

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HV04QT-66695

Laura Aleu,)
)
 Complainant,)
)
 v.)
)
 Marino & Yovana Ramirez,)
)
 Respondents.)

Administrative Action

FINDING OF PROBABLE CAUSE

This is a housing discrimination case. On October 23, 2017, New Jersey resident Laura Aleu (Complainant), filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that in or around April 2017, Marino and Yovana Ramirez (Respondents) refused to rent her an available apartment because of her Section 8 rent subsidy in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondents denied Complainant’s allegations of discrimination in their entirety. DCR’s ensuing investigation found as follows.

Summary of Investigation

Respondents own a two-family home at 130 North Avenue in Elizabeth which they utilize as a rental property. In or around April 2017,¹ Respondents placed a “For Rent” sign at the property and sought a tenant for the first floor apartment for a monthly rent of \$1,300.

Complainant lives with her adult son and has a Section 8 rent subsidy which pays a substantial portion of her monthly rent. Complainant told DCR that she saw the “For Rent” sign and called the telephone number and spoke to Respondent Marino Ramirez, who told her the apartment was being renovated and she could go by herself to see it. Complainant said she toured the apartment on her own without meeting Respondents. Complainant called Respondent Marino Ramirez and told him she was interested in renting the apartment. Complainant said he told her she should call his wife (Respondent Yovana Ramirez) as she handled those decisions. Complainant said she called Respondent Yovana Ramirez and Ramirez asked Complainant about her employment and ability to pay rent. Complainant said when she told Respondent that she had Section 8, Respondent told her that she would not rent to someone on Section 8 because they ruined her property and lived like animals.

¹ While Respondents entered a written lease that begins on February 1, 2017 with new tenants for the subject apartment, both Respondents and Complainant reported to DCR that the apartment was available for rent in or around April 2017.

In a written statement to DCR, Respondent Yovana Ramirez stated in part:

...I remember a conversation with a section 8 person, because there was one lady who called the 1st time to inquire the apartment information, and at that time when I mentioned the credit check she stated that her credit was not great, but that I should not worry about the rent being paid since she had section 8. At that time I explained I was only showing the apartment and there were other people interested. Not only that, but unfortunately the apartment was not certified for section 8. At that time I thought she was ok, since she did not say anything and the conversation was over. I remember telling her that the apartment was only a 2 bedroom apartment, while she was looking for a 3 bedroom apartment, the conversation ended and we both hanged up the phone. This lady called me for a 2nd time the following day asking me why I wouldn't rent to section 8 people, again I believe I repeated that the apartment was not certified for section 8 (I have knowledge that the city of Elizabeth would have to inspect said apartment, and that is a long process)...

...Maybe where I failed to be more detailed in my explanation to her is that I have had experience with Section 8 tenants, from my brother's house, where section 8 inspectors came to inspect an apartment and it failed inspection after he went through the process of paperwork and waiting time. I believe as a homeowner we have the right to choose to go to [sic] through the process of opting for Section 8 or not...

...the apartment was never rented to Section 8 people in the past, as we know that it would not pass inspection since the electric & gas are shared in common areas of the house, Elizabeth Housing Authority inspector would of failed the apartment at the time of inspection.

Complainant alleges that Respondents did not give her a rental application or review her credit or rent payment history prior to telling her she could not rent the apartment.

During an interview with DCR, Respondent Yovana Ramirez said that the two apartments in the house share a garage and a common hallway and the electricity for those areas is charged to the first-floor apartment. Respondent said she knew that the Elizabeth Housing Authority would not approve the first floor apartment for the Section 8 program for that reason.

Respondent Yovana Ramirez denied making the negative statements about persons with Section 8 subsidies that Complainant attributed to her. Ramirez told DCR that her

previous second-floor tenant, who did not have Section 8, had a dog that destroyed the apartment and then left owing rent after being evicted.

Respondent Yovana Ramirez gave DCR a copy of a one-year lease agreement which showed a tenancy commenced on February 1, 2017 for \$1,300. Respondent told DCR that the first floor tenants are given a \$50 credit each month to offset their payment of utilities for the common areas, reducing their monthly rent to \$1,250. The lease agreement confirmed same.

DCR contacted the Elizabeth Housing Authority and spoke to Housing Inspector Michael Horhay, who said a unit without a separate utility meter would not be approved for a Section 8 tenancy. Horhay added that the only way a unit without a separate meter would be approved for Section 8 is if the rent included utilities. He said a landlord could then charge a higher monthly rent to offset the cost of utilities. According to Horhay, this policy on metering and payment for utilities was the result of guidance the Elizabeth Housing Authority received from the United States Department of Housing and Urban Development.

Analysis

At the conclusion of an investigation, DCR is required to determine whether probable cause exists to credit a complainant's allegations of the verified complaint. See N.J.A.C. 13:4-10.2. For purposes of that determination, "probable cause" is defined as a "reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] was violated." Ibid. If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. See N.J.A.C. 13:4-11.1(b). A DCR finding that probable cause exists is not an adjudication on the merits. If DCR finds that there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the New Jersey Superior Court. See N.J.A.C. 13:4-10(e).

The LAD makes it unlawful for "any person" to discriminate against or refuse to rent real property to a prospective tenant because of the source of lawful income to be used for rent payments. See N.J.S.A. 10:5-12(g). "Lawful source of income" includes a housing voucher provided by a state or federal agency, including the housing voucher commonly referred to as "Section 8." See Franklin Tower One, LLC v. N.M., 157 N.J. 602, 618-23 (1999) (holding that a landlord may not deny a prospective tenant housing solely because the tenant planned to use Section 8 voucher).

While the parties dispute the details of the conversation, the evidence firmly supports a finding that Complainant and Respondent Yovana Ramirez discussed Complainant's intention to use a Section 8 voucher for rental payments at the time Complainant called Ramirez to inquire about the advertised, first-floor apartment. Ramirez admits that she told Complainant the apartment was not available to Section 8 recipients, though Ramirez claims she made the statement because she believed the apartment would not pass the inspection required for Section 8 approval. Ramirez did not, however, cite any instance of

having the house or apartment inspected for Section 8 approval. Rather, Ramirez relied upon what she believes are the applicable inspection standards and what she states happened with a relative at a separate property.

Respondents did not produce information to confirm that the utility metering of the house at 130 North Avenue in Elizabeth disqualified the first-floor apartment from approval for a Section 8 tenancy. Moreover, although Respondents reported that the first-floor apartment shares a utility meter with only the garage and common spaces of the house (and not with the second-floor apartment), DCR's investigation revealed that the lack of an entirely separate meter for the first-floor apartment would not necessarily result in the apartment being denied approval for a Section 8 tenancy. The landlord-tenant arrangement with respect to payment for utilities would likely be a determining factor.

No matter the potential outcome of an inspection, Respondents expressed an unwillingness to undergo the Section 8 administrative process for owners, as well as a belief that accepting an application from a Section 8 recipient is optional. At minimum, there is reasonable ground for suspicion that Respondents expressed a preference as to source of lawful income used for rental payments, in violation of N.J.S.A. 10:5-12(g)(3).

At this preliminary stage of the process, the Director finds that the circumstances of this case support a "reasonable ground of suspicion" to warrant a cautious person in the belief that the matter should "proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073.

DATE: January 15, 2019


Rachel Wainer Apter, Director
NJ DIVISION ON CIVIL RIGHTS