



# Maine Human Rights Commission

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COMMISSION COUNSEL

## INVESTIGATOR'S REPORT

H15-0022

HUD No. 01-15-0185-8

May 22, 2014

[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 refusing to renew Complainants' lease because Respondents found out that Ms. [REDACTED] was pregnant.

### **II. Respondents' Answer:**

Respondents denied discriminating against Complainants. The members of [REDACTED] did not want to do a short-term lease at the end of Complainants' then-current lease and informed Complainants of that fact. Complainants never asked to renew their lease for a full year.

### **III. Jurisdictional Data:**

- 1) Date of alleged discrimination: January 6, 2015, through February 1, 2015.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): February 23, 2015. Complainant's complaint was referred to the Commission from the federal Department of Housing and Urban Development ("HUD") on February 13, 2015.
- 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.

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- 4) Complainants are represented by [REDACTED]. Respondents are represented by [REDACTED].
- 5) Investigative methods used: A thorough review of the written materials provided by the parties, a Fact Finding Conference, and a telephone interview. 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] and Mr. [REDACTED] signed a one-year lease for a term beginning April 1, 2013 through March 31, 2014 for a one bedroom apartment (the "Unit") at [REDACTED] High Street. The lease was renewed for a one-year period from April 1, 2014 through March 31, 2015.
  - b) [REDACTED] High Street (the "Premises") is located in Portland, Maine.
  - c) [REDACTED] assists [REDACTED] in the management of the Premises.
  - d) [REDACTED] is a member (owner) of [REDACTED]
- 2) Complainants provided the following in support of their position:
  - a) Complainants moved into the Unit at the beginning of April 2013 pursuant to a one-year lease. Ms. [REDACTED] signed the lease on behalf of the landlord and Complainants signed the lease as tenants.
  - b) Complainants' lease was renewed for one year, from April 2014 to March 31, 2015.
  - c) On January 2, 2015, Ms. [REDACTED] contacted Ms. [REDACTED]. During the conversation, Ms. [REDACTED] told Ms. [REDACTED] that Ms. [REDACTED] was pregnant and also asked her about renewing Complainants' lease for another year. Ms. [REDACTED] stated that Complainants could be flexible and could do a month-to-month tenancy, since she was interested in short-term lease options as well.<sup>1</sup> Ms. [REDACTED] congratulated Ms. [REDACTED] and told her that Complainants might be able to do a six-month lease; Ms. [REDACTED] said she would be open to doing that. Ms. [REDACTED] said she would get back to Ms. [REDACTED].
    - i. In another submission, Ms. [REDACTED] stated that she was not sure if she had specifically requested a one-year lease, but Ms. [REDACTED] specifically told Ms. [REDACTED] that she and Mr. [REDACTED] wanted to stay in the Unit.
  - d) Ms. [REDACTED] contacted Ms. [REDACTED] to let her know that she was pregnant because she wanted to give Respondents a heads-up that there would be a baby in the building. She called Ms. [REDACTED] in January because Ms. [REDACTED] had sent a text to Mr. [REDACTED] checking in and wishing them Happy New Year.<sup>2</sup>

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<sup>1</sup> Ms. [REDACTED] stated that she had heard of other people moving to a month-to-month at the expiration of a year-long lease because it was more convenient.

<sup>2</sup> Ms. [REDACTED] stated that she sent a text to all of the tenants to touch base.

