

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M.C., and J.C. individually and as parents and
natural guardians of E.C. and O.C.,

Plaintiffs,

7:17-cv-3596 ()

-against-

**COMPLAINT AND
JURY DEMAND**

JOSEPH NIKIFOR and
KATHLEEN NIKIFOR,

Defendants

PRELIMINARY STATEMENT

1. Defendants Joseph Nikifor and Kathleen Nikofor (“Defendants”) discriminated against tenants, M.C., and J.C. individually and as parents and natural guardians of E.C. and O.C., by charging Plaintiffs a pet deposit for E.C. and O.C.’s service animal, refusing to renew Plaintiffs’ lease without an extra deposit, and by threatening eviction if the deposit is not paid.
2. Defendants refused to grant a reasonable accommodation for E.C. and O.C., in violation of the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and 3631; the New York State Human Rights Law, Executive Law §§ 290-301; and New York Civil Rights Law §§ 47 and 47-b.

JURISDICTION

3. This is an action for declaratory and injunctive relief pursuant to the Fair Housing Act, New York State Human Rights Law and New York Civil Rights Law.
4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

5. This Court has jurisdiction to issue declaratory relief pursuant to 28 U.S. §§ 2201 and 2202.
6. This Court has Supplemental Jurisdiction under 28 U.S.C. § 1367 for violations of New York State Human Rights Law and New York State Civil Rights Law.

VENUE

7. Pursuant to 28 U.S.C. § 1391(b) venue is proper in the Southern District of New York because a substantial part of the events or omissions giving rise to the claims alleged here occurred in the District.

PARTIES

8. Plaintiffs M.C. and J.C. are residents and lessees at 35 Market Lane Town of Clinton Corners, County of Dutchess, State of New York (“35 Market Lane”).
9. Plaintiff E.C. is the six year old child of M.C. and J.C.
10. Plaintiff O.C. is the eight year old child of M.C. and J.C.
11. Plaintiffs E.C. and O.C. reside with M.C. and J.C. at 35 Market Lane.
12. Defendants Joseph Nikifor and Kathleen Nikifor are the owners and lessors of real property located at 35 Market Lane.

STATEMENT OF FACTS

13. Plaintiffs live at 35 Market Lane, an attached single family apartment.
14. M.C. and J.C. entered into a residential lease with Defendants on September 15, 2015 for tenancy of 35 Market Lane.

15. On September 16, 2016, the lease term expired, and the tenancy converted to a month to month tenancy.
16. E.C. has Autism and Attention Deficit Hyperactivity Disorder (ADHD).
17. E.C.'s disabilities result in severe difficulty controlling his emotions.
18. E.C.'s disabilities interfere with his ability to socialize with peers.
19. E.C.'s disabilities also manifest by picking at his scalp, and flapping his arms.
20. O.C. has Autism and ADHD.
21. O.C.'s disabilities result in severe difficulty controlling his emotions.
22. O.C.'s disabilities interfere with his ability to socialize with peers.
23. E.C. and O.C.'s physician determined that it was medically necessary for them to have a service animal to help manage symptoms of their disabilities.
24. M.C. told Defendants that E.C. and O.C.'s physician had prescribed E.C. and O.C. a service animal to help manage the symptoms of their disabilities.
25. M.C. told Defendants that she would be acquiring a service animal as prescribed by E.C. and O.C.'s physician.
26. Defendants told M.C. that pets were not allowed at 35 Market Lane.
27. On April 13, 2017, M.C. and J.C. purchased a three (3) month old golden retriever named Jax as a service animal for E.C. and O.C.
28. M.C. has individually trained Jax to redirect E.C. and O.C. from engaging in the behaviors associated with their disabilities.
29. M.C. has individually trained Jax to redirect E.C. and O.C. to assist in regaining control of their emotions when their emotions are not controlled because of their disabilities.
30. Jax redirects E.C. from picking at his scalp.

31. Jax redirects E.C. from flapping his arms.
32. On April 13, 2017, upon learning that Plaintiffs had acquired Jax, Defendants sent a new written lease to M.C. and J.C.
33. The new lease included a provision for a \$500 pet deposit.
34. Defendants told M.C. and J.C. that if they did not execute the new lease and pay the pet deposit that Plaintiffs were to vacate the apartment no later than May 15, 2017.
35. M.C. told Defendants that Jax was a service animal and not a pet.
36. M.C. requested that Defendants waive the \$500 pet deposit.
37. Defendants have refused to waive the \$500 pet deposit.
38. On May 1, 2017, Plaintiffs made a good faith effort to resolve these issues by educating Defendants about their responsibilities under the Fair Housing Act.
39. As of the date of this Complaint, Defendants have made no efforts to resolve this matter.
40. Plaintiffs fear that they will be evicted.
41. No previous application has been made for the relief sought herein.

