accommodate by adding soft closers to the interior doors of the apartment building, by providing a personal laundry debit card service and by implementing several different options to address the removal of the complainant's household garbage.

[7] The respondent's actions fell short, however, of accommodating the complainant's disability. The respondent did not adequately address the entry way, by failing to install automatic door openers on the two exterior doors to the building and by installing a ramp that persisted in being an obstacle to the complainant's access to the apartment building. The respondent did not establish that it would suffer undue hardship by correcting the obstacles identified by the complainant.

[8] I find the complainant has not proven the retaliation complaint and it is dismissed for the reasons below.

**Issues:**

[9] The issues addressed in these reasons for decision are as follows:

1. Did the respondent discriminate against the complainant based on disability?
2. Did the respondent accommodate the complainant to the point of undue hardship?
3. If the complaint is established, what is the appropriate remedy?

4. Did the respondent retaliate against the complainant for filing the human rights complaint?

### Summary of the Evidence

[10] The following is evidence that is uncontested and accepted as fact:

- In 2010, the complainant moved into an apartment building owned and operated by the respondent.
- The machines in the building's laundry room require an electronic debit card for use. The debit cards are recharged using a machine which is located in another apartment building owned by the respondent. The complainant went to the other building about once a month to recharge her debit card prior to July 2012. The laundry card machine is owned and maintained by a third party.
- In July 2012, the complainant started having difficulties accessing the other apartment building due to her disability. She arranged with the respondent for a pre-loaded debit card to be brought to her upon request. This was done for approximately six years leading up to the filing of the human rights complaint.
- In July 2017, the complainant started corresponding with the respondent by e-mail about issues related to accessibility in the building.
- By e-mail and in person, the complainant discussed accessibility issues with the respondent's senior maintenance manager. The complainant also provided the respondent with a guide to barrier-free accessibility for persons with disabilities.
- Entry to the complainant's apartment unit involves going through four doors: an external main door, an inner main door, a door to the hallway and her apartment door.
- The complainant also uses the three inner doors to access the laundry room used by all tenants.
- The complainant has had great difficulty opening the main external doors due to the weight of the doors.
- The complainant had additional difficulty opening the inner doors and then keeping them open to pass through.
- In September 2017, the respondent offered to move the complainant into another apartment tower it owned and operated. That building had power assisted openers on the main entry doors and an elevator servicing the apartments. The rent would be the same as the complainant's apartment.
- After viewing the new apartment, the complainant declined the invitation to move as she was not satisfied with the condition of the building and complained that the building had similar accessibility issues to her apartment building.
- In July 2017, the respondent installed a small ramp to the existing stairs and added a railing. These renovations added more steps to the entry way.
- In December 2017, as a result complainant's continuing concerns about the inaccessibility of the apartment building, the respondent hired an engineer to assist with building a wheel chair accessible ramp to replace the small ramp in front of the building. The ramp was completed in December 2018.
- The accessible ramp has a metal grating that provides some grip. After installation of the ramp, some adjustments were made by the respondent to meet the National Building Code and the city's building by-laws.
- In October 2018, the respondent installed soft openers on the interiors doors of the building to alleviate the weight of the doors to make them easier to open and close.

- The apartment building has two exterior garbage bins with lids that lift up. As the complainant's strength declined, she had difficulty opening the bins. She started using a side door on one of the bins to put her garbage in until it was welded shut and could not be used.
- The respondent placed a small garbage pail outside the main garbage bins. After the complainant said the smaller bin was not accessible to her, the respondent arranged for her garbage to be picked-up outside her apartment door. That personal garbage pick-up service occurred between October 2017 and November 2018.
- In November 2018, the respondent arranged to have a 40-gallon residential garbage bin just outside the main garbage enclosure. At first, there was a lock on the bin and the complainant was given the key. Later the lock was removed at the complainant's request as she had difficulty taking the lock on and off. This garbage bin remained in use by the complainant at the time of the hearing of the human rights complaint.
- Approximately five months after the human rights complainant was filed, the respondent sent the complainant a new lease agreement to review. The new lease included an increase in monthly rent of \$50.00. The complainant's rent had not been raised in eight years.
- By e-mails to the respondent, the complainant resisted paying higher rent due to the excessive noise made by her neighbours which affected the quiet enjoyment of her own apartment.
- The respondent responded that it had sent notices to certain tenants that had been the subject of noise complaints. The respondent indicated there was little they could do about noise that occurs during day time hours not covered by the local by-law related to noise.

