STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SAMUEL SUKYASOV,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 06-2819
	)	
GMC PROPERTY MANAGEMENT,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

A formal hearing was conducted in this case on October 17, 2006, in Jacksonville, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Samuel Sukyasov, pro se
2705 Stardust Court, Number 10
Jacksonville, Florida 32211

For Respondent: Gregory Simms, Owner
GMC Property Management
9550 Regency Square Boulevard
Suite 902
Jacksonville, Florida 32225

STATEMENT OF THE ISSUE

The issue is whether Respondent committed a discriminatory housing practice against Respondent in violation of Section 760.23(2), Florida Statutes (2005).

PRELIMINARY STATEMENT

On or about February 8, 2006, Petitioner filed a complaint with the Federal Department of Housing and Urban Development. The complaint alleged that Petitioner was injured by a discriminatory housing practice.

On or about April 21, 2006, Petitioner Samuel Sukyasov (Petitioner) filed a Housing Discrimination Complaint with the Florida Commission on Human Relations (FCHR). The complaint alleges that Respondent GMC Property Management committed discriminatory housing practices based on Petitioner's national origin. Specifically, Petitioner alleged the following: (a) Respondent did not provide requested services and repairs consistent with the terms and conditions applicable to all residents; (b) Respondent entered Petitioner's apartment without prior notice; (c) Respondent contaminated Petitioner's bathtub and sink with hazardous chemicals as part of its pest control routine; (d) Respondent applied its lease provisions related to parking and towing of motor vehicles unequally by towing Petitioner's vehicle; (e) Respondent threatened Petitioner with eviction for non-payment or late payment of rent even though Petitioner was current in the payment of rent.

FCHR investigated Petitioner's complaint. On June 6, 2006, FCHR entered a Notice of Determination of No Reasonable Cause to believe that Respondent violated Section 760.23(2), Florida

Statutes (2005), by discriminating against Petitioner based on his national origin.

On or about July 20, 2006, Petitioner filed a Petition for Relief with FCHR. On August 4, 2006, FCHR referred the petition to the Division of Administrative Hearings.

A Notice of Hearing dated August 16, 2006, scheduled the hearing for October 10, 2006. An Amended Notice of Hearing rescheduled the hearing for October 17, 2006.

During the hearing, Petitioner testified on his own behalf. Petitioner offered 10 exhibits that were accepted into the record as evidence.

Respondent presented the testimony of one witness. Respondent offered five exhibits that were accepted into the record as evidence.

Neither party filed a transcript of the proceeding. On October 26, 2006, Respondent filed a timely Proposed Recommended Order. Petitioner filed an untimely Proposed Recommended Order on October 30, 2006.

FINDINGS OF FACT

1. Petitioner, an Armenian, began renting one of the units in Respondent's Colony Apartments on August 14, 2002, The initial lease term was August 14, 2002, to August 31, 2003. The monthly rent was $340 per month.

2. Petitioner renewed his lease beginning September 1, 2003, through March 31, 2004, for a monthly rent in the amount of $350.

3. Petitioner renewed his lease beginning April 1, 2004, through March 31, 2005, for a monthly rent in the amount of $360.

4. Petitioner renewed his lease in a timely manner on or about March 31, 2005. On April 1, 2005, the monthly rent for Petitioner's apartment increased to $370.

5. On April 4, 2005, Respondent charged Petitioner an extra $50 as a month-to-month charge because Respondent's staff unintentionally failed to enter the lease renewal into management's software. This clerical error resulted in Petitioner receiving one or more delinquency notices.

6. On April 6, 2005, Petitioner paid $365 in rent. Petitioner paid $370 in rent on May 6, 2005.

7. The rules addendum to the lease agreement at issue here provides as follows in pertinent part:

> 1. LATE PAYMENTS AND RETURNED CHECKS:
> a. Rent paid after the first day of each month shall be deemed as late; if rent is not received by close of business on the 5th day of the month, resident agrees to pay an additional fee of $50.00. Such fees will be considered additional rent.
>
> * * *

4. TERMINATION OF LEASE: Either Resident or Landlord may terminate this Lease Agreement at the end of the term by giving the other party thirty (30) days prior written notice. If Resident vacates [or] fails to give such notice, the Lease will be renewed on a month-to-month basis for successive one-month terms at a premium of $50.00 above the current monthly market rent until either party gives thirty (30) days prior written notice to the other, as provided herein. . . .

