



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

H14-0249, 0250

HUD No. 01-14-0349-8

Date: September 5, 2014

██████████ (Madison)

v.

██ (Skowhegan)

██████████ (Skowhegan)

I. Complainant's Complaint:

Complainant ██████████ alleged that Respondent ██████████ ("██████████" and its office manager, Respondent ██████████ treated her differently in the terms and conditions of her housing due to her disability because they failed to provide her with the washer/dryer that was advertised for her unit and they denied her a reasonable accommodation when they refused to provide her with a washer/dryer.

II. Respondents' Answer:

██████████ and Ms. ██████████ did not respond to several attempts by the Commission to elicit information from them in response to Ms. ██████████ Complaint.

III. Jurisdictional Data:

- 1) Dates of alleged discrimination: May, 21, 2014 and ongoing.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): June 6, 2014.
- 3) Respondents are subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act, as well as state and federal housing regulations.
- 4) Complainant is represented by ██████████, Esq. Respondents did not respond to requests from the Commission.
- 5) Investigative methods used: A thorough review of the written materials provided by the Complainant. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" here.

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IV. Development of Facts:

1) The parties in this case are as follows:

- a) Ms. [REDACTED] lives at 11 Rowell Street, Apt. 1, Madison, Maine. She has disabilities which include symptoms of fatigue, physical weakness, difficulty walking, severe joint pain, general indifference and inability to engage socially, and disturbed sleep.
- b) [REDACTED] is the property management company for the subject premises.
- c) Ms. [REDACTED] is the Office Manager for [REDACTED]

2) Complainant provided the following in support of her position:

- a) Ms. [REDACTED] has lived at the subject premises since October 2013. Ms. [REDACTED] saw an advertisement for the subject premises and noticed that the advertisement stated that the unit came with a washer and dryer.
- b) Ms. [REDACTED] inquired about the apartment in October 2013 and confirmed that the unit was advertised with a washer/dryer. Ms. [REDACTED] was told that it would take four to six months before appliances could be installed because the owner had recently spent money on remodeling the unit, which had been vacant for 11 months. The owner needed to replenish his savings before the washer/dryer would be available.
- c) The Owner reduced Ms. [REDACTED] rent by \$50.00 a month because of the missing washer/dryer.
- d) In the meantime, Ms. [REDACTED] sister offered to help her with laundry at her sister's home until the washer/dryer was installed in Ms. [REDACTED] apartment. This was a temporary solution for Ms. [REDACTED] but was not fully satisfactory because due to Ms. [REDACTED] disabilities she is unable to leave her home for lengthy periods of time. This resulted in Ms. [REDACTED] not begin able to use her sister's washer/dryer very often.
- e) In May 2014, Ms. [REDACTED] upstairs neighbor moved out. There was a washer/dryer in the upstairs unit in the vacated unit. Ms. [REDACTED] requested that the owner move the appliances from the vacant unit into her unit as a reasonable accommodation for her disabilities.
- f) Ms. [REDACTED] received a response from Ms. [REDACTED] which incorrectly stated that the landlord did not say when a washer/dryer would be installed in Ms. [REDACTED] s unit, and reiterated that she would have to wait. The response did not address Ms. [REDACTED] request for a reasonable accommodation.
- g) The washer/dryer in the vacant unit have been available and will be available for tenants without disabilities, but not to Ms. [REDACTED] even though her unit was advertised as including a washer/dryer.

3) Respondents did not provide any information in response to Complainant's allegations.

V. Analysis:

- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
 - 2) The MHRA provides, in part, that any person has the right to rent an apartment without discrimination on the basis of disability. 5 M.R.S. § 4581-A(1)(B); 94-CMR. Ch. 8, § 8.04(a)(1).
 - 3) The MHRA also provides, in part, that it is "unlawful for a person to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of the rights granted or protected by this Act", 5 M.R.S. § 4633(2), or to "evict or attempt to evict any tenant of any housing accommodations because of ...physical or mental disability..." 5 M.R.S. § 4581-A(1)(E).
 - 4) The Commission's housing regulation, which interprets § 4633(2), provides that:
 - A. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having aided or encouraged any person in the exercise or enjoyment of, any right granted or protected by this part.
 - B. Conduct made unlawful under this section includes, but is not limited to...
 - (2) Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the disability... of such persons...
- 94-348 C.M.R. Ch. 8, § 8.09.
- 5) Here Complainant alleged that she was denied promised appliances because of her disability and that she was denied a reasonable accommodation by Respondents.

Disability Discrimination - Terms and Conditions

- 6) Because the disability discrimination claim does not involve direct evidence, Complainant establishes a prima-facie case of unlawful housing discrimination with respect to the price, terms, conditions, or privileges of the sale, rental, or lease of a housing accommodation by showing that: (1) she is a member of a protected class, (2) she was not offered the same terms, conditions or privileges of rental of a dwelling or not provided the same services or facilities in connection therewith made available to others, and (3) under circumstances giving rise to a reasonable inference of prohibited discrimination. *See Khalil v. Farash Corp.*, 260 F. Supp. 2d 582, 588 (W.D.N.Y. 2003).
- 7) Once Complainant has established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondent to articulate a legitimate, nondiscriminatory reason its action. *See United States v. Grishman*, 818 F. Supp. at 23; *HUD v. Blackwell*, 908 F.2d at 870; *Doyle v. Dep't of Human Servs*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful

discrimination brought about the adverse housing action. *See id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondents' proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet her overall burden at this stage by showing that (1) the circumstances underlying the articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.

- 8) In order to prevail, Complainant must show that she would not have suffered the adverse action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979).
- 9) Complainant here has stated a prima-facie case of discrimination based on disability in the terms and conditions of her housing, as she is a member of a protected class, was presumably treated differently than non-disabled tenants, and under circumstances giving rise to an inference of prohibited discrimination.
- 10) Respondents did not provide any response in this case, but by a letter sent to Complainant, Respondents stated that Complainant was told that there was no timetable as to when she would receive a washer and dryer in her unit.
- 11) Complainant has not met her overall burden of showing that Respondents' reasons for not purchasing a washer/dryer for her unit were false or a pretext for discrimination.
 - a) Complainant applied to rent an apartment that was supposed to include a washer/dryer in the unit.
 - b) Complainant was told that she would get the washer/dryer within four to six months, but did not receive it. Respondents' letter stated that Complainant was not given a timetable as to when she would receive the washer/dryer, which is contradicted by the facts that Complainant presented.
 - c) Even when looking at the facts in the light most favorable to Complainant and assuming that she was in fact told that she would get a washer/dryer in a certain time frame, the facts do not support a finding that the time frame for purchasing the washer/dryer was established or delayed due to her disability.
 - d) Complainant stated that she was told that she would get the washer/dryer when the Owner had money to purchase them after completing a renovation to the property. This does not support that Complainant did not receive the washer/dryer due to her disability.
- 12) Discrimination on the basis of disability in the terms and conditions of Complainant's housing is not found.

Disability Discrimination - Reasonable Accommodation Claim

- 13) The MHRA makes it unlawful:

For any owner...managing agent or other person having the right... rent, lease or manage a housing accommodation or any of their agents to refuse to make reasonable accommodations in rules, policies, practices or services when those accommodations are necessary to give a person with physical or mental disability equal opportunity to use and enjoy the housing.

5 M.R.S. § 4582-A(2).

14) To establish a prima-facie case of failure to accommodate, Complainant must show that:

- (1) She has a "physical or mental disability" as defined by the MHRA;
- (2) Respondent knew or reasonably should have known of the Complainant's disability;
- (3) Complainant requested a particular accommodation;
- (4) The requested accommodation is necessary to afford Complainant an equal opportunity to use and enjoy the housing;
- (5) The requested accommodation is reasonable on its face, meaning it is both efficacious and proportional to the costs to implement it; and
- (6) Respondent refused to make the requested accommodation.

See 5 M.R.S. § 4582-A(2); *Astralis Condominium Ass'n v. Secretary, U.S. Dept. of Housing and Urban Development*, 620 F.3d 62, 67 (1st Cir. 2010) (interpreting similar provision in Fair Housing Amendments Act, but seemingly placing burden on Complainant to show accommodation was reasonable); *Oconomowoc Residential Programs v. City of Milwaukee*, 300 F.3d 775, 783 (7th Cir. 2002) (plaintiff's burden is only to show reasonableness "on its face"). Compare *Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001) (interpreting ADA) (holding that plaintiff need only show requested accommodation was feasible "on the face of things").

15) If Complainant makes this showing, Respondent can defeat the claim by showing that the proposed accommodation was unreasonable, meaning "it imposes undue financial or administrative burdens or requires a fundamental alteration in the nature of the program." *Oconomowoc Residential Programs*, 300 F.3d at 784.

16) The evidence in this case supports Complainant's claim that Respondents denied her a reasonable accommodation:

- a) Complainant has shown that she has a disability as defined by the MHRA.
- b) Based on correspondence from Respondents during Complainant's tenancy, Respondents were aware of Complainant's disability.
- c) Complainant requested to have the washer/dryer from a vacant unit moved to her unit as a reasonable accommodation due to her disability.
- d) Based on the facts provided by Complainant, her requested accommodation is necessary to allow her an equal opportunity to use and enjoy her housing.
- e) Complainant's request was reasonable as she had been promised a washer/dryer and a vacant unit in the complex had a washer/dryer that could have been moved into Complainant's unit until Respondents purchased a washer/dryer for Complainant's unit.

- f) In a letter to Complainant during her tenancy, Respondents stated that Complainant was told that there was no timeline for when Complainant would receive the washer/dryer. Complainant states however that she was told that she would get a washer/dryer in four to six months.
- i. Respondents did not respond to Complainant's request to have the washer/dryer in the vacant unit moved into Complainant's unit.
 - ii. Respondents' failure to respond to Complainant's request is in essence a denial of her request.
 - iii. Respondents have not shown that it would have been an undue hardship to move the washer/dryer from the vacant unit to Complainant's or that Complainant's request was unreasonable.
 - iv. As of August 22, 2014, which is the last date that information in this case was received, Complainant still had not been provided with the washer/dryer.

17) It is found that Respondents denied Complainant a reasonable accommodation for a disability.


VI. Recommendation:

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following findings:

1. There are **No Reasonable Grounds** to believe that Respondents [REDACTED] and [REDACTED] discriminated against Complainant [REDACTED] in the terms and conditions of her housing in violation of the Maine Human Rights Act; and
2. This portion of the complaint should be dismissed in accordance with 5 M.R.S. § 4612(2).
3. There are **Reasonable Grounds** to believe that Respondents [REDACTED] and [REDACTED] denied Complainant's request for a reasonable accommodation; and
4. Conciliation should be attempted on this claim in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



Victoria Ternig, Chief Investigator