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IN THE CIRCUIT COURT OF THE STATE OF OREGON

IN AND FOR THE COUNTY OF MULTNOMAH

HOUSING AUTHORITY OF PORTLAND,

Plaintiff

vs.

PAULETTE BELKNAP and all other occupants,

Defendant.

Case No. 98F-012209

OPINION

The plaintiff is a Public Housing Authority, and the defendant an eligible tenant. The tenant has occupied the premises for years. Through at least annual inspections, the landlord knew that the tenant repeatedly exhibited poor housekeeping (including her yard), and that she had cats in literal violation of her lease, which permitted her no more than one dog and one cat (she had a "legal" dog).

On May 26, 1998, the plaintiff duly served an eviction for cause notice which cited three bases for termination of the defendant's lease: housekeeping violations, an unlawful occupant, and keeping a pet in violation of the lease. For reasons which I set forth on the audio record, I found that the housekeeping and unlawful occupant breaches did exist and were sufficiently "serious" or "repeated"[1] as well as "material" as required to support eviction under the lease; that the tenant did not cure these violations in spite of substantial improvement in housekeeping by the end of the cure period; that the plaintiff did not in fact decline to negotiate a resolution short of eviction in retaliaton for the tenant's refusal to permit an unannounced inspection until she could comply with her counsel's

[1] The occupant violation was serious, the housekeeping violation serious and repeated.

instructions that counsel be present; and that the plaintiff had accepted rent with knowledge of the pet and housekeeping violations in the past.

With respect to the cat violation, I found that even if past waiver did not preclude this eviction based on the same violation, past waiver and the record in this case established that the cat violation was not "material" once it was separated from the cat urine on the carpet portion of the housekeeping violation.[2]

With respect to defendant's "fair housing"[3] defense, I found that the landlord was on notice through material it regularly collected from the defendant during its "annual review" that defendant suffered from multiple potentially disabling conditions, including depression, hypertension, liver, heart and kidney disease, asthma, hypertension and depression. Exhibits 103, 104, 105.

The defendant's disabilities substantially limit one or more of her major life activities, including her ability to maintain a house and yard without assistance.[4] Plaintiff was on notice of that defendant was thus "handicapped" by its repeated record of the plaintiffs medical and mental health problems; by its knowledge that defendant depended for her income on the SSI program in which eligibility is based on a recipient's inability to be self-sufficient without assistance *because of* one or more disabling conditions; and because with such knowledge, plaintiff's agents repeatedly observed

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[2] In other words, it is clear on the record that plaintiff would not have evicted the defendant for the cat violation alone without the damage to the carpet, which was belatedly cured.

[3] The defendant articulated this defense in her answer as "Fair Housing," citing ORS 659.430(1), 42 USC §3601 et *seq*, and Portland City Code 23.01.010. In her trial brief, defendant added The Rehabilitation Act of 1973, §504, 29 USC §794.

[4] This is significant because it qualifies the defendant for protection under fair housing laws concerning those with disabilities; so also does the fact that the defendant had a "record of having such an impairment" in the plaintiffs own files. *E.g.*, 42 USC 3602(h).

defendant's housekeeping problems. The landlord also was on notice, and it was true, that defendant's housekeeping problems were related to her disabilities. Her service coordinator had over the years once called some social service agency to see what services might be available for the defendant. Receiving no response, she asked the defendant if she had a caseworker, and the defendant said no. The service coordinator made no further inquiry and no further effort to discern any need for services to assist the defendant with her tenancy problems. She also made no such inquiry with respect to the current spell of problems which led to this eviction action.

The "housing inspector," who more frequently than annually inspected the defendant's premises, at one time over two years ago, referred her to a "housekeeping clinic" then maintained (and subsequently abandoned as useless) by the plaintiff That clinic presented videos on housekeeping tips, including how to motivate your children to help.

With respect to the current spell of problems, the plaintiff made no inquiry or effort whatsoever to determine whether the problems were related to plaintiff's various disabilities or, if so, whether there was any reasonable accommodation which would save defendant's tenancy. When asked at trial, the suitably fastidious housing inspector replied that based on his experience with depression with his mother and his assessment of other Public Housing Authority tenants who suffered depression, the defendant exhibited no signs of physical or mental disability. He also opined that although depression can affect housekeeping, it cannot do so to the extent of defendant's housekeeping problems.

