

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HQ10QO-65839

Joy Fender,)	
)	
Complainant,)	<u>Administrative Action</u>
)	
v.)	FINDING OF PROBABLE CAUSE
)	
Raymond McCann,)	
)	
Respondent.)	

On March 16, 2016, Ocean County resident Joy Fender (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her former landlord, Raymond McCann (Respondent), refused to accept her housing assistance voucher, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondent denied Complainant's allegations of wrongdoing in their entirety. The DCR investigation found as follows.

Summary of Investigation

Respondent owns a single-family home located at 301 Webster Avenue, Seaside Heights, which he uses as a rental property. Complainant and her family were displaced from their former residence, which was damaged by Superstorm Sandy.

On April 12, 2014, Complainant and her then boyfriend, Brian Fredella, signed a one-year lease agreement to rent the subject home for \$1,600 per month beginning on May 1, 2014. Complainant and Fredella occupied the home along with Complainant's three children ages 6, 8, and 13. In April 2015, Fredella moved out of the home.

On April 21, 2015, Complainant and Respondent entered into a new one-year lease agreement under which Complainant's rent was reduced to \$1,400 per month.

On May 1, 2015, Complainant received notice from the New Jersey Department of Community Affairs (DCA) that her name had been selected from a lottery of eligible individuals to submit an application for Sandy Tenant-Based Rental Assistance (Sandy

voucher).¹ Complainant told DCR that she immediately notified Respondent about the DCA letter and the Sandy voucher application process. She stated that Respondent told her to keep working on obtaining the Sandy voucher.

On August 20, 2015, Complainant received a Sandy voucher from DCA that would pay a significant portion of her monthly rent. Complainant said that on the same day, she presented it to Respondent and asked him to fill out the landlord's portion of the paperwork so she could get it processed. She said that Respondent refused to do so. She said that Respondent told her that she needed to get assistance from a different program, which he believed she could easily achieve because she had obtained the Sandy voucher.

Complainant stated that Respondent never explained why he would not sign the landlord's portion of the paperwork. She suspected that his refusal flowed from a desire to prevent DCA from inspecting the property because he had received funds from DCA's "Landlord Rental Repair Program" but did not perform the repairs.² Complainant explained that she reached that conclusion because no work had ever been done to repair her rental unit, and tenants in Respondent's other units had told her that he had not completed any work on their units either.

On September 21, 2015, Respondent initiated an eviction action against Complainant for non-payment of rent.

On October 18, 2015, Complainant and Respondent engaged in a mediation in the eviction proceedings. Complainant told DCR that during the mediation, she argued that Respondent was required to accept her Sandy voucher, which could be applied retroactively to pay her rent for the prior two months.³ Complainant stated that the mediator made a copy of it for his records. In an interview with DCR, Respondent acknowledged that he saw Complainant's Sandy Voucher at the mediation.

¹ The Sandy Housing and Rental Assistance Program provides housing stability for individuals and families impacted by Superstorm Sandy by providing up to 24 months of tenant-based rental assistance to eligible households.

² The New Jersey Fund for the Landlord Rental Repair Program was designed to provide funding for the restoration of residential rental units damaged by Superstorm Sandy. As a condition of receiving funding, eligible property owners agree to rent the repaired properties to low-to-moderate income households at approved affordable rates, and to comply with various state and federal housing laws and regulations. In addition to increasing the supply of affordable rental units, the program serves to revitalize storm-impacted neighborhoods, and contributes to the local economy through the purchase of goods and services for repairs and upkeep.

³ Complainant stated that she went in person to DCA and spoke with Tanja Silver, who told her that Respondent was required to accept her Sandy voucher and that the voucher applied retroactively.

At the conclusion of the mediation, Complainant and Respondent signed a *Consent to Enter Judgment* by which Complainant agreed to pay the amount of rent owed through a “commitment in writing by any government or social organization for rent or payment in full before 11-2-15.” See McCann v. Fender, (Docket No. OCN-LT-3759-15). Complainant told DCR that she signed the document because she already had the Sandy voucher that would allow her to satisfy the obligation. However, Complainant stated that Respondent frustrated the process by continually refusing to fill out his part of the voucher paperwork.

