



Maine Human Rights Commission  
# 51 State House Station | Augusta ME 04333-0051

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INVESTIGATOR'S REPORT  
H12-0148, H12-0149

DATE ISSUED: May 24, 2012

[REDACTED]

v.

[REDACTED]

**I. Complainants' Complaint:**

Complainants [REDACTED] and [REDACTED] alleged that Respondents [REDACTED], and [REDACTED] discriminated against them on the basis of familial status by making a statement that expressed a familial status preference, limitation or discrimination, and by issuing notices to quit against them to terminate their tenancy.

**II. Respondents' Answers:**

Respondents [REDACTED] agree that they expressed fear about a small children living in a second floor apartment but denied that they are evicting Complainants for that reason. They say that they are evicting Complainants because the Complainants did not return [REDACTED] calls, violated their lease by not putting the electric in their name, and illegally cut into the cable.

Respondent [REDACTED] states that he did not make the decision to begin evicting Complainants. He agrees that he told Complainants that they should start looking for another place to live after the owners expressed concerns about small children living on the second floor.

**III. Jurisdictional Data:**

- 1) Dates of alleged discrimination: March 13, 2012, April 10, 2012, April 24, 2012.
- 2) Date complaint filed with the Maine Human Rights Commission: March 27, 2012.<sup>1</sup>
- 3) Respondents are subject to the Maine Human Rights Act and the federal Fair Housing Act as well as state and federal housing regulations.
- 4) Respondents represent themselves. Complainant is represented by [REDACTED].

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<sup>1</sup> The complaint is dual-filed with the U.S. Dept. of Housing and Urban Development, 01-12-0206-8.

- 5) Investigative techniques used: Review of written submissions, follow up questions for the parties, interviews. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of reasonable grounds or no reasonable grounds.

**IV. Development of Facts:**

- 1) The parties and issues in this case are as follows:
- a) Complainants [REDACTED] and [REDACTED] have a three-year-old daughter and a baby on the way. They rented an apartment on the second floor of an apartment building from the Respondents on February 24, 2012.
  - b) Respondent [REDACTED] is the landlord and owns the building. Respondent [REDACTED] is his wife. Respondent [REDACTED] is the property manager and is employed by [REDACTED].
  - c) Complainants alleged that Respondents discriminated against them on the basis of familial status by making statements that expressed a familial status preference, limitation or discrimination, and by issuing notices to quit against them to terminate their tenancy.
  - d) Respondents [REDACTED] agree that they expressed fear about small children living in a second floor apartment but denied that they are evicting Complainants for that reason. They stated that they are evicting Complainants because the Complainants did not return [REDACTED]'s calls, they violated their lease by not putting the electric in their name, and they illegally cut into the cable. Respondent [REDACTED] states that he did not make the decision to begin evicting Complainants. He agrees that he told Complainants that they should start looking for another place to live after the owners expressed concerns about small children living on the second floor.
- 2) Respondent [REDACTED] provided the following:
- a) His property manager, [REDACTED], made the decision to rent to Complainants. When his wife [REDACTED] found out that [REDACTED] rented this second floor apartment to a family with a small child, she was very upset because the outside steps are dangerous for little kids, especially in the winter with snow and ice. Also, there is no insulation between the floors.
  - b) He called and told [REDACTED] that his wife was scared to death about kids living upstairs and it would be better if his family moved out. He told [REDACTED] he would give him all his money back. He did not follow up with a notice to quit or notice to vacate because he doesn't have grounds to evict because they have kids.
  - c) The downstairs tenant did not complain about the kids.

INVESTIGATOR'S REPORT

MHRC No. H12-0148, -0149

HUD No. 01-12-0206-8

- d) The lease with Complainants that took effect on March 1, 2012 states that Complainants are responsible for paying the electric. Complainants were supposed to call the power company and change the account into their names. The electric bill came at the end of March and he discovered that Complainants did not change the account into their names.
- e) He called [REDACTED] and left a message. He told [REDACTED] that if he was going to stay, he needed to change the electric bill into his name, but that if he was moving out, he didn't need to bother. [REDACTED] did not call him back. [REDACTED] called [REDACTED] the next day and left the same message. [REDACTED] did not call [REDACTED] back either. [REDACTED] went over to the apartment. [REDACTED] car was in the door yard but Complainants did not answer when he knocked on the door. [REDACTED] called [REDACTED] and reported what was happening. [REDACTED]. [REDACTED] called the downstairs neighbor and she said she could hear the Complainants upstairs, so he knew that the Complainants were avoiding him and [REDACTED].
- f) [REDACTED] called his lawyer on Monday, April 2, and asked him to send Complainants a notice of termination based on Complainants' failure to call the power company and change the account into their name and their failure to call him back.
- g) [REDACTED] submitted a copy of his telephone bill showing:

3-31 11:55 AM Call to [REDACTED] (xxx-0630)

3-31 12:11 PM Call to [REDACTED] (xxx-2006)

3-31 1:05 PM Call to [REDACTED] (xxx-2006)

3-31 2:51 PM Call to S [REDACTED] (xxx-2006)

3-31 2:52 PM Call to [REDACTED] (xxx-0630)

3-31 2:52 PM Call to [REDACTED] (xxx-2148)

3-31 2:54 PM Call to [REDACTED] (xxx-2006)

4-2 8:31 AM Call to attorney (xxx-2997)

- h) That day or the next, the downstairs neighbor reported that she was having trouble with cable service for her TV. She told [REDACTED] that [REDACTED] had asked if he could cut into her cable and he would pay her a little for the service, which she refused to do. On April 4, he got a call from the Wilton Police Department reporting that [REDACTED] had cut into the downstairs neighbor's cable. On April 5, the Wilton PD went back and summonsed [REDACTED] for theft of service.
- i) On April 4th or 5th, a representative from the cable company called and asked him questions about the cable. She beat around the bush but eventually she told him that [REDACTED] had told her that cable was included with the rent (which is false; he verified this with [REDACTED]) and that he ([REDACTED]) had cut into the downstairs neighbor's cable.

INVESTIGATOR'S REPORT

MHRC No. H12-0148, -0149

HUD No. 01-12-0206-8

j) On April 5th, he called his lawyer again and asked if he had grounds to issue a 7-day notice to quit for theft. He didn't hear back from the lawyer so he called again on April 9 and found out that his lawyer had issued a 7-day notice on Friday, April 6.

k) Complainants did not pay rent in April so he asked his lawyer to send another 7-day notice for non-payment of rent.

l) On April 10, 2012, [REDACTED] finally called [REDACTED] back. Their conversation went something like this:

[REDACTED]: I'm glad you found your phone.

[REDACTED]: That's not funny. It's illegal to evict someone because they had kids.

[REDACTED]: I'm not evicting you because of your kids.

[REDACTED]: It's illegal to evict someone because they had kids.

[REDACTED]: I'm evicting you because you're a liar [for lying to the cable company], a thief [for theft of service] and a coward [because he didn't return [REDACTED]'s calls].

[REDACTED]: Well, you're a "C—t head."

[REDACTED]: Hung up.

m) Today, April 13, 2012, [REDACTED] received notice of this complaint of housing discrimination. He tells the truth. He will tell a judge what he told me. He will cooperate in the investigation.

3) Respondent [REDACTED] provided the following:

a) He is the property manager for rental properties owned by the [REDACTED]. He knew the Complainants had a small child and that [REDACTED] was pregnant when he rented to them. The landlord does not have any objections to renting to families with children. There are minor children living in other apartments owned by [REDACTED]

b) The landlord asked him to ask the tenants to move out. He called [REDACTED] and asked if they could start looking for another place.<sup>2</sup> [REDACTED] was shocked and asked if they could get the security deposit back. He told [REDACTED] they could have everything back.

c) [REDACTED] also asked him to tell [REDACTED] that he should start looking for a place to live because the downstairs neighbor complained about them<sup>3</sup> and because [REDACTED] and [REDACTED] didn't get the lights changed into their names. He went over to the Complainants' building to try and talk to them about the lights. [REDACTED] car was in the door yard but he wouldn't answer the door when he knocked.

4) [REDACTED] provided the following:

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<sup>2</sup> [REDACTED] denied telling Complainants that the landlord could not have a child in the building because of the stairs, or that the landlord couldn't have a child running around.

<sup>3</sup> The downstairs neighbor did not make complaints about the [REDACTED] household directly to [REDACTED].

