

November 13, 2019

Determination

Case Name: Jeannie Vargas V. Jeffery Sojack

Case Number: 04-19-8272-8

I. Jurisdiction

A complaint was filed with the Pinellas County Office of Human Rights on August 14, 2019 alleging that the complainant(s) was injured by a discriminatory act. It is alleged that the respondent(s) was responsible for: Discriminatory terms, conditions, privileges, or services and facilities; Failure to make reasonable accommodation; and Discriminatory refusal to rent. It is alleged that the respondent(s)'s acts were based on Handicap; and Retaliation. The most recent act is alleged to have occurred on January 22, 2019, and is continuing. The property is located at: 1195 Indiana Street, Dunedin, FL 34698. The property in question is exempt under: Single Family Home. If proven, the allegation(s) would constitute a violation of Chapter 70 of the Pinellas County Code.

The respondent(s) receive no federal funding.

II. Complainant Allegations

Jeannie Vargas (CP) is a disabled female who resides at 1195 Indiana St., Dunedin, FL 34698. The Property is owned and managed by Jeffrey Sojack (R Landlord).

On August 23, 2018, CP rented and moved into the property. CP alleges that when she moved in, she requested a reasonable accommodation from (R Landlord) to have a ramp installed from the rear entrance of the home, leading to the backyard. CP also requested that the door to the rear entrance be repaired because of her disability she does not have the strength in her arms to open it.

CP also requested that a handrail leading to the laundry room be replaced. CP alleges (R Landlord) was supposed to replace the railing. CP and her husband do not reside together anymore. CP alleges (R Landlord) is aware of her need for the requested accommodations and the extent of her disability which require her to use a walker or cane sometimes to traverse the stairs.

CP has provided a copy of an email exchange between her and (R Landlord) who advised CP on January 22, 2019, that he would not be extending her lease. (R Landlord) also advised CP in the email "Upgrades or changes to the physical structure are not authorized." CP had a group that assists disabled persons willing to put in a ramp and other upgrades at no cost to her or (R Landlord). CP currently must use a portable ramp which she alleges is not compliant or to code and is dangerous. CP will be vacating the property at the end of August 2019, when her lease expires.

CP Vargas believes that the Respondent's actions constitute a violation of the Fair Housing Laws.

After filing this fair housing complaint, in a text message dated August 19, 2019, CP requested an extra day or two until the 30th to move out. In response, R Landlord texted, "You just reported me to the human rights office. The answer is no." CP believes that this is unlawful retaliation for exercising her fair housing rights.

Additionally, R Landlord had the water shut off on August 29, 2019. CP's lease expired that day

and she did not have water.

CP believes these actions to be unlawful retaliation for filing a fair housing complaint.

III. Respondent Defenses

In response to Jeannie Vargas V. Jeffrey Sojack PC-19-067:

Regarding Jeannie's claims, I find her claims fraudulent. I never denied Jeannie's request for a ramp. By the time Jeannie made the request, I had informed Jeannie and Teddy that I would not be extending the lease past its end date. Jeannie and Teddy's first request was for a storage shed which I accommodated in addition to removing the washer and dryer so they could use their own. I did however have to deny the fact they wanted to pour a concrete base in the back yard for the shed. I told them I did not want any permanent modifications to the house. Jeannie and Teddy bought a storage shed, and one that did not meet Dunedin code. One of the first electrical issues Jeannie had was her washer and dryer were 220 volt which the ones that were removed were only 110 volt. Jeannie blew the breaker and I had to have an electrician upgrade the electrical. Jeannie made several demands, almost weekly to install gate latches, cut the bottom of one of the gates. I was literally there every weekend for the first two months trying to accommodate her. Upon moving in, I collected first month and deposit. Subsequently, Jeannie and Teddy were delinquent rent the second month stating the reason was Jeannie had a stroke. I did not charge a late fee. The third month, Jeannie and Teddy were delinquent again and only paid once I had my real estate agent at the time ask them to leave. At that time, I did charge a late fee. Jeannie and Teddy decided not to leave and to pay rent. I believe at this time, Jeannie informed me Teddy hit her and I told her to report it to the police. Jeannie told me her and Teddy were separating. During the initial screening, my real estate agent told me Jeannie and Teddy barely made the minimum rental income qualification together. After the second delinquency, I informed the both of them that they would not be staying past the date of the lease agreement. After this, Jeannie did ask if she could install a ramp. Jeannie never disclosed her disability and I never asked. I told Jeannie she could have a ramp under two conditions, I would not pay for it, and I did not want one that attached to the exterior of the house as there was only 9 months left on the lease. Jeannie later told me the company that was going to pay for the ramp said they would not. I believe they said it was because she did not own the house. I said OK, and Jeannie never mentioned it again. During Jeannie's stay, she made continuous requests that were not disability related. Upon the request of installing a spot light on the outside of the house, I reiterated I did not want any modifications to the house. Jeannie then texted me that her dishwasher was broken again. The first dishwasher broke in December and was replaced with a new dishwasher. Jeannie then told me she reported me to the Human Rights Organization and there was water in the dishwasher and bugs coming out of the dishwasher. This was 9 days prior to her move out date. I called a plumber and the appliance repairman. Neither one removed the water, so I scheduled to go clean the water out of the dishwasher myself. When I cleaned the water out, I took a picture, there were no bugs. Now that Jeannie has moved out, I have done a preliminary walkthrough to find the house in need of several repairs, pest control due to a flea infestation, most likely due to her seven dogs, lawn care because they did not do sufficient lawn maintenance before they left, a need to be thoroughly cleaned, and the house smells of smoke. The repairs include fixing the fence which they damaged when they removed their shed, new deadbolts because when she moved in, she replaced the originals with her own then did not put them back when she left. I have not been able to turn on the water and electric yet to determine if everything is in working order. However, due to the amount of maintenance/repairs, it is unlikely there will be much if any of their deposit left to return.

IV. Findings and Conclusions

REASONABLE MODIFICATION

Ms. Vargas alleges that she was denied the opportunity to modify the home that she was renting from Jeff Sojack. In order to prevail in a reasonable modification complaint, the following elements must be satisfied: (1) The Complainant is a person with a disability; (2) The Respondent knew or reasonably should have known that the Complainant is a person with a disability; (3) The Complainant requested permission to modify the dwelling or the common areas of the housing; (4) The requested modification may be necessary to afford the Complainant an equal opportunity to use and enjoy the dwelling; (5) The Respondent refused the Complainant's request to make such modification or failed to respond or delayed responding to the request such that it amounted to a denial.

In her intake questionnaire, Ms. Vargas states that she has Lymphoma in right arm, back problems, and knees. There are times when she uses a cane or walker. She asserts that Mr. Sojack is aware of her disability. (C-1)

We can conclude that Ms. Vargas does have a medical condition that meets the definition of Disability under the housing discrimination laws. The first element has been met.

Ms. Sojack is aware of Ms. Vargas's request to have a ramp installed. He asserts that such a modification could be made under two conditions: (A) He would not pay for it; and (B) He did not want it permanently attached to the house. Mr. Sojack asserts that there was an outside agency that was going to install the ramp, but they ultimately chose not to do it because she did not own the home. (D-1)

In rebuttal, Ms. Vargas states that she spoke to Mr. Sojack about the ramp in September 2018 and October 2018, and that he said yes. Ms. Vargas told Mr. Sojack that she would contact the Disability Achievement Center, but she had a stroke at the beginning of November 2018. When she got home, she wasn't talking or walking well. She was using her walker. (C-6) Ms. Vargas's husband, Teddy Myers submitted an account of conversations that he and Ms. Vargas had with Mr. Sojack regarding access issues and repairs. The handrail, ramp, and door, was discussed. (E-3) However, there was no reference to payment. Under Chapter 70 and the Fair Housing Act, the landlord must permit a reasonable modification when necessary, but the tenant is obliged to pay for it. Regarding the ramp, the evidence demonstrates that Mr. Sojack allowed Ms. Vargas to explore modification. She did so when she contacted Disability Achievement Center. However, this organization did not agree to perform the work. Ms. Vargas does not deny that this modification could have been made if this group was willing to construct the ramp. Mr. Sojack did not fail to permit the reasonable modification. It wasn't done because Disability Achievement Center decided not to perform the work and Ms. Vargas did not follow through after this decision.

Additionally, Ms. Vargas submitted several text communications between herself and Mr. Sojack. These texts concern appliance replacement, repair, and other issues unrelated to disability modification requests. If the parties were once in the interactive process regarding reasonable modifications, it would appear that such discussions broke off when Ms. Vargas had a stroke and she failed to follow through with such requests. (C-3, C-4, C-6)

Based on the above discussion, the fifth element fails. There is insufficient evidence that Mr. Sojack failed to permit a reasonable modification.

REFUSAL TO RENT

Regarding the refusal to rent issue, it should be characterized as a non-renewal case. Ms. Vargas actually rented from Mr. Sojack, but the alleged harm is that her lease was non-renewed.

