

October 07, 2019

Determination

Case Name: Lisa Keys V. Keith Morton

Case Number: 04-19-7482-8/PC-19-056

I. Jurisdiction

A complaint was filed on June 20, 2019 alleging that the complainant(s) was injured by a discriminatory act. It is alleged that the respondent(s) was responsible for: Discriminatory refusal to rent. It is alleged that the respondent(s)'s acts were based on Race; and Color. The most recent act is alleged to have occurred on May 17, 2019. The property is located at: 616 2nd. Ave. NW, Largo, FL 33770. The property in question is exempt under: Single Family Home. If proven, the allegation(s) would constitute a violation of Article II, Division 3 of Chapter 70 of the Code of Ordinances of Pinellas County, Florida and Sections 804a or f of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

The respondent(s) receive no federal funding.

II. Complainant Allegations

Lisa Keys (CP) is a white female who with her husband, Wayne Keys Sr. (CP husband) whose race is black, attempted to rent the residence located at 616 2nd. Ave. NW, Largo, FL 33770. The Property is owned by Keith Morton (R Owner). The property is represented by (R Owner) sister, Natalie Fici (R Fici) who speaks and acts on (R Owner) behalf.

In May 2019, CP and (CP Husband) were shown the rental home twice and provided a rental application, which was completed and submitted. On May 14, 2019, CP received a text message from (R Fici) advising that the couple was approved for the property and asked to meet on May 17, 2019, to sign the lease and pay the security deposit.

CP met with (R Fici) at the property on May 17, 2019. At some point, CP alleges (R Fici) asked to see a picture of (CP Husband). (R Fici) advised CP that she needed to see what he looked like and asked, "He isn't a foreigner is he?" CP advised (R Fici) "No, you already know he works at Dunedin H.S. and coaches Dunedin H.S. and Tampa Prep and already approved based on background checks & salaries."

(R Fici) responded, "I still need to see a photo." CP provided one and (R Fici) stated "Oh, he is a dark dude." CP replied, "He is a black man yes, does that matter?" (R Fici) said, "Yes, I have to tell the owner." CP replied, "So because he is black, now you aren't going to rent to me." (R Fici) replied, "I have to tell the owner." CP responded, "You know that is discrimination and quite illegal." (R Fici) allegedly responded, "I know but I have to tell the owner he is black."

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

III. Respondent Defenses

In the written reply, Respondent Fici stated "It was the third time I met Lisa Keys was lease signing. She was alone. I had never seen her husband. I asked to see a picture since he was not there to sign. I said I need to call the owner. Lisa said something about race and getting \$40 back

as she was walking to her car. I was very surprised but held up \$40 and said here. She just took off." Verbally, Fici stated she needed to see all the parties, and had never seen the person.

Respondent Keith Morton verbally stated he had told Fici that he needed to see and meet all persons. Thus, when the husband was not present, Fici needed to call him. He stated he needed to see a face with a name to know who was renting from him. He stated Fici had called him because it was the 3rd time they had met, and she still had not met the husband. Thus, Fici was calling him to see if it was okay to rent to them. Morton stated that he had later called the cp, and was willing to rent to her. Morton denied Fici told him of the race of the person on the photo.

IV. Findings and Conclusions

A. FINDINGS:

5/10/2019 Cp Lisa Keys submits application to Natalie Fici; (B-1)
5/14/2019 Cp receives text they were approved to rent the property. (B-1)
5/17/2019 Cp meets Natalie Fici at the rental who then asked for a picture of the husband;

B. LAW & ANALYSIS:

The central action of the case involves the respondent sister Natalie Fici (of respondent property owner Keith Morton) asking the cp for a picture of her husband, and the rental transaction not being finalized afterwards.

According to the cp, the sequence of events was:

After being told she would be rented to, the cp met with Fici on Friday, 5/17/19, to sign the lease and pay the deposit. The cp wrote, "After a short time Natalie Fici said, "Can I see a picture of your husband? I said, "yes, but why?" She said, "I just need to see what he looks like." I said Ok let me look on my phone." While I was looking, she said, "He isn't a foreigner, is he?" I said, "no, you already know he works at Dunedin H.S. and coaches at Dunedin H.S. and Tampa Prep and you already approved us based on background check & salaries." Natalie Fici said, "I still need to see a photo." I showed her and she said, "oh he is a dark dude", I said "he is a black man yes, does that matter?" she said "yes, I have to tell the owner." I said, "so because he is black, now you aren't going to rent the home to me and my husband?" she said, "I have to tell the owner." I said, "you know that is discrimination and quite illegal." She said, "I know but I have to tell the owner he is black." I then said I was going to take this further." (B-4)

The cp then admittedly left the site without further interaction. Whereas the cp did not contact the respondent again, it is unknown whether the respondent attempted to contact the cp. The cp states she did not receive any voice messages, and did not appear to receive any calls from respondent Morton.

