

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

ERICA DANIELS,
Complainant

v.

Docket No. 00260463

VERONICA WASHINGTON,
Respondent

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER OF THE HEARING OFFICER**

Appearances: Donald Frank, Esq., for Complainant
Robert Dambrov, Esq., for Respondent

I. PROCEDURAL HISTORY

On September 7, 2000, Erica Daniels (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (the “Commission”), against Veronica Washington (“Respondent”) claiming that Washington unlawfully attempted to raise her rent and then evict her from her apartment because she has children under six years of age, in violation of c. 151B, § 4(11).

On November 19, 2001, the Commission found probable cause to credit Complainant’s allegations. On May 28, 2002, the Commission certified the case for Public Hearing. A public hearing was held before me on September 25 and 30, 2002, in Springfield, MA. In deciding this matter, I have considered the entire record, including the testimony and exhibits introduced at hearing, and the stipulations of the parties.¹ I have likewise considered the proposed Findings of

¹ On September 27, 2002, after the commencement but prior to the close of the Public Hearing, the Investigating Commissioner ordered an “Amendment to Commission Complaint and Order of Certification

Fact and Conclusions of Law submitted by the parties after the public hearing. To the extent that the proposed findings and conclusions are in accord with the findings herein, they are accepted; to the extent that they are not, they are rejected. Certain proposed findings have been omitted as not relevant or necessary to a proper determination of the material issues presented.

II. FINDINGS OF FACT

1. Complainant, Erica Daniels, leased an apartment in a two-family residence owned by Respondent and located at 100 Andrews Street, Springfield, MA (the “subject premises”). Daniels resided in the apartment from March 1997 until February 1, 2002.

2. Respondent, Veronica Daniels, at all times relevant herein, owned the two-family premises located at 98-100 Andrews Street, Springfield, MA. Respondent did not reside in the residence.

3. In March 1997, Complainant and Respondent executed a Housing Assistance Payment Contract (“HAP Contract” or “Lease”) for the subject premises as part of a Section 8 rental certificate program. Under the Section 8 program, the Housing Allowance Program (“HAP”),² sets the monthly rent to be paid for the premises in accordance with the U.S. Dept. of Housing and Urban

to Public Hearing.” The order stated, “The Findings, Rulings And Entry Of Order entered on November 13, 2000, by Dina E. Fein, Associate Justice, in the Trial Court, Commonwealth of Massachusetts, Western Division, Housing Court Department, No. 00-SP-3518, entitled Veronica Washington, Plaintiff, and Erica Daniels, Defendant, is not to be given any preclusive effect in the public hearing certified herein and is not to be used to collaterally estop any party herein from relitigating factual issues which were heard and/or decided by the Housing Court, provided that said Findings, Rulings And Entry Of Order may be introduced as evidence in the public hearing to be given whatever consideration, if any, the Hearing Officer decides.”

² HAP is the designated Housing Agency (“HA”) referred to in the various rental agreements.

Development Guidelines. Pursuant to the agreement, HAP paid the difference between the monthly rent and Complainant's share of the rent in the form of housing assistance payments.

4. The initial Lease was for the period of March 15, 1997 to March 31, 1998, with a monthly rent of \$525.00. HAP paid \$503.00 of the rent in the form of housing assistance payments, and Complainant paid the remaining \$22.00. The Lease further provided that "this Lease will automatically self-extend under the same terms and conditions as the initial Lease, and shall continue in full force and effect...from year to year..." In this case, the parties' Lease automatically renewed for successive one-year terms, with the last automatic renewal effective April 1, 2000.³

5. The Lease expressly incorporated a "Lease Addendum", which the parties executed simultaneously with the Lease. According to the specific terms of the Lease, in the event of any conflict between the Lease and the Lease Addendum, the Lease Addendum governed. The Lease Addendum provided that "[t]he amount of the tenant rent is subject to change by [HAP] during the term of the Lease." However, "[t]he owner may not demand or accept any rent payment from the tenant in excess of the tenant rent." The Lease Addendum also provided that during the term of the Lease, or any extension thereof, the owner may terminate the tenancy for serious or repeated violations of the terms of the Lease, violation of federal, state, or local law, criminal activity, or "other good

³ According to the parties, the only amendment contained in the last extension pertained to Complainant being excused from paying any portion of the rent, with the entire amount being paid by HAP.

cause.” “Other good cause” includes the failure of the tenant to accept the offer of a new lease or revision; a family history of disturbances, or damage to property; the owner’s desire to use the property for personal or family purposes; or, a business or economic reason to terminate the tenancy. The owner does not have to provide grounds for terminating the Lease if the owner terminates the tenancy at the end of the initial term or at the end of any successive definite term.

