



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

MHRC # H18-0028-A/B; HUD # 01-18-9036-8

May 3, 2018

Shane Robertson (Saco)

v.

**Carol Starbird Crawford (South Portland) &
Robb Allen Crawford (South Portland)**

I. Summary of Case:

Complainant Shane Robertson inquired about a rental listed by Respondents Robb Allen Crawford (“Manager”) and Carol Starbird Crawford (“Owner”) who co-own the apartment building; Manager has primary management responsibility for the building. Complainant alleged that Respondents discriminated against him based on familial status when they treated him differently in the terms and conditions of housing and refused to continue to consider renting to him. Respondents denied discrimination and stated they did not wish to rent to Complainant because of his large-breed dog. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, holding an Issues & Resolution Conference (“IRC”), and requesting additional information. Based upon this information, the Investigator recommends a finding that Respondents discriminated against Complainant on the basis of familial status.

II. Jurisdictional Data:

- 1) Dates of alleged discrimination: January 8, 2018.
- 2) Date complaint filed with the Maine Human Rights Commission (“Commission”): January 24, 2018.
- 3) Respondents are subject to the Maine Human Rights Act (“MHRA”) and the federal Fair Housing Act (“FHA”), as well as state and federal housing regulations.
- 4) Complainant is not represented by counsel. Owner is represented by Michael F. Vaillancourt, Esq.; Manager is represented by Michael F. Vaillancourt, Esq. and Jeremy Dean, Esq.

III. Development of Facts:

- 1) Complainant provided the following in support of his claims:

Complainant, who is married with a wife and three minor children, responded via email to a listing Respondents posted online for a large two-bedroom apartment (“Subject Apartment”). Complainant and

Manager wrote back and forth until Manager asked how many people were in Complainant's family. Complainant disclosed that he has three children. Respondent then stated that it sounded like Complainant needed more of a three-bedroom, which would cost more (although it was still the same unit). Complainant provided that his children share a bedroom and, therefore, his family was still seeking the advertised two-bedroom rate. When Manager did not respond, Complainant wrote to request a showing. Manager did not write back. Shortly thereafter, Complainant's wife ("Wife") emailed Crawford posing as a single woman, and Manager offered to show her the apartment.

2) Respondents provided the following in support of their position:

Respondents placed an advertisement for Subject Apartment on a classified website. In the past, Subject Apartment had been rented as a shared apartment; Respondents intended to continue to rent it this way. Applicants would have had the opportunity to rent either one, two, or three bedrooms in Subject Apartment and the other rooms would have been rented out to other tenants. The leases for Subject Apartment have reflected this style of renting since 2015.¹ Respondents believed Complainant's large-breed dog would have presented a problem,² and this was the real reason they ended communication. Complainant was not considered a good candidate.

3) The Investigator made the following findings of fact based on the documentation submitted by the parties and the information gathered at the IRC:

- a) Respondents posted an online listing entitled "Very large 2 bedroom apartment. Dogs accepted. Available now!" The full listing was unavailable, but did advertise the monthly rent, which Complainant recalled was around \$1,295. The listing did not specifically state that the apartment was a single-family apartment, but it also did not describe the apartment as shared.
- b) On January 8, 2018, Complainant and Manager emailed each other nine times within three hours concerning the listing.
 - i. At 12:00 p.m. Complainant wrote to ask if the apartment was available, and whether there were any restrictions on the type of dogs accepted. Sixteen minutes later, Manager replied that Respondents did accept dogs, and asked about the breed. Three further emails were exchanged about the dog in the next 15 minutes.
 - ii. At 12:40 p.m., Manager asked Complainant how many people would be occupying the apartment. Within an hour Complainant responded that he was inquiring about the apartment on his own behalf and on behalf of his wife and their three minor children.
 - iii. At 3:00 p.m. Manager wrote to Complainant stating, "Its [sic] a 2-3 bedroom apartment. This definitely sounds like the 3 bedroom rate which would be 1575.00." Four minutes later, Complainant provided that because his children all shared one bedroom he was still seeking to rent the apartment at the two-bedroom advertised rate. Manager did not respond. He stated that he accesses his personal emails during his regular workday, and would have stopped checking

¹ Subject Apartment was not described as shared housing in the advertisement Respondents placed on the classified website, or in discussions with Complainant or with Wife.