On November 21, 2015, Complainant and her children were evicted from the property. They stayed in a hotel until December 2015, when they moved into a single-family home where the landlord accepted Complainant’s Sandy voucher. Complainant still uses the voucher to pay her rent on a monthly basis.

Respondent told DCR that he urged Complainant to seek out assistance and specifically instructed her to obtain a Sandy voucher. However, he denied being told by Complainant on or around May 1, 2015, that she had submitted an application for a Sandy voucher.

Respondent denied that Complainant presented him with a voucher in August 2015. In a letter to DCR dated June 18, 2016, Respondent wrote that the first time he saw the Sandy voucher was when he received a copy of papers filed in the eviction action, including Complainant’s *Certification and Request for Stay of Removal* (Certification) on November 18, 2015. Respondent did not explain why he was unwilling or unable to sign and accept the voucher on November 18, 2015. Respondent produced a copy of Complainant’s Certification and ancillary documents, which included some rent receipts and the Sandy voucher. In the Certification, Complainant wrote in part:

May 1st - I told Raymond I received preliminary approval. Raymond told me to stay on top of it. I did.

I was awarded voucher on Aug 20.

I showed Raymond and I asked him to fill out landlord contact form.

He asked me what it was and I told him it needed to be filled out, so DCA can inspect before they allow me to use voucher. He said no.

Analysis

The LAD makes it unlawful for “any person” to refuse to rent property to a prospective tenant because of a “source of lawful income used for rental or mortgage payments.” See N.J.S.A. 10:5-12(g)(1). Accordingly, landlords may not reject a tenant’s request to use a housing voucher provided by a state or federal agency. See e.g., Franklin Tower One, LLC v. N.M., 157 N.J. 602, 618-23 (1999) (holding that landlord may not deny prospective tenant housing solely because tenant proposed to use Section 8 voucher to assist in paying rent).

At the conclusion of an investigation, the DCR Director is required to determine whether “probable cause exists to credit the allegations of the verified complaint.” N.J.A.C. 13:4-10.2. “Probable cause,” for purposes of this analysis, means a “reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated.” Ibid.

A finding of probable cause is not an adjudication on the merits, but merely an initial “culling-out process” whereby the DCR makes a threshold determination of “whether the matter should be brought to a halt or 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 (1991). Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

In this case, the parties presented conflicting versions of events. Complainant claimed that the day she received the Sandy voucher in August 2015, she presented it to Respondent, but he refused to complete and sign the property owner’s section of the related documents.

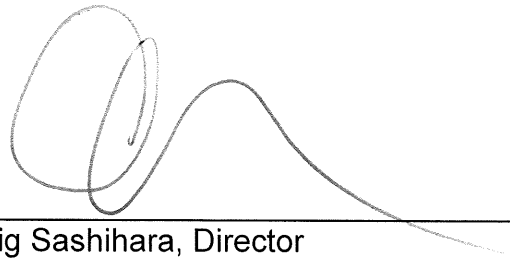
Respondent appears to acknowledge that Complainant’s Sandy voucher was a “source of lawful income used for rental or mortgage payments” for purposes of the LAD. However, in a letter to DCR dated June 18, 2016, he wrote that she waited until November 18, 2015, to tell him that she obtained it. During the investigation, Respondent admitted to the DCR investigator that he saw the Sandy voucher during a mediation on October 18, 2015.

For purposes of this disposition only, the Director finds that there is sufficient evidence to support a reasonable suspicion that Respondent refused to accept Complainant’s Sandy voucher. The notion that Complainant promptly asked her landlord to complete the required paperwork upon learning that she had been approved,

is consistent with the undisputed evidence that Complainant entered into a renewal lease with Respondent in April 2015, and as a displaced single-mother, went through the application process to obtain a housing voucher to provide rental assistance for herself and three young children. In the context of this undisputed evidence, it seems more logical that she would inform her landlord the day she received it—as opposed to inexplicably waiting until three months later (i.e., two months after the landlord filed for her family’s eviction).

At an evidentiary hearing, the parties will have an opportunity to present evidence regarding their respective versions of events. At that hearing, the Administrative Law Judge will hear live testimony and evaluate the credibility of the witnesses. Clowes v. Terminix Int’l, Inc., 109 N.J. 575, 587 (1988). In the meantime, 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, supra, 228 N.J. Super. at 56.

DATE: 3-20-17



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS