

3/30/2022

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

SUPERIOR COURT

RECEIVED

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff,
v.
MARK DAVIDSON,
Defendant.

Civil Action No. 227 W00297A

JURY TRIAL DEMAND

COMPLAINT

The Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey, brings this action against Mark Davidson (“Davidson” or “Defendant”) for violations of anti-discrimination, consumer protection, and lead paint laws relating to the tenancy of Maura Smith and Daniel Hocking, former residents of Davidson’s apartment unit at 35 Oakland Street, Apartment 1 in Salem, Massachusetts.

Ms. Smith and Mr. Hocking moved into the apartment on July 1, 2020. The following March, Davidson offered to renew their lease at the same rate; they accepted his offer. One month later, Ms. Smith and Mr. Hocking emailed Davidson alerting him to the fact that they were expecting a child. The email noted how the pregnancy might create “a potential issue with MA lead laws,” but said that they would be comfortable with lead remediation rather than full removal if the law allowed that option. Instead, the very next morning, Davidson called to inform them that he was no longer willing to renew their lease at all—renegeing on his prior offer and their acceptance—and that they would have to move out by July 1, 2021. Davidson’s refusal to renew

the lease forced Ms. Smith and Mr. Hocking to find a new place to live and move, in the middle of a pandemic, while Ms. Smith was seven months pregnant. Davidson later rented the apartment to tenants who do not have children.

As detailed below, Davidson's actions constitute a violation of the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2, as well as a violation of provisions of the Massachusetts anti-discrimination and lead paint laws. See G.L. c. 151B, § 4; G.L. c. 111, § 99A. The Commonwealth seeks injunctive relief, compensatory and punitive damages, civil penalties, and attorneys' fees and costs.

PARTIES

1. Plaintiff Commonwealth of Massachusetts is represented by and through its Attorney General, whose principal place of business is located at One Ashburton Place, Boston, Massachusetts. The Attorney General is authorized to bring this action pursuant to G.L. c. 12, § 10, G.L. c. 93A, § 4, and G.L. c. 151B, §§ 5 and 9.

2. Defendant Mark Davidson currently resides in Beverly, Massachusetts. At all times relevant to the Complaint, Davidson was the owner of a rental property at 35 Oakland Street in Salem, Massachusetts.

JURISDICTION & VENUE

3. The Court has jurisdiction over this action and the power to grant the relief requested pursuant to G.L. c. 93A, § 4, G.L. c. 151B, §§ 5 and 9, and G.L. c. 214, § 1.

4. Venue properly lies in Essex County pursuant to G.L. c. 223, § 5, G.L. c. 93A, § 4, and G.L. c. 151B, § 5.

PROCEDURAL HISTORY

5. On June 21, 2021, Laura Smith and Daniel Hocking filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”), alleging that Davidson discriminated against them based on familial status to avoid the requirements of the Massachusetts lead law.

6. On October 27, 2021, the MCAD determined that probable cause existed to credit the allegations that Davidson had discriminated against Ms. Smith and Mr. Hocking based on familial status and that he had refused to renew their lease to avoid the requirements of the Massachusetts lead law.

7. On November 9, 2021, Davidson elected judicial determination pursuant to C. L. c. 151B, § 5, and thereafter the MCAD transferred the complaint to the Attorney General’s Office.

8. On March 21, 2022, the Commonwealth served a five-day demand letter, pursuant to G.L. c. 93A, § 4, on Davidson.

FACTS

9. Davidson owns the property at 35 Oakland Street, Apartment 1 in Salem, Massachusetts (“the subject property”).

10. In March 2020, Laura Smith and Daniel Hocking toured the subject property with Davidson. During the tour, Mr. Hocking explained that his children would be living at the premises on certain weekends. Davidson responded that if the children were living there permanently and were under six years of age, he would have to abate lead, but that Mr. Hocking’s children would be fine to live there on weekends.

11. In July 2020, Ms. Smith and Mr. Hocking moved into the subject property. They lived there without incident.

12. On March 11, 2021, Mr. Davidson sent Ms. Smith and Mr. Hocking the following email offering a renewal of their lease at the same rental rate:

Hey Daniel and Laura,

I hope you are enjoying Oakland Street.

