

DETERMINATION OF REASONABLE CAUSE

CASE NAME: Alvera v Creekside Village Apartments
CASE NUMBER: 10-99-0538-8

I. JURISDICTION

A complaint was filed with the Department on October 22, 1999, alleging that Ms. Tiffani Ann Alvera, the complainant, was injured by a discriminatory act by the respondents, Creekside Village Apartments, a California Limited Partnership; General Partners Edward and Dorian Mackay; The CBM Group, Inc.; and CBM Group employees Karen Mock, Resident Manager of Creekside Village Apartments, and Inez Corenevsky, Supervising Property Manager. It is alleged that the respondents were responsible for a discriminatory refusal to rent and discriminatory terms, conditions, privileges, or services and facilities, in violation of Sections 804 (a) and (b) of the Fair Housing Act. The most recent discriminatory act was alleged to have occurred on September 7, 1999. The property is Creekside Village Apartments, 1953 Spruce Drive, Seaside, Oregon. The property is not exempt under the Act.

The respondents receive federal financial assistance from the United States Department of Agriculture, Rural Development.

II. COMPLAINANT'S ALLEGATIONS

Ms. Alvera alleged that on August 2, 1999, her husband physically assaulted her in their home, apartment 21 in Creekside Village Apartments. Her husband was jailed and Ms. Alvera obtained a temporary restraining order against him. On August 4, 1999, Ms. Alvera alleged, she received a 24 hour notice to vacate from management that stated that, pursuant to Oregon law: "You, someone in your control, or your pet, has seriously threatened immediately to inflict personal injury, or has inflicted substantial personal injury upon the landlord or other tenants." The notice specified that the incident was the assault on Ms. Alvera by her husband. Ms. Alvera alleged further that after issuing the notice, the managers refused to accept her rent for September. The managers also refused to move her to a one bedroom apartment; since her husband was not to live with her any more, she believed that she no longer qualified for a two bedroom apartment in this USDA subsidized complex. Ms. Alvera alleged that management discriminated against her because of her sex because the way they interpret and enforce Oregon state law toward domestic violence victims has a greater negative impact on women. She also alleged that management would not have treated men the same way as she was treated.

III. RESPONDENTS' DEFENSES

The respondents defended that they gave Ms. Alvera a 24 hour notice to vacate because it is their policy to evict tenants who pose a threat to the safety and well-being of other tenants in the complex. When one person in the household poses a threat, the entire household is evicted.

IV. FINDINGS AND CONCLUSIONS

The investigation revealed that the subject property consists of forty units and is funded by the USDA Rural Development program. The property is intended to serve lower income residents.

The investigation found that Ms. Alvera and her former husband, Mr. Humberto Mota, signed a lease and moved into a two bedroom unit at the complex in November, 1998. Until the incident from which this complaint arises, Ms. Alvera received no warnings or admonitions concerning her tenancy from the respondents. During this period Mr. Mota assaulted Ms. Alvera, who called the police. However, the respondents apparently were not aware of this incident and no action was taken with respect to their tenancy. In March, 1999, respondent Karen Mock became the resident manager of Creekside Village Apartments.

The evidence shows that on August 2, 1999, at approximately 5:30 am, Mr. Mota physically assaulted Ms. Alvera, causing Ms. Alvera to go to the hospital. Her mother, Tamie Alvera, who resided in unit 30 in the complex, at approximately 6:00 am, went to Ms. Mock in order to get a key to her daughter's apartment so that she could see whether Mr. Mota was still in the apartment. At the time, Tamie Alvera told Ms. Mock that Ms. Alvera had been beaten by Mr. Mota. Ms. Mock wrote up an incident report and sent it to respondent Corenevsky. The investigation revealed that immediately after she was released from the hospital, Ms. Alvera obtained a restraining order against her husband, which she showed to Ms. Mock. The restraining order stated that Mr. Mota could not contact Ms. Alvera at her residence, place of business, or within 100 feet of Ms. Alvera and could not contact her by phone or mail. The order also stated that Mr. Mota would move from and not return to their residence. Ms. Alvera discussed with Ms. Mock removing Mr. Mota from the lease.

