

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FORNETHA JUDGE RIZOS,)
)
 Petitioner,)
)
 vs.) Case No. 04-1888
)
 POINT VISTA APARTMENTS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the administrative hearing in this proceeding on behalf of the Division of Administrative Hearings (DOAH), on October 8, 2004, in Orlando, Florida.

APPEARANCES

For Petitioner: Fornetha Judge Rizos, pro se
5215 Limelight Circle, Apartment One
Orlando, Florida 32839

For Respondent: Cathy L. Lucrezi, Esquire
Law Offices of Heist, Weisse,
& Lucrezi, P.A.
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Fort Myers Beach, Florida 33932

STATEMENT OF THE ISSUE

The issue for determination in this proceeding is whether Respondent discriminated against Petitioner on the basis of her race, sex, familial status, or association with handicapped

individuals in violation of Subsection 760.23(2), Florida Statutes (2003), by refusing to renew Petitioner's lease when it expired or by subjecting Petitioner to different treatment than other similarly situated tenants.

PRELIMINARY STATEMENT

On December 30, 2003, Petitioner filed a Complaint of Discrimination with the Florida Commission on Human Relations (Commission). The Commission investigated the matter and determined there was no reasonable cause to determine that Respondent discriminated against Petitioner. Petitioner timely filed a Petition for Relief. On May 27, 2004, the Commission referred the matter to DOAH to conduct an administrative hearing.

On June 17, 2004, ALJ Fred L. Buckine scheduled the administrative hearing for August 20, 2004. DOAH transferred the case to the undersigned, and Petitioner requested a continuance to allow her time to obtain counsel. The undersigned granted the request and scheduled the administrative hearing for October 8, 2004.

At the hearing, Petitioner repeatedly requested a continuance to allow her additional time to obtain counsel. The undersigned explained on the record that Petitioner had approximately 120 days between the date the Commission referred the matter to DOAH and the hearing date, including one

continuance, in which to obtain counsel. Moreover, Petitioner had approximately 273 days to obtain counsel after she filed her charge of discrimination on December 30, 2003.

Petitioner initially requested her second continuance within five days of the date of the rescheduled hearing. By rule, the standard for granting continuances within five days of the hearing date is "extreme emergency" rather than "good cause." An administrative agency, including DOAH, cannot deviate from a valid existing rule, and time to obtain counsel is not an extreme emergency.

At the hearing, Petitioner testified, called two other witnesses, and submitted four exhibits for admission into evidence. Respondent called three witnesses and submitted 12 exhibits for admission into evidence.

The identity of the witnesses and exhibits, and any rulings regarding each, are reported in the record of the hearing. Neither party requested a Transcript of the record. Petitioner and Respondent timely filed their respective proposed recommended orders on October 12 and 14, 2003.

FINDINGS OF FACT

1. Petitioner is a member of a protected class. Petitioner is a female whose race is African-American. Petitioner's household includes children who are under the age of 18 and who are, or who are perceived to be, handicapped.

2. Respondent rents dwelling units to the public at 5455 Pointe Vista Circle, Orlando, Florida. The apartment community is identified in the record as Pointe Vista Apartments (Pointe Vista).

3. Petitioner applied to lease an apartment at Pointe Vista on November 1, 2001. Respondent approved the application and the parties entered into a written lease for a term of "one year" beginning on December 21, 2001, and ending on November 30, 2002. The parties subsequently entered into a renewal lease covering a term from December 1, 2002, through November 30, 2003.

4. Respondent performed various repairs and maintenance jobs in Petitioner's apartment from sometime in March 2003, through September 17, 2003. Petitioner requested most of the repairs, but some of the jobs involved required maintenance. Respondent made six repairs to the air-conditioning system.

5. Some of the repairs to the air-conditioning system were required because Petitioner, or members of her household, had damaged the thermostat. The property manager notified Petitioner in writing that Petitioner was not in compliance with the lease because Petitioner failed to operate the air-conditioning system properly and that a repeat violation within 12 months would be grounds for termination of the lease.

6. The property manager observed the apartment during one of the repairs. On June 26, 2003, the property manager notified Petitioner in writing that Petitioner was not in compliance with the lease because Petitioner failed to maintain the apartment in accordance with the terms of the lease. In particular, doors were "punched" out, wet newspaper was in the kitchen, the carpet was damaged and "extremely" dirty, and the microwave was broken. The notice stated that a repeat violation within 12 months would be grounds for termination of the lease.

7. Orange County scheduled an inspection of Petitioner's apartment on August 12, 2003, to determine if the apartment was eligible for continued "Section 8 rental assistance." Petitioner refused to allow the inspection, and Orange County rescheduled the inspection for August 29, 2003.

8. Petitioner's apartment failed the inspection conducted on August 29, 2003. In order to pass an inspection, Petitioner needed to repair a living room window, stove burners, a garbage disposal, and a loose door panel. Petitioner also needed to eliminate roach infestation and improve housekeeping. The apartment passed a subsequent inspection conducted on September 19, 2003.

9. Respondent notified Petitioner of Respondent's intent not to renew the lease on October 23, 2003. The notice informed

Petitioner that she would need to vacate the apartment by November 30, 2003.

10. Petitioner remained in possession of the apartment during December 2003, and paid no rent. The property manager issued a "Three Day Notice to Pay Rent or Deliver Possession." Petitioner returned the keys to the apartment in early January 2004.

CONCLUSIONS OF LAW

11. DOAH has jurisdiction over the parties and subject matter in this proceeding pursuant to Subsection 120.57(1), Florida Statutes (2004). DOAH provided the parties with adequate notice of the administrative hearing.

12. The burden of proof is on Petitioner to show by a preponderance of the evidence that there is a prima facie case of discrimination. § 760.34(5), Fla. Stat. (2003); Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Brown v. American Honda Motor Co., 939 F.2d 946 (11th Cir. 1991). Petitioner must make a prima facie showing that she is a member of a protected class; was subjected to adverse action; was qualified to rent the apartment; and that the apartment remained available for rent after Respondent terminated the lease.

13. For reasons, stated in the Findings of Fact, Petitioner failed to show she was qualified to rent the

apartment. Petitioner repeatedly failed to comply with the terms of the lease. Neither the lease nor any law created a reasonable expectation that the tenancy would continue beyond the expiration date of the lease.

14. Petitioner failed to show that she received disparate treatment from the treatment of tenants in a non-protected class. Petitioner did not demonstrate bias on the part of Respondent or that Respondent's non-renewal of the lease was motivated by Petitioner's race, gender, familial status, or association with handicapped individuals. Robinson v. Twelve Lofts Realty, Inc., 610 F.3d 1032 (2d Cir. 1979).

15. Respondent articulated a legitimate, nondiscriminatory reason for refusing to renew Petitioner's lease. Petitioner failed to show that the reasons articulated by Respondent were a pretext for discrimination.

RECOMMENDATION

Based on the foregoing Findings of Facts and Conclusions of Law, it is

RECOMMENDED that the Commission enter a final order determining that Respondent did not discriminate against Petitioner when Respondent refused to renew Petitioner's lease.

DONE AND ENTERED this 3rd day of November, 2004, in
Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of November, 2004.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.