

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)

MICHAEL DABNEY,)

Petitioner.)

CHARGE NO.: **2021SH1587**
EEOC/HUD NO.: **05-21-2463-8**
ALS NO.: **22-0111**

ORDER

This matter coming before the Commission on August 3, 2022 by a panel of three, Panel Chair Barbara R. Barreno-Paschall, Chair Mona Noriega and Commissioner Stephen A. Kouri II presiding, upon the Request for Review (“Request”) of Michael Dabney (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2021SH1587, and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent’s dismissal of Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.²

DISCUSSION

On April 15, 2021, Petitioner filed a charge of discrimination with the U.S. Department of Housing and Urban Development (“HUD”), perfected with the Respondent on May 10, 2021, alleging that Excel Real Estate Management Inc. (“Manager”) and Excel Investments, LLC (“Owner”) subjected him to discriminatory terms, conditions, privileges, or services and facilities related to a rental due to his race, in violation of Section 3-102(B) of the Illinois Human Rights Act (“Act”). On January 5, 2022, the Respondent dismissed Petitioner’s charge for lack of substantial evidence. Petitioner filed a timely Request.

Factual Background

On August 29, 2019, Petitioner signed a lease for Unit 3 of Manager and Owner’s four-unit property located at 205 Eisenhower Drive, Bloomington, Illinois (“205 Eisenhower Drive”). On September 30, 2019, Petitioner signed a second lease pushing back his move-in date to November 2019. Both versions of Petitioner’s lease specified monthly rent of \$795. Plaintiff stated he saw the apartment advertised online for \$795. Manager and Owner provided Respondent a copy of the Craig’s

¹ In a request for review proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge requesting review of the Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

² This order is entered pursuant to a 3-0-0 vote by the Commissioners.

List July 31, 2019, advertisement post for Petitioner's unit listing the monthly rent as \$795. In November 2020, Petitioner renewed his lease for a monthly rate of \$800. In November 2021, Petitioner again renewed his lease, this time for a monthly rate of \$850.

There are four units at 205 Eisenhower Drive. Unit 1, Unit 2, and Unit 3 (Petitioner's unit) are all 2-bed, 1-bath 1,250 square-foot townhouses. The previous tenant in Unit 1 was initially paying \$725 a month, which was then renewed for \$755. In May 2020, Nick Daniels (White) moved into Unit 1 with a monthly rent of \$755. A new tenant moved into the unit in May 2021 with a monthly rate of \$790. Cindy Miller (White) rented Unit 2 in August 2019 for \$750 per month. She renewed her lease in August 2020 and August 2021 for monthly rates of \$755 and \$815 respectively.

Petitioner alleged that Manager and Owner discriminated against him because of his race, Black, by charging him a higher rent than his White neighbors. Manager and Owner's articulated legitimate, non-discriminatory reason for the differing rates is that the rates are based on the current market value of those units and are set prior to meeting the applicant. Further, they have articulated that they will reduce the lease rates of a particular unit if there is little interest. Lastly, Owner and Manager stated that Petitioner's unit contained newer amenities than the other units.

Respondents' investigation revealed that Petitioner's unit has a dishwasher, an updated kitchen sink with sprayer, a new stove with digital interface, new cabinets, and an additional carpeted room in the basement. Further, Manager and Owner installed a new, stainless-steel refrigerator at Petitioner's request. Units 1 and 2 have older appliances and do not contain a dishwasher or additional carpeted room in the basement. Further, Unit 1's carport space is smaller.

Manager and Owner stated that they initially charged Daniels the same rate as the previous tenant due to lack of renovations to Unit 1. They also provided Respondent with copies of advertisements for Unit 2. The first advertisement was posted in March 2019 and listed the rent as \$795. The second advertisement was posted in May 2019 and listed the rent as \$750. Manager and Owner stated that they generally reduced the rent of vacant units after 30 to 60 days if there was little interest in the unit. Manager and Owner stated that Unit 1 is usually harder to rent due to the reduced carport size, and therefore it is usually rented at a lower rate.

Analysis

The Commission concludes that the Respondent properly dismissed Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D). Under the Act, substantial evidence is "evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." 775 ILCS 5/7A-102(D)(2).