The investigation revealed further that Ms. Mock was instructed by Ms. Corenevsky to terminate Ms. Alvera's tenancy and issue a 24 hour for cause eviction notice. On August 4, 1999, CBM Group issued a 24 hour notice to Ms. Alvera and Mr. Mota. The notice stated: "You, someone in your control, or your pet, has seriously threatened immediately to inflict personal injury, or has inflicted substantial personal injury upon the landlord or other tenants." The notices specified: "On August 2, 1999 at approximately 6 am. Humberto Mota reportedly physically attacked Tiffani Alvera in their apartment. Subsequently, Police were called in."

The investigation established that on August 4, 1999, Ms. Alvera made an application for a one bedroom unit at the complex because there was then only one member of the household. The evidence shows that this application was rejected by the respondents because of the incident of domestic violence for which Ms. Alvera received the 24 hour notice. The evidence showed that unit 18, a one bedroom apartment into which Ms. Alvera eventually moved, was available as of August 4, 1999. On October 8, 1999, Ms. Alvera submitted a second application for a one bedroom apartment. On November 2, Ms. Alvera signed a lease for a one bedroom apartment, where she resided until she was later evicted for reasons not directly related to the allegations of this complaint.

The evidence further revealed that on August 6, 1999, Ms. Mock refused to accept Ms. Alvera's rent for the month of August. The respondents communicated to Ms. Alvera up through early September, 1999 that they intended to pursue an FED action against her. On October 26, 1999, an attorney representing the respondents wrote Ms. Alvera "concerning your Rental Agreement of [unit 21]." The letter stated:

"As you know, there was a recent incident of violence that took place between you and another member of your household. It is our understanding that you have taken steps to ensure that such an incident will not occur again.

This letter is to advise that Creekside is very concerned about the effect of such conduct on other tenants of the premises. Your conduct and the conduct of the other tenant would probably have been grounds for termination of your tenancy. Obviously, Creekside would not desire to take this action.

This letter is to advise that if there is any type of reoccurrence of the past events described above, that Creekside would have not other alternative but to cause an eviction to take place. We solicit your cooperation in continuing to maintain a restraining order or for you to take whatever action is necessary to make certain that the rules of your tenancy are followed."

There is no dispute that the sole reason for the 24 hour notice was respondents' response to this incident of domestic violence. The evidence shows that none of the other tenants complained to the respondents that their tenancy had been disrupted or that they had been injured or feared injury because of the incident. Ms. Mock stated that after Ms. Alvera vacated the apartment a hole in the wall, which might have been caused by an assault by Mr. Mota, was discovered, but that she learned of this damage long after the 24 hour notice had been issued and that she did not report the hole to her superiors.

The investigation did not establish that Ms. Alvera was treated differently than similarly situated male tenants. There were no similarly situated male tenants. The evidence also

revealed that there were at least three incidents of domestic violence at Creekside Village Apartments, all involving female victims, but respondents knew only about the August, 1999 incident involving Ms. Alvera. The evidence showed that the respondents issued three other 24 hour notices. One notice was for criminal activity, one was because the INS took the entire family away, and one was because a tenant threatened other tenants with a baseball bat. The evidence also showed that the resident manager filed six incident reports with upper management during the period June 1, 1999 to January 31, 2000. The only incident report involving violence, domestic or otherwise, was that involving Ms. Alvera.

It is the respondents' policy, expressed by respondent Corenevsky, that where there is any threat or act of violence by a tenant or their guest, the household is terminated. She stated that the subject property has a "zero tolerance" for violence or threats of violence, and this policy was affirmed by the ADA/504 Coordinator for CBM Group. Ms. Corenevsky stated: "As is often the case in a domestic violence situation the victim does not take steps to prevent a recurrence of violent acts, subjecting other tenants to witness the scene play out time and time again. The reasons we take such a hard stance on the issue of violence is to maintain a peaceful living environment for all tenants."

Nationally, each year from 1992 to 1996 about 8 in 1,000 women and 1 in 1,000 men experienced a violent victimization by an intimate—a current or former spouse, girlfriend or boyfriend. National statistics also showed that, although less likely than males to experience violent crime overall, females are 5 to 8 times more likely than males to be victimized by an intimate. Other national studies have found that women are as much as ten times more likely than men to be victimized by an intimate.

