

TABLED DOCUMENT NO. 15- 15 (6) TABLED ON MAY 10 2007



BRITISH COLUMBIA EVIDENCE

Indexed as: Strumecki v. Capital Regional Housing Corp. (No. 2) Cited: (2005), 54 C.H.R.R. D/133, 2005 BCHRT 386

CHRR Doc. 05-488

Paragraphs 1 - 82



Elmer Strumecki

Complainant

v.

Capital Regional Housing Corporation

Respondent

Date of Decision:
September 1, 2005

Before:
British Columbia Human Rights Tribunal, Barbara Humphreys

File No.:
48

Appearances by:
Aleem Bharmal, Counsel for the Complainant
A.R. Borzoni and Robert Farvolden, Counsel for the Respondent

EVIDENCE — admissibility of medical evidence — HOUSING ACCOMMODATION — tenancy condition discriminates on the basis of disability — PROCEDURE — motion for non-suit

Summary: The B.C. Human Rights Tribunal allowed a no evidence motion and dismissed a complaint.

The complaint was filed against the Capital Regional Housing Corporation ("CRHC") in Victoria by Elmer Strumecki. He alleged that he was discriminated against because of his mental and physical disability because CRHC would not allow him to have his two dogs live with him in his apartment. At the end of Mr. Strumecki's presentation of his case the respondent made a no evidence motion asking that the complaint be dismissed because there was no evidence of discrimination.

Mr. Strumecki has been renting an apartment from CRHC since 1998. CRHC does not allow dogs to live in the building. Mr. Strumecki has arranged for a friend to take care of his dogs and Mr. Strumecki visits them.

Mr. Strumecki suffers from fibromyalgia, and, most likely, mitochondrial myopathy. The main symptoms of both are muscle pain and fatigue. He also has hearing loss in both ears. But there was no evidence, the Tribunal found, to establish that Mr. Strumecki has been diagnosed with depression or any mental disability.

Mr. Strumecki claimed that he needed to have the dogs live with him because their company helped him deal with his disabilities. The 'no dogs rule' had an adverse effect on him because of disability, he argued. However, the Tribunal found that there was no connection established between Mr. Strumecki's disability and his dogs. The fact that he has a disability and that he made a request that was refused is not enough.

The Tribunal found that individuals who are not disabled also experience benefits from companion animals. The evidence did not show that there was a connection between the absence of Mr. Strumecki's dogs and a negative impact on him because of his disability.

CASES CITED

Edward v. 593984 B.C. Ltd. (2004), CHRR Doc. 04-226, 2004 BCHRT 102: 68
Ingram v. British Columbia (Workers' Compensation Board) (2003), CHRR Doc. 03-208, 2003 BCHRT 57: 68

Madsen v. Torry (No. 1) (2003), 47 C.H.R.R. D/374, 2003 BCHRT 60: 4.

Niagara North Condominium Corp. No. 46 v. Chassie, [1999] O.J. No. 1201 (QL) (Gen.Div.): 48, 50, 71

LEGISLATION CITED

British Columbia

Human Rights Code, R.S.B.C. 1996, c. 210, s. 10(1): 1

1. INTRODUCTION

[1] Elmer Strumecki filed a complaint with the B.C. Human Rights Commission in which he alleged that Capital Regional Housing Corporation ("CRHC") discriminated against him regarding a term or condition of tenancy because of a physical disability, contrary to s. 10(1) of the *Human Rights Code* [R.S.B.C. 1996, c. 210] (Exhibit 1). He subsequently amended his complaint to include the ground of mental disability (Exhibit 3). The complaint was referred by the Commission to the Tribunal for hearing (Exhibit 2).

[2] Mr. Strumecki has been renting one of CRHC's apartments since October 1998, when he moved to Victoria. CRHC allows certain small pets in all its buildings, and cats in designated buildings. However, CRHC does not allow pet dogs (the "rule"). Mr. Strumecki owns two dogs which, except for a brief period of time when he had them in his apartment, are cared for elsewhere. The essence of Mr. Strumecki's complaint is that, because of his disabilities, CRHC should accommodate him by allowing him to keep his dogs in his apartment.

2. NO EVIDENCE MOTION

[3] After the completion of Mr. Strumecki's evidence, CRHC brought a motion of no evidence. Briefly put, CRHC argues that Mr. Strumecki has not established that he has a mental disability, or that its rule adversely affects him because of any disability.