Similarly, the employee of the plaintiffwhose contact with her concerned supervising a "comp grant" rehabilitation of the premises in late 1996 through early 1997, opined that she noticed no signs of mental or physical disability in her contacts with the defendant_ This employee had in the past

received "504 training" (The Rehabilitation Act of 1973, §504, 29 U.S.C.A. §794) and had previously worked as plaintiff's "ADA Coordinator" (Americans with Disabilities Act, 42 USC $12 10 1 et seq). She did not understand that her purpose in having contact with the defendant was to determine whether the defendant was suffering any handicap which impaired her ability to maintain a tenancy, and she made no attempt to make such a determination.

In the period leading to this eviction, the defendant suffered substantial medical deterioration and major life stresses related to the death of her mother. These circumstances increased the severity of her cumulative handicap, further impaired her ability to maintain her tenancy, and also accounted for the quantity of stored materials in her house and garage.[5] Nonetheless, as demonstrated by the substantial improvement in her circumstances (which brought the housekeeping conditions to acceptable levels after the expiration of the deadline for a cure under the eviction notice, but before trial), she was able with reasonable accommodation (furnished by her "unlawful occupant" as housekeeping assistant and, apparently, Legal Aid's involvement) to maintain her tenancy in a manner which met all of the plaintiffs lease requirements.

The unlawful occupant in fact provided the tenant with both housekeeping assistance and emotional support which was appropriate and reasonably required by her handicapping conditions. Had plaintiff made any inquiry and attempt to achieve reasonable accommodation for the handicapping conditions which underlay the defendant's problems in maintaining her tenancy, those accommodations would have included assisting plaintiff in "legalizing" the presence of her occupant

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[5] Defendant lives in a "scattered site" dwelling which differs from housing projects in that the public housing unit is maintained in integration with private residential housing. In this case, the defendant resides in a single family residence.

by adding him to the lease and those accommodations would have been successful.[6]

Defendant's fair housing defenses are based on federal, state, and local law which apply generally to private as well as to public landlords. As such, they contemplate no apparent affirmative duty to determine whether a tenant's problems relevant to eviction are the result of a "handicap" and whether there is an appropriate and reasonable accommodation which would save the tenancy. As to most landlords, the obligation is to make reasonable accommodation if and when it is requested, but not to engage in affirmative diagnostic, counseling, or referral attempts.

Public Housing Authorities, however, have a higher fair housing obligation. 24 CFR $966.7 provides:

> (a) For all aspects of the lease and grievance procedures, a handicapped person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person.
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> (b) The PHA shall provide a notice to each tenant that the tenant may, at any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy.

This regulation articulates an application of federal fair housing requirements in the Housing

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[6] These findings, in common with all others in this opinion and those made orally on the record, are based on my conclusion as to what is more likely than not.

Authority context. It recognizes or creates an affirmative duty. Where, as here, the PHA is on notice that a tenant is handicapped and that the problems which threaten the tenancy are related to her handicapping conditions, it has an affirmative duty to provide mechanisms sufficient to determine, or to inquire sufficiently to determine, whether reasonable accommodations can preserve the tenancy. Providing a "housecleaning clinic" may or may not be a reasonable accommodation for some conditions and some tenants, but having sent this tenant to such a clinic once in the past is manifestly insufficient to comply with the plaintiff's affirmative fair housing obligations in this case. So, too, are the only other arguable attempts an inquiry: an unreturned phone call to an unspecified social service agency in the past, and one inquiry concerning whether the defendant had a caseworker.

It is clearly not the duty of the plaintiff to preserve a tenancy at all cost, even if the problems which threaten the tenancy and plaintiffs many legitimate interests in the peace, quiet, health, and safety — as well as quiet enjoyment — of other tenants and neighbors, and in the quality of the improvements it owns, happen to be the result of a handicapping condition. It is also true that such tenancy problems as arose repeatedly in this case can occur in public housing without being the result of any handicapping condition. All that is required is that "[f]or all aspects of the lease and grievance procedures, a handicapped person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person."

Plaintiff made no attempt at compliance with this duty. Had it done so, this eviction would have been prevented. As a matter of controlling federal law, defendant must prevaii.

September 4, 1998

Michael H. Marcus, Judge