6. Pursuant to the Lease Addendum, the owner may offer the tenant a new Lease, for a term beginning at any time after the initial term. If the owner offers the tenant a new Lease, the owner must give the tenant written notice of the offer with a copy to HAP, at least sixty (60) days before the proposed beginning date of the new lease term. The notice must also specify a reasonable time limit for the tenant to accept the offer. If the owner seeks to terminate the Lease for grounds, the owner must provide the tenant with written notice of the grounds and provide a copy of the eviction notice to HAP. The Lease may not be revised unless the revision has been approved in writing by HAP.

7. The Lease provided that any household member added by birth or those approved in writing by the owner and HAP may reside in the premises. Moreover, only members specifically named in the HAP Contract can reside in the premises. The HAP Contract between the parties only listed Complainant and her son, Kalaii Green.

8. Complainant testified that at the time she and Respondent initially discussed the rental of the premises in 1997, Respondent asked her how many

9. At the time Complainant moved into the subject premises in March 1997, Complainant lived in the premises with her son, Kalaii Green, who was born in 1993. On January 14, 2000, Complainant gave birth to her second child, Khalif Sharif. Because Khalif had medical problems, he remained in the hospital for an extended period of time. Respondent testified that she had no knowledge of Complainant's pregnancy prior to being informed of Khalif's birth in January 2000. Complainant claimed that she avoided telling Respondent about her pregnancy for fear she would object to having an additional child in the premises.

10. Complainant testified that her child came home from the hospital on March 13, 2000. However, the medical records from Baystate Medical Center indicate that Khalif was discharged "home or with family" on February 21, 2000.

Moreover, on March 1, 2000, Complainant sent a letter to Donna Glynn, of HAP,

requesting a Section 8 certificate for a larger apartment. I believe Complainant made a harmless mistake with respect to the date her son came home from the hospital, and I draw no adverse significance to this conflicting testimony.

11. Respondent became aware of the birth of Complainant's child in early January 2000. On May 25, 2000, Respondent sent Complainant the following letter (Exhibit 6):

This letter is in reference to rent increase:

Please be advise, I have made the decision to increase your rent from \$525/mo to \$550/mo **based on your family size increase** (emphasis supplied).

As of 8-1-00 your rent will be increase to \$550 without heat & electricity.

Please indicate your intentions in writing whether or not you agree with the proposed increase to your monthly rental amount.

The letter did not contain any reference or "cc" indicating that Respondent forwarded the letter to HAP.

12. At the Public Hearing, Respondent admitted she did not know at the time that it was unlawful to discriminate against a tenant for having a child or children. However, Respondent denied that the rent increase was related to the birth of Complainant's child. Rather, she testified that she sought the increase because she had incurred increased costs associated with the premises and expected to incur additional costs in the future. In addition, Respondent stated that she became concerned that additional adults were residing in the household. Specifically, she claimed that Complainant's boyfriend, Khalif Sharif (the father of Complainant's newborn child), often resided in the premises. However,

Respondent failed to produce any credible evidence that she or her husband, Anthony Dewdney, actually inquired whether Sharif maintained his residence at the apartment.

13. On May 25, 2000, Respondent also sought to increase the rent for the downstairs unit at 98 Andrews Street from \$525.00 to \$535.00. Although the two apartments at 98-100 Andrews Street were nearly identical, Respondent testified that she only increased rent for the downstairs apartment by \$10.00 because the tenant, Tina Thomas, had not lived at the residence as long as Complainant. Thomas had one child living with her in the downstairs apartment. The notice of the rent increase sent to Thomas did not specify or provide any reasons for the increase.

14. Complainant admitted that her boyfriend, Khalif Sharif, resided at the premises overnight about three times per week prior to the birth of her child. After bringing the baby home, she testified that he perhaps stayed over an extra night a week for a short period of time to help care for the child. However, she claimed Sharif continued to maintain his own residence. Complainant also testified that Sharif neither had a key to the premises nor kept furniture or clothes at her apartment. Moreover, she stated that she stayed over at his residence several nights a week. Sharif corroborated Complainant's testimony. He also testified that he regularly left his car at the premises for use by Complainant. I credit Complainant and Sharif's testimony regarding their living arrangements.

15. Respondent testified that her annual real estate taxes on the premises increased from \$882.45 in 1997 to \$1,141.92 in 2000. In addition, she stated that she had learned that she would be receiving, in the fall 2000, an adjusted quarterly water/sewer bill. She subsequently received water/sewer bills showing an increase from \$81.92 in 1997 to \$448.22 in 2000. Respondent also testified that she had to replace the carpeting in the premises at a cost of \$198.14 for materials. Lastly, she stated that Complainant's rent of \$525.00 had not changed since the inception of the Lease in 1997, and remained well below the market value for similar rental units in the area. I credit Respondent's testimony with respect to these specific expenses.

16. Donna Glynn worked as a case manager for HAP. She testified that over the years, she had regular contact with Respondent regarding her rental units. Based on her review of inspection reports, Glynn considered Respondent's units better by comparison than most rental properties. She also stated that she never had to withhold payment or terminate a contract with Respondent. I credit Glynn's testimony.

17. Respondent testified that after she gave Complainant the notice of May 25, she regularly asked Complainant if she was willing to pay the rent increase. She claimed that Complainant neither gave a definite response, nor indicated that the request was excessive, unreasonable, or discriminatory. Contrary to Respondent's testimony, Complainant stated that she specifically told Respondent the increase was unfair. Complainant also claimed that Respondent became belligerent and yelled at her, and Tina Thomas overheard their

conversations. Although Thomas admitted to hearing these conversations, she testified that Respondent neither argued with nor yelled at Complainant. I credit Respondent and Thomas' testimony on this particular matter.

18. On June 12, 2000, Respondent purportedly sent Complainant a letter regarding several issues with her tenancy (Exhibit 9). Specifically, Respondent claimed that Complainant failed to remove furniture from the outside porch, as she had previously requested. In addition, Respondent asserted that Complainant had to pay a bill from September 1999, for a plumber to replace a toilet in the unit. Lastly, Respondent claimed that she had received "numerous complaints" about Complainant's dog and requested that the dog be removed from the premises because keeping a pet "is in direct violation of the contract." This is the first time Respondent had written to Complainant about these specific problems. This letter is also notable for the absence of any discussion of Complainant's "family size increase" mentioned in the letter of May 25, 1999. In addition, although Respondent testified that she sent a copy of this letter to HAP, the copy obtained from HAP's files did not bear a date-stamp. According to Glynn, the absence of a date-stamp on a document indicated that it was either attached or included with another submission to HAP, or that was hand-delivered directly to a representative. Glynn further stated that HAP typically only date-stamps the first page of documents received in the mail. Glynn had no recollection of receiving this document, although she indicated that Respondent had occasionally visited the HAP office.

19. With respect to Respondent's allegation that Complainant kept a dog in violation of the Lease, Complainant testified that she had the dog in the premises for several years. She further claimed that Respondent had given her permission to keep the dog and, thereafter, Respondent never complained to her about the pet. Although Respondent acknowledged that Complainant had the dog for more than a year, she stated that Complainant had represented the dog belonged to her aunt and she would only be keeping it temporarily. Although neither the Lease nor the Lease Addendum contained any expressed restrictions against pets, Respondent contended the agreements prohibited Complainant from having a dog. The Lease did contain a provision prohibiting Complainant from making "noises or acts which disturb the quiet, security, or welfare of other occupants." Tina Thomas, who lived downstairs from Complainant, testified that Complainant's small dog was quiet and not a problem. I credit Thomas and Complainant's testimony on this matter.

20. On July 6, 2000, Respondent filed with HAP an "Owner Request for Rent Adjustment", requesting that Complainant's rent be increased from \$525.00 to \$550.00 per month (Exhibit 13). As grounds therefore, Respondent specifically noted increases in property taxes and water/sewer charges, and the cost of replacing the carpet in Complainant's unit.⁴ In the request, Respondent did not

⁴ As further evidence that Respondent may have doctored or fabricated documents, Complainant testified that the copy of this document she obtained from HAP (Exhibit 13A) did not indicate "Property tax increase over previous/quarter/year" as a reason for the rent increase. However, the copy produced by Respondent in discovery (Exhibit 13), did have a check mark next to "Property tax increase over previous quarter/year." I credit Complainant's testimony on this matter.

mention anything with respect to Complainant's increased family size or reference the matters described in her letter dated June 12, 2000.

21. Neither Complainant nor HAP formally agreed to Respondent's requested rent increase. Although Glynn does not recall Complainant mentioning anything specific about her reasons for rejecting the rent increase, she recalled Complainant stating that she wanted to move to a larger apartment. Glynn also remembered mentioning to Complainant that if she accepted Respondent's request, she would be committed to a new lease for a term of August 1, 2000 to July 31, 2001, and, thus, likely unable to move to a bigger unit until after the end of the new lease term. According to Glynn, Complainant never stated to her that she felt the Respondent's request was excessive, unreasonable, discriminatory, or illegal. I credit Glynn's testimony.

22. On July 18, 2000, Respondent sent Complainant a letter entitled, "Notice To Vacate For Possession With Option For Tenancy At New Rental Rate" (Exhibit 7). The letter instructed Complainant to vacate the premises by August 31, 2000, but gave Complainant the option, effective August 1, 2000, to remain as a tenant if she agreed to pay \$550.00 per month in rent. On the same date, Respondent also purportedly sent another letter to Complainant and HAP (Exhibit 10), which stated the following:

This letter is in reference to your occupancy to 100 Andrew Street and Notice to Quit for Possession on the unit.

You are hearby (sic) put on notice that I intend to take proccession (sic) of the Unit Located at 100 Andrew Street effective August 31, 2000.

This is your 30 Day notice to Vacant [sic]. I have decided to take possession (sic) of the unit located at 100 Andrew Street for the following reasons:

1. Your refusal to accept an increase in rent for that unit effective Aug. 1, 2000
2. Your violation of having pets in that unit as per lease agreement dated March 1997.
3. Your violation of having oppurants (sic) other than those listed on the lease agreement dated March 2000.

23. Complainant claimed that she never received the second July 18 (“30 Day Notice to Vacate”) letter; and, I credit her testimony. The letter also does not bear any indication that it was forwarded (“cc”) to HAP. Although a copy of the letter was found in HAP’s files, the copy bears a date-stamp of “September 19, 2000.” Coincidentally, “September 19, 2000” is almost three weeks after Respondent commenced eviction proceedings against Complainant and approximately two weeks after Complainant filed her complaint with the Commission. Respondent failed to provide any credible reason why she sent two letters to Complainant and HAP on July 18 as opposed to only one; or, why in the first letter she offered Complainant the option of staying in the apartment for an additional \$25.00 in rent, and then, in the second, sought to evict Complainant for, among other reasons, failing to agree to the rent increase. Under these circumstances, I believe that Respondent likely fabricated sending the second letter to Complainant on July 18, in an attempt to reconstruct legitimate reasons to evict Complainant from the premises.

24. On September 1, 2000, Respondent commenced eviction proceedings against Complainant in the Hampden County Housing Court. On November 13, 2000, the Housing Court found that Respondent had neither a proper basis for terminating the tenancy nor followed the proper legal procedures. The Housing Court thus entered judgment in favor of Complainant for possession of the premises.

25. On January 30, 2001, Respondent notified Complainant in writing that she would not renew the Lease due to expire on March 31, 2001 (Exhibit 12). Respondent indicated in this letter that she planned to have a family member move into the premises as soon as it became vacant.⁵ In response, Complainant moved out of the premises on February 1, 2001. Thereafter, Respondent Leased the premises to a non-family member, Tamara Touset, effective April 6, 2001, again under the Section 8 rental certificate program, for \$750.00 per month. Touset had three young children, ages 6, 3, and 1, listed on her Section 8 Lease agreement.⁶ Respondent testified that at the time she sent the non-renewal notice to Complainant, her niece had planned to move to Springfield from New York City and reside in the premises. However, Respondent claimed that sometime in February 2001, her niece informed her that she was moving to

⁵ As discussed above, the Lease Addendum provides that “other good cause” for terminating the tenancy includes “the owner’s desire to use the property for personal or family purposes.”

⁶ Respondent’s subsequent leasing of the subject premises to a tenant with three children could raise an inference that Respondent did not hold any bias against children. However, considering that Complainant was proceeding with her MCAD charge, Respondent may also have rented the unit to a tenant with children to create the impression that she held no bias against Complainant for having an additional child in the premises. Moreover, at the time she tried to raise Complainant’s rent, Respondent admitted that she did not know it was unlawful to discriminate against tenants with children; however, at the time she rented the unit to Touset, it would be fair to assume she clearly knew the law. For these reasons, I give this evidence no weight in my deliberations.

Virginia instead of Springfield. I refuse to credit Respondent's testimony with respect to the reasons she gave for the non-renewal of Complainant's Lease.

26. Complainant testified that Respondent's alleged discriminatory conduct caused her significant emotional distress. Specifically, she claimed that after she received Respondent's letter dated May 25, 2000, she began to worry "excessively." She also testified that she became overly concerned that she would get evicted and, thus, leave her and her children with no place to live. Furthermore, she claimed that she was already stressed from being a single parent responsible for caring for a sick infant.⁷ Complainant testified that during the period she waited for the Housing Court decision, she became ill and experienced a loss of appetite, vomiting and exhaustion. However, she admitted that she was pregnant during this period and further acknowledged that she regularly got sick and suffered from nausea due to her pregnancy. Although Complainant claimed that she wanted but could not afford counseling, she admitted that she had health insurance during the summer of 2000 and never inquired with her health organization or insurer about counseling services.

27. In the fall of 2000, Complainant had been taking computer technology classes at MCDI. She claimed that the stress directly and probably caused by Respondent's discriminatory actions hindered her ability to focus clearly on her school work and caused her to miss classes. She asserted that her career was delayed thirteen weeks because she could not finish her schooling due to the

⁷ Both Complainant and Khalif Green testified that their son suffered from numerous health issues since being born. I credit their testimony.

stress associated with the eviction proceeding and, thus, she lost \$7,800.00 (13 weeks x 40 hours per week @ \$15.00 per hour) in anticipated earnings.

Additionally, Complainant testified that she had to defend herself in the summary process proceeding and had to take off time from work to research her case and attend court proceedings. At this time, she worked for the YMCA and earned \$8.75 per hour. She stated she lost 72 hours (15 –20 days) of work, for a total loss of \$630.00 in wages. She also testified that she incurred \$500.00 to \$600.00 in moving expenses. However, in a prior submission to the Commission, she submitted documentation indicating that she had only incurred \$150.00 in expenses when she moved out of the apartment on February 1, 2001 (Exhibit 16). I credit Complainant's testimony with respect to her loss of \$630.00 in wages. I decline to credit the remainder of her testimony on her emotional distress and out-of-pocket damages.

III. CONCLUSIONS OF LAW

M.G.L. c. 151B, § 4(11) prohibits an owner, real estate broker or managing agent to "refuse to rent or lease... or otherwise to deny to or withhold from any person such accommodation because such person has a child or children who shall occupy the premises with such person, or to discriminate against any person in the terms, conditions or privileges of such accommodations or the acquisition thereof." In this case, Complainant maintains that Respondent unlawfully attempted to increase her rent and then attempted to evict her from the premises because she had a new child.

As a preliminary matter, I reject Complainant's contention that under the doctrine of collateral estoppel, I should give preclusive effect to the findings of the Housing Court in the parties' summary process action. Consistent with the Order of the Investigating Commissioner,⁸ I have allowed the submission of the Housing Court decision into evidence for limited factual purposes, but I have neither adopted nor considered the Court's factual findings for purposes of reaching my conclusions with respect to whether Respondent violated the provisions of M.G.L. c. 151B.