[4] As stated by the Tribunal in *Madsen v. Torry*, 2003 BCHRT 60 [47 C.H.R.R. D/374] at § 4 and 5:

The standard to be applied in a no evidence motion was set out in *Gerin v. I.M.P. Group Ltd.* (1994), 24 C.H.R.R. D/449 (N.S. Bd.Inq.) at para. 24 as follows:

Since the evidence is not weighed and assessed, the rejection of the motion does not mean that the complaint will succeed if no further evidence is brought forward, it simply means that this conclusion could be made, not that it ought to or will be made. On the other hand, the "any evidence" standard is probably too low; there must be some reasonable basis on which a conclusion in the complainant's favour could be reached. In this way, some protection is offered to a respondent and, in my judgment, most parties are treated fairly. [Emphasis in original.]

This standard was adopted by the Tribunal in *Marc v. Fletcher Challenge Canada Ltd.* (No. 3) (1998), 35 C.H.R.R. D/112 (B.C.H.R.T.) and *Rafuse v. British Columbia (Ministry of Tourism)*, 2000 BCHRT 42 [reported 38 C.H.R.R. D/227]. This is the standard which I shall apply in this case.

[5] The parties agreed that this was the standard to be applied to this no evidence motion.

3. MR. STRUMECKI'S CASE

A. Mr. Strumecki

[6] At the time of the hearing, Mr. Strumecki was a 58-year-old twice-divorced man who lived on his own in Victoria. He has two grown children and two grandchildren in Calgary. He receives a Canada disability pension.

[7] Mr. Strumecki stated that, when he came to Victoria in the fall of 1998, he was dealing with a lot of losses: his vocation, his earning ability, and his second marriage. He said he was depressed and distraught, to the point that he could not care for his dogs.

[8] Mr. Strumecki's disability pension is based on a diagnosis of mitochondrial myopathy, an enzyme deficiency which causes muscle pain, stiffness and fatigue. After exercising, he must rest for a period of

time. Occasionally Mr. Strumecki gets a flare-up, which requires several days' rest. He takes over-the-counter pain medications which relieve 80 percent of his pain. Further, Mr. Strumecki has been diagnosed with fibromyalgia, which also causes fatigue and muscle pain. In addition, he has a partial hearing loss in both ears, and wears hearing aids. Mr. Strumecki testified that he spends a lot of his time managing his health concerns, and that he feels socially isolated.

[9] Mr. Strumecki testified that he separated from his second wife in September 1997 and moved to Penticton, where he became involved with a woman in a "rebound relationship". When he moved to Victoria in September 1998, and began a nine-month relationship with a woman. In the fall of 2002, he began a relationship with a woman in Vancouver whom he had met on the Internet. This relationship lasted for a few months. Since February 2003, they have been friends. Mr. Strumecki said that his disabilities interfere with his relationships.

[10] Mr. Strumecki drives a car. The ferry receipts Mr. Strumecki entered show that he drove his car for most of his trips to and from Vancouver (Exhibit 12). He generally stayed for several days with the woman with whom he had previously been involved, and who subsequently agreed to care for his dogs. He has also made round trips to Penticton in his car, staying there for several weeks visiting family.

[11] The medical specialists Mr. Strumecki has seen have encouraged him to exercise as much as he can. He has been playing badminton at a community recreation centre since his arrival in Victoria. Three times a week, he does weight training and cycling to warm up before playing badminton. Mr. Strumecki said that weight training has been "miraculous" for him. He was selected to go to the B. C. Seniors badminton tournament; however, because his badminton partner was hospitalized, he did not compete.

[12] Mr. Strumecki said that Dr. Ewert, his family physician since June 2000, has not treated him for depression, and she has not referred him to a psychologist or psychiatrist for such treatment.

B. Mr. Strumecki and His Dogs

[13] Mr. Strumecki has two Lahso Apso/Maltese dogs named Buster and Lucy (Exhibit 4, tab 5). The dogs, who are siblings, were acquired by Mr. Strumecki and his second wife. He brought the dogs to Victoria while he was living in CRHC's apartment. Mr. Strumecki loves his dogs very much — they are affectionate and "like family" to him. They give him pleasure, entertain him, and enhance the quality of his life. They take him out of himself and, when wal[k]ing them, provide an opportunity for him to interact with other people.

[14] In Victoria, Mr. Strumecki arranged a foster care situation for the dogs because he was in no condition to look after them at that time: he was "distraught". Another reason Mr. Strumecki did not bring the dogs into his apartment was that he could visit them and they were well taken care of. He had daily access to the dogs, and walked them five times a week. A year later, when this foster-care provider went on vacation, Mr. Strumecki had to make other arrangements.

