STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EULINDA M. RUSS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 11-5422
	)	
KEYS PROPERTY MANAGEMENT ENTERPRISE, INC.,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

This case was heard on January 30, 2012, in Starke, Florida, before E. Gary Early, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Eulinda Russ, pro se
Post Office Box 902
Starke, Florida 32091

For Respondent: Sean Murrell, Esquire
Murrell Law, LLC
4651 Salisbury Road, Suite 503
Jacksonville, Florida 32256

STATEMENT OF THE ISSUE

Whether Petitioner was the subject of unlawful discrimination in the terms, conditions, privileges, or provision of services in connection with the rental of a dwelling from Respondent, based on her race, in violation of section 804(b) or 804(f) of Title VIII of the Civil Rights Act

of 1968, as amended by the Fair Housing Act of 1988 and the Florida Fair Housing Act, chapter 760, Part II, Florida Statutes (2011).

PRELIMINARY STATEMENT

On July 18, 2011, Petitioner filed a complaint with the U.S. Department of Housing and Urban Development (HUD) and the Florida Commission on Human Relations (FCHR), alleging that she was discriminated against based on her race by Respondent. The basis for the claim of discrimination is that Respondent failed to perform adequate maintenance and repairs to her leased house in the Country Club Woods residential community, or imposed discriminatory terms and conditions on her with regard to her leasehold interest in violation of the Fair Housing Act.

An investigation of the complaint was made by FCHR. On September 19, 2011, the FCHR issued its Notice of Determination of No Cause, which incorporated a HUD Determination, dated September 8, 2011, and concluded that there was no reasonable cause to believe that a discriminatory housing practice had occurred.

Petitioner disagreed with FCHR's determination and filed a Petition for Relief. The petition was forwarded to the Division of Administrative Hearings for a formal hearing on the matter. The final hearing was scheduled for December 6, 2011. Petitioner requested a continuance of the hearing, which was

unopposed. The hearing was reset for January 30, 2012, and was held as scheduled.

At the hearing, Petitioner testified on her own behalf and offered the testimony of Kelsy Roulhac, her son; and Wanda Gary, a Florida Correction and Probation Officer. Petitioner offered Petitioner's Exhibits P1-P21, which were received in evidence. Respondent presented the testimony of Rebekkah Baker, Property Manager for Country Club Woods; Samuel Baker, who performed maintenance at Country Club Woods; Karen Headrick, the CEO for Respondent; Sheila Palmer, a resident of Country Club Woods; and Tynesha Epps, a resident of Country Club Woods. Respondent offered Respondent's Exhibits R1-R5, which were received in evidence.

The FCHR did not have the final hearing recorded either by electronic means or by court reporter. Neither party elected to have a court reporter present. Therefore, there is no official record of the final hearing.

After the hearing, Petitioner and Respondent timely filed Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order. References to statutes are to Florida Statutes (2011) unless otherwise noted.

FINDINGS OF FACT

1. Respondent owns and manages the Country Club Woods residential community in Starke, Florida. Country Club Woods is

a racially-mixed community. The current residential mix includes 29 African-American families and 6 white families. County Club Woods receives low-income housing subsidies in the form of tax credits through the Florida Housing Finance Corporation. Some residents qualify for federal Section 8 housing subsidies.

2. Petitioner is African-American. On February 4, 2011, Petitioner signed a lease agreement for a home in Country Club Woods. Rent was $698.00 per month. The home was vacant, and power and water had been turned off. Respondent asked Petitioner to activate power and water so that repairs and unit preparation could be performed, and she did so. Petitioner's rent for February was partially prorated to account for the period during which she did not occupy the unit.

3. The lease agreement required that all occupants of the house be listed, and provided that "[n]o other occupants are permitted." Guests were limited to stays of no more than 14 consecutive days. Due to the status of Country Club Woods as an affordable housing community, it is subject to restrictions on the income and criminal history of its residents. Therefore, all permanent occupants are required to undergo income and background screening to ensure that the low income housing tax credit rules are being met. The failure to do so could jeopardize the tax credits.

