

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2010CH1646
)	HUD NO.: 05-10-0309-8
JOAN CONWAY)	ALS NO.: 11-0350
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito¹, David J. Walsh², and Rozanne Ronen³ presiding, upon Joan A. Conway's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")⁴ of Charge No. 2010CH1646; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

A. PROCEDURAL HISTORY

1. On November 10, 2009, the Petitioner, filed an unperfected charge of discrimination with the Respondent, perfected December 7, 2009, alleging that 1100 West Roscoe, LLC Co., Bil-Mar Management, LLC and Trishmer Corporation ("hereafter referred collectively as Management"), subjected her to unequal terms and conditions relating to rental because of her age, 71 (Count A), her sex, female (Count B), and her physical and mental disabilities (osteoarthritis and paranoia) (Count C), in violation of Sections 3-102 (B) and 3-102.(B) of the Illinois Human Rights Act.
2. In Counts A, B, and C, the Petitioner alleged that Management subjected her to unequal terms and conditions of tenancy because of her age, he sex, and her disabilities in that: 1) on June 26, 2009, Management charged her \$100.00 more than Management charged other tenants; 2) from July 24, 2009 until December 2009, Management failed to allow her to move into another unit at no additional cost in order to prevent fumes from going into her unit; 3) on July 6, 2009, Management denied her request to install an additional lock on her unit; 4) on July 24, 2009, Management failed to triple the security deposit refund and return her security deposit because of fumes in her unit; and 5) on July 24, 2009, and October 23, 2009,

¹ This Order is in accordance with a vote cast by Commissioner Viverito prior to the expiration of her term.

² This Order is in accordance with a vote cast by Commissioner Walsh prior to the expiration of his term.

³ This Order is in accordance with a vote cast by Commissioner Ronan prior to the expiration of his term.

⁴ 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 Department's action shall be referred to as the "Petitioner."

Management treated the Petitioner in a condescending and contentious manner. The Petitioner further alleged that under similar circumstances, Management treated younger, male, non-disabled tenants more favorably.

3. On June 14, 2010, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
4. The Petitioner filed a timely request for Review on August 18, 2010. Pursuant to the Respondent's response, the Commission vacated the dismissal and remanded the charge to the Respondent for further investigation on September 30, 2010.
5. The Petitioner's charge was again dismissed for Lack of Substantial Evidence on May 18, 2011. On June 13, 2011, the Petitioner requested an extension of time to file a Request for Review, which the Commission granted on July 13, 2011.
6. On October 17, 2011, the Petitioner filed her second Request for Review.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner was a former tenant Management.
2. Management required six tenants, including Jason Burkett (age, 40, sex, male disability status unknown) and Edward Bowen (age, 25, sex, male, disability status unknown) to pay a security deposit equal to \$100.00 more than the tenants' monthly rent.
3. From July 24, 2009 until December 2009, the Petitioner requested Management to allow her to move from a studio apartment to a one-bedroom apartment to avoid odorless fumes in her unit.
4. Management investigated the Petitioner's unit on several occasions and could not detect any fumes.
5. Management notified the Petitioner that the one-bedroom, a larger unit, was available for a higher rent than the Petitioner was paying. The Petitioner did not accept the offer to rent the one-bedroom at a higher rent.
6. There was no evidence of a younger, male, non-disabled tenant to move to a larger unit without paying a higher rent.
7. On July 6, 2009, the Petitioner requested Management to install a lock on her door, in addition to the two locks already on her door. Management denied the request. The evidence did not reveal that Management installed an additional lock on the door of a younger, male, non-disabled tenant.
8. Management had a practice of returning security deposits when a tenant vacated an apartment and there was not damage to the unit to offset the security deposit.
9. In July 2009, Petitioner requested her deposit back; Management declined the Petitioner's request because she was not moving out of her unit. The evidence did not reveal, that Management

returned the security deposit of younger, male nondisabled tenants who continued to reside in their apartments.

10. The Petitioner alleged Management treated her in a condescending manner. However, the Petitioner failed to specify the circumstances of each incident or to provide any evidence that Management were motivated by her age, her sex, or her disabilities. Further, the Petitioner failed to provide, any evidence that the alleged comments materially changed the terms and conditions of her tenancy.
11. In her Request, the Petitioner argued that Management Verified Response to the charge was not timely filed and therefore, Management should have been defaulted. The Petitioner also argued that the Respondent engaged in unfair “pretrial practice” by “gagging” her during the drafting of her charge and by refusing to allow her to amend her charge to add retaliation. Additionally, the Petitioner argued that she was not allowed to present evidence or perform proper cross-examination during the fact-finding conference. The Petitioner argued that there are various inaccuracies in the evidence presented by Management and therefore the evidence is unreliable.
12. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner’s charge for Lack of Substantial Evidence. The Respondent argues the evidence was insufficient to establish a *prima face* case of discrimination.

C. DISCUSSION & DETERMINATION

The Commission concludes that the Respondent properly dismissed all counts of the 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. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See *In re Request for Review of John L. Schroeder*, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

In Counts A, B, and C, In the Petitioner’s matter, the evidence was insufficient to establish a *prima facie* case of discrimination. In order to establish a *prima facie* case of housing discrimination, there must be some evidence that the Petitioner was: (1) a member of a protected class; (2) that she was a tenant in good standing; (3) that Management altered the terms, conditions, and privileges of the Petitioner’s tenancy, and that the Management treated a similarly situated tenant outside the Petitioner’s protected class more favorably under similar circumstances. See *Turner v. Human Rights Commission*, 177 Ill.App.3d 476, 488, 532 N.E.2d 392, 399 (1st Dist. 1988). The third and fourth elements were not established. There was no evidence Management treated other, similarly situated tenants outside of the Petitioner’s protected class more favorably under similar circumstances. Rather, the evidence shows that the Management treated tenants outside of the Petitioner’s protected class similarly.

Furthermore, Management articulated a non-discriminatory reason for not allowing the Petitioner to move into another unit at no additional charge. At the time the Petitioner wanted to move to a different apartment, there was no studio apartment available. Management only had a larger (one-bedroom) unit

available and the rent for that unit was higher than what the Complainant was paying for a studio apartment. It was not Management practice to allow tenants to move to larger units without paying higher rent. No other tenant has been allowed to move to a larger unit without a commensurate rent increase.

Finally, as to the Petitioner's allegations that Management treated her in a condescending manner, the Petitioner did not specify the circumstances of each instance nor did she provide any evidence that Management were motivated by discriminatory motives based on her age, race, or disabilities. Also, the evidence did not reveal, and the Petitioner failed to provide, any evidence that the alleged comments materially changed the terms and conditions of her tenancy.

D. CONCLUSION

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of the Charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and 1100 West Roscoe, LLC Co., Bil-Mar Management, LLC and Trishmer Corporation 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

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Entered this 4th day of December 2018.

Commissioner Diane M. Viverito

Commissioner David J. Walsh

Commissioner Rozanne Ronen