[15] Over the next months, the dogs were in a number of different foster homes. This has had a detrimental impact on them — Lucy was throwing up and Buster developed a skin condition. The dogs were not fed what Mr. Strumecki wanted them to be fed, or cared for in the way that he wanted them to be cared for. Mr. Strumecki became concerned about the level of care his dogs were receiving — they need more attention as they age and their faculties diminish. This ongoing situation of unsatisfactory foster homes was hard on Mr. Strumecki.

[16] In the fall of 2000, Mr. Strumecki had to find another foster home for his dogs. Someone had berated him for not taking better care of them, causing Mr. Strumecki to feel inadequate. As a result of some articles he had read, he became convinced of the health benefits of dog ownership, and he decided to challenge CRHC's rule.

[17] On October 25, 2001, he took the dogs into his apartment. He removed them on January 31, 2002, and again placed them in foster care. The woman in Vancouver, with whom Mr. Strumecki was

involved from September to November 2002, took care of the dogs during the course of their relationship. She resumed the foster care situation in February 2003, and takes very good care of them. Mr. Strumecki sees his dogs about once a month; he misses them very much.

C. Mr. Strumecki and CRHC

[18] Mr. Strumecki applied to CRHC for subsidized housing on September 29, 1998 (Exhibit 4, tab 1). He did not answer the question — "Do you have pets?" — on p. 3. On October 21, 1998, he signed a tenancy agreement with CRHC, which stated that pets other than fish, turtles, and small caged birds, hamsters, or guinea pigs were not permitted (Exhibit 4, tab 2).

[19] On September 14, 2001, Mr. Strumecki sent an email to Carol Pickup, Chairman of CRHC's Board of Directors (Exhibit 5). In it, he recounted that, since moving into his apartment in 1998, his dogs had been in three different homes. During this time period, he was able to see them three times a week and walk them for one hour each time. Mr. Strumecki wrote that his dogs were well-behaved, and that he could not understand why they could not live in his apartment with him. Stating that he did not want to put them through the stress of accommodating to another new environment, and that they supported him when he was not feeling well, he asked for Ms. Pickup's assistance.

[20] On October 25, 2001, Mr. Strumecki brought his dogs into his apartment. He knew this [was] not permitted in his tenancy agreement. He put a "Please Don't Knock" sign on his door because the dogs might bark if they were startled. One of his neighbours complained to CRHC.

[21] What followed was a great deal of correspondence between Mr. Strumecki and CRHC, which eventually served him with a Notice to End a Residential Tenancy. Mr. Strumecki's application to set aside the Notice, and his appeal of the refusal to do so, were both denied (Exhibit 4, tabs 6, 7, 8, 9, 10, 11, 12, 15, and 16).

[22] Mr. Strumecki removed the dogs from his apartment on January 31, 2002.

D. Medical and Expert Evidence on Behalf of Mr. Strumecki

a. Dr. Cara Ewert

[23] Dr. Ewert has been Mr. Strumecki's treating physician since June 6, 2000. She graduated from the Faculty of Medicine at UBC, completed a Family Practice Residency, and in 2003 was working on obtaining a Masters of Sports Medicine degree. She specializes in family practice and sports medicine. She prepared a report to be entered into evidence in these proceedings (Exhibit 4, tab 19). She wrote that Mr. Strumecki had told her that he had been diagnosed in 1989 with mitochondrial myopathy, a rare disorder on which she does not have sufficient expertise to comment. She referred Mr. Strumecki to Dr. Sirrs, a specialist, to confirm that diagnosis, and also to clarify whether he had fibromyalgia.

[24] Dr. Ewert set out the symptoms which Mr. Strumecki had related to her: muscle and joint pain, weakness exacerbated by cold, loss of coordination, unbalance, fatigue, stiffness, lack of concentration and motivation, malaise, occasional nausea, and depression. She was treating his described symptoms with cognitive support and refilling prescriptions — Tryptophan (an amino acid) and anti-inflammatories — which had previously been prescribed. She wrote that Mr. Strumecki had told her that he suffered from social isolation, and that "obviously the solace he receives from companionship with his pets is of benefit".

b. Dr. Christopher Atkins

[25] Dr. Atkins is a medical specialist in the treatment of rheumatology, and he testified as an expert in this field. He also has experience diagnosing fibromyalgia. His expert report dated July 24, 2003, was entered as Exhibit 4, tab 20.