4. When she signed the lease, Petitioner knew what the lease required regarding the occupancy of the house. Petitioner listed Aulettia Russ and Aarian Russ, her daughter and son, as occupants with her in the home.

5. After the lease contract was signed, Respondent performed a few repairs and updates to prepare the unit for Petitioner. Mr. Sam Baker, who performed maintenance services for County Club Woods, fumigated the house and painted some of the interior walls. He performed a minor repair to the roof, which consisted of applying tar around the cracked rubber boot of the roof drain vent. Mr. Baker moved a stove into the house from another unit because there was no stove when the lease was signed. He also replaced the toilet with a new one.

6. Petitioner moved into the unit on February 16, 2010. She was joined by her fiancé, Kevin Sampson, and her older son, Kelsy Roulhac, neither of whom were listed as occupants. Mr. Sampson was on probation for several felony offenses. Both Mr. Sampson and Mr. Roulhac were residents for the entirety of Petitioner's tenancy. At no time during the tenancy did Petitioner seek to add Mr. Sampson or Mr. Roulhac to the lease.

7. Petitioner testified that Rebekkah Baker, the property manager, knew that Mr. Sampson was a permanent occupant, but had no objection. Ms. Baker denied that she consented to his occupancy, given that it would have been a violation of Country

Club Woods policy against leasing to persons with a criminal history in the past seven years. Given the consequences of failing to meet the occupancy and background screening requirements, Ms. Baker's testimony is credited.

8. When Petitioner moved in, there were still problems with the unit. Problems noted by Petitioner included a broken dishwasher, mildew on a number of surfaces, dead insects -- likely from the fumigation -- in the cabinets, a hole in the foyer wall caused by the adjacent door's doorknob, a ceiling stain from the roof leak, a missing shower head, a broken light fixture, and a missing smoke alarm. In addition, the carpet was stained and in generally very poor condition.

9. Petitioner resolved the mildew problem by cleaning the affected surfaces with Tilex. Petitioner's son, Mr. Roulhac, got rid of the dead insects and cleaned the cabinets. Petitioner replaced the showerhead on her own.

10. Shortly after she moved in, Petitioner notified Respondent that her roof was leaking. Mr. Baker went to the house, advised Petitioner's daughter that he was there to fix the roof, and went onto the roof. He determined that the leak was occurring at the location of his previous repair. He completed the repair by re-tarring the roof drain vent boot.

11. Petitioner testified that the roof continued to leak after heavy rains. She indicated that she made a subsequent

complaint via a message left on Ms. Baker's telephone answering machine. Ms. Baker testified that she received no subsequent complaints, and there is no other evidence to suggest that Respondent received any subsequent complaints regarding the roof. Mr. Baker performed no further repairs.

12. Petitioner complained that the dishwasher was holding water. She testified that Respondent never came to fix the dishwasher. Both Mr. Baker and Ms. Baker testified that Mr. Baker was tasked to repair the dishwasher, but upon arriving at the house was denied entry, with the explanation that the dishwasher had been fixed by a friend, and the problem resolved by removing a plastic fork that had clogged the drain.

13. From the time Petitioner moved in, until the time she vacated the home, Mr. Baker fixed the hole in the foyer wall and the broken light fixture. In addition, Mr. Baker came to the house to fix the refrigerator, which was a problem that was not on the original list.

14. From the beginning of her tenancy, Petitioner complained of the carpet. The carpet was badly stained and worn. In addition, the carpet contained a dye or some other substance that aggravated Aarian Russ's asthma. It was Petitioner's desire to have the carpet replaced before the time of her daughter's graduation.

15. Respondent agreed to replace the carpet, and had employees of a flooring company go to Petitioner's house to measure for new carpet. The flooring company employees were allowed entry to the house by Petitioner's daughter. They measured the rooms, except for Petitioner's bedroom, which was locked. Respondent advised Petitioner that the measurements of the bedroom of an identical unit could be provided to the carpet company. It is not known if that was done. Due to difficulties on the part of the flooring company, the new carpet was not installed before Petitioner vacated the unit. There was no evidence offered to suggest any relationship between the failure to install new carpet and Petitioner's race.