[11] The complainant gave evidence regarding her experience as a person living with MS and the barriers to accessibility she faced living in her apartment building. The following is a summary:

- The complainant was diagnosed with MS in the late 1990s.
- During the last ten years, the complainant experienced progressive symptoms of MS
- She has experienced decreased strength, fatigue, cognitive and short-term memory issues, effects on emotional regulation and depression, and problems with hearing and vision.
- The complainant's balance is affected by MS. She uses two walking canes to get around and often loses balance trying to open and hold the main entry doors to the building due to the weight of the doors. The effort can be taxing.
- It is difficult to operate the main doors when she is carrying garbage bags or groceries and trying to hold her canes. She is constantly losing her balance and then correcting whilst keeping the doors open.
- There are times the complainant wanted to leave her apartment to go out for a walk, but did not do so because she did not want to fight the doors to get outside.
- The complainant deliberately chose a first-floor apartment when she moved into the building due to the impacts of living with a disability.
- When the complainant moved into the apartment building there was a bit of a slope in the front of the building and three or four steps leading to the main entry doors.
- In 2017, the complainant started to experience greater difficulty accessing the building and her apartment due to worsening symptoms of MS.
- In July 2017, the complainant started corresponding with the respondent by e-mail raising issues of accessibility in the apartment building, first to the senior maintenance manager and then later to the vice-president. The complainant advised the respondent about which accommodations would be address her mobility issues and also sent materials related Canadian standards for reducing barriers to accessibility. The complainant highlighted information about accessible ramps and noted the potential tripping hazards due to the use of metal grating on ramps.

- The complainant says her e-mail correspondence with the senior property manager was difficult due to his ignorance about human rights issues and accessible building codes. The communication with the respondent improved once she escalated her correspondence to the senior vice-president.
- The complainant says the accessible ramp installed by the respondent is one of the best ramps she has seen in terms of construction. However, the ramp still presents a barrier to accessing the apartment building as the gaps in metal floor grating are a tripping hazard for the complainant, particularly with the build-up of ice and snow.
- After installation of the new ramp, the complainant e-mailed the respondent on several occasions stating her concerns about the inaccessibility of the ramp and how the build-up of snow and ice prevented safe use of ramp. The e-mails included photographs the complainant had taken of the ramp and its condition.
- The complainant has paid taxi drivers to bring her groceries inside her home or to drop them over her balcony so she does not carry her items on the accessible ramp or through the main doors and risk losing her footing.
- She wants the floor grating on the ramp replaced to address the barriers she faces to access her apartment building.
- The complainant suggests automatic openers be installed on the main doors to make the door accessible.
- The complainant concedes that the soft closers installed by the respondent on the interior doors made the doors and interior of the building accessible to her.
- She says it is inconvenient to wait for a laundry debit card to be delivered, but has lived with it for five or six years. It had become more difficult to get a card filled prior to filing her complaint due to changes in the respondent's staffing. She says the debit card delivery worked for the most part, but did not allow her to spontaneously decide to do her laundry if she did not have a charged-up card.
- About the personal garbage pick-up service, the complainant says the garage would be picked up every couple of days by the cleaners at first, but then staff came less and less frequently to pick it up.
- Another tenant rooted through the complainant's garage bag when she left it outside her apartment door. It was humiliating for her to have garbage in front of her door and she felt embarrassed about being perceived as a litter bug by her neighbours.
- The complainant is able to lift the lid of the smaller residential garbage bin. Every now and then snow builds up around the bin which can makes it difficult to access, but for the most part the smaller bin is accessible to her.
- Although the complainant was not told directly by the respondent to leave her apartment, she did not feel welcome in the building anymore because of the rent increase proposed by the respondent approximately 5 months after the human rights complaint was filed. She believes the rent increase was an act of retaliation by the respondent in response to filing the complaint.

[12] The senior vice president for the respondent gave the following relevant evidence related to the accessibility of the apartment building and the accommodations made by the respondent in response to the complainant's accessibility concerns:

- There are 5,200 apartment units under his management, including 380 units in Yellowknife.
- In September 2017, the senior vice president became aware of the complainant's concerns about the accessibility of her apartment building and unit and her experiences with the senior property manager. The vice president spoke to senior property manager and was then copied on any

further e-mail correspondence between him and the complainant. The vice president thinks communication between them was improved and became more cordial.