[26] Dr. Atkins saw Mr. Strumecki on October 20, 1999, and diagnosed him with fibromyalgia (tab 20, p. 3). There is no connection between fibromyalgia and depression. Dr. Atkins' treatment

recommendations for fibromyalgia are antidepressants in order to induce stage IV sleep, and an aerobic exercise program at least four times a week. Dr. Atkins also referred to a medical report which he had from Dr. Eisen, whom he described as a world expert on mitochondrial myopathy. Dr. Atkins testified that Mr. Strumecki did not mention his dogs during his visit.

c. Dr. Sandra Sirrs

[27] Dr. Sirrs is the medical director of the Adult Metabolic Disease Clinic at Vancouver General Hospital. It is a clinic for adults with inborn errors of metabolism. She is also a member of the UBC Division of Endocrinology. She sent three reports to Dr. Ewert (Exhibit 4, tab 21).

[28] Dr. Sirrs first saw Mr. Strumecki on March 10, 2003. Dr. Sirrs stated that there was insufficient evidence to conclude that Mr. Strumecki had mitochondrial myopathy, but that she thought it was the most likely diagnosis. To confirm the diagnosis, Dr. Sirrs referred Mr. Strumecki to Dr. McGregor for a muscle biopsy and to Dr. Vallance for mitochondrial enzymology.

[29] Dr. Sirrs next saw Mr. Strumecki on October 28, 2003. The results of his muscle biopsy were "non-diagnostic". Dr. Sirrs wrote that she thought the diagnosis of mitochondrial myopathy was "probable". She continued:

There are legal issues, however, facing Elmer and this is why I spent time explaining to him that an independent review of his results would only place him in the "possible" category. Should his mitochondrial DNA studies be positive (which is unlikely as there is no compatible history), this would upgrade him into the "definite" category which would be helpful for his ongoing legal battles.

[30] Dr. Sirrs recommended a program of activity and vitamin therapy.

[31] Dr. Sirrs again saw Mr. Strumecki on June 1, 2004. Dr. Sirrs wrote that she reviewed records from another of Mr. Strumecki's doctor[s] going back to the 1980s: "What is encouraging about those records is that his functional status has remained quite stable". She emphasized to Mr. Strumecki the need for regular physical exercise, and again concluded with a diagnosis of "probable" mitochondrial myopathy.

[32] There is no reference to Mr. Strumecki's dogs in any of Dr. Sirrs' reports.

d. Dr. Mary Ann McColl

[33] Dr. McColl has a B.Sc. in occupational therapy, an M.H.Sc. in community health and epidemiology, and a Ph.D. in preventive medicine and biostatistics. She is not a medical doctor, and she did not have any medical information about Mr. Strumecki. Dr. McColl testified as an expert in aging and disabilities, and the community integration of people with disabilities.

[34] Dr. McColl did not conduct research involving companion animals (pets); rather, she reviewed research literature to prepare her report on the subject of companion animals (Exhibit 4, tab 22). The literature she reviewed dealt with individuals with severe, chronic disabilities.

[35] Dr. McColl did not critique any of the research she reviewed. She has previously provided two expert reports about service animals after reviewing the research literature. This report is her first on companion animals. She has written many articles and chapters of books; none, however, deal specifically with companion animals. She agreed there is no evidence in the research literature to support a conclusion that one animal is less helpful than two.

[36] The term "companion animal" refers to an animal kept for pleasure — in other words, a pet. Companion animals are to be distinguished from service animals, which are trained to do specific tasks for individuals with disabilities, and also from therapy animals, which are used by therapists for short-term therapeutic purposes.

[37] Some of [the] articles which Dr. McColl reviewed were entered into evidence.

[38] "Pet Ownership May be a Factor in Improved Health of the Elderly", published in the *Journal of*

Nutrition for the Elderly (1996), examined associations between pet ownership and eating, exercise, nutritional status, and specific cardiovascular risk factors in the elderly (Exhibit 6). There was a 31 percent response rate (127 out of 409) to questionnaires, and a 25 percent participation rate in blood tests which were necessary for five of the hypotheses involving blood pressure and blood chemistry. Dr. McColl agreed that such a low response rate was not a random sample. The other five hypotheses were

- a. pet owners demonstrate significantly higher dietary quality than non-owners;
- b. pet owners eat significantly more regularly than non-owners;
- c. pet owners are significantly more physically active than non-owners;
- d. pet owners have significantly lower body mass indices than non-owners; and
- e. pet owners have significantly lower waist-to-hip ratios than non-owners.

[39] The only hypotheses which were partially supported were two involving blood chemistry. Dr. McColl agreed that her conclusion in her report was a "misinterpretation" of the article.

