



Maine Human Rights Commission

51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330

Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711

www.maine.gov/mhrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

INVESTIGATOR'S REPORT

H14-0634 0642

HUD No. 01-15-0095-8

March 3, 2014

██████████ ██████████

v.

██████████ (██████████)

I. Complainant's Complaint:

Complainant ██████████ alleged that she was discriminated against on the basis of her gender by Respondent ██████████ because she was subjected to a sexual hostile housing environment and because she was evicted. Ms. ██████████ also alleged that Mr. ██████████ retaliated against her after Ms. ██████████ attorney told Mr. ██████████ attorney that she had made a complaint of sexual harassment. Ms. ██████████ alleged that Mr. ██████████ stole her cat and shut off her electricity before she was scheduled to move out.

II. Respondent's Answer:

Mr. ██████████ stated that he made one stray comment that was not directed at anyone in particular. He denied making the other comments Ms. ██████████ alleged that he made. Mr. ██████████ evicted Ms. ██████████ because she never paid the rent during her tenancy. Mr. ██████████ denied stealing Ms. ██████████ cat, and stated that he did not have money to pay to keep the lights on since Ms. ██████████ did not pay rent.

- 1) Dates of alleged discrimination: October 9, 2014.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): December 22, 2014. Complainant's complaint was referred to the Commission from the federal Department of Housing and Urban Development ("HUD") on November 21, 2014.
- 3) Respondent is 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 represented by ██████████, Esq. Respondent is represented by ██████████, Esq.

INVESTIGATOR'S REPORT:

H14-0624

HUD No. 01-15-0095-8

- 5) Investigative methods used: A thorough review of the written materials provided by the parties. Respondent provided a response to the Commission, but did not respond to the Commission's initial request for information and documents despite multiple requests to do so. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" here.

IV. Development of Facts:

1) The parties in this case are as follows:

- a) Ms. [REDACTED] rented a single family mobile home owned by Mr. [REDACTED] located at 6 Kelly Road, New Limerick, Maine, (the "Premises") from February 16, 2014, through October 9, 2014.

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

- a) When Ms. [REDACTED] moved to the Premises it was in bad condition. There was trash left by the previous tenants and a lot of repairs that needed to be done. Mr. [REDACTED] was not helpful in assisting Ms. [REDACTED] with the trash or the repairs.
- b) Shortly after Ms. [REDACTED] moved in, Mr. [REDACTED] came by the Premises. He saw that a male friend was there helping Ms. [REDACTED] fix the bedroom floors. Mr. [REDACTED] told Ms. [REDACTED] that she was not allowed to have visitors without his knowledge or permission.
- c) A few weeks later, Mr. [REDACTED] was in the Premises working when he began talking about sex. Mr. [REDACTED] asked Ms. [REDACTED] how she "took care of her needs," and he also asked her about having sex with him. Mr. [REDACTED] also stated that he had never had a woman with no teeth give him a blow job.¹
- d) Ms. [REDACTED] told Mr. [REDACTED] that he was married and that she did not do that type of thing. Mr. [REDACTED] then started talking about Ms. [REDACTED] breasts, calling them "boobs", and asked her if she played with herself. Ms. [REDACTED] told Mr. [REDACTED] that his comment was not called for, and he left the Premises.
- e) Ms. [REDACTED] felt disgusted by Mr. [REDACTED] statements, and made sure that she was never alone with him again.
- f) On several occasions, Mr. [REDACTED] made sexual comments to Ms. [REDACTED]. He would often speak "dirty" and did not care that Ms. [REDACTED] did not want him to talk to her that way or that she was not interested in having sex with him.
- g) Mr. [REDACTED] would speak in a sexual manner to Ms. [REDACTED] even when her friends were present. On one occasion, Ms. [REDACTED] saw Mr. [REDACTED] grab her friend's ("Friend 1") breast.
- h) Friend 1 provided the following in support of Ms. [REDACTED] complaint:

¹ Ms. [REDACTED] does not have teeth. This comment was overheard by Friend 1, Friend 2, and another individual.