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- e) Ms. [REDACTED] stated that she did not discuss wanting a bigger apartment with Ms. [REDACTED]. She felt their apartment was big enough for the two of them and the baby. Ms. [REDACTED] stated that she and Mr. [REDACTED] thought about having to get a bigger apartment at some point, but not with an infant or baby.
  - f) On January 6, 2015, Ms. [REDACTED] left Ms. [REDACTED] a voice message stating that the [REDACTED] members would not renew Complainants' lease because the lease was for two adults, a dog and a cat. Ms. [REDACTED] also stated that she would be happy to provide Complainants with excellent references.
    - i. In the voice message, Ms. [REDACTED] also stated that the [REDACTED] members were torn about what to do.
  - g) Complainants had renewed their lease the year before after receiving a letter from Respondents with new lease dates. Complainants expected to receive that same renewal letter in 2015, but Ms. [REDACTED] specifically stated in her voice message that Respondents would not be renewing Complainants' lease.
  - h) While Complainants lived in the Unit, no children lived at the Premises. Complainants never saw children visiting anyone in the building.
  - i) When Complainants were moving, Mr. [REDACTED] had a conversation with another tenant ("Tenant"). Mr. [REDACTED] told Tenant that Ms. [REDACTED] was pregnant and they had to move out because they could only have two adults and two pets in the Unit. Mr. [REDACTED] did not tell Tenant that he was happy to be moving out or that Complainants were moving to a bigger apartment.
  - j) Complainants moved into another one-bedroom apartment at another location after vacating the Unit.
- 3) Respondents provided the following in response to Complainants' allegations:
- a) In January 2015, Ms. [REDACTED] contacted Ms. [REDACTED] and said that she was pregnant and that Complainants were looking for a larger apartment.
    - i. At the FFC, Ms. [REDACTED] stated that Ms. [REDACTED] told her that Complainants eventually wanted to move to a bigger place, and that moving in April when the baby was due would be difficult.
  - b) Ms. [REDACTED] asked if Complainants could do a month-to-month lease until they were able to find a new apartment because Complainants did not want to move in April. Ms. [REDACTED] also asked about a six-month extension to the lease. Ms. [REDACTED] told Ms. [REDACTED] that a six-month lease may work, but she would have to discuss it with the [REDACTED] members.
    - i. Ms. [REDACTED] had only been involved in the management of the apartment for a few months and felt that she could not make the decision herself.
  - k) Ms. [REDACTED] outlined her conversation with Ms. [REDACTED] in an email to Ms. [REDACTED]. See Exhibit A (Ms. [REDACTED] email to Ms. [REDACTED] and response by Ms. [REDACTED]).
  - c) The [REDACTED] members discussed Ms. [REDACTED] request and agreed that they did not want to enter into a month-to-month or six-month short-term lease arrangement. Respondents stated that a six-

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month lease would have meant that the apartment would be vacant in the Fall, which is a more difficult time of year to find a tenant, and that a month-to-month rental would cause uncertainty.

- i. Ms. [REDACTED] also stated that Complainants could vacate the Unit early with no penalty as a convenience to Complainants, and [REDACTED] would provide a good reference.
  - ii. Respondents try to let tenants out of their leases when they can, and have done so in the past.
- d) Complainants' lease provided that there would only be two occupants and a dog and a cat in the Unit.
- e) At the FFC, the [REDACTED] members stated that it was their impression that Complainants were looking for a larger apartment and did not want to renew their lease.
- f) At the FFC, Ms. [REDACTED] stated that Ms. [REDACTED] did not state that she did not want to renew her lease, but she also did not state that she wanted to renew her lease.
- g) Ms. [REDACTED] communicated to Complainants that a six-month lease or a month-to-month lease was not acceptable. She told Complainants that Respondents would be adhering to the terms of the lease.
- i. At the FFC, Ms. [REDACTED] stated that part of her voice message to Ms. [REDACTED] stated that Respondents would not be renewing Complainants' lease at least in part because of what the terms of the lease specified.
- h) As of March 10, 2015, the Unit remained vacant as painting and other work was being done.
- i) A tenant who resided at the Premises in 2004 had a child while living there. In 2011, Respondents also had tenants who had a child living with them part of the time. Respondents also have a second property, and a mother and her child resided there for a year "a number of years ago".
- j) Complainants never requested a one-year lease for the period from April 1, 2015 to March 31, 2016. Respondents' practice is to send a letter with a lease renewal to their tenants six to eight weeks prior to the expiration of the lease. Respondents sent the renewal information for the April 1, 2014 to March 31, 2015 lease to Complainants in February 2014, and Complainants signed the lease renewal on February 26, 2014.
- 4) Complainants provided a written transcript of the voice message Ms. [REDACTED] left for Ms. [REDACTED]