The PF elements would be:

1. Membership in protected class and known to the respondent;
2. The cp applied and was qualified to rent;
3. The application was rejected;
4. The respondent rented to persons not of the protected class, and/or remains available at the same or similar terms offered to the complainant;
5. Additional evidence exists indicating discriminatory intent, such as suspicious timing, procedural irregularities, etc.

As the cps are interracial and had applied and been approved by the respondent housing provider, elements 1 & 2 have been met. Regarding element number three, the application was not rejected, but an irregularity occurred that caused the transaction not to be completed. Thus, the element of

the application not being rejected actually gives the cp's assertions more credible weight.

During the investigation, the respondent was asked various questions, including who had ultimately been rented to, and their race. However, despite a second request under threat of adverse inference, no information was provided as to the current occupant. Thus, the race of the current occupants for purposes of this prima facie elements is not known.

Overall, it is believed the cps have established a prima facie case of a possible denial due to them applying, being told they were approved, but having the rental transaction not be completed due to an irregular, disputed event.

One issue to be addressed is whether there was an actual denial of a rental transaction, in light of the cp walking off the site when being told the owner would have to be contacted. This is discussed further below.

Respondent defense:

On June 19, 2019, the Notice of the complaint letters were sent to the parties. On 6/25/2019, a voicemail was received from an unidentified person (727-421-3526-believed to be Natalie Fici) who stated, "Hello I received a letter and...looking for #...PC-19-056. Lisa Keys... This is all fabricated. She said I showed husband the rental home twice...then, why would I need to ask what he looked like?" This is all fabricated. Ok—thank you for your attention." (C-2)

On 6/28/2019, the investigator received a phone call from Natalie Fici, who then placed Mr. Keith Morton on the telephone. Fici stated that "All I said to her what that I had to call the owner...I never saw her husband." She stated the only reasons was that she needed to see all parties, and had never seen the person. Fici stated the cp "took off", assuming it all and making up story about race." Fici asked the investigator if the whole matter was moot because it had been made up. (C-2)

Owner Keith Morton got on the telephone and stated he had not been present, and was told the information after the fact. He stated the lady had come over 3 times. **He stated he had told Fici that he needed to see/meet them all. He stated, "that's why...3rd time and he wasn't there again. That she said she had to call the owner."** He stated she asked for a picture, and needed to call the owner. He stated she was sure what to do, and that the cp just "took off." (C-2)

He stated he was a friendly bus driver in St. Petersburg who was liked by persons of all backgrounds. He stated he had been in the rental business for 25 years. He stated he called the cp after the transaction after she had left, but she did not answer. He said he was willing to rent, and just wanted "a face to a name". (C-2)

He did not have any current African Americans he was renting to, and the last such person was estimated by him to be roughly 12-14 years ago.

Regarding how long Fici had been working for him, he stated she was just doing him a favor. He estimated she had shown 2 units in the last year. He stated that because his rent was inexpensive, residents tended to stay a long time in his units.

He stated he usually advertised in Craig's list, but this time he used 4 smaller newspapers, such as the Belleaire Bee, as one he could remember. He stated the ad directed persons to call Fici, and that his rental criteria was usually first month's rent and equal security.

He stated he would call the Pinellas County Sheriff's office himself usually as a background check, but this time used a friend who he paid, and whom was a computer whiz.

He stated that applicants would usually call Fici, look at the place and take an application. **He stated his policy was to always see the people. He would ask how many would be there, and**

then ask to meet them. He stated he did this all the time, and stated, "what if one person signs and three move-in? I need to see who is going to be there." (C-2)

He estimated he got 2 applications a year. Morton took the position that race had nothing to do with the transaction. He could not remember the last African American applicant that had applied. He stated that Fici had asked the person 3 times to meet him, and thus when the husband did not show up, Fici had to call him as the owner.