[40] "Animal Companions and One-Year Survival of Patients After Discharge From a Coronary Care Unit" (1980), followed ninety-six patients after their discharge from a coronary care unit, and considered the effects of social isolation and social support, including pet ownership, on these patients (Exhibit 7). The findings of the study were that social affiliation and companionship, including pet ownership, have important health benefits. The authors concluded (at p. 5):

The apparent effect of pets on survival may not depend on the pets; rather, it may result from differences in personality or social condition between those who have pets and those who do not. We found no differences in measures of tension, anxiety, depression, confusion, vigor, or fatigue between pet owners and non-owners. We believe that further investigation of possible personality differences and pet ownership is indicated.

[41] In "Presence of Human Friends and Pet Dogs as Moderators of Autonomic Responses to Stress in Women" (1991), the researchers evaluated the autonomic responses of individuals performing mental arithmetic in the presence of the experimenter, a female friend, or a pet dog (Exhibit 8). Dr. McColl agreed that this was a highly artificial situation. A study of sixteen women and four men demonstrated that pet owners in their homes showed lower blood pressure while petting their dogs than while reading aloud: "Physiological Effects of Petting a Companion Animal" (1986) (Exhibit 9).

[42] The study described in "Pet Ownership and Risk Factors for Cardiovascular Disease" (1992) concluded that systolic blood pressure and plasma triglyceride levels were significantly lower in pet owners than non-owners (Exhibit 10). The types of pets identified were dogs, cats, birds, fish, and horses. The authors cautioned that the associations they identified between pet ownership and lower triglyceride and cholesterol levels and systolic blood pressure "do not prove that the acquisition of a pet will lower risk factors in individual people and there are several ways in which other factors could have confounded these results" (at p. 300).

[43] The author of "The Pet as an Anxiolytic Intervention" (1991) tested the blood pressure of test subjects over a ten-minute baseline period and then again in three stress conditions: reading aloud, reading quietly, and interacting with a friendly but unknown dog (Exhibit 11). The subjects were ninety-two undergraduate students, 72 percent of whom were women. The results showed that reading aloud was the most anxiety producing, followed by interacting with the dog, and then, the least anxiety producing, reading quietly (at p. 487). The author concluded that pets provide a source of comfort and companionship for many individuals, and that there appeared to be potential benefit for selected cardiovascular responses in this age group (at p. 8).

[44] According to Dr. McColl, the fact that not all individuals exposed to the same stressors experience the same negative outcome suggests that there must be mediators of the stress-outcome relationship. The most powerful mediators or stress buffers are personal vulnerability factors, such as age, gender, previous experience; appraisal and coping abilities; and social support, which generally applies to

support from other people but may also apply to support from animals (Exhibit 4, tab 22 at p. 2). While the literature she reviewed involved individuals with severe and chronic disabilities, she believed the results were applicable in proportion to the severity of the disability.

[45] Dr. McColl stated the following in the summary of her report (at p. 6):

The research and published literature strongly supported the benefits of companion animals for older and disabled individuals in terms of physical, social and psychological health outcomes. Although some of the evidence is anecdotal or derived from small studies, there is sufficient evidence from large, well-controlled trials, accumulated consistently over a period of about 20 years, to lead to a confident conclusion about the benefits of companion animals. As one author puts it, companion animals "provide people with disabilities with a dignified way to remain integrated in their community". [Cite omitted.]

[46] Dr. McColl agreed that individuals who are not disabled would experience the same benefits from companion animals as do the disabled.

4. SUBMISSIONS OF THE PARTIES

A. CRHC

[47] Briefly put, CRHC argued that there was no evidence that Mr. Strumecki suffers from a mental disability, and, therefore, that aspect of his complaint should be dismissed. Further, CRHC argued that there is no evidence that its rule adversely affects Mr. Strumecki *vis-à-vis* his physical disability in that any adverse impact of the rule on Mr. Strumecki is not because of his disability but as a result of the affection that human beings may have toward their pets.

B. Mr. Strumecki

[48] Mr. Strumecki says that he has both mental and physical disabilities, that CRHC's rule adversely affects him because of those disabilities, and that CRHC failed to accommodate him. He relies on the case of *Niagara North Condominium Corp. No. 46 v. Chassie*, [1999] O.J. No. 1201 (QL) ("*Niagara North*").

5. ANALYSIS AND DECISION

A. Evidence before the Tribunal

[49] There are a number of documents which are included in Exhibit 4 which were not entered as exhibits for the truth of their contents: tabs 6, 7, 8, 17 and 18. More particularly, Mr. Strumecki clarified during the hearing that he was not relying on medical notes in tabs 6, 13, or 14, but on Dr. Ewert's report at Exhibit 4, tab 19.