National statistics show that 90% to 95% of victims of domestic violence are women. National estimates are that at least one million women a year are victims of domestic violence. A 1998 Oregon Domestic Violence Needs Assessment stated that more than one in eight (13.3 %) women in the state were the victims of physical abuse by an intimate in the prior year. Evidence obtained during the investigation showed that 93% of the victims of domestic violence reported to Clatsop County in 1999 were women. The 1998 Oregon Domestic Violence Needs Assessment compared the Oregon statistics to national statistics on the prevalence of domestic violence and found them to be comparable. National studies using a similar methodology reported that 1 out of every 9 to 1 out of every 12 women had been victims of physical assault by an intimate partner within the previous year. This compares to the Oregon study's finding that 1 of every 10 Oregon women have been victims of physical assault.

These statistics demonstrate that the respondents' policy of evicting all members of a household because of an incident of domestic violence, regardless of whether the household member is a victim or a perpetrator of the domestic violence, has an adverse impact based on sex, because of the disproportionate number of women victims of domestic violence.

The respondents have raised several reasons for their policy. One rationale advanced by the respondents is the need to protect other tenants both from threats of violence or violence and from being disturbed in their tenancy. However, the evidence fails to support this rationale. In the case of Ms. Alvera, no other tenants complained about the incident in question and the evidence shows that the only tenant who was aware of the incident was Ms. Alvera's mother. There were no other records of tenant complaints or incident reports involving domestic violence though the evidence shows that incidents of domestic violence were occurring at the complex. Further, there was no evidence in the investigation to support an assumption that there is a greater probability that persons living in the immediate vicinity of a household that has incidents of domestic violence will themselves become victims of that violence.

The respondents also argued that their policy is consistent with and mandated by rules of Rural Development concerning properties funded by that agency. Rural Development has implemented regulations and procedures providing that: "Action or conduct of the tenant or member which disrupts the livability of the project by being a direct threat to the health or safety of any person, or the right of any tenant or member to the quiet enjoyment of the premises..." is grounds for termination of tenancy. However, Rural Development's rules and policies also provide: "It is not the intent that this provision of material lease violation apply to innocent members of the tenant's household who are not engaged in the illegal activity, nor are responsible for control of another household member or guest." The Rural Development representative responsible for monitoring Creekside Village Apartments stated that the rule protects innocent parties.

Respondent Corenevsky also stated that a reason that the respondents evict the entire household is because a TRO doesn't stop violence, and many men are not afraid of TROs. The results of national studies on the effectiveness of restraining orders in preventing future incidents of domestic violence are mixed. One study showed that in the six months after a restraining order is issued, 65% of the women who obtained the order reported no further domestic violence problems. Another study showed that future incidents of violence did occur even after a restraining order was obtained. However, the respondents' rationale is based on overbroad generalizations that do not take into account either the individual circumstances of the female victim tenant or all of the actions that she may have taken to prevent a recurrence of the violence. For example, in the case of Ms. Alvera, Mr. Mota was jailed, apparently subsequently left the country, and has had no further contact with Ms. Alvera.

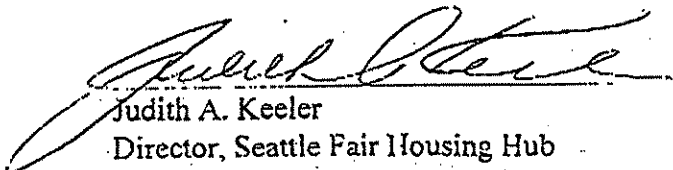
In issuing a 24 hour notice, the respondents apparently also were relying on an Oregon State law, ORS 90.400(3), which permits landlords to issue a notice for a tenant to vacate the property within 24 hours if there is substantial personal injury to the landlord or other tenants. However, that law, and the legislative history behind it, were not intended to apply to innocent victims of violence. During the legislative process witnesses testified that: "There are special concerns about battered women who might be evicted under this provision because of the outrageous conduct of an abusive boyfriend; they would be punished twice; beaten by the boyfriend, then evicted because of the boyfriend's abuse."

The evidence taken as a whole establishes that a policy of evicting innocent victims of domestic violence because of that violence has a disproportionate adverse impact on women and is not supported by a valid business or health or safety reason by the respondents.

V. CONCLUSION

For the foregoing reasons, the Department finds reasonable cause to believe that the complainant has been discriminated against because of her sex in violation of the Fair Housing Act. A copy of the Final Investigative Report is available by requesting the Report in writing addressed to the Fair Housing Hub, Northwest/Alaska Area, U.S. Department of Housing and Urban Development, 909 First Avenue, Suite 205, Seattle, Washington 98104.

4/13/01
Date


Judith A. Keeler
Director, Seattle Fair Housing Hub