Generally to establish a *prima facie* case of discriminatory terms and conditions, the Petitioner has to show that: 1) the Petitioner is a member of a protected class; 2) the Petitioner was in good standing with the terms and conditions of the Manager and Owner; 3) the Manager and Owner subjected him to discriminatory terms and conditions; and 4) the Manager and Owner treated a similarly situated non-Black renter more favorably under similar circumstances. See *Turner v. Human Rights Comm'n*, 177 Ill. App. 3d 476, 487 (1st Dist. 1988). If the Petitioner establishes a *prima facie* case, the Manager and Owner may rebut the presumption of discrimination by articulating a legitimate, nondiscriminatory reason for its decision, and then the Petitioner must prove that the articulated reason was a pretext for discrimination. *Zaderaka v. Ill. Human Rights Comm'n*, 131 Ill. 2d 172, 178-79 (1989). The Petitioner may discredit a respondent's justification for its actions by demonstrating either that: (1) the proffered reasons had no basis in fact; (2) the proffered reasons did not actually motivate the decision; or (3) the proffered reasons were insufficient to motivate the decision. *Sola v. Illinois Human Rights Comm'n*, 316 Ill. App. 3d 528, 536–37 (1st Dist. 2000).

Here, Petitioner established his *prima facie* case. He is a member of a protected class; the renewal of his lease indicated he was on good terms with Manager and Owner; he paid more in rent than other tenants who rented 1,250 square-foot townhouses from Manager and Owner; and these other tenants who were charged less were White. However, Manager and Owner have articulated legitimate, nondiscriminatory reasons for charging Petitioner more than the White tenants: that the rates are based on the current market value of those units and are set prior to meeting the applicant; that they reduced the lease rates of a particular unit if there was little interest; and that Petitioner's unit contained newer amenities than the other units. Respondent's investigation found evidence supporting these stated reasons. Petitioner has not presented sufficient evidence to show that these reasons were pretextual.

In his Request, Petitioner argues that Respondent did not fully investigate his charge. Specifically, Petitioner argues that Respondent "failed to analyze how [Manager and Owner] advertised Unit 1, at what rate, and how long before they received an application that would justify the lower monthly rent of \$755." Respondent did, however, obtain reasons from Manager and Owner explaining the different prices. Manager and Owner articulated that rates are determined by the current market value and set prior to meeting an applicant, they reduced rates if there was little interest in a unit, and Petitioner's unit had newer amenities than the other units. After that, the burden shifted to Petitioner to show that the stated reason is pretextual.

Petitioner also argues in his Request that Respondent relied on credibility determinations to conclude that Manager and Owner had a non-discriminatory reason for charging Petitioner a higher rent. As to this argument, Petitioner alleges that Respondent "concludes [Petitioner] should be paying a higher rent than the other tenants because his unit has better features." However, Respondent never made such a conclusion. Rather, Respondent obtained a reason from Manager and Owner explaining the different rental rates. Nowhere did Respondent conclude that Petitioner should pay a higher rent. Manager and Owner are allowed to make business decisions, even "high-handed" or "mistaken" ones,

so long as they are not discriminatory. *Millbrook v. IBP, Inc.*, 280 F.3d 1169, 1181 (7th Cir. 2002) (citations omitted). Again, it is Petitioner’s burden, not Respondent’s, to establish that the given reasons are pretext.

Lastly, Petitioner argues that the Manager and Owner’s legitimate, nondiscriminatory reason for charging a higher rental rate shifted over the course of the investigation, evidencing that these reasons were pretextual. However, Manager and Owner’s articulated reasons all related to the different market factors that affect the price of the units. Both the timing of the market and the differences in amenities can reasonably and jointly explain the disparity in rental rates between units. Further, it is established that the rates were determined and advertised prior to Manager and Owner knowing an applicant’s identity. Petitioner’s arguments are not persuasive, and he has not presented any additional evidence showing that the articulated reasons were pretextual.

Accordingly, Petitioner has not presented sufficient evidence to show that the Respondent’s dismissal of the charge was not in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of Petitioner’s charge for lack of substantial evidence is hereby **SUSTAINED**.
2. This is a final Order. A final Order may be appealed to the Illinois Appellate Court by filing a Petition for Review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, Excel Real Estate Management Inc., and Excel Investments, LLC as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
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HUMAN RIGHTS COMMISSION)

Entered this 9th day of August, 2022.

Commissioner Barbara R. Barreno-Paschall

Commissioner Stephen A. Kouri II

Chair Mona Noriega