B. Niagara North Condominium Corp. No. 46 v. Chassie

[50] At issue in this case was whether Mr. and Mrs. Chassie, who owned a cat in contravention of the bylaws of the condominium building, would be required to remove their cat from their condominium.

[51] The facts in this case were as follows. The bylaws of the condominium building in question prohibited the ownership of any pets other than small caged birds or fish. However, the Chassies were not informed of the prohibition when they bought the condominium. Moreover, when they were looking at condominiums in the building, they saw a number of other cats, and were told by a Board of Directors member that, if there were no complaints about their cat, there would not be a problem. Further, there was evidence before the Court that the "no-pet" rule had not been enforced over the years.

[52] The condominium corporation's application to the Court for an order directing the Chassies to remove their cat was denied for the following reasons.

[53] Condominium rules and by-laws are required to be reasonable. "Reasonableness" is a criterium

that evolves over the years as society develops. The judge considered amendments in Ontario to the *Landlord and Tenant Act* in 1990 which had the effect, generally speaking, of allowing termination of a tenancy only if a pet caused a problem. For greater clarity, further amendments were introduced in 1998, in the *Landlord and Tenant Act, 1997*, which declared that any provision in a tenancy agreement prohibiting a pet was void, and that a tenancy could only be terminated if there was a problem with a particular pet. Based on this societal evolution, the legislation recognized that the mere presence of a pet no longer constituted substantial interference with the reasonable enjoyment by other tenants of their tenancy.

[54] The Court then referred to various newspaper articles the judge had read concerning the therapeutic value of pets. The decision also referred to the judge's personal observations of the interaction between animals and residents of seniors' homes.

[55] After reviewing the *Condominium Act*, and a number of Ontario decisions regarding pet ownership in contravention of condominium rules, the judge concluded that the rules must be reasonable, with some flexibility to accommodate those owners who "feel a need for the comfort that can be provided by a small and faithful companion" (at § 70) which are unlikely to interfere with the use and enjoyment of other owners. In the circumstances of the case, the Chassies' cat, which never left their condominium, could not reasonably be said to interfere with the use and enjoyment of any other owners.

[56] Another factor which the judge noted was evidence that the Board of Directors had knowledge that other condominium owners had, over the years, also had cats. The Board had taken no action against any cat owner other than the Chassies. The judge was of the view that the Board had "implicitly acquiesced in the presence of cats in the building" (at § 85). The judge concluded that a "condominium corporation cannot sleep on its rights and then enforce them against people who have relied on the non-enforcement" (at § 85).

[57] Finally, the judge considered Mrs. Chassie's medical history and the Ontario *Human Rights Code*. The medical opinion from Mrs. Chassie's doctor was that the "emotional trauma caused by the legal proceedings surrounding her cat have precipitated a worsening of her depression" and that removing the cat could "precipitate a relapse of her depression" (at § 92). The judge concluded that enforcement of the no-pets rule would have an adverse effect on Mrs. Chassie as it "would effectively prohibit her from living in the building because her cat is essential to her well being and 'an important part of her treatment.'" "In the specific circumstances of this case", the judge viewed Mrs. Chassie's cat as a therapy utility animal (as opposed to a companion animal: see § 62 and 93).

[58] For all these reasons, the judge dismissed the application to the Court for an order that the Chassies remove their cat.

C. Is there a reasonable basis on which a conclusion in Mr. Strumecki's favour could be reached?

[59] Mr. Strumecki provided medical evidence that he suffers from fibromyalgia and, most likely, mitochondrial myopathy. The main symptoms of both — muscle pain and fatigue — are similar. He also has hearing loss in both ears. However, there was no evidence before the Tribunal that Mr. Strumecki has been diagnosed with depression, or any mental disability. He did not put before the Tribunal any such medical diagnosis.

[60] The parties have made submissions about whether a family practitioner, such as Dr. Ewert, can diagnose depression. In my view, these submissions miss the point. I agree with CRHC that Dr. Ewert clearly did not diagnose depression; therefore, the question of whether she could make such a diagnosis is not the point. It is significant that, in her report, Dr. Ewert capitalizes the diagnoses of "Mitochondrial Myopathy" and "Fibromyalgia", but does not capitalize Mr. Strumecki's many symptoms which she lists, one of which is depression. I cannot conclude that Mr. Strumecki was diagnosed with the mental illness of depression on the basis of Dr. Ewert including the word "depression" in a list of symptoms any more than I could conclude that he suffered from a particular illness on the basis that he experienced the symptom of "nausea" or "respiratory allergies".

