STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009CH1182
	)	HUD NO.: 05-09-0052-8
JIAN LI,	)	ALS NO.: 09-0116
	)	
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen, presiding, upon the Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2009CH1182, Jian Li, Complainant, and Prairie Management & Development, Inc., and Neighborhood Redevelopment Associates, L.P., Respondents; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request and supporting materials, and the Department's response to the Complainant's Request; and the Complainant's Reply to the Department's response; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Complainant's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On October 15, 2008, the Complainant filed an unperfected charge of discrimination with the Department, perfected on December 5, 2008, in which he alleged that the Respondents subjected him to discriminatory terms, conditions, privileges, or services and facilities by terminating his tenancy because of his disability (Bladder Cancer), in violation of Section 3-102.1(B) of the Illinois Human Rights Act (the "Act"). The Department dismissed the charge on March 3, 2009 based on its finding that there was no substantial evidence of discrimination. The Complainant filed a timely Request on March 24, 2009, and his timely Reply to the Department's response on June 19, 2009.

2. The undisputed evidence in the investigation file shows that from February 2003 through February 2008, the Respondents employed the Complainant as a Resident Maintenance Engineer at one of the Respondents' properties, the Chinatown Elderly Apartments (the "Subject Property"). The Subject Property is a low-income "project-based" Section 8 rental building for elderly residents, and it is a HUD-assisted multi-family housing project.

3. As a condition of his employment, the Respondents required the Complainant to live on the Subject Property. The Complainant resided at the Subject Property with his wife in the only "non-project based" unit in the Subject Property. The Complainant did not have a written lease or occupancy agreement with the Respondents. The Respondents provided a rent concession to the Complainant and his wife as part of his overall employment benefits and as partial compensation for his employment. The Complainant and his wife had also been on the Respondents' waiting list on "standby" for a one-bedroom "project-based" unit in the Subject Property since January 21, 2000.

4. Ping Ning Lai ("Lai") was a resident manager at the Subject Property. The Respondents also required Lai to live on the Subject Property as a condition of his employment. Lai and his wife resided in a "project-based" unit while he was employed by the Respondents. Lai did not have an occupancy agreement with the Respondents. The Respondents also provided a rent concession to Lai and his wife as part of his overall employment benefits and as partial compensation for his employment. Lai and his wife had been on the Respondents' waiting list on "stand by" for a one-bedroom "project-based unit" since August 10, 1992.

5. In September of 2007, Lai retired his position as a building manager. At that time, Lai and his wife were at the top of the Respondents' waiting list for a "project-based" unit. Therefore, when Lai retired, he and his wife were able to continue to reside in their "project-based" unit, and they began to pay rent to the Respondents at a low-income elderly rent level. Lai and his wife were also disabled when they assumed their "project-based" tenancy at the Subject Property.

6. In approximately July of 2007, the Respondents hired Daniel Kung ("Kung") as manager of the Subject Property.

7. In July of 2007, the Complainant was diagnosed with Bladder Cancer. The Respondents were aware of the Complainant's disability. Beginning on July 29, 2007, the Respondents permitted the Complainant to go on a reduced work schedule as a reasonable accommodation for his disability. The Complainant helped to train Wen-Zhi Li as his supplemental worker and eventual substitute replacement.

8. On October 24, 2007, Kung called the Chicago Police to the Subject Property after the Complainant allegedly assaulted him. Kung reported to the responding officers that the Complainant had physically threatened him in the management office on the Subject Property. As a result, the Complainant was arrested.

9. Following his October 24, 2007 arrest, the Complainant appeared before a judge of the Circuit Court of Cook County on January 16, 2008. The judge entered an

Order of Special Conditions of Bond Release (the "Bond"). According to the Bond, the Complainant was not permitted to go to the area of Kung's home or office, or the engineering quarters, which were all on the Subject Property, for a period of six months.

10. On January 24, 2008, the Respondents terminated the Complainant's employment and issued him a 30-day lease termination notice. The Respondents' articulated, legitimate non-discriminatory reason for terminating the Complainant's tenancy was that the Complainant's employment had been terminated. However, the Complainant and his wife were allowed to remain on the Respondents' waiting list for a "project-based" unit at the Subject Property.

11. In his Request and his Reply, the Complainant contends that the incident that occurred on October 24, 2007, did not actually rise to level of an assault. The Complainant also argues that Lai was a similarly situated comparable whose tenancy was not terminated when his employment with the Respondents voluntarily ended. In its response, the Department argues that the Complainant failed to establish a *prima facie* case of discrimination because he failed to show that a similarly situated comparative had been treated more favorably under similar circumstances. The Department also argues that the Complainant failed to show that the Respondents' legitimate, articulated, non-discriminatory reason for terminating the Complainant's tenancy was a pretext for disability discrimination

12. The Commission's review of the Department's investigation file leads it to conclude that the Department properly dismissed the Complainant's charge for lack of substantial evidence because the Complainant did not establish a *prima facie* case of discrimination. The *prima facie* case requires an evidentiary showing that a similarly situated non-disabled individual was treated more favorably under similar circumstances. In this case, the Complainant has failed to produce such evidence.

13. The Complainant's only alleged comparative, Lai, is not "comparable" to the Complainant at all. Lai, who is also disabled, voluntarily left his employment with the Respondents. The Complainant, on the other hand, was involuntarily separated from his employment following a criminal arrest and court proceedings that resulted in the issuance of a Bond, which, by its terms, made it impossible for the Complainant to work and reside on the Subject Property for a set period of time.

14. Further, the evidence shows that Lai and his wife resided in a one-bedroom "project-based" unit at the time that Lai voluntarily terminated his employment. Once his employment ended, because Lai and his wife were already at the top of the Respondents' waiting list for a one-bedroom "project-based" unit, they were able to immediately assume a renter status in the "project-based" unit that they already occupied. Conversely, the Complainant and his wife resided in a "non-project based" unit at the time that his employment was involuntarily terminated; thus, once his employment ended, the Complainant's entitlement to the "non-project based" unit ended. The Complainant was not otherwise eligible or entitled to continue to reside in the "non-project based" unit once he was no longer employed by the Respondents.

15. Even assuming *arguendo* that the Complainant could establish a *prima facie* case, the Complainant has not presented evidence that the Respondents' articulated, legitimate, non-discriminatory reason for terminating the Complainant's tenancy was a pretext for disability discrimination. The Complainant's argument is severely undercut by the undisputed evidence that once the Respondents were made aware of the Complainant's disability in July of 2007, they immediately took steps to reasonably accommodate the Complainant's disability by adjusting his work schedule and providing him with a supplemental worker. Further undercutting the Complainant's contention is the fact that Lai and his wife, who were disabled, were permitted to continue to reside in their "project-based" unit once Lai voluntarily terminated his employment. There is simply no evidence in the file to suggest that the Respondents were motivated by unlawful disability discrimination when they terminated the Complainant's tenancy.

16. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of his charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Complainant's charge is hereby **SUSTAINED.**

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Respondents Prairie Management & Development, Inc., and Neighborhood Redevelopment Associates, L.P., as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
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HUMAN RIGHTS COMMISSION)

Entered this 22nd day of July 2009.

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen