

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & GAYLE GOODWIN,
Complainant

v.

DOCKET NO. 10 –BPR-01620

JOSEPH CIAMPA,
Respondent

Appearances:

Caitlin Sheehan, Esq., Commission Counsel

James K. Ferraro, Esq. for Joseph Ciampa

DECISION OF THE HEARING OFFICER

I. INTRODUCTION

On or about July 13, 2010, Gayle Goodwin filed a complaint with this Commission charging Respondent Joseph Ciampa with discrimination in housing on the basis of receipt of public assistance in violation of M.G.L. c. 151B§4, ¶10. The Investigating Commissioner issued a probable cause finding. Attempts to conciliate the matter failed, and the case was certified for public hearing. A public hearing was held before me on March 13, 2013. After careful consideration of the entire record and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant Gayle Goodwin is a long-time resident of Melrose, Massachusetts and has received a Section 8 rental subsidy since 2006. From April through June 2008, Complainant and her daughter were living in a rental unit at 36 Warren Street in Melrose.

2. Respondent Joseph Ciampa owns a total of 10 rental units, including a two-family home located at 2-4 Linden Road, Melrose. Respondent has rented to Section 8 tenants in the past. He testified credibly that he likes having Section 8 tenants because the rent is guaranteed.

3. Beginning in September or October 2009, Complainant was under threat of eviction and she began looking for a new apartment for herself and her daughter. Complainant was seeking a two-bedroom apartment in Melrose that was close to her parents' house and her daughter's school, with available parking. She also required an apartment renting for less than the Section 8 limit of \$1,350, with Complainant's portion of the rent equal to 30% of her adjusted gross income.

4. On April 1, 2010, Respondent placed an ad on Craigslist seeking to rent a 5 room, 2-bedroom second floor unit in the two-family home he owned at 2-4 Linden Road. The unit was available for rental on May 1, 2010 and the rent was \$1,200 per month. (Ex. J-1)

5. After observing Respondent's ad on Craigslist, on April 4, 2010, Complainant emailed Respondent to inquire about the unit. Respondent suggested she look around the neighborhood and if interested, contact him to schedule a showing. (Ex. J-2) Complainant testified that she searched the location on the internet on April 5 or 6 and was familiar with the area, but she did not contact Respondent to view the apartment.

6. Respondent testified credibly that after advertising the unit for two weeks and showing it to several people, he did not find suitable tenants. On or about April 17, Respondent took the unit off the market and began making repairs to the building's interior and exterior in order to improve the building's appearance and desirability.

7. On April 21, 2010, Complainant emailed Respondent that she was interested in viewing the apartment if it was still available. Respondent replied that the unit had not been

rented and that he had decided to make some repairs to the building's exterior before showing it again.

8. Although the repairs were not yet completed, Respondent agreed to show the apartment to Complainant on the evening of Saturday, April 24. They arranged to meet between 6:20 and 6:30; however, according to Respondent's credible testimony, Complainant did not arrive until 7:15. Complainant denied coming late to the showing but I do not credit her testimony.

9. Respondent testified credibly that while showing her the apartment, Complainant expressed reservations about the unit and told Respondent that she was physically unable to climb the stairs because of back pain, and she inquired about Respondent relocating the laundry facilities from the basement to the second floor.¹ Respondent told Complainant that he could not re-plumb the entire building in order to move the laundry. Respondent stated that Complainant also told him that she was enrolled in an "address confidentiality" program that would require him to send all mail to her post office box and not directly to her address. I credit his testimony.

10. The testimony of Complainant and Respondent differed slightly with respect to how Respondent learned that Complainant was a Section 8 recipient. Respondent testified that he learned of her status indirectly when Complainant told him that the porch would not pass a Section 8 inspection and he responded that he would make the required repairs. Complainant testified that at the end of the viewing she told Respondent that she had Section 8 and Respondent responded that he would have to fix the porch before it would pass inspection.

11. Respondent testified credibly that despite his misgivings about renting to Complainant, he gave her an application with his usual instructions to send the completed

¹ Complainant testified that she suffers from several ailments including a bad back and fibromyalgia.

application to him along with a check for the first month's rent and if he decided to rent the unit to her he would contact her; if not, he would return the check.

12. Respondent testified that because Complainant was late for the appointment, because she stated that she was unable to navigate stairs and because of her participation in an "address confidentiality" program, he did not find her to be a suitable candidate for the apartment. I credit his testimony.

13. Complainant testified that she liked the apartment because it was spacious, had on-street parking, and was near her daughter's school, her parents' house and stores. The rent was \$1,200 per month, which fit within the section 8 requirements.

14. Complainant testified that after viewing the apartment on April 24, she went to her parent's house where she filled out the application, placed it in a stamped envelope addressed to Respondent without a check and asked her father to mail it the next time he went out. Complainant testified that she did not sign and date the application because her daughter was anxious to go home and because Complainant sought to rent the apartment as soon as possible. I do not find this explanation for her failure to sign and date the application credible as this would have taken mere seconds. Complainant offered no explanation for her failure to enclose a check with the application. I also do not credit Complainant's testimony that she asked her father to mail the application to Respondent.²

15. There was no contact between Complainant and Respondent from April 24, 2010 to June 16, 2010. I find it incredible that Complainant seriously sought to rent the unit in question, given her expressed inability to climb the stairs, her dissatisfaction with the laundry's location

² Complainant's father Robert Goodwin testified that he mailed a letter for Complainant the following day but did not see its contents. I do not credit this testimony.

and her failure to contact Respondent to follow-up on her supposed application for nearly two months after viewing the unit.

16. After viewing the premises at Linden Road, Complainant continued to seek out other apartments in Melrose. She viewed approximately 10 units but found it difficult to find suitable housing in her rental range and stated she was desperate to find a place.

17. On June 10, 2010, Respondent re-listed the Linden Road second-floor unit for rent on Craigslist. He testified credibly that he rented the unit on June 12, 2010 and stated that he received Complainant's unsigned, undated application on June 14 or 15. (Ex. J-3) I credit his testimony.

18. On June 16, 2010, Complainant emailed Respondent stating that she hadn't heard back from him since mailing her application in April and inquired about the status of the apartment. Respondent apologized for not getting back to her and stated that he had rented the apartment before receiving her application. (Ex. J-2)

19. Complainant responded that, having seen the June 10 Craigslist ad, she wondered whether the second floor unit was still available. Respondent replied that Complainant was welcome to meet the new tenants.³ Complainant then inquired whether the listed apartment was actually the first floor unit and if so, noted that Respondent had her application.⁴ Respondent did not respond to this email and there was no further correspondence between Complainant and Respondent. (Ex. J-2) Respondent testified credibly and without contradiction that the first floor

³ Respondent testified credibly that this was a sarcastic response to Complainant's suggestion that the unit was still available.

⁴ The June ad listed the address as "2 Linden Road" whereas the April ad listed the address as "4 Linden Road." There is no dispute that the address of the property in question is 2-4 Linden Road. Respondent testified credibly that both ads referenced the second floor unit and that the discrepancy in the street number was due to an error on his part.

unit has been occupied by the same tenant for many years and was never vacant during the time period in question.

20. Respondent rented the unit in question to a person who was not a Section 8 recipient. (Testimony of Respondent; Ex. J-5)

21. Complainant filed 13 housing discrimination complaints with this Commission between June 25, 2010 and July 1, 2010. In 11 of those complaints, Complainant claimed that she was denied housing because of her status as a Section 8 recipient. Of the other two complaints, one claimed discrimination based on marital status and the other on lead paint. (Testimony of Complainant; Ex. R-3)

22. Complainant moved into a new apartment on or about July 31, 2010.

III. CONCLUSIONS OF LAW

Complainant alleges that Respondent did not rent her an apartment because of her status as a recipient of a Section 8 rental subsidy. M.G.L. Chapter 151B, §4(10) makes it unlawful for any person "furnishing rental accommodations to discriminate against anyone who is a recipient of federal, state or local housing subsidies ... including rental assistance or rental subsidies because such individual is such a recipient or because of any requirement of such ... rental assistance or housing subsidy program." ⁵

In order to make out a prima facie case of housing discrimination based on rental subsidy discrimination, Complainant must show: (1) she was a member of a protected class at the time of

⁵ Commission Counsel argues that the Commission should add, sua sponte, a claim for handicap discrimination because one of Respondent's reasons for rejecting her as a tenant was her inability to climb the stairs. I decline to add such a claim, as Complainant never actually applied for the apartment until it was already rented. Moreover, Complainant never raised the issue, it was not investigated by the Commission and it was not the subject of the Probable Cause Finding. In addition, Complainant indicated that she could not climb the stairs, thereby raising a legitimate concern that she could not manage living in the apartment.

the discriminatory act; (2) she applied for an apartment for which the Respondent was seeking applicants; and (3) she was not selected to rent the apartment and the apartment was rented to someone not of her protected class. See Baker v. Collazo and Maggi, 4 MDLR 1421 (1982) Williams v. Hardy, MDLR (2001); Brennan v. Hong, 31 MDLR 129, 130 (2009) citing Wheelock College v. MCAD, 371 Mass. 130 (1976).

Complainant, a recipient of a Section 8 rental subsidy, was a member of a protected class; she alleges that she sought to rent an apartment from Respondent that was available for rental;⁶ and Respondent was seeking applicants through Craigslist advertisements. Notwithstanding that Respondent removed the unit from the market to make repairs, Complainant viewed the apartment and identified herself as a Section 8 recipient. Respondent later re-advertised the unit, Complainant then submitted an application, and Respondent rented the apartment to a tenant who did not participate in a government sponsored rental subsidy program. Because the apartment had been re-advertised as available at the time Complainant applied, I conclude that she has established a prima facie case of housing discrimination on the basis of her status as the holder of a rental subsidy.⁷

Once a prima facie case is established, the burden of production shifts to Respondent to articulate legitimate, non-discriminatory reasons for his failure to rent the apartment to Complainant. See, Wheelock College v. MCAD, 371 Mass. 130 (1976); Abramian v. President & Fellows of Harvard College, 432 Mass 107, 116 (2000). Respondent offered several legitimate, non-discriminatory reasons for not renting to Complainant. Even if Complainant had

⁶I am not convinced that Complainant was seriously seeking to rent the unit, as she did not contact Respondent for nearly two months after viewing the apartment, and then only after it was re-advertised. I conclude that if she were “desperate” for the apartment as she testified, she would have contacted the Respondent soon after viewing the unit. Moreover, at the time she actually applied, the unit was already rented and was no longer available.

⁷While I conclude that at the time Complainant actually submitted an application the unit was no longer available, for purposes of the prima facie case, I will consider the unit available at the time she responded.

made a timely application, it is clear that Respondent would have rejected her based on his testimony about why he found her not suitable; therefore, I will analyze the legitimacy of these reasons. Respondent testified credibly that after temporarily removing the unit from the market in order to make repairs, he showed Complainant the unit in April, when he determined that she was not a suitable tenant because she arrived 45 minutes late for the showing, she complained of great difficulty climbing the stairs and she participated in an “address protection” program that would require him to send mail to a post office box and not directly to her rental address. Respondent re-advertised the unit in June and thereafter received Complainant’s undated, unsigned rental application, by which time he had rented the unit to another tenant. Respondent denied that he refused to consider Complainant because she was a Section 8 recipient and that fact that he had a history of renting to Section 8 tenants underscores his credibility on this issue.

Once Respondent has articulated legitimate, non-discriminatory reasons for his actions, the burden shifts to Complainant to show that Respondent’s reasons for not renting the apartment to her were a pretext for unlawful discrimination. Wheelock College, supra. The record is devoid of any evidence that Respondent rejected Complainant for reasons related to her Section 8 status. Even if she had applied in April and been rejected, her Section 8 status was not the reason. I did not find Complainant to be a credible witness, do not believe that she actually applied for the apartment in April and do not believe that she was a bona fide applicant at that time. Moreover, at the time she actually submitted an application in June, the unit was no longer available. I conclude that Complainant has utterly failed to demonstrate that Respondent’s articulated reasons for not renting her the apartment were a pretext for unlawful discrimination. For the reasons stated above, I conclude that Respondent did not engage in housing

discrimination in violation of M.G.L.c.151B§4(10), and hereby order that this matter be dismissed.

IV. ORDER

For the reasons set forth in this decision, the complaint in this matter is hereby dismissed. 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 10 days after the receipt of this Order and a Petition for Review within 30 days of receipt of this Order.

SO ORDERED, this 27th day of June, 2013

JUDITH E. KAPLAN,
Hearing Officer