- The vice president had extensive discussions with the complainant about how to make the apartment building more accessible.
- The complainant told him the steps into her building were too steep to safely access the front entrance and suggested an accessibility ramp be installed. They also discussed other concerns the complainant had about accessibility, including, the heavy exterior and interior doors and the difficulty with using the stairs at the building where the laundry card machine was located.
- The respondent fills all pot holes in the parking lots of its apartment buildings with gravel to grade the parking lots and areas leading to the buildings. Using gravel is a standard means of repair in Yellowknife.
- The laundry card machines are owned and maintained by a third party company and the respondent does not have control over where the laundry card machines are placed. The company is very difficult to negotiate with. The respondent has tried to have discussions about adding further machines that were unsuccessful until 2019 when the company agreed to install a card machine in the complainant's building.
- He had discussed with the complainant about her difficulty with lifting the lid of the outdoor garbage bin due to its height and weight. He says city officials advised the respondent that the side door on the bin did not comply with local by-laws and had to be sealed.

[13] The regional manager for the respondent gave the following relevant evidence related to the respondent's interactions with the complainant and the accommodations made by the respondent in response to the complainant's concerns:

- She has been the regional manager since April 2018 and managed the complainant's building since that time.
- The majority of her conversations with the complainant have been about the noisiness of neighbours, the requesting of a debit card machine in her building and about the loading the debit card.
- When she took over management of the building, there was no laundry card machine in the complainant's building. Tenants had to visit a neighbouring building to fill the card.
- The complainant asked the staff to load the laundry debit card for her and they would do so upon request from the complainant.
- The owner of the card machines dictates how many machines they provide and where they are installed. The respondent had been negotiating with the company since 2017 to install additional machines. In 2019, they were able to negotiate the installation of a card loading machine in the complainant's building.
- The respondent put a residential garbage bin beside the main outdoor bin and chained it to a fence around the garbage area.
- The complainant did not indicate the top of the new bin was too heavy or inaccessible. She was more concerned the new garbage bin would become a free for all for everybody to use as it was publicly accessible. Other than people putting dog waste in the new bin, the regional manager says that was not an issue.
- From April 2018 until the small garbage bin was placed, the complainant would e-mail the leasing office and the staff would pick-up the garbage and place it in the dumpster. The complainant was not satisfied with how long it took to pick it up. The staff worked business hours and for a few hours on Saturdays. The complainant said people were insulting her about the garbage and people bringing the garbage back to her.

- The regional manager said she became hesitant to further correspond with the complainant about a new lease due to the resistance to any rent increase. The respondent decided to hold off on a lease renewal with the complainant and implemented a month-to-month arrangement without a rent increase and under the terms of the previous lease. This would normally include a \$100.00 monthly charge, but the respondent decided to forgo that charge.

### **Complainant's Submissions**

[14] The following is a summary of the complainant's submissions about each of the specific areas of discrimination:

#### *Main Entry Way and Ramp*

- The respondent failed to provide accessible access to the main entry way to the apartment building and barriers to accessibility remain even after the installation of an accessible ramp.

#### *Building Doors*

- The heavy external doors and internal doors within the apartment building present a barrier to the complainant's entry to and movement within the building.

#### *Laundry Facilities*

- All accommodations provided by the respondent to fill the complainant's laundry card failed to address the accessibility of the laundry facilities in the complainant's building.

#### *Garbage Removal*

- The garbage bins outside the complainant's apartment building were not accessible and the accommodations provided to the complainant were insufficient to address the issue.

[15] The complainant seeks orders declaring a finding of discrimination and directing the respondent to cease and refrain from future discrimination.

[16] The complainant further seeks orders requiring the respondent to modify the accessible ramp and to install power-assisted doors on the two main entry doors

### **Respondent's Submissions**

[17] The respondent does not dispute that the applicant has established a *prima facie* case of discrimination. The respondent argues the complainant was accommodated for her disability on each of the specific areas of discrimination raised in the complaint.

[18] The following is a summary of the respondent's submissions about each of the specific areas of discrimination:

#### *Main Entry Way and Ramp*

- An external ramp was installed outside the main entryway prior to the filing of the complaint and using a reasonable process to design a ramp accessible to people with physical disabilities.
- The respondent does not bear an obligation to design or construct any fixture to the building in accordance with the complainant's preferred specifications.

- The respondent alleges the complainant acted in bad faith because the accessible ramp had been installed prior to the filing of the complaint. The respondent seeks a finding from the Panel that that part of the complaint is frivolous or vexatious.

#### *Building Doors*

- The respondent intends to install power-assisted door openers on the exterior main doors to the apartment building.
- Since the complainant was filed, the respondent has installed spring loaded soft closers to all interior doors in the apartment building. These hinges make the doors easier to open and close for the complainant.

#### *Laundry Facilities*

- The respondent reasonably accommodated the complainant's access to the laundry room in the apartment building by delivering pre-filled laundry debit cards to the complainant.

#### *Garbage Removal*

- The respondent reasonably accommodated the complainant by implementing various alternates to the complainant's use of the exterior garbage bins.