[61] Further, while Mr. Strumecki testified that he was "distraught" when he first came to Victoria, and that he had gone to a psychiatrist, his evidence at the hearing in 2004 was that Dr. Ewert, who has been his family physician since June 6, 2000, was not treating him for depression and that she had not referred him to a psychologist or psychiatrist for treatment of depression.

[62] Counsel for Mr. Strumecki refers to Dr. Atkins' report, where he states in the section entitled, "HISTORY" (Exhibit 4, tab 20, p. 1):

He has had a lot of psychological problems and tensions. He has been treated for depression with amitriptyline but this was not suitable. He has seen Dr. Hoffer who has given [him] some multivites including B 12 injections that he gives himself.

[63] Dr. Atkins saw Mr. Strumecki on October 20, 1999. There is no timeframe in his report regarding when Mr. Strumecki was treated for depression. Again, Mr. Strumecki's evidence was that, since June 6, 2000, he has not been treated for depression.

[64] Mr. Strumecki referred in his final submission to medical information which was not entered into evidence during the hearing. As I can make a decision only on the evidence properly before me, it would be improper for me to make any reference to this information or to give it any weight.

[65] Mr. Strumecki also referred to what he said was Dr. Atkins' recommendation that Mr. Strumecki undergo a psychiatric assessment, and the fact that counsel for CRHC did not cross-examine Dr. Atkins on this recommendation. My notes of the hearing make it clear that, in cross-examination, Dr. Atkins clarified that this comment in his report about a psychiatric assessment, and the entire paragraph in which it is contained, is, in fact, Dr. Eisen's comment. Dr. Atkins' oral evidence in cross-examination was that he did not understand this reference made by Dr. Eisen to a psychiatric exam.

[66] Dr. Sirrs does include in her letters to Dr. Ewert the following:

History of "depression"

Again, there is no timeframe about when the depression occurred, and, again, Mr. Strumecki's evidence was that he had not been treated for depression by Dr. Ewert, who had been his family physician since June 2000.

[67] In the absence of a medical diagnosis of depression, I cannot conclude that Mr. Strumecki had a mental disability. As stated above in § 4, the test is not whether there is "any" evidence, but whether there is a reasonable basis on which a conclusion in Mr. Strumecki's favour could be reached. I find that, on the ground of mental disability, there is not. However, in the event that I am incorrect in reaching this conclusion, I will continue my analysis on the assumption that Mr. Strumecki does have the mental disability of depression.

[68] Mr. Strumecki provided medical evidence that he suffers from fibromyalgia and, probably, from mitochondrial myopathy. He also wears a hearing aid in both ears. Mr. Strumecki alleges that he was discriminated against by CRHC as its rule adversely affected him because of these disabilities and depression. He must, therefore, establish that he suffered an adverse effect that he would not have suffered if he did not have the disabilities. The fact alone that he has disabilities and that he was not permitted to keep his dogs in his apartment is not sufficient. Another way to view Mr. Strumecki's complaint is that he is alleging that CRHC discriminated against him by refusing the accommodation he requested, that is, permission to keep his dogs in his apartment. He must, therefore, establish a connection between his disabilities, on the one hand, and the requested accommodation, on the other. Again, the fact alone that he has disabilities and that a requested accommodation was refused is not sufficient (see *Ingram v. Workers' Compensation Board*, 2003 BCHRT 57 [CHRR Doc. 03-208] at § 20, and *Edward v. 593984 BC Limited*, 2004 BCHRT 102 [CHRR Doc. 04-226] at § 16).

[69] Neither Dr. Atkins, who diagnosed Mr. Strumecki with fibromyalgia, nor Dr. Sirrs, who made a probable diagnosis of mitochondrial myopathy, mentioned Mr. Strumecki's dogs, or any medical benefit related to these disabilities which he might derive from their presence.

[70] In her report, Dr. Ewert states that the solace Mr. Strumecki received from his pets was of benefit. CRHC submits that this is not an expert or a medical opinion related to Dr. Ewert's area of expertise, and that this statement provides no actual medical diagnosis or medical connection between any of Mr. Strumecki's disabilities and his dogs. Regarding Dr. McColl's report, CRHC maintains that she does not distinguish between the benefit of companion animals to all human beings and to those with disabilities, and she provides no reasonable basis to establish a connection between Mr. Strumecki's disabilities and his dogs.