* * *

9. RIGHT OF ACCESS: Landlord shall have the right to enter the Apartment without notice, for inspection maintenance and pest control during reasonable hours. In case of emergency, Landlord may enter at any time to prevent damage to property.

* * *

15. REPAIRS: Resident accepts the Apartment in its current "as is" condition. Landlord will make necessary repairs to the Apartment to render Apartment tenantable with reasonable promptness after receipt of written notice from Resident unless the repairs are required due to acts of negligence of Resident of his guests, in which case, Resident agrees to pay Landlord immediately the cost of repair. Resident agrees to make maintenance checks at regular intervals on each smoke alarm located in the Apartment and to immediately report any and all defects in writing to Landlord . . . Resident shall maintain the Apartment, including the fixtures therein, in a clean, sightly and sanitary condition . . . .

* * *

23. RULES AND REGULATIONS:

* * *

e. Parking: Resident agrees to abide by the parking regulations established by Landlord. No trailers, campers, boats, or commercial vehicles will be allowed without the written permission of Landlord. Motor vehicles may be towed at Resident's expense, without notice, if parked improperly or if parked on lawns. Only operating passenger vehicles with current tags and ordinary size may be parked on the Premises, motorcycles shall not be parked beside buildings, under overhangs or under stairways; disabled vehicles with flat tires shall not be parked on the Premises and all such vehicles may be towed away without notice and at the Resident's expense. No vehicle repairs will be allowed on the Premises.

* * *

o. Maintenance: Service call are performed during normal weekday working hours except in cases of bona fide emergencies. All service calls must be reported by the Resident to the Landlord (i.e. office personnel). They may be reported by telephone, written message, or in person. Maintenance personnel employed by the Landlord are not authorized to take any individual calls except those that are made through the office. Service calls are performed on a "first-come, first-served" basis with priority given to those requests that would constitute a hazard or discomfort to a resident.

8. On April 28, 2005, Petitioner requested Respondent to perform the following maintenance in his apartment after lunch: (a) repair large burner on stove; (b) repair bottom oven

element; (c) repair living room blind; and (d) repair rusty kitchen drain. Respondent completed these repairs the next day.

9. Petitioner paid $370 in rent for the month of June 2005.

10. On June 10, 2005, Petitioner complained that his refrigerator was leaking and that he lost food in the freezer compartment. Respondent gave this complaint a high priority and changed Petitioner's refrigerator.

11. By letter dated June 15, 2005, Respondent advised Petitioner that his apartment was in an unsanitary condition. The letter informed Petitioner that he had seven days to correct the matter at which time, Respondent intended to inspect Petitioner's apartment.

12. A letter dated June 22, 2005, stated that Respondent intended to inspect Petitioner's apartment for cleanliness on June 23, 2005 at 8:00 a.m. The letter also advised that Respondent intended to fix a leak causing damage to the apartment below Petitioner's apartment. In the letter, Respondent demanded that Petitioner clean his bathtub so that Respondent's maintenance men could caulk it and stop the leak. The letter warned Petitioner that if the bathtub was not cleaned, Respondent would have a housekeeper to clean it and charge Petitioner's account $50 for the service provided.

13. Petitioner paid $370 in rent for the month of July. On July 6, 2005, Respondent finally adjusted Petitioner's account to correct the erroneous $50 one-time, month-to-month charge carried over since April 2005. It took three months for Respondent to verify that the $50 charge was Respondent's clerical error and not Petitioner's failure to pay his rent on time or his failure to timely renew his lease. The correction resulted in a zero balance on Petitioner's account.

14. On July 5, 2005, Petitioner requested the following maintenance in his apartment: (a) repair problem causing sink to backup; and (b) repair problem causing bathtub to have spots and an unpleasant odor. Petitioner told Respondent he believed that the maintenance men had poured a chemical in his bathtub, causing the spots and the odor. Respondent gave this complaint a high priority, sending a maintenance man to Petitioner's apartment later that day. The maintenance man repaired the sink and inspected the bathroom. There is no credible evidence that Respondent used a chemical in the building's plumbing system that caused the spots and bad smell in Respondent's bathtub. The greater weight of the evidence indicates that Petitioner did not keep his tub clean.

15. In July 2005, Respondent's staff placed a warning notice on Petitioner's vehicle. The notice advised that the vehicle was subject to towing by a date certain due to an

expired license tag as of May 2003 and a flat tire. After receiving the notice, Petitioner moved his vehicle and parked it in another area of the apartment complex.

