

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2011CH2301</b>
	)	HUD NO.: <b>05-11-0592-8</b>
<b>DEBORAH WENGER,</b>	)	ALS NO.: <b>11-0832</b>
	)	
Petitioners.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Merri Dee<sup>1</sup>, and Lauren Beth Gash<sup>2</sup> presiding, upon Deborah Wenger's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>3</sup> of Charge No. 2011CH2301; 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 February 10, 2011, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Mark Mercer ("Mercer") and River District Apartments, LLC ("herein after Management") subjected her to discriminatory terms, conditions, privileges, or services and facilities because of her association with a Black individual in violation of Section 3-102(B) of the Illinois Human Rights Act ("Act").
2. In Counts A and B, the Petitioner alleged that on December 2, 2010, Management subjected her to discriminatory terms, conditions, privileges, or services and facilities because of her association with a black individual in that Management: 1) harassed her over "little infractions" of her lease: 2) left intimidating messages on her phone threatening to evict her: and 3) refused to add her daughter's father to her lease. The Petitioner further alleged that Management did not subject other similarly situated, white tenants with no known association with black individuals to the same treatment as Petitioner.

<sup>1</sup> This Order is in accordance with a vote cast by Commissioner Dee prior to the expiration of her term.

<sup>2</sup> This Order is in accordance with a vote cast by Commissioner Gash prior to the expiration of her term.

<sup>3</sup> 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."

3. On September 26, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
4. On October 6, 2011, the Petitioner filed a timely Request. On February 1, 2012, the Respondent filed its Response to the Petitioner's Request.

## **B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS**

1. The Petitioner was a tenant of Mercer. In June 10, 2010, the Petitioner applied for the rental unit that Management owned, she indicated to Management that her daughter's father, Antonio Brown ("Brown") was incarcerated. Petitioner then gave Management a copy Brown's driver's license.
2. Mercer is the owner and manager of River District Apartments, LLC. River District Apartments owns and operates a 40-unit housing complex located at 1142 Revell Avenue, Rockford, Illinois.
3. On June 11, 2010, the Petitioner entered into one-year lease with Management effective June 11, 2010, through May 30, 2011. The lease provides that: 1) there are to be two individuals residing in the apartment (i.e., identifies the Petitioner with "child" on the lease); 2) any additional people residing at the dwelling, incur an additional monthly expense of \$75 per month; 3) the monthly rent is \$500 per month and is due on the first day of each month; 4) failure to pay rent will result in eviction; and 5) that the utilities shall be the responsibility of the tenant and must be paid on time or will incur a 5 dollar a day late fee. The Petitioner's lease further states that if an additional person resides in the dwelling, he or she must be added to the lease within 5 days of moving in. The Petitioner's lease further states that a tenant cannot sublet the apartment to other individuals.
4. The Petitioner was late with her monthly rental payments and was late paying her utilities several times in violation of the lease. The Petitioner did not dispute that she was late paying her rent and utilities during the term of her lease.
5. On August 2, 2010, Management issued the Petitioner a "Landlord Five Day Notice" for not paying her monthly rent and demanding a full payment of \$525.00. The notice further stated that failure to pay the full rental amount plus late fee will result in termination of the lease. On November 2, 2010, Management issued the Petitioner another "Landlord Five Day Notice" for failure to pay her monthly rent. The notice further stated that failure to pay the full rental amount plus late fee will result in termination of the lease.
6. On December 12, 2010, Management issued the Petitioner a "Landlord Ten-Day Notice" which stated that: 1) Petitioner was not paying her utilities; 2) too many people were living in the apartment who were not in the lease; and 3) she failed to pay the full rental amount. The

notice further stated noncompliance of those three items would result in termination of the lease and eviction.

7. The evidence revealed that the Petitioner sublet or rented part of her apartment to another individual, David Hackbert (white) in violation of her lease.
8. On January 3, 2011, Management issued another "Landlord Five Day Notice" for failure to pay her full rental amount.
9. Management used the same lease terms as Petitioner's lease for two white tenants with no known association with black individuals, Ted Rodifer and Jillian Rodifer. The evidence further shows that Management issued at least sixteen Five Day Notices or Summons and Complainant Detainers to similarly situated white tenants with no known association with black individuals.
10. Management stated that it did not add Brown to the lease because he was incarcerated at the time the Petitioner signed her lease.
11. In her request the Petitioner did not submit an argument. The Petitioner attached to her Request letters from DCFS, the Winnebago County Health Department, and the Illinois Department of Human Services.
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 argued that the Petitioner failed to establish a prima facie 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 the Petitioner's matter the Commission finds that the evidence was insufficient to establish a *prima facie* case of housing discrimination. Generally to establish a *prima facie* case of housing discrimination, the evidence must show: (1) that the Petitioner a member of a protected class; (2) the Management was aware of the Petitioner's protected class; (3) Management altered the terms, conditions or privileges of their real estate transaction; and (4) Management treated a similarly situated tenant outside the Complainant'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). In the Petitioner's case the fourth elements were not established. There was no

evidence that Management treated a similarly situated tenant outside the Petitioner's protected class more favorably under similar circumstances. The evidence revealed that Management treated other White tenants with no known association with Black individuals similarly to the Petitioner.

The Commission further finds that the Association articulated a non-discriminatory business reason for their actions and there was no evidence of pretext. Management stated that the Petitioner committed several infractions of her lease such as not paying her rent on time, not paying her utilities on time, and subletting to other individuals not on the lease. Based on the infractions, Management issued her multiple "Landlord Notices." Additionally, Management stated that they did not place her daughter's father on the lease because he was incarcerated at the time the lease was entered into. In her Request, the Petitioner offered no evidence of pretext. In the absence of any evidence that the business consideration relied upon by the Association is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the Association. See *Berry and State of Illinois, Department of Mental Health and Developmental Disabilities*, IHRC, ALS No. S-9146 (December 10, 1997).

#### **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 Petitioners' 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, Mark Mercer and River District Apartments, LLC as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS                    )  
  )  
HUMAN RIGHTS COMMISSION    )

**Entered this 3<sup>rd</sup> day of December 2018.**

Commissioner Nabi R. Fakroddin

Commissioner Merri Dee

Commissioner Lauren Beth Gash