[71] I agree with these submissions. In my view, the medical evidence provided by Mr. Strumecki in support of his complaint falls far short of the medical evidence that was before the Court in *Niagara North*. Based on the medical evidence before the Court, the judge concluded that Mrs. Chassie suffered from a mental disorder within the meaning of the Ontario *Human Rights Code*. Further, the medical evidence provided in support of Mrs. Chassie was compelling. Her doctor wrote that Mrs. Chassie's cat was an important part of her treatment, and that removing the cat would precipitate a relapse of her depression. Mrs. Chassie's need for her cat was such that a requirement that she give it up would "effectively prohibit her from living in the building because her cat is essential to her well being and an important part of her treatment" (at § 93). The judge specifically rejected the argument that her cat was "merely a companion animal providing emotional support, and not a therapy utility animal like a seeing eye dog" (at § 93).

[72] In contrast to *Niagara North*, Dr. Ewert does not say that Mr. Strumecki required the presence of his dogs because of his medical condition, or that his dogs were an important part of his treatment. Despite her statement that his dogs provided solace to Mr. Strumecki, Dr. Ewert did not state that his condition improved during the three-month period when he had them in his apartment.

[73] In further contrast to *Niagara North*, except for the period October 25, 2001, to January 31, 2002, when he brought his dogs into his apartment to challenge the rule, Mr. Strumecki has not had his dogs with him since October 1998, when he entered into his tenancy agreement with CRHC. In his correspondence with CRHC during the three-month period when he had his dogs in his apartment, Mr. Strumecki made it clear that, if he were not permitted to keep his dogs with him, he would place them elsewhere as he wished to remain in his apartment.

[74] There is no medical evidence before the Tribunal that Mr. Strumecki suffered any medical ill effects as a result of not having his dogs with him since 1998. Indeed, Dr. Sirrs wrote after she saw Mr. Strumecki on June 1, 2004, and after she reviewed his medical records going back to the 1980s: "What is encouraging about those records is that his functional status has remained quite stable". Regarding depression, there was no medical evidence that Mr. Strumecki was in a state of depression without his dogs, or that their presence during the three-month period Mr. Strumecki brought them into his apartment improved his condition. In fact, Mr. Strumecki, who testified that he was "distracted" in 1998, has since then been able to attend weight training (which he described as "miraculous" for him), and play badminton three times a week.

[75] Much of Mr. Strumecki's evidence was that he was concerned about the level of care his dogs were receiving when they were in less-than-ideal foster home situations. In my view, such evidence cannot be the basis for Mr. Strumecki's complaint of discrimination on the ground of disability. Further, I note that Mr. Strumecki testified that, while he misses his dogs, the care they are receiving in Vancouver is excellent.

[76] In addition to the medical evidence about Mrs. Chassie, the other essential evidentiary underpinnings of the judge's reasoning in *Niagara North* were the societal change which had occurred in Ontario as evidenced by amendments to that province's landlord and tenant legislation beginning in 1990 and the fact that the Board of Directors had not enforced its no-pet rule over the years. The decision also referred to the fact that Mrs. Chassie's cat could not reasonably be viewed as a nuisance as it never left the Chassies' condominium.

[77] There was no evidence before the Tribunal that this province has reached a similar consensus

redefining the relative rights and responsibilities regarding pet ownership in the context of a landlord-tenant relationship. Further, there is no evidence before me that CRHC did not diligently enforce its rule.

[78] It is unclear to me how Dr. McColl's report assists Mr. Strumecki [to] establish a connection between mitochondrial myopathy, fibromyalgia, or depression and his dogs. The subjects in the studies included patients discharged from a coronary care unit, individuals performing mental arithmetic (primarily women), and undergraduate students (again, primarily women). Studies suggested certain benefits of pet ownership with respect to seniors and lower systolic blood pressure and plasma triglyceride levels, and benefits for selected cardiovascular responses. There was no evidence that there was a medical concern about Mr. Strumecki's blood pressure, triglyceride levels, or cardiovascular responses.

[79] Further, Dr. McColl agreed that individuals who are not disabled would experience the same benefits from companion animals as do the disabled. Hence, Dr. McColl's report does not demonstrate that there is a connection between the absence of Mr. Strumecki's dogs and a negative impact on him because of his disabilities.

[80] Based on the evidence before me, I am of the view that CRHC's rule did not adversely affect Mr. Strumecki because of any of his disabilities.

[81] I conclude that, with respect to his allegation of discrimination on the ground of mental or physical disability, Mr. Strumecki has not established that there is a reasonable basis on which a conclusion in his favour could be reached.

6. CONCLUSION

[82] For the reasons stated above, CRHC's no evidence motion is granted, and the complaint is dismissed.