16. Respondent's staff issues these warning notices to any vehicles on the apartment premises that are parked improperly, broken down and unattended, had missing or expired license tag, and/or had a flat tire. Respondent's staff does not check to determine the ownership of the car before issuing the warning.

17. Respondent's staff placed a second warning notice on Petitioner's vehicle for the same reasons. On August 23, 2005, Ace Towing & Storage, pursuant to a contract with Respondent, removed Petitioner's car from the premises. The contract with the towing company results in five to ten cars per month being removed from the premises.

18. Between the time that Petitioner's car was towed in August 2005 and the hearing, Petitioner compiled a long list of vehicles that he claims violated Respondent's rules and regulations for motor vehicles. During the hearing, Respondent presented persuasive evidence that all but two of the cars had been moved or towed from the premises. The two vehicles that remained at the apartment complex no longer violated Respondent's rules and regulations.

19. On August 23, 2005, Petitioner complained that the deadbolt lock on his apartment door would not move.

20. On August 24, 2005, Petitioner complained that his kitchen blind needed to be replaced.

21. On August 25, 2005, Petitioner would not allow Respondent's maintenance men to enter his apartment to make repairs.

22. On August 30, 2005, Petitioner's downstairs neighbor filed a written complaint with Respondent. The neighbor complained that his apartment had bathroom mold for the fourth time and that he was experiencing breathing problems due to the mold. The neighbor also complained that Petitioner made noises all night long. According to the neighbor, the noises sounded like Petitioner was moving furniture.

23. On or about August 31, 2005, Respondent sent Petitioner a letter advising him that loud noises from his apartment were disturbing other residents. The letter requested Petitioner's cooperation in keeping noise at a minimum.

24. At some point in time, Petitioner filed a housing complaint with the City of Jacksonville. In response to Petitioner's complaint to the City of Jacksonville, Respondent delivered a timely letter dated September 13, 2005, to Petitioner. The letter informed Petitioner that it would be inspecting his apartment on September 14, 2005. The letter complied with the requirements of Section 83.53, Florida Statutes (2005).

25. On September 14, 2005, Respondent and the city's inspector attempted an inspection of Petitioner's apartment pursuant to Chapter 518, Jacksonville Municipal Code, to determine compliance with the City's Property Safety and Maintenance Code, a city ordinance, which sets minimum property standards. The inspector could not complete the inspection because he could not gain access to Petitioner's apartment.

26. By letter dated October 12, 2005, Respondent provided Petitioner with a seven-day notice of termination of tenancy with option to cure, as authorized by Section 83.56(2)(b), Florida Statutes (2005), and rules addendum to the lease agreement. The letter states as follows in relevant part:

> You are hereby notified the GMC Property Management intends to terminate you tenancy, for reason of your failure to comply with the duties imposed upon tenants by law and/or with material provision of you rental agreement, to wit: It has come to our attention that you are disturbing and being a nuisance to the resident (sic). This is in violation of your lease agreement. We need you to correct this matter immediately to avoid termination of your lease agreement. Demand is hereby made that you remedy the noncompliance within seven (7) days of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct, or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without your being given an opportunity to cure the noncompliance.

Because Petitioner was not at home or would not open the door, Respondent delivered this letter to Petitioner in a timely fashion by posting it at the entrance to Petitioner's apartment.

27. On April 6, 2006, Petitioner renewed a lease for the term beginning April 1, 2006, to March 31, 2007, for $385 per month.

28. On May 8, 2006, Petitioner complained that he was having problems with his plumbing because his bathroom had brown spots on the floor and wall. Petitioner would not let Respondent's maintenance in his apartment on May 9, 2006.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. See §§ 120.569, 120.57(1), and 760.35(3), Fla. Stat. (2006).

30. Petitioner alleges that Respondent violated the Florida Fair Housing Act, Sections 760.20-760.37, Florida Statutes (2005). Specifically, Petitioner asserts that Respondent violated Section 760.23(2), Florida Statutes (2005), which prohibits discrimination against a person in the terms, conditions, or privileges of rental of a dwelling, or in provision of services or facilities in connection with the rental of a dwelling because of, among other reasons, the person's national origin.