It's that time of year that I check in with you about the future. Your lease is going to expire in 90 days from March 30th.

What are your future plans?

Are you interested in renewing or moving?

If you would like to renew your lease we will extend it at the current rate.

Please let me know if you have any questions and if you could kindly let me know your final answer on or before March 30th at 9am that would be greatly appreciated.

13. On March 24, 2021—well within Davidson's deadline for their "final answer"—Ms. Smith and Mr. Hocking responded as follows:

Hi Mark,

We are enjoying the apartment and location and would like to renew the lease for another year.

Thanks,
Daniel and Laura

14. Almost exactly one month later, on April 25, 2021, Mr. Hocking and Ms. Smith emailed Davidson to notify him that Ms. Smith was pregnant.

Hi Mark,

We wanted to let you know that Laura is pregnant and we're expecting a baby girl in August. We understand that there's a potential issue with MA lead paint being so strict. We'd like to stay at 35 Oakland St. but do hope to buy a house in the next couple years. Our understanding is that for 2 years a child under six can live in an apartment with lead remediation (covered paint in the living areas) rather than full removal and we are certainly comfortable with that option.

Thanks for understanding. Give us a call if you want to talk about any of this.

Dan Hocking and Laura Smith

15. The following day, April 26, 2021, Davidson called Mr. Hocking to inform him that he was no longer willing to renew the lease—they would have to move out by the end of June. Davidson explained to Mr. Hocking that he wanted to take this "opportunity" to renovate the bathroom at the subject property, requiring that they vacate the premises.

16. Davidson had never mentioned the necessity of a bathroom renovation to Ms. Smith or Mr. Hocking at any point during their tenancy. At no point during their tenancy had a contractor

entered the subject property to inspect the bathroom. In particular, it appears that the need for renovation had not affected his decision to offer renewal of the lease until (one day) after he found out they were expecting a child. A contractor was brought in to inspect the bathroom only after Davidson decided to terminate the lease.

17. A few days later, Mr. Hocking and Ms. Smith emailed Davidson to tell him that they were "taken off guard" by his refusal to renew their lease and asked him if there was any other option to avoid its termination. They asked if renovations could be postponed, or if they could be done while they lived at the premises. They also asked if perhaps they could do a "month-to-month" tenancy so they could avail themselves of rental options that would not start until July or August.

18. Davidson refused every alternative, writing back: "The current lease expires on July 1st, 2021 and as we went over on the phone this past Monday, the lease is being terminated at the time it expires."

19. Davidson's actions in refusing to allow the renewal of their lease after being informed of the pregnancy caused Ms. Smith and Mr. Hocking significant emotional and economic harm. Upon being forced to move out by July 1st, Ms. Smith and Mr. Hocking obtained a last-minute tenancy in a unit with \$550 higher rent every month; they were forced to pay over \$3,000 in overlapping rent when the move-in date did not align with the expiration of their lease with Davidson; they paid moving expenses; and they had a number of other increases in their expenses as a result of the forced move. Their emotional damages were also substantial, as they suffered the stress of having to scramble to find a new place to live at the start of Ms. Smith's third trimester in the midst of the COVID-19 pandemic. They were forced to have multiple unwanted face-to-face interactions with potential landlords so they could view potential units.

20. After renovating the bathroom at the subject property, Davidson leased the unit to new tenants. They do not have children.

21. Upon information and belief, Davidson owns multiple buildings that have never been inspected for lead, including 35 Oakland Street in Salem, and he has never rented any units in these buildings to tenants with children under six years of age.

STATEMENT OF CLAIMS

Count I: Unfair or Deceptive Business Practices

(G.L. c. 93A, § 2)

22. The Commonwealth re-alleges and incorporates the preceding paragraphs.

23. By offering real property for rent or lease, Defendant is engaged in trade or commerce as defined in G.L. c. 93A, § 1.

24. Defendant violated G.L. c. 93A, § 2 by engaging in unfair or deceptive business practices. Defendant refused to renew Ms. Smith and Mr. Hocking's lease because they notified him that they were expecting a child to avoid the requirements of the lead law. In doing so, Davidson knowingly and intentionally failed to comply with existing statutes, rules, regulations, or laws meant to protect the public's health, safety, or welfare as set forth in G.L. c. 151B, § 4.

25. The Attorney General's general consumer protection regulations deem as unfair or deceptive any acts that are "oppressive or otherwise unconscionable in any respect," or "fail to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth . . . intended to provide the consumers of this Commonwealth protection." 940 Mass. Code Regs. §§ 3.16(1), (3).

26. The Massachusetts Lead Law itself makes clear that non-compliance also constitutes a violation of G.L. c. 93A. See G.L. c. 111, § 199A(c). The Lead Law applies to any "child-occupied facility," defined as a "building constructed before 1978 and visited regularly by

the same child, under 6 years of age, on at least 2 different days within a week if each day's visit lasts at least 3 hours." The law imposes an obligation on the part of the owner of any child-occupied facility to inspect the unit for lead, remove or cover any lead found, and obtain either a Letter of Full Compliance or a Letter of Interim Control. G.L. c. 111, § 197; 105 CMR 460.100(A). By refusing to renew the lease at the subject property after being informed that Ms. Smith and Mr. Hocking were expecting a child—and despite a prior agreement to renew the lease initiated by Davidson—Defendant's conduct constituted a violation of the Massachusetts Lead Law and, thus, an unfair or deceptive practice under G.L. c. 93A.

27. Davidson also engaged in an additional "deceptive" practice insofar as he intentionally misrepresented to Ms. Smith and Mr. Hocking his true motivation for refusing to renew their lease, relying on a dishonest pretext rather than forthrightly acknowledging the discriminatory reason for his actions. In doing so, Davidson exhibited the sort of "conduct involving dishonesty ..., deceit, [and] misrepresentation" that breaches G.L. c. 93A. *Spenninbauer v. Kane*, 1998 WL 474170, at *2 (Mass. App. Ct. Aug. 4, 1998).

28. Davidson's violations of the consumer protection act were "willful or knowing" as described by statute, see G.L. c. 93A, § 9, as he was cognizant of his obligations under the Lead Law and of the discriminatory and unlawful reason for his refusal to rent and rescinded his offer of renewal under a false claim of a need to conduct a bathroom renovation. See *Montanez v. Fagg*, 24 Mass. App. Ct. 954 (1987) (defining "willful or knowing" conduct under G.L. c. 93A).

29. Ms. Smith and Mr. Hocking suffered and continued to suffer damages, including but not limited to emotional distress and economic harm, as a result of Davidson's actions.

Count II: Housing Discrimination Based on Familial Status
(G.L. c. 151B, § 4(11))

30. The Commonwealth re-alleges and incorporates the preceding paragraphs.

31. Davidson is the “owner” of the subject property as that term is used in G.L. c. 151B, § 4(11), which makes it unlawful for said owner to refuse to rent or otherwise deny housing accommodations because children will occupy the premises. “[D]iscrimination against persons with children shall extend to women who are pregnant.” 804 CMR 2.02.

32. Davidson’s refusal to renew Ms. Smith and Mr. Hocking’s lease of the subject premises—one month after his express offer (and their acceptance) to renew, but *one day* after being informed of Ms. Smith’s pregnancy—constitutes discrimination on the basis of familial status.

33. Ms. Smith and Mr. Hocking suffered and continue to suffer damages, including but not limited to emotional distress and economic harm, as a result of Davidson’s actions.

PRAYER FOR RELIEF

WHEREFORE, the Commonwealth of Massachusetts requests that this Court:

- (a) Find that Davidson violated G.L. c. 93A, § 2;
- (b) Find that Davidson violated G.L. c. 151B, § 4(11);
- (c) Find that Davidson violated G.L. c. 111, § 199A;
- (d) Issue injunctive relief as necessary to ensure Davidson’s compliance with state anti-discrimination, lead paint, and consumer protection laws;
- (e) Award compensatory damages and punitive damages to Laura Smith and Daniel Hocking, and any other individual victims of discrimination identified at trial;
- (f) Award civil penalties up to \$5,000 for each unfair or deceptive act or practice as determined by this Court;
- (g) Award attorneys’ fees and costs; and
- (h) Order such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

The Commonwealth demands a trial by jury on all issues that are triable by jury.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS
MAURA HEALEY
ATTORNEY GENERAL

/s/ David Rangaviz

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Dated: March 30, 2022