With respect to Complainant's claim of discrimination against Respondent, she seeks to establish her case by "direct evidence", which is evidence that "if believed, results in an inescapable, or at least highly probable, inference that a forbidden bias was present..." Wynn & Wynn, PC v. MCAD, 431 Mass. 655, 665 (2000); Fountas v. Medford Public Schools, 22 MDLR 264, 269 (2000). In a direct evidence case, a complainant does not have to adhere to the three stage burden shifting paradigm set forth in McDonnell-Douglas v. Green, 411 U.S. 792, 802 (1972). Rather, a mixed motive analysis is applied to Complainant's allegation of discrimination. Pursuant to this analysis, Complainant must first prove by a preponderance of the evidence that a proscribed factor played a motivating part in the challenged employment decision. Fountas, 22 MDLR at 269.

I find that Complainant has met this burden. Specifically, Complainant gave birth to a child in January 2000 and brought her baby home in February 2000. Respondent then informed Complainant on May 25, 2000, that she was

⁸ See, note 1, *supra*.

increasing her rent “based on your family size increase.” This letter clearly raised an inference that Respondent held a bias against Complainant for having an additional child in the premises. Moreover, I credited Complainant’s testimony that Respondent complained to her at the outset of the tenancy that a prior tenant had “too many children.” Therefore, Complainant has established direct evidence that Respondent’s animus played a factor motivating her decision to increase Complainant’s rent.

Since Complainant has met her initial burden, the burden of persuasion shifts to Respondent, “who may avoid a finding of liability only by proving that it would have made the same decision even without the illegitimate motive.” Wynn & Wynn, P.C., 431 Mass. at 667, *quoting*, Price Waterhouse v. Hopkins, 490 U.S. 228, 244-245, 109 S. Ct. 1775 (1989); Fountas, 22 MDLR at 269. In this case, I find that Respondent gave disingenuous and inconsistent reasons for both her desire to raise Complainant’s rent and her attempt to evict her from the premises. Consequently, I find that Respondent’s articulated reasons for her actions lack credibility.

As an initial matter, I credited Respondent’s testimony that she incurred substantial increases in the residence’s property taxes and water/sewer charges. I also believe that as of 2000, the rent she charged Complainant was substantially below market rents for this type of unit. However, I am not persuaded that these reasons constituted Respondent’s prime reasons for seeking to increase Complainant’s rent. Perhaps if Respondent had, from the outset, consistently and clearly articulated these “economic” factors as reasons

for seeking the rent increase, I would be inclined to find that she met her burden of persuasion. However, the evidence revealed that Respondent instead engaged in a variety of confusing, inconsistent, and disingenuous actions that only entangled her in her own web of deceit.

For example, Respondent testified at the Public Hearing that her reference to “family size increase” in her letter of May 25, 2000, referred only to additional adults living in the premises. However, neither Respondent nor her husband provided any credible evidence that they ever actually inquired whether Complainant had additional adults living in the apartment. In addition, I find that Respondent failed to provide any credible evidence that she had reasonable grounds for making this assumption.

In addition, in the letter dated June 12, 2000, Respondent raised new issues with respect to Complainant’s tenancy, including the allegation that Complainant kept a dog in violation of the Lease. Respondent also demanded that Complainant remove furniture that allegedly blocked access to her front porch, and repay a plumber’s bill incurred nine months earlier. I found Respondent’s testimony regarding these allegations to be without credibility. In particular, I credited Complainant’s testimony that Respondent, more than a year earlier, had previously allowed Complainant to keep the dog. More importantly, this letter conspicuously failed to mention anything with respect to Complainant’s “family size increase” or other adults living in the premises. Consequently, I believe that Respondent likely fabricated the allegations contained in this letter in order to create grounds for evicting Complainant from the premises.