31. In all respects material here, the language in Section 760.23(2), Florida Statutes (2005), is identical to that in Title 42, Section 3604(b), United States Code, which is part of the Federal Fair Housing Act, as amended. "If a Florida Statute is modeled after a federal law on the same subject, the Florida statute will take on the same construction as placed on its federal prototype, insofar as such interpretation is harmonious with the spirit and policy of the Florida legislation." See Brand v. Florida Power Corporation, 633 So. 2d 504, 509-510 (Fla. 1st DCA 1994).

32. Petitioner has the ultimate burden of proving that Respondent committed a discriminatory housing practice based on his national origin, Armenian. See § 760.34(5), Fla. Stat. (2005). However, in the absence of direct evidence of intentional discrimination, the following well-established, three-part burden of proof test developed in McDonnell Douglass Corp. v. Green, 411 U.S. 792 (1973), is used in analyzing cases brought under the Federal Fair Housing Act:

> First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for its action. Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance that the legitimate

> reason asserted by the defendant are in fact mere pretext.

See United States Department of Housing and Urban Development v. Blackwell, 908 F.2d 864, 872 (11th Cir. 1990), quoting Pollitt v. Bramel, 669 F. Supp. 172, 175 (S.D. Ohio 1987).

33. Petitioner initially must establish the following elements: (a) Petitioner is a member of a protected group relative to his national origin; (b) Petitioner rented one of Respondent's apartments and was able and willing to comply with the terms of the lease agreement when he executed his renewal lease on or about March 31, 2005; and (c) Respondent subjected Petitioner and other apartment residents who were not members of the protected group to different rental terms and conditions or provided them with different services and facility usage.

34. Petitioner has not proved the third element of his prima facie case. There is no evidence that Respondent failed or refused to offer the same terms and conditions for renting to Petitioner as were offered to other residents in the apartment complex. Specifically, Petitioner did not demonstrate the following: (a) that Respondent treated him any differently than any other resident who placed a work order for maintenance services; (b) that Respondent ever entered Petitioner's apartment without proper notice; (c) that Respondent had his car towed but failed to have other cars with parking violations

towed; (d) that Respondent threatened to evict him for failure to pay his rent; and (e) that Respondent stained his bathtub with smelly chemicals of any kind.

35. To the extent that Petitioner proved his prima facie case, Respondent presented a legitimate nondiscriminatory reason for every action it took or failed to take. First, Respondent responded promptly to all of Petitioner's maintenance requests and made all necessary repairs when Petitioner did not deny access to his unit. Respondent did not ignore or delay making needed repairs in Petitioner's apartment.

36. Second, Respondent needed emergency access to Petitioner's apartment to stop water damage to the downstairs apartment. Respondent complied with the requirements of Section 83.53, Florida Statutes (2005), before entering Petitioner's apartment to make the necessary repairs.

37. Third, Respondent gave Petitioner two warnings that his car would be towed due to a flat tire and expired license tag. The greater weight of the evidence indicates that Respondent routinely had cars towed that violated the parking rules and regulations without knowing who owned the towed vehicle. All cars identified by Petitioner as violating the parking rules were eventually towed, removed from the premises, or restored to operational status.

38. Fourth, Respondent never threatened to evict Petitioner for non-payment of rent. The erroneous one-time $50 charge to Petitioner's account was a clerical mistake resulting in no harm to Petitioner.

39. Respondent issued a seven-day termination notice with option to cure because Petitioner made noises that disturbed other residents. There is no evidence that any other resident was allowed to make such noises after receiving a first warning and therefore avoid receiving the notice set forth in Section 83.56(2), Florida Statutes (2005).

40. Finally, there is no competent evidence that Respondent used hazardous chemicals in Petitioner's plumbing. Respondent's only concern regarding Petitioner's bathtub, was to require Petitioner to clean the tub so that Respondent's employees could caulk around it to stop the downstairs leak.

41. Petitioner has not shown that Respondent's reasons for actions taken or not taken were a pretext for a discriminatory housing practice based on national origin. The record here indicates that Respondent applied the terms of the lease to all residents, including Petitioner, without regard to their national origin. On the other hand, Petitioner repeatedly violated the lease agreement and its rules addendum.

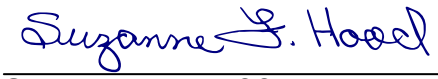
RECOMMENDATION

Based on the forgoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That the Florida Commission on Human Relations enter a final order finding that Respondent did not commit a discriminatory housing practice based on Petitioner's national origin.

DONE AND ENTERED this 30th day of November, 2006, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
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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.