² At the IRC Respondents provided they had concerns because Subject Apartment was newly refurbished. In later submissions, they provided their concerns about the dog were related to sharing the living space with another, unrelated adult.

his email around this time. Crawford further stated that he was communicating with a few dozen other inquiries about the apartment.³

- c) The following day, Complainant, Wife, and Manager continued to communicate about the apartment.
- i. At 8:33 a.m., Complainant asked Manager to show the apartment; Manager did not respond.
 - ii. At 8:39 a.m., Wife wrote to Manager purporting to be a single woman interested in the apartment.⁴ Within 30 minutes, Manager responded to set up a viewing with Wife.
 - iii. At 10:37 a.m., Complainant wrote Manager to state he believed he was being discriminated against based on familial status and that he intended to file a complaint with the Commission. Approximately fifteen minutes later, Manager responded and stated concerns about having a dog in the newly-renovated unit⁵ without referencing the size or breed of the dog. Complainant disputed this rationale and stated that that Manager had already “okayed” his dog; within five minutes, Manager denied this. Five minutes later, Complainant wrote a final email pointing to the fact that Manager stopped communicating when Complainant provided he wanted the two-bedroom apartment for three minor children.
- d) Respondents provided copies of leases showing that Subject Apartment had been rented as a shared unit with two or three occupants and a monthly rent between from \$1250 to \$1602.
- i. From September 1, 2015 through September 1, 2016, three occupants rented Subject Apartment. The tenants had a single lease to rent the apartment for “\$1250 (\$625 each)” a month, but the lease specifically stated three occupants were in residence.
 - ii. From November 28, 2017 through November 28, 2018, three occupants rented Subject Apartment. Each of the three leases stated the monthly rent was \$534 (\$1602 total).
 - iii. From January 31, 2018 through July 31, 2018, two occupants rented Subject Apartment. They executed separate leases, each with monthly rent of \$648 (\$1296 total).
- e) Respondents provided several versions of simultaneous listings of Subject Apartment, with several variations between the rental terms. Some listings advertised Subject Apartment as a shared unit, and some did not. The listing Complainant and Wife responded two did not identify a shared unit.
- f) Respondents rent apartments to several other families with minor children, including an apartment with an identical footprint to Subject Apartment (“Identical Apartment”). Identical Apartment is currently rented to a four-person family with one minor child and a mid-sized dog for \$1,250.⁶ None of the other families Respondents rent to, including the tenants of Identical Apartment, are part of a shared living situation.

³ Manager was asked to produce evidence of all other email correspondence he had concerning the Subject Apartment. Other than Complainant and Wife, he was in correspondence with just two other potential renters on January 8th and January 9th, 2018. It is notable that Manager was emailing with one potential renter on January 8, 2018 at 4:54 p.m., despite his claim that he would have stopped checking his mail by this time (and had, therefore, not received Complainant’s last correspondence).

⁴ Wife also wrote, “I would like to do a drive by and see if it is appropriate for a young woman before wasting your time with scheduling a viewing.” Even after this statement, Respondents never provided Subject Apartment was intended to be rented as a shared apartment.

⁵ Crawford further stated “This has been a family building of varied sizes for a long time. I hope your family and yourself find a nice place to live. I am sure you are great tenants. At this point in time I would appreciate no more contact.”

⁶ Prior tenants include a family with two minor children and a family with one minor child.

IV. 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 Maine Revised Statutes (“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.

Terms and Conditions Claim

- 2) The MHRA makes it unlawful for an owner or manager of rental property to discriminate against any individual because of familial status in the “price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations.” 5 M.R.S. § 4581-A(1)(D).
- 3) Because this case does not involve direct evidence, Complainant establishes a prima-facie case of unlawful housing discrimination by showing (1) that he is a member of a protected class, (2) that he 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) that this occurred 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).
- 4) Once Complainant has established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondents to articulate a legitimate, nondiscriminatory reason their actions. *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 Respondents have 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 his 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. In order to prevail, Complainant must show that he 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).
- 5) Complainant has established his prima-facie case. He has minor children, and was told he would need to rent Subject Apartment as a three-bedroom at a higher cost than the advertised two-bedroom rate. Because Manager stopped communicating when Complainant continued to want to pay the advertised rate for his family, while communicating instead with Wife – who he believed was a single woman – there are circumstances that give rise to an inference of discrimination.
- 6) Respondents articulated a legitimate, nondiscriminatory reason for their actions, namely that they were only engaging in preliminary discussions about a shared apartment, and would have explained the situation had communication continued.
- 7) At the final stage of the analysis, Complainant demonstrated that he was subjected to different terms and conditions on the basis of familial status, with reasoning as follows:
 - a. When Complainant stated he was seeking to rent the advertised two-bedroom apartment not only for himself but for his wife and three minor children, Respondents immediately raised the rent, calling the

same apartment a "three-bedroom". Respondents did not clarify that the unit was intended to be shared, nor did they respond even after Complainant explained that his family only needed two bedrooms.