INVESTIGATOR'S REPORT:

H14-0624

HUD No. 01-15-0095-8

i. Friend 1 worked for Mr. [REDACTED]. Friend 1 stated that Mr. [REDACTED] was always "talking crap" and making comments like, "[h]ey, I've got a broken neck. How much harm can I be?"

i. When Friend 1 worked for Mr. [REDACTED] he tried to kiss her in his garage.

ii. On another occasion, Friend 1 saw Mr. [REDACTED] slap Ms. [REDACTED] on the backside and stated, "[w]hole lot of a** there."

iii. Ms. [REDACTED] told Friend 1 that Mr. [REDACTED] would come to the Premises without being invited. He would tell Ms. [REDACTED] that he owned the trailers. Ms. [REDACTED] showed up at Friend 1's home in the early morning more than once stating that she would get out of the shower and find Mr. [REDACTED] standing in her living room.

iv. Ms. [REDACTED], Mr. [REDACTED] and Friend 1 were driving one day when Mr. [REDACTED] reached over and grabbed Friend 1's right breast. She yelled at him. She did not drive him anywhere else after that incident.

i) Friend 2 provided the following in support of Ms. [REDACTED] complaint:

i. Friend 2 has known Mr. [REDACTED] for more than 20 years. Friend 2 is Friend 1's sister.

ii. On one occasion, Friend 2 heard Mr. [REDACTED] proposition Ms. [REDACTED] by asking her to give him a blow job in exchange for rent because "he 'never had a blow job by someone that did not have their teeth.'"

3) Respondent provided the following in response to Complainant's allegations:

a) Mr. [REDACTED] stated that the friend Ms. [REDACTED] had in the Premises to repair the bedroom floors was a registered "pervert". At the time, Mr. [REDACTED] had four children under the age of six years old. He told Ms. [REDACTED] that only she was allowed to do carpentry without Mr. [REDACTED] prior approval.

b) Mr. [REDACTED] stated that he made the comment about not having a blow job from a woman with no teeth. He said it as an aside and it was not directed at anyone in particular. He stated that he always wondered what it would be like "to have someone gum it".

i. Mr. [REDACTED] denied making the other comments Complainant alleged he made.

c) Mr. [REDACTED] stated that Ms. [REDACTED] did not witness what he supposedly did to Friend 1's breast, and he denied touching Friend 1's breast.²

d) Mr. [REDACTED] never received any rent from Ms. [REDACTED]. He evicted her for failure to pay rent.

² Mr. [REDACTED] further provided that if he had touched Friend 1's breast, it would have been between consenting adults.

INVESTIGATOR'S REPORT:

H14-0624

HUD No. 01-15-0095-8

- e) Mr. ██████ stated that he did not have anything to do with Ms. ██████ cat disappearing. She told the sheriff that someone else had stolen her cat. Mr. ██████ denied that he told Friend 1 that he would give Ms. ██████ her cat back if she dropped the charges against him.
- f) Ms. ██████ never transferred the electricity into her name during her tenancy. Mr. ██████ never received rent from Ms. ██████ and was unable to pay for electricity.

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 housing without discrimination on the basis of gender. 5 M.R.S. § 4581-A(1)(B); 94-348 C.M.R. Ch. 8, § 8.04(a)(1).
- 3) The MHRA makes it unlawful for any owner having the right to rent housing accommodation to discriminate against any individual because of gender in the "price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations." 5 M.R.S. § 4582.
- 4) The Commission's regulations provide that it is unlawful to "threaten, intimidate, or interfere" with persons in their enjoyment of a dwelling because of the gender of such persons, or of visitors or associates of such persons. 94-348 C.M.R. Ch. 8, § 8.09(B)(2).