Hi, [REDACTED] it's [REDACTED] um giving you a call Monday at about 11:00. Um, just calling to let you know, uh, sorry, because of the apartment specifications in uh your lease of two adults and two pets we won't be renewing the lease in April. So just calling to let you know that. We are adhering to the specificities of the lease at this time. Um, good news is, though, if you begin looking for another place before April and you find one, we won't adhere to um the lease and you can break it and there won't be any penalties. And also if you require any references we'd be happy to um give you an excellent reference because you've been great tenants. So if you have any questions, give me a call 233-7154. But again this is Dianne [REDACTED] and um we'll talk soon. Thanks, [REDACTED] Bye-bye.

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- 5) At the FFC, Ms. [REDACTED] stated that her impression of the conversations the [REDACTED] members had was that they did not want to do a short-term lease. Complainants' current lease provided for two occupants and a dog and a cat, and the Unit could not accommodate another person and the related items.
- 6) At the FFC, Ms. [REDACTED] stated that the lease had a limitation on the number of people who could occupy the Unit.
- 7) At the time of the FFC, the Unit remained unrented.
- 8) In a telephone interview with the Investigator, Tenant provided that he came downstairs one morning and saw Complainants moving stuff. He asked if they were moving out, and Mr. [REDACTED] told him that they were. Mr. [REDACTED] said they found a bigger place because Ms. [REDACTED] was pregnant. Tenant congratulated Mr. [REDACTED] and asked if Complainants had any problems breaking their lease. Mr. [REDACTED] responded no. Tenant stated that it was a quick conversation. Tenant had a vested interest in knowing whether Complainants were able to break their lease because he and his wife were trying to get pregnant, and he wanted to know if there would be an issue breaking the lease. Tenant stated that he thought he had mentioned to Ms. [REDACTED] that he and his wife were trying to get pregnant. He also stated that he would not want to live in the building with a child because of the neighbors and because the walls were paper thin. He stated that he lives in a one-bedroom apartment with the same floor layout as Complainants, but the kitchen and ceiling height were a bit different.
  - a) Mr. [REDACTED] stated that he did not recall telling Tenant they were moving out during the conversation as it was obvious they were moving. Mr. [REDACTED] responded to Tenant's questions and did not elaborate. Mr. [REDACTED] did not say that Complainants were moving to a larger apartment.
- 9) Portland City Ordinances Section 6-110, "Minimum standards for space and occupancy thereof", provides:

No person shall occupy as owner-occupant or shall let to another for occupancy any dwelling, dwelling unit, or rooming unit which is or would be overcrowded as determined by the following minimum standards for space and occupancy:

(a) *Space per person.* Every dwelling unit shall contain at least one hundred (100) square feet of habitable floor area for the first occupant and at least seventy (70) square feet of additional habitable floor area for each additional occupant. For the purpose of this subsection, a child under the age of one (1) shall not be counted.

- 10) The Unit consisted of an 8' x 13' kitchen, a 16' x 17' living room, a 16' x 17' bedroom, and a bathroom.<sup>3</sup>

**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

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<sup>3</sup> Respondents provided that this is approximately 600 square feet.

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“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 familial status. 5 M.R.S. § 4581-A(1)(B); 94-348 C.M.R. Ch. 8, § 8.04(a)(1).
- 3) “Familial status” means a family unit that has one or more minor children. 5 M.R.S. § 4553(5-A). “The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant...” 94-348 C.M.R. Ch. 8, § 8.03
- 4) 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... any tenant of any housing accommodations because familial status.” 5 M.R.S. § 4581-A(1)(E).
- 5) 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 familial status... of such persons...