16. Petitioner complained that she had not been given notice that the flooring company employees were coming, and complained that Respondent had not performed a background check on the workers. She argued that she was entitled to have a background check done on anyone providing services before she would have to allow them into her home. There is no relationship between Petitioner's complaints regarding the lack of a background check on the workers and Petitioner's race.

17. The lease agreement provides that "[m]anagement will make repairs . . . after receipt of written notice." Respondent occasionally prepared work orders describing the nature of the problem at a unit, and the work done to resolve the problem.

However, the evidence demonstrates that written work orders were likely the exception rather than the rule. It appears that most problems were reported by verbal requests, and resolved by Mr. Baker's maintenance and repairs.

18. Most of Petitioner's requests for repairs and maintenance were made verbally. At some point, due to the number of items, Petitioner provided Respondent with a list of items for repair. There is no evidence that any repairs at Petitioner's home were documented with a work order. In any event, there was no evidence that the failure to document the work, which was common, was the result of Petitioner's race.

19. Petitioner did submit seven work orders in evidence. Six of the work orders reflected repairs made by Respondent to the homes of African-American families upon verbal requests. One of the work orders reflected repairs made by Respondent to the home of a white family upon a verbal request. Petitioner questioned why none of her repairs were memorialized in work orders. The work orders do not substantiate that Petitioner was discriminated against on account of her race, and in fact serve to indicate that Respondent provided maintenance services equally, without any consideration to the race of the person requesting such services.

20. Petitioner complained that Mr. Baker did not have "credentials," and questioned him regarding any education or

licenses that qualified him to perform maintenance, including electrical work. Whether qualified to do so or not, Mr. Baker performed maintenance for all of the residents of Country Club Woods, regardless of their race. There is no relationship between Petitioner's complaints regarding Mr. Baker's credentials and Petitioner's race.

21. Beginning in April, 2011, Petitioner began to fall behind on her rent. Petitioner was paid bi-weekly, though how that affected her ability to plan for monthly rental payments was not clearly explained. On April 21, 2011, Ms. Baker posted a notice on Petitioner's door demanding that the $279.60 balance of the April rent payment be made. Petitioner denied having seen the notice. However, the copy of the notice put in evidence includes the notation from Ms. Baker that "[p]romised to pay balance w/ May 2011's rent."

22. On May 9, 2011, Ms. Baker posted a notice on Petitioner's door demanding that the rent payment be made. The amount in arrears was calculated to be $1,077.60, which included a late fee. Petitioner denied having seen the notice. However, the copy of the notice put in evidence includes the notation from Ms. Baker that "pd. $698 on 5/11/11."

23. On June 1, 2011, Ms. Baker posted a notice on Petitioner's door demanding that the rent payment be made. The

amount in arrears remained at $1,077.60. Petitioner denied having seen the notice.

24. On July 27, 2011, Respondent provided a notice to Petitioner indicating that due to unauthorized occupants and $1,975 in unpaid rent, Petitioner had until August 1, 2011, to vacate the premises, or Respondent would commence eviction proceedings. Petitioner admitted to having received that notice.

25. Respondent's resident history report indicates that by the time Petitioner vacated the home on August 31, 2011, her rent was $2,075.60 in arrears. Some of that was due to assessed late charges, but the majority reflected unpaid rent. When Petitioner vacated the unit, Petitioner's security deposit was applied, the remaining arrearage was assigned to a collection company, and Respondent's books were cleared.

26. Ms. Sheila Palmer and Ms. Tynesha Epps testified at the hearing. They have been residents of Country Club Woods for 16 years and for 1 year and 3 months, respectively. Both are African-American. Both testified that they had never been refused maintenance at their homes, and that Respondent was responsive to their requests for maintenance which were generally verbal. Neither Ms. Palmer nor Ms. Epps was aware of any instance in which management of Country Club Woods had

discriminated against any tenant due to their race, though neither personally knew Petitioner.

27. Ms. Headrick, Ms. Baker, and Mr. Baker each testified that they never denied or limited repair and maintenance services to any resident of Country Club Woods account of their race. They each testified convincingly that race played no factor in their duties to their tenants.