Regarding why Fici had to call Morton about the photo, Morton stated it was because she had to ask if it were ok to rent to them despite the husband not showing up this time. Morton stated Fici told him they did not bring the other party, and Morton suggested having the cp sign now, then meeting husband later when he signed. Morton denied that Fici told him the race of the person, saying he learned about the person's race through a phone call from a newspaper. (C-2)

On July 1, 2019, the department received a written reply from Natalie Fici. She wrote, "the third time I met Lisa Keys was lease signing. She was alone. I had never seen her husband. I asked to see picture. Since he was not there to sign, I said I need to call the owner. Lisa said something about race and getting \$40 back as she was walking to her car. I was surprised but held up \$40 and said here. She just took off." (C-1)

Analysis and Conclusion:

In her rebuttal, the cp stated that she had already told Fici over the phone that her husband would not be able to make it on Friday, and they had agreed she would take the lease and have it signed by her husband that night. Cp Keys noted they had already been approved, as indicated by the texts between the parties, and was the reason why she was dropping off the money on that day. Keys stated that Fici did not say she had to "call" the owner, but that she had to "tell" the owner that the husband was black. (B-4)

Regarding the denial, Cp Lisa Keys stated she had not received any phone messages from respondent Morton, and did not believe she had received any calls from him at all. She stated that after reporting the matter to a news outlet, the reporter interviewed Morton. The reporter then called her back to state that Morton would be calling her to offer her the unit. However, the cp stated no such call apparently came. The cp stated she had Cricket Wireless, whose service did not allow access to usage details or phone logs. Thus, her phone records were not obtainable, which was confirmed by the investigator with Cricket Wireless directly.

It is noted that Cp Lisa Keys has a text from respondent Fici stating they were to meet on Friday to sign the lease, and tender \$1400 to Fici, who texted that "the owner was happy". As the cp has a text dated May 10, showing she had applied, and a subsequent text indicating they would sign a lease, it would appear the transaction was nearly complete.

The text screen shots do show the telephone number being the same as the one used by Fici and Morton during their interview with the investigator.

There are two main issues to be determined. First off, was race a factor in the actions undertaken by the respondent, and secondly, was the cp denied a rental by the respondent or did she voluntarily walk off without actually being told she could not have the unit?

The issue of race as a factor is discussed first.

Race as a factor in the transaction:

During the investigation, on July 18, 2019, respondents Fici and Morton were sent a request for information in order to obtain a more detailed response to the allegations, and to provide further information on the overall context of the particular rental transaction.

In particular, the respondents were asked to provide a line by line reply to the cp's assertions, and included a request for others who were similarly told to be present or show a license photo. Further, the race and move-in date of the subsequent occupant was requested, among other items.

Despite this request, no response was received. On August 7, 2019, a second letter, sent both certified and regular mail, was sent to respondents Fici and Morton specifying that their failure to provide the requested information could be deemed adverse to their position, and used against them. Despite showing a received signature dated 8/12/2019 on the return receipt card, no response was ever provided. In a call to Fici on September 10, 2019, Fici stated they had already replied, that she could not give out Morton's number without his permission and that she could not talk at that time. (C-2)

Therefore, no further information was provided by the respondent to assess whether race was a factor.

However, other possible relevant factors as to whether race was a factor are the following:

First, it is undisputed that the sister asked to see a photo of the husband while on-site, and undisputed that Fici called Morton while on-site. According to the respondents, the reason Fici called Morton was to report that the husband was not present at the meeting. However, it is not logical that viewing a photo would be of any relevant value in prompting a call to Morton. Fici could have simply called the owner upon knowing the husband was not present. Further, the meeting could have been rescheduled to a later time when the husband was available.

Secondly, it is not logical that Fici's viewing of the husband's photo would have assisted respondent owner Morton in putting a 'face to a name'. Even if Morton were to rely on Fici's visual identification of a person, it is believed the respondents already had both the cp's and husband's information on a completed application form. Thus, it is of not much value to have Fici see the person for Morton, when his name and information were already on an application form.

It is also unclear on why neither respondent reached out to the cp after she had left. It would appear logical for the respondent to have called any applicant who had already been screened, and whom was able and willing to meet the rental terms, including the immediate tendering of a cash money order. It would also appear logical for the respondent to have called the cp simply to dispel any confusion, and/or to correct and clarify any misconceptions, as Fici clearly knew what the cp believed at that time. Thus, the failure to reach out to save a nearly completed transaction or to clarify a misunderstanding is suspicious.

Lastly, the respondent has failed to provide any of the requested information to better assess their intentions. This could be viewed as attempting to escape legal scrutiny. However, this is speculation, as there could be other possible reasons for not participating in the investigative process.