94-348 C.M.R. Ch. 8, § 8.09.

- 6) Here Complainants alleged that they were discriminated against in housing on the basis familial status when they were not allowed to renew their lease because Ms. [REDACTED] was pregnant. Respondents have denied any discrimination, and stated that Complainants did not want to renew their lease for a year, and Respondents did not want to enter into an agreement for any short-term lease options with Complainants.
- 7) Because the Complainants’ claim does not involve direct evidence<sup>4</sup>, Complainants establish 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 (1) that Complainants are members of a protected class, (2) that Complainants were 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).

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<sup>4</sup> Complainants argued that Ms. [REDACTED] message on Ms. [REDACTED] answering machine (*see pp. 4-5 above*) constitutes direct evidence. “Direct evidence” consists of “explicit statements by [Respondent] that unambiguously demonstrate [Respondent’s] unlawful discrimination. . . .” *Doyle v. Dep’t of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6. In this case, Ms. [REDACTED] message is not on its face discriminatory.

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- 8) Once Complainants have established a prima-facie case, the burden of production, but not of persuasion, shifts to Respondents to articulate a legitimate, nondiscriminatory reason for 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 Respondents have articulated a nondiscriminatory reason, Complainants must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse housing action. *See id.* Complainants' burden may be met either by the strength of Complainants' 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, Complainants can meet their 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.
- 9) In order to prevail, Complainants must show that they 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).
- 10) Complainants have stated a prima-facie case of discrimination based on familial status in the terms and conditions in their housing. Complainants are members of a protected class as Ms. [REDACTED] was pregnant at the time of the events alleged in the complaint. Complainants alleged that they were not allowed to renew their lease for a year as other tenants were allowed to do, and the circumstances give rise to a reasonable inference of prohibited discrimination in that they were told that their apartment could not accommodate their newborn.
- 11) Respondents have articulated a legitimate, nondiscriminatory reason for not renewing Complainants' lease, namely, Complainants stated they were looking for a bigger apartment and did not want to renew their lease for a full year.
- 12) At the final stage of the analysis, there is sufficient evidence to show that Respondents' reason for not renewing Complainants' lease was false or irrelevant and that but for their familial status they would have been given the opportunity to renew their lease, with reasoning as follow:
  - a) In Respondents' first submission, they stated that Ms. [REDACTED] said that Complainants were looking for a bigger apartment and did not want to renew their lease for the Unit. At the FFC, Ms. [REDACTED] stated that Ms. [REDACTED] did not state that she did not want to renew her lease, but she also did not state that she did want to renew her lease. Ms. [REDACTED] credibly stated that she was not certain whether she specifically stated that Complainants wanted to renew their lease, but that she did state that they wanted to stay at the Unit. The record does not reflect that Ms. [REDACTED] stated that Complainants were not interested in renewing their lease.
  - b) Respondents' main argument has been that they did not want to have a short-term lease with Complainants, which is completely their prerogative. Respondents have also argued that Complainants stated that they were looking for a bigger apartment and did not want to renew their lease. The fact of whether Complainants stated that they did not want to renew their lease is controverted in the record.
  - c) The record shows that Respondents took the affirmative step of telling Complainants that Respondents would not be renewing their lease. Ms. [REDACTED] voice message to Ms. [REDACTED] and the email

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correspondence in Exhibit A are telling as to why Respondents made the decision not to renew Complainants' lease. In her voice message, Ms. [REDACTED] specifically stated that the lease provided for two adults, a dog and a cat, that Respondents would be enforcing the terms of the lease, and that as a result, Respondents would not be renewing Complainants' lease. Additionally, Ms. [REDACTED] email to Ms. [REDACTED] stated that Ms. [REDACTED] told her that Complainants eventually want to move into a bigger apartment. This shows that Ms. [REDACTED] indicated this preference for some point in the future, but that she was not specific with Ms. [REDACTED] regarding when Complainants wanted to find a bigger apartment. Ms. [REDACTED] response discussed the fact that the lease provided for two occupants, a cat, and a dog, and her view that "[t]he apartment is not large enough to accommodate another person and related items." This statement clearly shows that Respondents took Ms. [REDACTED] pregnancy into consideration in its decision not to renew Complainants' lease.

- d) The Unit was approximately 600 square feet in size (648 s.f., plus a bathroom; 544 s.f. without including the kitchen), and could easily have accommodated a third person, especially where that person was to be an infant. Portland's occupancy standards require only 170 square feet of habitable space for two adults and a child under the age of one – approximately one-third of the size of the Unit. Even after the child turned one year old, only 240 square feet would be required. This supports a finding of discrimination, since the Unit was not actually too small for Complainants and their child. This appears to have been a pretext for Respondents' decision not to continue renting to Complainants, even though they were considered good tenants, once they had a child.
- e) Complainants were not given the opportunity to renew their lease. Presumably in February 2015, Complainants would have received paperwork in the mail asking if they wanted to renew their lease. Respondents preemptively took that option away based on the fact that Complainants would be having a baby and an additional occupant in the Unit, which is unlawful discrimination on the basis of familial status.

13) Discrimination in the terms and conditions in housing on the basis of familial status is found.

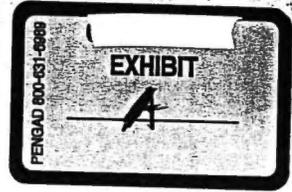
**VI. Recommendation:**

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

1. There are **Reasonable Grounds** to believe that Respondents [REDACTED] LLC, [REDACTED] and [REDACTED] discriminated against Complainants [REDACTED] and [REDACTED] [REDACTED] in housing on the basis of familial status in violation of the MHRA; and
2. Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).

  
Amy M. Sneider, Executive Director

  
Victoria Ternig, Chief Investigator



Subject: [redacted] and [redacted] on High Street  
Date: January 4, 2015 at 5:37 PM

[redacted] from [redacted] called the other day to let me know that she and Travis are expecting a baby in April. She said that eventually they want to move to a bigger place and that since their lease runs out in April, she wanted to know what options they had.

She mentioned month to month paying but I said I didn't think that could be an option. I did mention that I would discuss with you and Mike about the possibility of doing a 6 month lease. It would end in Sept. What are your thoughts? I know that you mentioned once that trying to rent in the winter is more difficult than the summer/spring. Is Sept a good time? Also, we would have to do some cleaning up in the space.

Mike said that he was good with it as they have been good tenants in our eyes. Let me know so I can talk with her about it again. [redacted] was wondering too, if I could tag along with you when and if you do meet with prospective tenants just to see how you do things. Would that be ok?

Look forward to hearing from you.  
Hope that I handled this ok. Didn't think you would want to do a month by month rent.

PS: Waiting on [redacted] for estimate. Called Friday to get status but haven't heard yet. I will try [redacted] again too.



**From:** [REDACTED]  
**Subject:** Fwd: [REDACTED] and [REDACTED]  
**Date:** April 26, 2015 at 8:59 AM  
**To:**



Begin forwarded message:

**From:** Dianne [REDACTED]  
**Subject:** Fwd: [REDACTED] and [REDACTED]  
**Date:** April 26, 2015 at 8:56:08 AM EDT  
[REDACTED]

Begin forwarded message:

**From:** [REDACTED] <[REDACTED].com>  
**Subject:** [REDACTED] and [REDACTED]  
**Date:** January 5, 2015 at 1:24:56 PM EST  
**To:** [REDACTED] >

Their original lease, beginning 4/1/2013 stated that they could have one cat and one dog and two occupants. The apartment is not large enough to accommodate another person and related items.

They should start looking right away, and if they find something that will allow them to move prior to 4/1 we will release them from their obligations under the lease. We will also furnish them with an excellent reference if they need it.  
We will not be renewing their lease on 4/1 or allowing any month to month or short period lease extension.