Ultimate Findings of Fact

28. There was no competent, substantial evidence adduced at the hearing that Respondent failed or refused to provide services to Petitioner under the same terms and conditions that were applicable to all persons residing in the Country Club Woods community. There was not a scintilla of evidence that, in providing services to Petitioner, Respondent deviated from its standard practice of providing maintenance services to all residents of Country Club Woods regardless of their race, income, or any other reason.

29. The evidence does support a finding that Petitioner materially breached the terms of the lease agreement, both by allowing undisclosed persons to reside at the house, and by failing to timely pay rent.

30. Petitioner's race had nothing to do with the timing or manner in which maintenance and repair services were provided to her by Respondent, and it is expressly so found. The evidence

did not demonstrate that Respondent discriminated against Petitioner on the basis of her race. Therefore, the Petition for Relief should be dismissed.

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. § 120.57(1), Fla. Stat.

32. Florida's Fair Housing Act, sections 760.20 through 760.37, Florida Statutes, makes it unlawful to discriminate in the provision of services provided to the tenants of rental housing. In that regard, section 760.23(2), provides that:

> (2) It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, or religion.

33. In cases involving a claim of rental housing discrimination, the burden of proof is on the complainant. § 760.34(5), Fla. Stat.

34. The Florida Fair Housing Act is patterned after Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Act of 1988, and discrimination covered under the Florida Fair Housing Act is the same discrimination prohibited under the Federal Fair Housing Act. Savanna Club Worship Serv. v. Savanna Club Homeowners' Ass'n, 456 F. Supp. 2d 1223, 1224

(S.D. Fla. 2005); see also Loren v. Sasser, 309 F.3d 1296, 1300 (11th Cir. 2002). When "a Florida statute is modeled after a federal law on the same subject, the Florida statute will take on the same constructions as placed on its federal prototype." Brand v. Florida Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994); see also Millsap v. Cornerstone Residential Mgmt., 2010 U.S. Dist. LEXIS 8031 (S.D. Fla. 2010); Dornbach v. Holley, 854 So. 2d 211, 213 (Fla. 2d DCA 2002); Fla. Dep't of Cmty. Aff. v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

35. A plaintiff may proceed under the Fair Housing Act under theories of either disparate impact or disparate treatment, or both. Head v. Cornerstone Residential Mgmt., 2010 U.S. Dist. LEXIS 99379 (S.D. Fla. 2010). To establish a prima facie case of disparate impact, Petitioner would have to prove a significantly adverse or disproportionate impact on a protected class of persons as a result of Respondent's facially neutral acts or practices. Head v. Cornerstone Residential Mgmt., supra, citing E.E.O.C. v. Joe's Stone Crab, Inc., 220 F.3d 1263, 1278 (11th Cir. 2000). To prevail on a disparate treatment in housing claim, Petitioner would have to come forward with evidence that she was treated differently than similarly-situated tenants. Head v. Cornerstone Residential Mgmt., supra, citing Schwarz v. City of Treasure Island, 544 F.3d 1201, 1216

(11th Cir. 2008) and Hallmark Dev., Inc. v. Fulton County, 466 F.3d 1276, 1286 (11th Cir. 2006).

36. The evidence indicates that Petitioner was attempting to prove that she was discriminated against due to Respondent's disparate treatment of her as opposed to other residents, both African-American and white, that lived in the Country Club Woods community.

37. In establishing that she was the subject of discrimination based upon her race, Petitioner could either produce direct evidence of discrimination that motivated disparate treatment in the provision of services to her, or prove circumstantial evidence sufficient to allow the trier of fact to infer that discrimination was the cause of the disparate treatment. See King v. Auto, Truck, Indus. Parts & Supply, 21 F. Supp. 2d 1370, 1381 (N.D. Fla. 1998).

38. Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to inference or presumption. Denney v. City of Albany, 247 F.3d 1172, 1182 (11th Cir. 2001); Holifield v. Reno, 115 F.3d 1555, 1561 (11th Cir. 1997). Courts have held that "'only the most blatant remarks, whose intent could be nothing other than to discriminate. . .' will constitute direct evidence of discrimination." Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1358-59 (11th Cir. 1999)(citations omitted).