### **Commission's Submissions**

[19] Counsel for the Commission submits there is congruency between the *Human Rights Act* (the "Act") and the United Nations Convention on the Rights of Persons with Disabilities (the "UN Convention")<sup>1</sup>. The Commission requests that the Panel acknowledge this international convention and apply it to this case.

#### **Analysis:**

#### ***Issue 1: Did the respondent discriminate against the complainant based on disability?***

[20] The Act prohibits a person from denying any individual any goods, services, accommodations or facilities that are customarily available to the public on the basis of a prohibited ground of discrimination.<sup>2</sup> Disability is a prohibited ground of discrimination under the Act.<sup>3</sup>

[21] I find that the respondent provides "facilities" and "services that are customarily available to the public. The respondent provides rental apartments to members of the public."<sup>4</sup>

[22] To establish *prima facie* discrimination, the complainant must first establish she has a characteristic protected by the Act, which in this case is disability. She must then establish that she experienced an adverse impact with respect to disability, and that disability was a factor in the adverse impact.<sup>5</sup>

[23] The Act defines disability to include, among other things "any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness." The legislation also

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<sup>1</sup> *United Nations Convention on the Rights of Persons with Disabilities*, 13 December 2006, U.N.T.S. 2515 at 3.

<sup>2</sup> *Human Rights Act*, S.N.W.T. 2002, c. 18, subsection 11(1).

<sup>3</sup> *Human Rights Act*, S.N.W.T. 2002, c. 18, subsection 5(1).

<sup>4</sup> *Hughes v. Elections Canada*, 2010 CHRT 4 at para. 35.

<sup>5</sup> *Moore v. British Columbia (Education)* 2012 SCC 61 at para. 33.

sets out a non-exhaustive list of examples of disability. Disabilities can include for example, any degree of paralysis, lack of physical coordination, blindness or visual impairment, deafness or hearing impediment, or physical reliance a wheelchair or other remedial appliance or device.

[24] The evidence in this case demonstrates the complainant has a disability. The complainant suffers from MS and the complainant's evidence about her symptoms from this disease include decreased strength, fatigue, cognitive and short-term memory issues, effects on emotional regulation and depression, and problems with hearing and vision.

[25] The complainant must prove she experienced an adverse impact in accessing her apartment building. The complainant's evidence about the difficulty she has to access the entrance of her apartment building and the main and interior doors of the building, the inaccessibility of the laundry debit card reader located in a neighbouring apartment building and the difficulty she has to lift the lid of the exterior garbage bin was uncontroverted.

[26] The last element to be determined is whether the complainant's disability was a factor in her being able to access those spaces in her apartment building.

[27] With respect to the main entry way to the apartment building, the complaint's concerns about the slope outside the building and the heaviness of interior doors connect with the reality that she contends with decreased mobility and balance that arise from her disability. The complainant's use of two canes to balance herself was a factor in not being able to navigate the main doors and the interior doors. I find there is a reasonable connection between the adverse impact the complainant experienced and her disability on these items.

[28] The complainant's disability was also a factor in the impacts the complainant experienced when she wanted to use the laundry in her building. She was impacted by not being able to reasonably access the debit card reader located in the neighbouring building. Disability was also a factor in the complainant being impacted by the heavy lid of the exterior garbage bin since she has reduced strength and balance as a person living with MS.

***Issue 2: Did the respondent accommodate the complainant to the point of undue hardship?***

[29] If a complainant establishes *prima facie* discrimination, the burden shifts to the respondent to prove *bona fide* and reasonable justification for the discrimination.<sup>6</sup>

[30] Justification can be established if obstacles to accessibility are rationally connected to a legitimate objective, the respondent's choice not to eliminate the barrier is based on an honest and good faith belief it was necessary for fulfillment of the objective, and not eliminating the barrier is reasonably necessary to achieve the legitimate objective.<sup>7</sup>

[31] The respondent has a duty to do whatever is reasonably possible to accommodate persons with disabilities to the point of undue hardship. The point of "undue hardship" is defined to be reached when reasonable means of accommodation are exhausted and only unreasonable or impractical options for accommodation remain.<sup>8</sup> The duty to accommodate a person with a disability is a core and transcendent

<sup>6</sup> *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15 at paras. 120-121.

<sup>7</sup> *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15 at para. 121; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3; *Human Rights Act*, s.11.

