

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

KIERSTEN T. NONTNY,
Petitioner.

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CHARGE NO.: **2012SH3408**
HUD NO.: **05-12-0875-8**
ALS NO.: **13-0201**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Duke Alden presiding, upon Kiersten T. Nontny's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2012SH3408; 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 Notice of Dismissal is **SUSTAINED** on the following ground:

- A) LACK OF JURISDICTION**
- B) LACK OF SUBSTANTIAL EVIDENCE**

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

A. PROCEDURAL HISTORY

1. The Petitioner filed an unperfected charge of discrimination with the Respondent on June 1, 2012, and perfected on June 29, 2012. The Petitioner alleged that in or about January 2012, D & D Trust d/b/a Dallas Properties ("Dallas") failed to accommodate her physical disability, multiple sclerosis (Count A), and retaliated against her for requesting a reasonable accommodation (Count B) in violation of Sections 3-102.l(C)(2) and 6-101(A) of the Illinois Human Rights Act ("Act").
2. In Count A, the Petitioner alleged that on unspecified dates, Dallas failed to accommodate her disability in that Dallas failed to remove standing water in her crawl space and repair holes in the living room ceiling.
3. In Count B, the Petitioner alleged that she filed a complaint with the City of Champaign on June 13, 2011. The Petitioner alleged that on July 27, 2011, less than two months after she filed her complaint with the City of Champaign, Dallas filed a forcible entry and detainer action against her.
4. On January 30, 2013, the Respondent dismissed the Petitioner's Charge for Lack of Substantial Evidence.
5. On May 6, 2013, the Petitioner filed this timely Request. On June 11, 2013, the Respondent filed its Response to the Request.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent."

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner was a tenant of Dallas.
2. The Property in question is located 3450 Stoneway Court, Champaign, Illinois. Dallas is owned by Doug Dallas. The subject property, 3450 Stoneway Court as well as 3252 and 3254 Stoneway Court are condos.
3. The Petitioner stated that she was diagnosed with Multiple Sclerosis (MS) in April 2007. She believes she moved to the subject property, a townhouse, in August of September 2008. There are four townhouses in a building. Doug Dallas, President of Dallas Properties, owned two of the buildings in the complex. Dallas did not live in any of the units. She told Dallas that she had MS when she first moved to the subject property. Due to her medical condition, she has a compromised immune system and any mold affects her health.
4. When the Petitioner first moved into the subject property, her intent was to purchase the property contract for deed. The agreement was that the Petitioner was to pay \$3,000 down, but she only paid \$1,500. The Petitioner told Dallas that she was going to pay the other \$1,500 the next month, but he never received it. Therefore, she never fulfilled the terms of the contract for deed.
5. The Petitioner and Dallas entered into a lease agreement that was to begin on May 1, 2009, with a rental amount of \$875.00 on the first of every month. The Petitioner was to pay all deposits and charges for utility connection and service to the premises for telephone, electricity, gas, garbage, cable, water and any other utility connection and service. If the Petitioner failed to pay in full any installment of the rent herein reserved within the first 5 days of the month when the installment was due or if the Petitioner violated any of the conditions or agreements of this lease then the Petitioner was in default under this lease. Dallas had the right and option to re-enter and repossess the leased premises and to terminate this lease.
6. The Petitioner stated that she stopped paying rent in January 2011 because of the condition of her unit.
7. The Petitioner further stated that she was to have a Contract for Deed per the results of home inspection. In October of 2008, Master Spec inspected her townhouse and found out that there was standing water and debris in the crawl space that need to be drained and cleaned and that a sump pump needed to be installed. She sent Dallas a copy of the inspection after she received it.
8. The Petitioner stated that she talked to Dallas over the phone and in person several times about draining the water, cleaning under the house as well as installing sump pump. Dallas would not reply. The last time she discussed the water problem with him was in the spring of 2011.
9. The Petitioner stated that the City of Champaign Neighborhood Service Department made a couple of appointments to see her house. However, it never worked out with the scheduling because of her being a single parent and having to take her kids places, her work schedule and with having to go to doctor's appointments

10. Monthly Rental Income Record of Dallas dated from 2010 - June 2012, shows that Dallas received lapses in rent from between May and July 2010 from the Petitioner. Dallas did not receive any rent from Petitioner from November 2010 through April 2012.
11. On July 27, 2011, Dallas filed a complaint to the Circuit Court of the Sixth Judicial Circuit in Champaign County against the Petitioner. The complaint indicates that the Petitioner violated the terms of the leasing agreement by withholding rent from October 2010 through July 2011; thus the Petitioner was in default in the amount of \$9,080 for past due rent (plus interest), attorney's fees, and the costs of the suit.
12. In her Request, the Petitioner did not provide an argument. The Petitioner simply states that Joyce Datton was treated more favorably and that the Dallas sent her a Sewer bill.
13. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Jurisdiction as to Count A and Lack of Substantial Evidence as to Count B. In Count A, the Respondent argued that the Count A was not timely filed. In Count B, the evidence was insufficient to establish a *prima facie* case of discrimination and retaliation. The Respondent further argued that the Landlord articulated a non-discriminatory reason for its actions and its investigation uncovered no evidence of pretext.

C. DISCUSSION & DETERMINATION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for Lack of Jurisdiction and Lack of Substantial Evidence.

As to Count A, the Commission finds there was no jurisdiction over this count. Pursuant to 775 ILCS 5/7B-102(A), a charge of discrimination related to housing or real estate must be filed within 365 days after the date of the alleged civil rights violation. Section 7B-102(A) of the Act is jurisdictional and the failure of a complainant to file a charge within the proscribed 365-day time limit deprives the Respondent of jurisdiction to investigate the charge. See Trembczynski v. Human Rights Commission, 252 Ill.App.3d 966, 625 N.E.2d 215, 218 (1st Dist. 1993). In the Petitioner's matter, the Petitioner stated that she requested a sump pump in 2008 and that the last time she discussed the water problem with him was in the spring of 2011. The Petitioner filed her charge in June, 2012 approximately three years since the initial request. As such, Count A of the charge was not timely filed and the Respondent lacked jurisdiction over this count.

As to Count B, the Commission concludes that the evidence was insufficient to establish a *prima facie* case of retaliation. Generally to establish a *prima facie* case of retaliation the Petitioner must show: (1) she engaged in a protected activity; (2) that Dallas committed an adverse action against her; and (3) a causal connection existed between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd dist. 2000). In the Petitioner's matter, the first element was not established. The Petitioner stated that she filed a complaint with the City of Champaign on June 13, 2011 regarding the mold and how it affects her disability. It is uncontested that the Petitioner filed a complaint regarding the mold on the property. However, the Petitioner's statements do not show that she opposed discrimination when she filed her complaint. A protected activity is when a person opposes what he/she believes is unlawful discrimination, such as discrimination based on, race, gender, age, disability, religion etc. In the absence of a protected activity, the Petitioner has failed to establish his *prima facie* case.

Additionally as to Count B, the Commission concludes that Dallas articulated a non-discriminatory reason for his actions and there was no evidence of pretext. The Evidence revealed that the Petitioner failed to pay rent for several months. Pursuant to the rental agreement Dallas evicted the Petitioner for non-payment of rent. In her Request, the Petitioner did not provide any evidence of pretext. In the absence of any evidence that the business consideration relied upon by Dallas is a pretext for discrimination, it is improper to substitute judgment for the business judgment of Dallas. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

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, D & D Trust d/b/a Dallas Properties 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 29th day of October 2018.

Commissioner Nabi R. Fakroddin

Commissioner Hermene Hartman

Commissioner Duke Alden