**FIRST CAUSE OF ACTION
THE FAIR HOUSING ACT, 42 U.S.C. §§ 3601-
3619, 3631**

42. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.
43. The Fair Housing Act prohibits discrimination against a renter of real property on the basis of their disability, or the disability of an individual the lessor knows will be living in the leasehold. 42 U.S.C. § 3604(f)(1)
44. The Fair Housing Act defines a person with a disability as a person with either: a physical or mental impairment which substantially limits one or more of such a person's major life

activities; or a record of having such an impairment; or is regarded as having such an impairment. 42 U.S.C. § 3602(h).

45. E.C. has mental impairments of Autism and ADHD.

46. E.C.'s Autism and ADHD substantially limit his ability to interact with peers and control his emotions in public and private settings.

47. E.C.'s Autism and ADHD also cause him to pick at his scalp and flap his arms.

48. O.C. has mental impairments of Autism and ADHD.

49. O.C.'s Autism and ADHD substantially limit his ability to interact with peers, and control his emotions in public and private settings.

Claim 1

The Fair Housing Act 42 U.S.C. § 3604(f)(1)

50. In a residential lease, the Fair Housing Act prohibits a landlord from taking an adverse action against a renter because of a disability of a person intending to reside in the dwelling. 42 U.S.C. § 3604(f)(1).

51. Defendants were told that E.C. and O.C. required a service animal.

52. Defendants were told that Jax was a service animal and not a pet.

53. The property remains available for rent from Defendants.

54. M.C. and J.C. are otherwise qualified to continue leasing the property.

55. The new lease requirement that Plaintiffs pay a pet deposit discriminates against E.C. and O.C. on the basis of their disabilities by making the property unavailable to Plaintiffs in violation of the FHA, 42 U.S.C. § 3604(f)(1).

Claim 2
The Fair Housing Act 42 U.S.C. § 3604(f)(2)

56. In a residential lease, the Fair Housing Act prohibits a landlord from discriminating against any person in the terms, conditions or privileges of the rental of a dwelling because of the disability of a person residing in the dwelling. 42 U.S.C. § 3604(f)(2).
57. Defendants were told that E.C. and O.C. required a service animal.
58. Defendants were told that Jax was a service animal and not a pet.
59. Defendants told Plaintiffs that they must leave their apartment by May 15, 2017 because M.C. had acquired a service animal for E.C. and O.C., in violation of the Fair Housing Act, 42 U.S.C. § 3604(f)(2).

Claim 3
The Fair Housing Act 42 U.S.C. 3604(f)(3)(B)

60. It is unlawful for landlords to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including public use and common areas. 24 C.F.R. § 100.204(a).
61. M.C. requested that E.C. and O.C. be reasonably accommodated by Defendants.
62. M.C. requested that Defendants waive the pet deposit as a reasonable accommodation.
63. Defendants have refused to waive the pet deposit for E.C. and O.C.'s service dog in the new lease.
64. Defendants' refusal to provide E.C. and O.C. with a reasonable accommodation has denied them an equal opportunity to use and enjoy the property in violation of the Fair Housing Act, 42 U.S.C. 3604(f)(3)(B).

Claim 4
The Fair Housing Act 42 U.S.C. § 3617

65. It is unlawful for Defendants to coerce, intimidate, threaten, or interfere with Plaintiffs enjoyment of their rights which are protected under the Fair Housing Act, 42 U.S.C. § 3617.
66. Defendants have threatened to evict Plaintiffs from the apartment if they do not pay the pet deposit and execute the new lease.
67. Defendants have coerced, threatened, and interfered with the rights of E.C. and O.C. in violation of the Fair Housing Act, 42 U.S.C. § 3617.
68. Defendants' conduct is ongoing, making declaratory and injunctive relief against Defendants appropriate pursuant to 42 U.S.C. §§ 3601-3619, and 3631, as well as Fed. R. Civ. P. 57, and 28 U.S.C. § 2201.