<sup>8</sup> *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15 at paras. 120-123.

human rights principle.<sup>9</sup> Where a physical barrier prevents a person with a disability from accessing their rental unit safely and with dignity, accommodation requires that the housing provider take all reasonable and practical steps to remove that barrier.<sup>10</sup>

[32] This exercise is not always easy, convenient, or cost-effective. There may necessarily be some hardship in accommodating someone's disability, but unless that hardship imposes an undue or unreasonable burden, it yields to the need to accommodate.<sup>11</sup> Reasonable accommodation is satisfied where the service provider could not have done anything else reasonable or practical to avoid the negative impact on the individual.<sup>12</sup>

[33] The complainant has an obligation to participate in the accommodation process, and to accept solutions that are reasonable, without insisting on perfection. If the complainant rejects a reasonable proposal, the respondent's duty to accommodate is discharged and the complaint is dismissed.<sup>13</sup>

### *Main Entry Way and Ramp*

[34] The respondent argues the part of the complaint related to the main entry way to the apartment building ought to be dismissed simply because the respondent installed an accessible ramp prior to the complaint. It further argues by filing the complaint on this basis, the complainant is acting in a vexatious manner. Accepting this argument requires the Panel to conclude the ramp, as it was installed, removes all barriers to accessibility the complainant experienced at the entry way due to her disability.

[35] I accept the respondent's evidence that the ramp was installed in compliance with the National Building Code and local by-laws. However, compliance with these codes does not necessarily discharge the respondent's burden to ensure the accessibility to the building for the complainant and other people with disabilities. Compliance with human rights puts an additional burden on a respondent to make sure modifications such as ramps facilitate accessibility in addition to building code compliance. In this case, the respondent had an accessible ramp designed and built to comply with building codes and then stopped its process to make the main entry way accessible there.

[36] This is not a case where the respondent's accommodation efforts were negligible, half-hearted, or insincere. I accept that, upon learning of the barriers to accessibility faced by the complainant, the respondent started a process of inquiry into planning and building an accessible ramp. A ramp was designed and built and efforts were made to make changes to ensure the ramp complied with building codes. Discrimination can persist, however, if there is an ongoing barrier or obstacle to the mobility of persons with disabilities. The complainant maintains the entry way to the apartment building remains inaccessible to her and others in similar circumstances.

[37] The accommodation analysis may require a respondent to a complaint to endure some hardship in order to make housing accessible to people with disabilities. It is only when that hardship becomes "undue" that a landlord is justified in retaining a disability-related barrier.

<sup>9</sup> *Québec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron*, 2018 SCC 3 at para. 20.

<sup>10</sup> *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15, at para. 120; *Moore v. British Columbia (Education)* 2012 SCC 61 at para. 49.

<sup>11</sup> *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, 2007 SCC 15 at para. 122.

<sup>12</sup> *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 at para. 38; *Québec (Commission des normes, de l'équité, de la santé et de la sécurité du travail) v. Caron*, 2018 SCC 3 at para. 29.

<sup>13</sup> *Central Okanagan School District. No. 23 v. Renaud*, 1992 CanLII 81 (SCC), [1992] 2 S.C.R. 970 at 994–95.

[38] After the installation of the ramp was finalized, the respondent simply concluded it had met its burden to accommodate the complainant's disability without considering the complainant's actual mobility issues. In this case, the complainant provided the respondent with materials about how to build a ramp that would remove obstacles to accessibility prior to the ramp's installation.

[39] After the ramp was completed, the complainant presented her concerns to the respondent about the ramp falling short of making the entry way accessible. She did so through extensive e-mail correspondence to the respondent outlining the reasons why the ramp's metal grating presented a tripping hazard and the problems with the build-up of ice and snow, which made the ramp treacherous. The complainant also provided further information about the accessible ramp located at the city's pool as a viable example of a ramp that removed barriers to accessibility. Despite having this information, the respondent chose not to modify the flooring of the ramp to remove the obstacles the existing grating presents.

[40] The respondent submits the accessible ramp was built in accordance with the National Building Code and the local by-laws and therefore the installation of the ramp accommodated the complainant to the point of undue hardship.

[41] There is a gap between accessibility requirements contained in legislation such as the National Building Code and society's expectations for accessibility as expressed in human rights legislation. Those standards do not necessarily address issues faced by persons with disabilities. A service provider must be prepared to accommodate individuals for their specific needs even when this results in providing accommodations that exceeds the existing building codes.

[42] The respondent did not call any evidence with respect to the necessary-variances required to the building codes, if any, to make the ramp accessible to the complainant. The respondent did provide evidence of the cost of building the ramp, including the submission of receipts for the design, materials and contracting of the build. But the respondent did not present any evidence that the further cost or time to implement changes to the ramp to make it accessible to the complainant would cause the respondent any hardship not the least undue hardship.