Gender Discrimination: Sexually Hostile Housing Environment

- 5) A hostile housing environment claim is analyzed similarly to a hostile work environment claim. *See, e.g., Neudecker v. Boisclair Corp.*, 351 F.3d 361, 364-365 (8th Cir. 2003); *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996); *Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993).
- 6) Such a claim is actionable when unwelcome behavior because of protected class status unreasonably interferes with Complainant's use and enjoyment of the premises. *See Honce*, 1 F.3d at 1090. *Cf. Me. Hum. Rights Comm'n Reg. § 3.06(I) (1) (July 17, 1999) (employment)*. "Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive [housing] environment." *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57 (employment case). In determining whether an actionable hostile housing environment exists, it is necessary to view "all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance. . . ." *Doyle*, 2003 ME 61, ¶ 23, 824 A.2d at 57. It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the housing environment to become hostile or abusive. *Id; Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996) (employment). "The standard requires an objectively hostile or abusive environment--one that a reasonable person would find hostile or abusive--as well as the victim's subjective perception that the environment is abusive." *Nadeau*, 675 A.2d at 976.

INVESTIGATOR'S REPORT:

H14-0624

HUD No. 01-15-0095-8

- 7) The fact that the conduct complained of is unwelcome must be communicated directly or indirectly to the perpetrator of the conduct. *See Lipsett v. University of Puerto Rico*, 864 F.2d 881, 898 (1st Cir. 1988) (employment).
- 8) Complainant has shown that she has at least an even chance of success in a civil action in her sexually hostile housing environment.
 - a. Complainant has shown that she was subjected to unwelcome sexual conduct which led to an abusive housing environment. Complainant alleged that she was subjected to multiple occurrences of Respondent talking to her about sex. Respondent admitted to one of the instances, but the record shows that there were witnesses to the other incidents that Complainant alleged. Some of these instances involved touching and when viewed as a whole are objectively and subjectively offensive.
 - b. Complainant communicated to Respondent that the conduct was unwelcome, but he ignored her protests and continued to make sex-related comments to her.
- 9) Discrimination on the basis of a sexually hostile housing environment is found.

Gender Discrimination - Eviction

- 10) Because this case does not involve direct evidence, Complainant establishes a prima-facie case of unlawful housing discrimination by proving (1) she was a member of a class protected under the MHRA; (2) Respondent was aware of Complainant's membership in that class at the time of the eviction; (3) Complainant as willing and qualified to continue renting her apartment; and (4) Respondent refused to permit Complainant to continue to rent the apartment. *See Radecki v. Joura*, 114 F.3d 115, 116 (8th Cir. 1997).
- 11) 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 Respondent's 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.
- 12) 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).
- 13) Complainant has met her prima-facie case by showing that she is a member of a protected class, Respondent was aware of that membership, Complainant was willing and arguably qualified to continue to rent the Premises, and Respondent refused to allow her to continue to rent the Premises.

INVESTIGATOR'S REPORT:

H14-0624

HUD No. 01-15-0095-8

- a. Complainant did not pay rent during her tenancy, which might have led to a conclusion that she was not qualified to rent the Premises. Because the reason for Complainant's failure to pay rent is unclear, it is assumed, solely for the purposes of her prima-facie case, that she was qualified to rent the Premises.
- 14) Respondent has provided a legitimate, nondiscriminatory reason for evicting Complainant, namely, Complainant did not pay rent during her tenancy.
 - 15) At the final stage of the analysis, Complainant has not shown that Respondent's reason for her eviction was false or irrelevant, and that her gender was the reason that she was evicted, with reasoning as follows:
 - a. Respondent argued that Complainant was evicted because she did not pay him rent. Complainant did not dispute that she did not pay rent during her tenancy.
 - b. While Respondent waited almost eight months before evicting Complainant, the record does not support that her eviction was due to her gender.
 - 16) Discrimination on the basis of gender in housing is not found.

Retaliation Claim

- 17) The MHRA provides that "[a] person may not discriminate against any individual because that individual has opposed any act or practice that is unlawful under this Act or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this Act." 5 M.R.S. § 4633(1).
- 18) In order to establish a prima-facie case of retaliation, Complainant must show that she engaged in statutorily protected activity, she was the subject of a materially adverse action, and there was a causal link between the protected activity and the adverse action. *See Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 20, 824 A.2d 48, 56 (employment case); *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006) (same). The term "materially adverse action" covers actions that are harmful to the point that they would dissuade a reasonable person from making or supporting a charge of discrimination. *See Burlington Northern*, 126 S. Ct. 2405. One method of proving the causal link is if the adverse action happens in "close proximity" to the protected conduct. *See id.*
- 19) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in statutorily protected activity. *See Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondents must then produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action. *See Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at 56. If Respondents make that showing, Complainant must carry her overall burden of proving that there was, in fact, a causal connection between the protected activity and the adverse action. *See id.*
- 20) Complainant has met her prima-facie case for her retaliation claim. Complainant has shown that she engaged in protected activity by opposing Respondent's sexual statements and behaviors. Complainant was also subjected to a materially adverse action, since Respondent allegedly stole her cat and shut off the electricity in the Premises before she was scheduled to move out. Finally, Complainant has also shown that there was a causal link between her protected activity and the materially adverse actions she experienced

INVESTIGATOR'S REPORT:

H14-0624

HUD No. 01-15-0095-8

because they occurred shortly after Complainant's attorney informed Respondent's attorney of her sexual harassment claim.

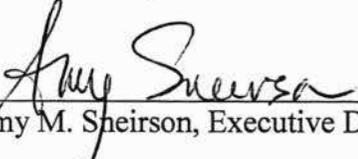
- 21) Respondent has provided a legitimate, nondiscriminatory reason for the electricity being turned off: Complainant did not put the electricity in her name during her tenancy, and did not pay Respondent rent. As a result, Respondent did not have money to pay for the electricity at the Premises. Respondent denied stealing Complainant's cat.
- 22) At the final stage of the analysis, Complainant has shown that she has at least an even chance of success in a civil action in her retaliation claim and that there is a causal connection between her protected activity and the materially adverse action she experienced.
- a. Respondent stated that he did not take Complainant's cat. Friend 1 provided an affidavit in support of Complainant's complaint. While Complainant alleged that Friend 1 heard Mr. [REDACTED] say that he would give Ms. [REDACTED] back her cat if she dropped the charge against him, this information was not in her affidavit, and Respondent stated that Complainant told the sheriff that someone else had taken her cat. Complainant did not dispute that she did not pay rent during her tenancy, and she did not dispute that she never put the electricity for the Premises in her name. If Complainant never paid rent, or for the electricity, it is reasonable that Respondent did not have money to pay for the electricity. However, a question is raised because Complainant had electricity during most of her tenancy, and it was only shut off after Respondent's attorney was made aware of Complainant's complaint of sexual harassment.
- b. This is a case of he said/she said, but Complainant's version is equally as believable as Respondent's version. The timing of the alleged retaliation leads to the conclusion that Complainant has at least an even chance of success on her claim of retaliation.

23) Retaliation in violation of the MHRA is found.

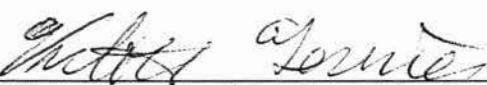
VI. Recommendation:

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

1. There are **Reasonable Grounds** to believe that Complainant [REDACTED] was subjected to a sexually hostile housing environment by Respondent [REDACTED] in violation of the MHRA; and conciliation should be attempted on this portion of the complaint in accordance with 5 M.R.S. § 4612(3).
2. There are **No Reasonable Grounds** to believe that Complainant [REDACTED] was discriminated against by Respondent [REDACTED] in her eviction on the basis of her sex in violation of the MHRA; and 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 Complainant [REDACTED] was retaliated against by Respondent [REDACTED] in violation of the MHRA; and conciliation should be attempted on this portion of the complaint in accordance with 5 M.R.S. § 4612(3).



Amy M. Sheirson, Executive Director



Victoria Ternig, Chief Investigator