INVESTIGATOR'S REPORT

MHRC No. H12-0148, -0149

HUD No. 01-12-0206-8

- a) The lease indicates that the tenants are responsible for electric and that they needed to "change lights ASAP." He asked the electric company to make the change but the electric company made an error and put the account in someone else's name. Once he realized the problem, the electricity was put into [REDACTED] name. Neither he nor [REDACTED] remembers the date.
  - b) They did receive telephone calls from Respondents that they did not return. They received one call when they were asleep. Another call came in while they were sleeping again. [REDACTED] works second shift and his sleep schedule accommodates his work schedule. They did not refuse or decline to answer the door when the property manager knocked.
  - c) [REDACTED] was charged with theft of service (or some other violation) for allegedly cutting into the downstairs neighbor's cable. He denies the charge. He denies telling someone at the cable company that cable was included with the rent. He denies telling that person that [REDACTED] was, or probably was, the person who cut into the neighbor's cable. He denies asking the downstairs neighbor if he could cut into her cable.
  - d) There is no cable equipment (jack, box, etc.) in their apartment. They would have no means of benefitting from "stealing" cable. They asked the rental agent if they could get satellite TV, not cable. While the lease shows tenant responsible for cable television, this only means that IF they get the equipment installed, they have to pay for the service.
  - e) They received the 30-day notice to quit on April 10 (the notice is dated April 3; no reason is given). They received the 7-day notice to quit on April 24 (the notice is dated April 6; reason given: "you have violated or permitted a violation of law regarding tenancy in that cable and internet services were illegally provided to the apartment that you occupy"). They have not received a notice for nonpayment of rent.
- 5) A representative from the cable company provided the following:
- a) The company received a tip that [REDACTED] cut into their lines. They investigated the tip and found that the cable was illegally spliced and running up an outside wall and into [REDACTED] apartment through the window.
  - b) [REDACTED] spoke to a Customer Service Representative at the cable company. He told the representative that the cable was like that when he rented the place and that cable was included with the rent.
  - c) The company had [REDACTED] served with criminal charges for stealing cable services.
- 6) The downstairs neighbor ("Neighbor") provided the following:
- a) She lives downstairs from [REDACTED] and she works for the same employer as [REDACTED]

INVESTIGATOR'S REPORT

MHRC No. H12-0148, -0149

HUD No. 01-12-0206-8

- d) At work, [REDACTED] told her he was going to be moving in to the apartment upstairs and asked her about cable/internet service. He hinted around that he wanted to hook into her cable line to use high speed internet. She told him she would not do anything illegal.
- e) After [REDACTED] moved in, she was bothered by the noise of his daughter running around and banging. At work, she told him that it was "kind of noisy." He asked her to let him know when she had concerns. The next day she told him the noise was still a problem. She loves kids, has grandchildren.
- f) She made one noise complaint to [REDACTED] about the [REDACTED] household prior to the cable issue.
- g) She began having trouble with her cable service. The computer froze up, the TV blinked on and off. She pays a lot for her service and was upset that it was interrupted. She thought the cable line was affected by ice and snow because she noticed that it was drooping down around her kitchen windows and back door. It wasn't like that before. She reported all this to the cable company on a Tuesday. On Thursday, the police were there to serve [REDACTED] with a summons.

**V. Analysis:**

- 1) The Maine Human Rights Act 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.A. § 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 Maine Human Rights Act provides, in part, that it is unlawful housing discrimination for any owner, managing agent, or any other person having the right to rent, lease or manage a housing accommodation, or any agent of these, to issue any advertisement relating to the rental or lease of the housing accommodation that indicates any preference, limitation, specification or discrimination based upon familial status; or to evict or attempt to evict any tenant of any housing accommodation because of the familial status of the tenant. 5 M.R.S.A. § 4582.
- 3) The housing regulations of the Maine Human Rights Commission, 94-348 C.M.R ch. 8, § 8.04(E)(1), states that it is unlawful to "make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement with respect to the ... rental of a dwelling which indicates any preference, limitation or discrimination because of ...familial status..., or an intention to make any such preference, limitation or discrimination."
- 4) Here, Complainants [REDACTED] and [REDACTED] advance two claims of housing discrimination. First, they allege that Respondents [REDACTED] made statements that expressed a familial status preference, limitation or discrimination. Second,

## INVESTIGATOR'S REPORT

MHRC No. H12-0148, -0149

HUD No. 01-12-0206-8

they allege that the Respondents issued notices to quit against them to terminate their tenancy because of their familial status.

- 5) Respondents [REDACTED] agree that they expressed fear about small children living in a second floor apartment but denied that they are evicting Complainants for that reason. [REDACTED], the owner, said that he is evicting Complainants because they did not return his calls, because they did not put the electric in their names, and because they illegally cut into the cable.
- 6) Respondent [REDACTED] states that he did not make the decision to begin evicting Complainants. He agrees that he did tell Complainants that they should start looking for another place to live after the owner and his wife expressed concerns about small children living on the second floor.

### Unlawful Statements

- 7) Complainants' first claim is easily addressed. Respondents [REDACTED] admitted that they called Complainants by telephone and expressed fear about small children living in this particular second floor apartment. [REDACTED] was "scared to death" that a small child would get hurt on the outside stairs and there was no insulation between floors. [REDACTED] told [REDACTED] that it would be better if his family moved out and that he would give [REDACTED] all his money back. Respondent [REDACTED] said essentially the same thing on behalf of the [REDACTED], even though he obviously did not share their concerns given that he rented the apartment to the Complainants knowing that they had a small child and a baby on the way.
- 8) The statements made by Respondents, although intended to protect the Complainants' family from harm, are unlawful under the Maine Human Rights Act and the Commission's Housing Regulations.