[43] The respondent did not submit any evidence to demonstrate it had even considered how to make modifications to the ramp to remove the accessibility barriers. In my view, by ceasing serious consideration of the ramp at the point of completing the ramp, the respondent stopped short of taking all reasonable and practical steps to remove the disability-related barriers presented to the complainant by the ramp.

[44] There is no question not being able to reasonably access the complainant's apartment building has negatively affected her quality of life. Due in part to the difficulty in navigating first, the steep entry way to the building, and then a ramp that causes the complainant to slip and lose her footing, the complainant cannot access the building in the same manner as an able-bodied person can. Not being able to safely access her home is not a mere inconvenience for the complainant, but also results in a loss of dignity.

[45] It is acknowledged the complainant cannot expect a perfect solution when accommodations are made to remove accessibility obstacles. However, I do not view the complainant's evidence of the continuing concerns about the new ramp as seeking a perfect solution. Rather she raised reasonable concerns about how the ramp perpetuates barriers to accessibility to her home. By ignoring those concerns, the respondent failed to make the front entry way to the building accessible to the complainant.

[46] The respondent has not offered any reasonable justification for not modifying the ramp to ensure the surface is a not slip resistant one or that the tripping hazards caused by the holes in the metal grating could not have been modified or changed to remove the barriers the complainant identifies. There was no evidence from the respondent that making these modifications to the ramp would be cost prohibitive or require substantial structural change.

[47] I find the respondent discriminated against the complainant due to the main entry way to the building being inaccessible to her. The respondent's efforts to make the entry way accessible by installing a ramp failed to remove the barriers to accessibility. Accordingly, the respondent's allegation that this part of the human rights complaint is frivolous or vexatious is not supported by the evidence.

### *Building Doors*

[48] The respondent concedes discrimination related to the complainant's difficulty in using the two main exterior doors to the apartment building due to her disability. The respondent's evidence and submissions are that power-assisted doors will be installed on both main doors.

[49] The complainant agrees the installation of power-assisted doors is a reasonable accommodation to remove this barrier to accessibility and requested an order be made by the Panel requiring it. I will make that order further to my comments below.

[50] The complainant concedes the respondent has installed spring-loaded soft closers on all interior doors in her apartment building that removes the accessibility barriers within the building and to gain entry to her apartment unit.

[51] The complainant argues the amount of time it took for the respondent to address this issue was extreme and needless. The complainant also argued that the respondents did not respond to her many communications in a timely way. Based on a review of the e-mail correspondence between the complaint and the senior maintenance manager, this appears to be the case

[52] The applicant had unreasonable expectations of the respondent's capacity to respond to her and who on occasion sought to impose quite unrealistic deadlines on the respondent. Once the complainant's concerns about the maintenance manager's lack of action were raised with the vice-president, the respondent addressed her concerns about the heavy interior doors in the building on a reasonable timeline.

### *Laundry Facilities*

[53] The complainant's main concern about the accessibility of laundry facilities is that there was no debit card machine in her apartment building. This resulted in an inconvenience to her as the closest machine was located in a neighbouring building that is inaccessible due to her disability. In 2018, a card machine was installed in the complainant's building and the complainant concedes the accessibility barrier was eliminated at the time of the hearing of the complaint. I have considered the impact on the complainant due to her disability prior to 2018 and the accommodations provided by the respondent to address the discrimination.

[54] The complainant submits that as a person with a physical disability, she had to plan in advance when she would do her laundry and therefore, she could not spontaneously decide to do so because there is no

debit card machine in the building. She argues this amounted to discriminatory treatment as compared to able-bodied persons who could easily access the neighbouring building to fill up their laundry cards. The complainant also takes issue with the amount of time it took to have a card machine installed in her apartment building, namely from the time she moved into the building in 2010 until 2018.

[55] The vice president and regional manager both gave evidence about the difficult relationship the respondent has with the company that owns and maintains the debit card machines, including strained and stalled negotiations to have a card machine installed in the complainant's building. I accept the respondent's evidence that the card machine company dictates the number and location of machines and the respondent therefore has very little bargaining power with respect to those decisions.

[56] Given the negotiations between the company and the respondent did not result in having a machine until a number of months after the filing of the complaint, I view the arrangements the respondent made to regularly fill up the complainant's debit card upon request as reasonable.

[57] The respondent approached this accessibility issue as a problem to be solved and then worked with the complainant to come up with a reasonable solution that assisted the complainant to access the laundry facilities in her building. While it may not always have been convenient for the complainant to have to rely on requesting a debit card from the respondent, I do note the complainant's evidence that this card system worked reasonably well for approximately six years prior to the filing of the complaint.

[58] I find the respondent reasonably accommodated the complainant related to this part of her complaint and discharged its burden to remove the barrier to accessibility experienced by the complainant.