From the known respondent information, three items appear to be relevant. First, that respondent Morton admittedly had not rented to an African American tenant for an estimated 12-14 years. According to the Pinellas County Property Appraiser Records, respondent Morton has owned three properties since at least year 2000. Two of the properties were single family dwellings (401 Stremma Rd.: 1/6/1995)(527 4th Ave. NW: 9/14/1999), and a third was a property containing 5 dwellings (3 efficiencies/2 one bedroom-one bath: 10/31/2000). As the 401 Stremma property is listed as his homestead property, that would leave 6 other dwellings for rental.

The ethnic composition of the population of Largo, FL is composed of 64k White Alone residents (77.7%), 9.5k Hispanic or Latino residents (11.5%), 4.54k Black or African American Alone residents (5.51%), 2.2k Two or More Races residents (2.67%), 1.66k Asian Alone residents (2.01%), 188 Native Hawaiian & Other Pacific Islander Alone residents (0.228%), 177 American

Indian & Alaska Native Alone residents (0.215%), and 128 Some Other Race Alone residents (0.155%). At 5.5%, Largo would not appear to have a sizeable African American population. It is possible that the respondent did not have many African American applicants, and possible he did not have many available units.

A second factor possibly evidencing race is the respondent admittedly changed his advertising practice for this property. As he stated during an interview, he usually advertised his rentals on Craig's list, but this time he advertised in four different local newspapers. He specified one that he could remember as the Belleaire Bee, or something similar.

However, it is unknown what this difference in this advertising outlet means, as all of his properties were in the same town of Largo, Florida.

The last irregularity would be the switch in background screeners used by the respondent. During an interview, the respondent stated his previous practice was to call the sheriff's office himself to screen an applicant's background. This time, however, he stated, he used a friend who was a "computer wiz". It is unknown why this change in background occurred.

During the course of the investigation the respondent was asked about this change, but failed to reply to any of the questions. As the respondent was warned that the failure to provide the information could be deemed to be adverse to their interest, it is believed the information is adverse to their interest. Namely, the information regarding others who had been told to be present to be seen prior to signing a lease.

However, this act of Fici needing to call the owner is the last act the respondent undertook in the transaction prior to the cp walking away. Is Fici's act of calling the owner equivalent to a denial, or did the cp abandon the transaction by walking away?

Was the cp denied the rental?

The determination of whether the cp was denied the rental is a separate issue than whether race was a factor in the transaction.

Is the respondent landlord's failure to undertake the affirmative act of contacting the cp after she had left the site equivalent to a denial, or constructive denial? Is the cp's sudden departure an abandonment of the rental transaction?

There are multiple possibilities as to why the respondent may have not undertaken any further contact with the cp. First, it reasonably could have been the race of the husband, as most of the rental transaction appeared nearly complete until the viewing of the license. Secondly, it could be the respondent wished to avoid someone he perceived to be a potential "problem" tenant after she had walked off.

Regardless, the sequence is as follows: The parties had agreed to meet so as to begin signing the lease. Upon the respondent asking to view a photo and inform the landlord, the cp left the site and did not attempt further contact with the respondent. The respondent also, apparently, did not attempt contact with the cp. Instead, the cp called the press and filed a complaint of discrimination. It is noted that in the cp's allegations, she asked respondent Fici if they were being denied because the husband was black, and Fici replied that she needed to call/tell the owner. It is unclear whether this was a denial statement.

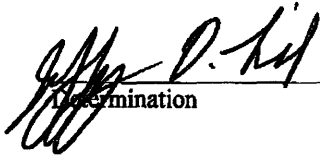
The alternative view would be that the manner of the transaction constituted a constructive denial though discouraging questions and actions. At the time, the cp was being asked to produce a photo of her spouse, and not an ID. Further, the respondent then allegedly asked, "he isn't a foreigner?" and "he's a dark dude" in expressing themselves. Ultimately, the cp was told the owner would have to be 'told' or 'called'. Thus, the cp then saw they were not wanted, and departed. This was

further confirmed by the respondent's lack of contact afterwards.

It is believed that the overall conduct of the respondents amounted to a constructive refusal to rent, as the rental transaction was nearly 90% complete and the cp was never called back by the respondent. As the cp had already been approved by the respondent, the additional step of providing a photo acted as an additional term or condition of screening, leading to the demise of the transaction. This is further evidenced by the respondent's failure to contact the cp to effectuate the rental.

C. CONCLUSIONS:

Therefore, based on the available evidence, we conclude that there is CAUSE to believe that the Respondent may have violated Article II, Division 3 of Chapter 70 of the Code of Ordinances of Pinellas County, Florida on the Complainant's allegations..



Jeff Lorick, Compliance Manager

Date 10/9/2019

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