### Eviction

- 9) A mixed-motive analysis applies in cases involving "direct evidence" of unlawful discrimination. *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6 (employment case); *Texas v. Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d 722, 730 (D. Tex. 2000) (Fair Housing Act). "Direct evidence" consists of "explicit statements by [Respondents] that unambiguously demonstrate [Respondents'] unlawful discrimination. . . ." *Doyle*, 2003 ME 61, ¶ 14, n.6. Where this evidence exists, Complainants "need prove only that the discriminatory action was a motivating factor in an adverse [housing] decision." *Patten v. Wal-Mart Stores East, Inc.*, 300 F.3d 21, 25 (1st Cir. 2002) (employment); *Doyle*, 2003 ME 61, ¶ 14, n.6. Upon such a showing, in order to avoid liability, Respondents must prove "that it would have taken the same action in the absence of the impermissible motivating factor." *Id.*; *Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d at 730. *Cf. Price Waterhouse v. Hopkins*, 490 U.S. 228, 276-77, 109 S. Ct. 1775, 1804 (1989) (O'Connor, J., concurring).

- 10) Here, Respondents [REDACTED] are not liable for the eviction notices that have been issued by Respondent [REDACTED] against Complainants. They do not own the premises, and do not have authority to bring or rescind an eviction action against Complainants.
- 11) As for Respondent [REDACTED] there is direct evidence that Complainants' familial status is one of the reasons he wants them to move out of the apartment. That evidence consists of the statements he admittedly made to Complainants expressing fear about small children living in this particular second floor apartment, and urging Complainants to move out. [REDACTED] also asked his agent, [REDACTED], to make similar statements to Complainants.
- 12) However, Respondent [REDACTED] was able to prove that he would have issued the eviction notices to Complainant for legitimate, non-discriminatory reasons even if the Complainants did not have a small child and a baby on the way, as follows:
- a) The lease between Complainants and [REDACTED] requires that the Complainants change the electric account into their names "asap." They signed the lease on about February 24, 2012 and it took effect on March 1, 2012. Complainants states that [REDACTED] asked the electric company to make the change but that the electric company made an error and put the account in someone else's name. Complainants did not submit any documents or witness statements to support their claim, but even if this is true, [REDACTED] was not made aware of any error. He discovered that the account was still in his name when he received a bill from the electric company at the end of March. He tried to call Complainants to discuss the issue and they did not return his calls. ([REDACTED] telephone bill shows that he made four calls to the Complainants on March 31, 2011, between 12:11 PM and 2:54 PM.) This fact is undisputed. Complainants state that the calls were received when [REDACTED] was asleep but they did not explain why they did not return [REDACTED] calls the following day. [REDACTED] did not return [REDACTED]s calls until April 10, 2012. [REDACTED] states that he asked his attorney to issue the first 30-day notice to quit (dated April 3, 2010) because Complainants did not change the electric account into their names and did not return his calls to discuss the problem.
- b) On April 5, 2012, three days after the first notice to quit was issued, [REDACTED] was charged with theft of services from the cable company for illegally cutting into the downstairs neighbor's cable. [REDACTED] denies the charge, but [REDACTED] believes that it is true. [REDACTED]s belief is based on the following facts: (a) the downstairs neighbor told him that [REDACTED] asked to cut into her cable, and that she refused; and (b) a cable company representative told him that [REDACTED] reported that cable was included with his rent, which isn't true, and that [REDACTED] insinuated that it was he, [REDACTED], who cut into the downstairs neighbor's cable, which also isn't true. While it is arguable that the downstairs neighbor could be biased against Complainants (she made noise complaints about them), the cable company representative has no known reason to misrepresent what [REDACTED] said.
- 13) In sum, while there is some evidence that Respondent [REDACTED] is motivated to evict the Complainants because of their familial status, [REDACTED] has established that he would be evicting Complainants "in the absence of the impermissible motivating factor." [REDACTED] has valid reasons

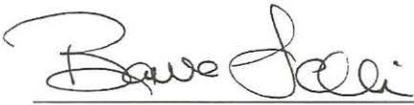
to believe that the Complainants violated their lease and that [REDACTED] [REDACTED] engaged in illegal conduct. There is no evidence that [REDACTED] [REDACTED] would choose not to issue notices to quit under these circumstances to tenants that did not have minor children in the household.

**VI. Recommendation:**

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

1. There are **Reasonable Grounds** to believe that Respondents [REDACTED], [REDACTED] [REDACTED] made unlawful statements to Complainants about their familial status;
2. Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3) to resolve that portion of the complaint.
3. There are **No Reasonable Grounds** to believe that Respondents [REDACTED] [REDACTED] are evicting Complainants because of their familial status;
4. That portion of the complaint should be dismissed in accordance with 5 M.R.S.A. § 4612(2).

  
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Amy M. Sneirson, Executive Director

  
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Barbara Lelli, Chief Investigator