### *Garbage Removal*

[59] The complainant's evidence that the height and weight of the lid of the exterior garbage bin made the bin inaccessible to her is not controversial. The complainant's disability made it difficult for her to lift the lid of the bin and put her garbage in it and, increasingly so, as her strength and balance was affected by living with progressive MS. The complainant could not dispose of her household garbage in the same manner as an able-bodied person living in her apartment.

[60] The complainant used a sliding door on the garbage to insert her garbage for a time as this made the task easier for her. This was a practical solution to the accessibility issue. Unfortunately, that solution was short-lived as the sliding door could no longer be used as an opening to put garbage in the bin. I accept the respondent's evidence that the sliding door was welded shut to comply with local by-laws unrelated to this human rights case and was not precipitated in any way by the respondent.

[61] There is also no conflict between the parties about the complainant raising the accessibility issues about the garbage bin with the respondent after she could no longer use the sliding door on the garbage bin.

[62] I find the respondent was responsive in providing various alternative options to the complainant for removal of her garbage. The first option tried was for the cleaning staff to retrieve the complainant's garbage in accordance with the building's daily cleaning schedule. This arrangement included pick up from outside the complainant's apartment door at first and then, later, from a location near the lobby of the building. After the complainant raised issues about this causing garbage build-up outside her apartment

door, the respondent installed a smaller residential garbage bin outside the main dumpster that the complainant continued to be able to reasonably access.

[63] Overall, I find all of the proposed and tried accommodations to improve accessibility to the garbage facilities for the complainant to be reasonable ones to accommodate the complainant's mobility and strength issues arising from her disability.

### **Conclusion:**

[64] The complainant has established that she experienced discrimination as a resident in her apartment building. She was denied facilities customarily available to the public in that she was not able to access the main entry way to the building and had to contend with the two heavy main doors to get into the building.

[65] The complainant also experienced accessibility issues related to using the laundry facilities in her building and the disposal of her household garbage. The respondent resolved the laundry card issue by implementing a personal laundry card service that worked reasonably well until a debit card machine was installed in the complainant's building. The barriers the complainant faced in the removal of her garbage were also resolved by the various reasonable accommodations implemented by the respondent after the complainant raised those accessibility issues.

[66] At the time of the hearing, the main doors to the apartment building remained inaccessible to the complainant and the accessible ramp continued to present obstacles to the complainant's access to the apartment building. The evidence does not support any bona fide and reasonable justification for these obstacles to remain in place.

[67] The respondent also did not submit any evidence about why there might be a need to maintain these known obstacles or evidence that the costs of further adjustments to the accessibility ramp would cause the respondent to suffer undue hardship.

[68] I address the Commission's request that the Panel acknowledge the UN Convention and apply it in this case.

[69] The UN Convention places obligations on state actors that have chosen to ratify it, which includes Canada. In contrast, federal, provincial and territorial human rights law places obligations on individual employers, service providers and other actors in civil society. The law that creates the Panel's jurisdiction, and which the Panel applies when it hears human rights cases is the law established by the territorial government. That is the sole source of our jurisdiction and so the legislation is what we follow and apply.

[70] For interpretation, we rely on cases that have been decided in the Northwest Territories and in other Canadian jurisdictions with similar legislation. It can be acknowledged that the law the Panel applies to human rights cases is intended to reflect and be consistent with international conventions that Canada has endorsed. This is reflected, for instance, in the definition of discrimination set out in the materials provided by the Commission, which is consistent with the approach human rights adjudicators have adopted from the Supreme Court of Canada case of *Moore v. British Columbia (Education)*.<sup>14</sup>

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<sup>14</sup> *Moore v. British Columbia (Education)* 2012 SCC 61.

[71] The spirit and intent of the UN Convention is aligned, in this manner, with the spirit and letter of the law applied by the Panel. This is no accident, since the Legislative Assembly of the Northwest Territories has recognized rights proclaimed in the UN Declaration of Human Rights in the preamble to the Human Rights Act.<sup>15</sup> This has the effect of making the consideration of goals and objectives outlined in the Convention a legitimate part of interpreting and applying the Act. The tests applied in this decision have been developed and evolved in this context.

### **Issue 3: Remedy**

[72] As required by the Act, I find there is merit to the complainant's complaint. My authority to impose a remedy comes from section 62(3) of the Act.<sup>16</sup>

[73] The Panel orders the respondent to install power-assisted automatic door openers on the two main entry way doors to the apartment building.

[74] I also order the respondent to make modifications to the entry way ramp to ensure it is slip-resistant and the grating no longer presents a tripping hazard to persons with physical disabilities.