In response, Mr. Sojack stated that Complainant's rent payment was delinquent for her second month in the unit. He was informed that Ms. Vargas had a stroke, and he did not charge a late fee. Complainant also did not pay her third month's rent on time. She paid only after his real estate

agent asked them to leave. This time a late fee was charged. Mr. Sojack explained that during the initial screening, his real estate agent told him that Jeannie and Teddy Vargas barely made the minimum to qualify together. After the second delinquency, Mr. Sojack informed the parties that they would not be staying past the end date of the lease agreement. (D-2)

In order to prevail in a terms of conditions case during a tenancy, the following elements must be met: (1) The Complainant is a member of a protected class; (2) The Complainant was the Respondent's tenant; (3) The Respondent imposed unfavorable or less favorable terms or conditions on the Complainant's tenancy; and (4) The Respondent did not impose such terms or conditions on similarly situated tenants not of the Complainant's protected class.

As we have previously concluded that Ms. Vargas is disabled and was Mr. Sojack's tenant, the first two elements have been met.

As to the third and fourth elements, it must be established that Mr. Sojack imposed unfavorable terms or conditions and treated non-disabled tenants more favorably. The complaint fails at the third and fourth elements. Mr. Sojack asserts that he has only rented to one other household. As to the other household, he states that they paid rent on time. He is also unaware if the other tenants were disabled. (D-4)

In rebuttal, Ms. Vargas did not dispute that her rent payments were late (C-4).

As there is insufficient evidence that Mr. Sojack treated tenants differently based on disability status, the refusal to rent/non-renewal allegation fails.

RETALIATION

The complaint was amended on October 21, 2019 to include retaliation. Ms. Vargas produced a text message exchange with Mr. Sojack from August 21, 2019. She also asserted that Mr. Sojack had the water turned off during the last day of her tenancy.

In order to prevail in a retaliation complaint, the following elements must be met: (1) The Complainant engaged in an activity protected by Chapter 70 and the Fair Housing Act, or aided/encouraged another to do so; (2) The Respondent subjected the Complainant to an adverse action; and (3) There exists a causal link between the protected activity and the adverse action.

Ms. Vargas filed her housing discrimination complaint on August 14, 2019, and it was mailed to Mr. Sojack that same day. The first element has been met.

On August 19, 2019, Ms. Vargas asked if she could have until the 30th to move out since she paid rent for the month and she was having problems with the movers. In response, Mr. Sojack texted, "You just reported me to the human rights office. The answer is no."

The second element has been met. Ms. Vargas was denied an opportunity to move out on August 30 (the lease expired on August 29 - Tab D-3).

The third element has also been met. Mr. Sojack minced no words in his reply. He informed Ms. Vargas in plain language that she could not stay through August 30 because she exercised her fair housing rights. This is direct evidence of a retaliatory action, and the third element has been fulfilled.

Ms. Vargas also asserts that Mr. Sojack shut off the water on August 29 in retaliation for filing a complaint. Records from the City of Dunedin indicate that Ms. Vargas arranged for the water to be shut off. In a document from the City of Dunedin's Utility Billing Department, there is an entry on August 8, 2019 which reads "TENANT TERM ACCT FOR 8/29/19." The detailed document

shows the "Requestor" as Jeannie V. Vargas. The requesting date was August 8, 2019 and turnoff was requested on August 29, 2019. (C-5)

Based on the evidence in the prior paragraph, the retaliation claim fails on the water turnoff issue. The evidence indicates that Ms. Vargas was not subjected to an adverse action. She herself requested that the water be turned off on August 29.

As to the Reasonable Modification issue, there is insufficient evidence that Respondent failed to permit a reasonable modification.

As to the Retaliation issue, there is reasonable cause to believe that Ms. Vargas was denied an extra day to move out in retaliation for filing a complaint. However, there is insufficient evidence to believe that the water was turned off prematurely in retaliation for engaging in protected activity.

V. Additional Information

Notwithstanding this determination by the Pinellas County Office of Human Rights, the Fair Housing Act provides that the complainant may file a civil action in an appropriate federal district court or state court within two years after the occurrence or termination of the alleged discriminatory housing practice. The computation of this two-year period does not include the time during which this administrative proceeding was pending. In addition, upon the application of either party to such civil action, the court may appoint an attorney, or may authorize the commencement of or continuation of the civil action without the payment of fees, costs, or security, if the court determines that such party is financially unable to bear the costs of the lawsuit.

The Department's regulations implementing the Act require that a dismissal, if any, be publicly disclosed, unless the respondent requests that no such release be made. Such request must be made by the respondent within thirty (30) days of receipt of the determination to the Field Office of Fair Housing and Equal Opportunity at the address contained in the enclosed summary. Notwithstanding such request by the respondent, the fact of a dismissal, including the names of all parties, is public information and is available upon request.

A copy of the final investigative report can be obtained from:

Paul V. Valenti, Human Rights/E. E. O. Officer

Jeff O. Hill NO CAUSE

Jeff O. Hill CAUSE RETALIATION