SECOND CAUSE OF ACTION
NEW YORK STATE HUMAN RIGHTS LAW

69. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.
70. The New York State Human Rights Law violations alleged herein form the same case and controversy as those forming the basis of causes of action alleged pursuant to Federal Law.
71. It is unlawful for a landlord to deny to an individual with a disability, directly or indirectly, any accommodation or privilege of accommodation on the basis of their disability. Executive Law § 296(18)(2).
72. Discriminatory practices include a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford

said person with a disability equal opportunity to use and enjoy a dwelling, including reasonable modification to common use portions of the dwelling. Executive Law § 296(18)(2).

73. Defendants have refused to accommodate Plaintiffs by failing to make a reasonable modification to their pet deposit policy.

74. Defendants have refused to renew Plaintiffs' lease unless they pay a pet deposit which violates Executive Law § 296(18)(2).

75. Defendants have threatened to evict Plaintiffs from their residence if they do not pay a pet deposit which violates Executive Law § 296(18)(2).

76. Because Defendants' discriminatory and unlawful conduct is ongoing, declaratory and injunctive relief against Defendants are appropriate pursuant to Executive Law § 296, as well as 28 U.S.C. § 1367, Fed. R. Civ. P. 57, and 28 U.S.C. § 2201.

**THIRD CAUSE OF ACTION
NEW YORK STATE CIVIL RIGHTS LAW § 47**

77. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.

78. The New York State Civil Rights Law violations alleged herein form the same case and controversy as those forming the basis of causes of action alleged pursuant to Federal Law.

79. New York Civil Rights Law § 47(1) specifically states that no person shall be denied admittance to and/or the equal use of and enjoyment of any public facility solely because that person is a person with a disability and is accompanied by a service dog.

80. New York Civil Rights Law § 47(2) covers all forms of public and private housing accommodations.

81. Accordingly, the property leased by Plaintiffs from Defendants is a public facility under New York Civil Rights Law § 47(1).
82. Defendants have unlawfully discriminated against Plaintiffs by seeking to deny E.C. and O.C. equal access to their apartment due to their service animal through the implementation of new lease provisions.
83. Defendants' refusal to permit E.C. and O.C. equal access to their apartment with their service animal violates New York Civil Rights Law § 47.
84. Because Defendants' discriminatory and unlawful conduct is ongoing, declaratory and injunctive relief against Defendants are appropriate pursuant to New York Civil Rights Law § 47, as well as 28 U.S.C. § 1367, Fed. R. Civ. P. 57, and 28 U.S.C. § 2201.

**FOURTH CAUSE OF ACTION
NEW YORK STATE CIVIL RIGHTS LAW § 47-b**

85. Plaintiffs re-allege and incorporate herein all previously alleged paragraphs of the Complaint.
86. The New York State Civil Rights Law violations alleged herein form the same case and controversy as those forming the basis of causes of action alleged pursuant to Federal Law.
87. New York Civil Rights Law § 47-b(2) provides that no person or legal entity shall attempt to impose or maintain any direct or indirect additional charge for the admittance of a service dog accompanying a person with a disability.
88. E.C. and O.C. are individuals with disabilities who rely on their service dog to ameliorate the symptoms of their disabilities.

89. Defendants have unlawfully discriminated against E.C. and O.C. by attempting to impose or maintain an additional deposit for a service animal in Plaintiffs' apartment through the implementation of new lease provisions.

90. Defendants' refusal to accommodate the E.C. and O.C.'s service animal by waiving the pet deposit violates New York Civil Rights Law § 47-b.

91. Because Defendants' discriminatory and unlawful conduct is ongoing, declaratory and injunctive relief against Defendants are appropriate pursuant to New York Civil Rights Law § 47-b, as well as 28 U.S.C. § 1367, Fed. R. Civ. P. 57, and 28 U.S.C. § 2201.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court order the relief as set forth below:

- a. A Declaratory Judgment against Defendants on the basis of violations of: the Fair Housing Act 42 U.S.C. §§ 3601-3619, and 3631; the New York State Human Rights Law, Executive Law §§ 290-301; and the New York State Civil Rights Law §§ 47 and 47-b; and
- b. A Permanent Injunction enjoining Defendants from requiring that tenants pay pet deposits for service animals; and
- c. Damages, in an amount to be determined by this Court; and
- d. Costs and disbursements incurred by Plaintiffs, as well reasonable attorney's fees; and
- e. Any other such relief as this Court may deem just and proper under the circumstances.

DATED: May 14, 2017
Brooklyn, New York

Respectfully submitted,



DISABILITY RIGHTS NEW YORK
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Application for *Pro Hac Vice* –to follow

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