- b. It is notable Respondents placed advertisements which failed to mention a shared living situation. Whether or not Respondents actually intended to continue to rent the bedrooms in the Subject Apartment separately, Complainant was denied even this opportunity. He requested a showing at the \$1295 advertised rate and Respondents did not respond. They did respond to Wife, posing as a single woman.
- c. The fact that Respondents rent to other families with minor children is not dispositive. Unlike any of Respondents' other units, Subject Apartment appears to be used as a shared living space for multiple unrelated tenants. Respondents were apparently unwilling to even consider such an arrangement for a family with three minor children.
- d. Although, on one occasion, Respondents rented Subject Apartment to three occupants on a per bedroom basis for a total rent of \$1602, Respondents also rented the entire unit to three occupants for \$1250 and, most recently, two occupants for \$1296. This was the same or close to the two-bedroom rate Complainant saw advertised, which tends to suggest Respondents were willing to rent the full unit at this rate, but not once they learned of Complainant's three minor children. Instead, Respondents sought a higher rate.

8) Discrimination in the terms and conditions of rental based on familial status is found.

Making Housing Unavailable

- 9) The MHRA makes it unlawful for an owner or manager of rental property to "refuse to show or refuse to sell, rent, lease, let or otherwise deny to or withhold from any person the housing accommodation because of...familial status." 5 M.R.S. § 4581-A(1)(B).
- 10) Because this case does not involve direct evidence, it too is analyzed under the burden-shifting rubric described above, albeit with a slightly different prima-facie case. For his making housing unavailable claim, Complainant can establish a prima-facie case by showing that (1) he is a member of a protected class; (2) he applied for and was qualified to rent the housing; (3) Respondents rejected him; and (4) the housing accommodation remained available thereafter. *See United States v. Grishman*, 818 F. Supp. 21, 23 (D.Me. 1993); *HUD v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990).
- 11) Complainant has established that he belongs to a protected class and was seeking to see and rent Subject Apartment, and Respondents cut off communication when they learned of Complainant's three minor children. Complainant did not have the opportunity to complete any formal application, but for purposes of the prima-facie case, it will be assumed he was otherwise qualified to rent the unit.
- 12) Respondents have articulated a legitimate, nondiscriminatory reason for not renting to Complainant, namely, that Complainant was not qualified because of his large-breed dog.
- 13) At the final stage of the analysis, Complainant has demonstrated that Respondents' reason was false or irrelevant and that unlawful discrimination was the reason for the decision to stop the rental process, with reasoning as follows:

- a. The record reflects Respondents have rented to other tenants with dogs and the listing at issue states "Dogs Accepted." Manager only asserted Complainant's dog was the reason he stopped communicating with Complainant after Complainant accused him of discrimination.
- b. Respondents provided shifting reasons why Complainant's dog would not be accepted. At first it was because the apartment was newly renovated. Later, it was because the dog would not be conducive to a shared living situation.
- c. Respondents argued that it had made no decision about Complainant's dog, and would have asked more questions had the process continued. However, based on the sequence of the parties' communications, it seems clear that Respondents had moved past their initial screening questions concerning the dog. It was when only Respondents asked about the number of occupants and Complainant revealed his familial status that Respondents stopped communicating about the rental.
- d. Manager provided he did not withdraw from the process and his response was only delayed because he was either busy talking to dozens of other potential tenants or not checking his email at that time. However, the documents Respondents produced show that Manager was only in communication with Wife and two other potential tenants, and that he continued talking with one of them during a period he claimed he would not have been checking his email. Manager also responded to Wife (posing as a single woman) within minutes, including making an offer to show the unit, during the same period that he was ignoring Complainant's request for a showing.
- e. Respondents' refusal to continue to communicate and to show the Subject Apartment had the effect of making housing unavailable to Complainant.

14) Making housing unavailable based on familial status is found.

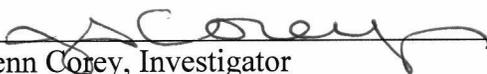
VI. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following finding:

- 1) There are **Reasonable Grounds** to believe that Respondents Carol Starbird Crawford and Robb Allen Crawford discriminated against Complainant Shane Robertson on the basis of familial status with respect to the terms and conditions of his housing;
- 2) There are **Reasonable Grounds** to believe that Respondents Carol Starbird Crawford and Robb Allen Crawford discriminated against Complainant Shane Robertson on the basis of familial status when they made housing unavailable to him; and
- 3) The claims should be conciliated in accordance with 5 M.R.S. § 4612(3).



Amy M. Sneirson, Executive Director



Jenn Corey, Investigator