Respondent's explanations for her actions become even more convoluted, when on July 18, 2000, she purportedly sent two letters to Complainant. In the first letter (Exhibit 7), entitled, "Notice to Vacate For Possession With Option For Tenancy At New Rental Rate", Respondent specified that Complainant had to vacate the premises by August 31, 2000, unless she agreed to pay a \$25.00 increase in her monthly rent. In the second letter (Exhibit 10), Respondent sought to evict Complainant. Among the grounds asserted for the eviction, Respondent stated that Complainant's family size had increased by virtue of her having occupants residing in the premises "other than those listed on the Lease agreement dated March 2000." In addition, she relied on the false claim that Complainant kept a dog in violation of the Lease. Respondent also failed to provide any credible evidence as to why she would send two letters to Complainant and HAP on July 18, as opposed to only one. Moreover, she could not provide a credible reason for the conflicts between the letters in which she, on the one hand, offered Complainant the option of continuing to rent the apartment for an additional \$25.00 per month, and in the other hand, sought to evict her for various reasons including her refusal to rent the apartment at a higher rent. I believe this evidence strongly supports the conclusion that Respondent did not send the second letter on July 18; rather, she sent it several months later in order to recreate legitimate business reasons to evict Complainant from the premises.

Finally, I found Respondent's testimony with respect to her reasons for evicting Complainant on January 30, 2001, lacked credibility. Respondent

claimed that she did not renew Complainant's Lease because she planned to have a family member move into the premises, but she ultimately rented the unit to a non-family member at a substantially higher rent after Complainant moved out of the apartment.

In summary, Respondent has failed to provide credible reasons for her actions and has, therefore, failed to meet her burden of persuasion. Consequently, Complainant has established that Respondent engaged in unlawful discrimination in violation of M.G.L. c. 151B, § 4(11).

IV. REMEDY

Upon a finding of unlawful discrimination, the Commission is authorized to award damages, including damages for emotional distress, to make Complainant whole. College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 159 (1987); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 181-182 (1985).

In this case, Complainant is entitled to recoup out-of-pocket moving expenses, which I believe totaled \$150.00. Complainant is also entitled to lost wages attributable to her missing work to defend the wrongful eviction proceeding brought by Respondent. I credited Complainant's testimony that she lost 72 hours of work, for a total loss of \$630.00 (72 hours @ \$8.75/hour) in wages. I did not, however, credit Complainant's testimony that Respondent's unlawful actions distracted her from her studies and, thus, caused her to miss classes and delay her graduation.

With respect to Complainant's claim for emotional distress, I found that Respondent's actions likely caused her some anxiousness, but did not cause her to worry "excessively." I also believe that Complainant's physical ailments - loss of appetite, nausea, and exhaustion - were likely related to her pregnancy. However, it is not unusual for a complainant to suffer distress caused by factors separate and apart from the discriminatory act. Rosati v. Town of Warren Bd. of Health, 19 MDLR 34, 38 (1997); Fiske v. R.P. Liquor, Inc., 16 MDLR 1042, 1057 (1994); Norman v. Andover Country Club, 15 MDLR 1394, 1422 (1993). Moreover, the presence of other significant stressors in Complainant's life does not absolve Respondent from liability for the distress caused by her actions. Franklin Publishing Co., Inc. v. MCAD, 25 Mass. App. Ct. 974, 975 (1988); Fiske, 16 MDLR at 1957. Under these circumstances, I believe Complainant is entitled to an award of \$15,000.00 for the emotional distress directly and probably caused by Complainant's unlawful conduct.

V. ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that:

1. Respondent, Veronica Washington, pay Complainant, Erica Daniels, within 60 days of receipt of this decision, the sum of \$630.00 in lost wages; and the sum of \$150.00 in moving expenses, for a total of \$780.00, plus interest at the statutory rate of 12% per annum from the

date the complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

2. Respondent, Veronica Washington, pay Complainant, Erica Daniels, within 60 days of receipt of this decision, the sum of \$15,000.00 in damages for emotional distress plus interest at the statutory rate of 12% per annum from the date the complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.
3. The parties shall notify the Clerk of the Commission as soon as the above-described ordered payments have been made. If Respondent fails to comply with the terms of this Order within the time periods allotted, then Complainant is instructed to immediately notify the Clerk of the Commission.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 27th day of February, 2003.

EDWARD R. MITNICK,
Hearing Officer