[75] The complainant seeks compensation in an amount to be determined by the adjudicator.

[76] Although success for the complainant on the substantive human rights complaint was divided, I do conclude that the on-going inaccessibility of the entry way to the complainant's apartment building caused considerable injury to the complainant's dignity, including a reluctance to leave her apartment due to the having to contend with those difficulties. This made the complainant feel like a lesser person compared to the able-bodied residents of the apartment building.

[77] I am satisfied the complainant has suffered injury to her dignity, feelings and self-respect and she should receive damages to compensate her. I award damages in the amount of \$7,500.00 under section 62(3)(v) of the Act.

### **Issue 4 - Retaliation complaint**

[78] While the foregoing is sufficient to deal with the substantive human rights complaint, I will address the complainant's retaliation complaint. The retaliation complaint was filed approximately six months after the initial complaint was filed. In it the complainant alleges the respondent's failure to finalize a long-term lease with her and the respondent's offer to relocate the complainant to other apartment buildings constitute retaliation against her.

[79] Section 15 of the Act prohibits a person from retaliating against a complainant because a human rights complaint is made. Proof of retaliation requires a link or a connection between the filing of the initial complaint and the subsequent conduct that causes harm to the complainant. The complainant must prove that the respondent was aware of the complaint and the action was, at least in part, a deliberate response to the complaint to cause a negative impact to the complainant.<sup>17</sup>

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<sup>15</sup> *Universal Declaration of Human Rights*, 10 December 1948, GA Res. 217A(III).

<sup>16</sup> *Human Rights Act*, S.N.W.T. 2002, c. 18, subsections 62(1) and 62(3).

<sup>17</sup> *Walsh v. Mobil Oil Canada* 2008 ABCA 268 at paras. 65-91; *Virk v. Bell Canada (Ontario)*, 2005 CHRT 2 at paras. 155-159.

### *New Lease*

[80] I cannot find that the retraction of a new lease agreement by the respondent amounts to retaliation as I fail to see the link between the renewal of the complainant's lease and the human rights complaint. The complainant's current lease was set to expire and the respondent reasonably forwarded a new lease to her for review.

[81] The complainant's evidence is that she was not happy about paying an increase in rent because of what she perceived to be the respondent's failure to address her noise complaints. The respondent reasonably advised the complainant about their process related to noise. The respondent decided it did not want to engage in further negotiations of lease terms with the complainant and elected to maintain the current lease on a month-to-month basis.

[82] There was no negative impact on the complainant arising from this choice by the respondent. In fact, there was a positive one for the complainant as the month-to-month arrangement resulted in no monthly rent increase.

### *Offers to Relocate*

[83] The complainant says the respondent should have known that offering to move her into the tower apartment it owned would be unacceptable and demeaning to her. She had investigated that option approximately six months prior to filing her human rights complaint and it presented similar accessibility issues to her current apartment building. She also argues the offer to move her into a comparable apartment in a building owned by a third party presented her with a similarly inaccessible home.

[84] The evidence is clear that the respondent did offer to relocate the complainant to another building owned by the respondent or to one owned by a third party after the primary complaint was filed. A basic connection between the filing of the complaint and the sending of the offers by the respondent can surely be made. However, context is important. Those offers were submitted by letter from the respondent's counsel to the Commission approximately five months after the initial complaint was filed. The letter was partially sent as a follow-up to the respondent's initial response to the complaint and to initiate settlement discussions by way of a proposal through the Commission's complaint process. Those intentions are specifically indicated in the letter.

[85] I am mindful of the complainant's evidence that the tower was a building she did not want to live in because it presented similar accessibility issues to her current apartment building. Further, I have considered her comments that there are few accessible apartments in the community and therefore the respondent's offer of a third-party apartment building was not really a viable one.

[86] I fail to see how the written offers to settle caused any negative impact on the complainant. Practically speaking the complainant had the option to accept the respondent's offer, to make an offer to settle of her own or to ignore the offer entirely, which she inevitably did. Further, the respondent's offer did not prevent the complainant from moving her human rights case forward or cause any other detriment to her.

[87] There is also no evidence the respondent's offers were not made in good faith. The reasonable conclusion I draw is that the respondent's offers were an extension of the efforts made by the respondent prior to the filing of the initial complaint to problem-solve the various accessibility issues raised by the complainant and referenced in the foregoing reasons of this decision.

[88] The complainant has not established, on a balance of probabilities, a case of retaliation.

Dated at the City of Yellowknife in the Northwest Territories this 28<sup>th</sup> day of July, 2022.

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Paul Parker, Adjudicator  
Northwest Territories Human Rights  
Adjudication Panel