39. Petitioner presented no direct evidence of discrimination by Respondent in its provision of maintenance and repair services to any resident of Country Club Woods, including Petitioner.

40. When there is no direct evidence of discrimination, fair housing cases are subject to the three-part test set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981). Boykin v. Bank of America Corp., 162 Fed. Appx. 837, 838; 2005 U.S. App. LEXIS 28415 (11th Cir. 2005); see also Massaro v. Mainlands Section 1 & 2 Civic Ass'n, Inc., 3 F.3d 1472, 1476 n.6 (11th Cir. 1993); Secretary, U.S. Dept. of Housing and Urban Development, on Behalf of Herron v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990); Savannah Club Worship Serv. v. Savannah Club Homeowners' Ass'n, 456 F. Supp. 2d at 1231-1232.

41. Under the three-part test, Petitioner has the initial burden of establishing a prima facie case of unlawful discrimination. McDonnell Douglas Corp. v. Green, at 802; Texas Dep't of Cmty. Aff. v. Burdine, at 252-253; Burke-Fowler v. Orange Cnty., Fla., 447 F.3d 1319, 1323 (11th Cir. 2006); Valenzuela v GlobeGround North America, LLC., 18 So. 3d at 22. "The elements of a prima facie case are flexible and should be tailored, on a case-by-case basis, to differing factual circumstances." Boykin v. Bank of America Corp. 162 Fed. Appx.

at 838-839, citing Fitzpatrick v. City of Atlanta, 2 F.3d 1112, 1123 (11th Cir. 1993)

42. If Petitioner is able to prove a prima facie case by a preponderance of the evidence, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for its actions. Texas Dep't of Cmty. Aff. v. Burdine, 450 U.S. at 255; Dep't of Corr. v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991). Respondent has the burden of production, not persuasion, to demonstrate to the finder of fact that its action as a landlord, upon which the complaint was made, was non-discriminatory. Dep't of Corr. v. Chandler, supra. This burden of production is "exceedingly light." Holifield v. Reno, 115 F.3d 1555, 1564 (11th Cir. 1997); Turnes v. Amsouth Bank, N.A., 36 F.3d 1057, 1061 (11th Cir. 1994).

43. If Respondent produces evidence that the basis for its action was non-discriminatory, then Petitioner must establish that the proffered reason was not the true reason but merely a pretext for discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 516-518 (1993). In order to satisfy this final step of the process, Petitioner must "show[] directly that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief." Dep't of Corr. v. Chandler, 582 So. 2d at 1186, citing Tex. Dep't of

Cmty. Aff. v. Burdine, 450 U.S. at 252-256. Pretext can be shown by inconsistencies and/or contradictions in testimony. Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143 (2000); Blackwell, supra; Woodward v. Fanboy, L.L.C., 298 F.3d 1261 (11th Cir. 2002). The demonstration of pretext "merges with the plaintiff's ultimate burden of showing that the defendant intentionally discriminated against the plaintiff." (citations omitted) Holifield v. Reno, 115 F.3d at 1565.

44. Petitioner has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). Failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1013 n.7 (Fla. 1st DCA 1996), aff'd, 679 So. 2d, 1183 (Fla. 1996)(citing Arnold v. Burger Queen Systems, 509 So. 2d 958 (Fla. 2d DCA 1987)).

45. As applied to this case, the standard established in McDonnell-Douglas requires Petitioner to establish in her prima facie case: (1) that she is a member of a protected class; (2) that she requested that necessary maintenance services be performed to her dwelling by Respondent on terms comparable to others living in Country Club Woods; and (3) that, based on her race, she was denied provision of services protected by the Fair Housing Act which were available to other tenants of Country

Club Woods. See, e.g., Savannah Club Worship Serv. v. Savannah Club Homeowners' Ass'n, 456 F. Supp. 2d at 1232.

46. Petitioner did not meet her burden to establish a prima facie case of discrimination. Petitioner failed to prove that any actions on the part of Respondent were discriminatory in nature. The evidence in this case demonstrates that Petitioner received services from Respondent in response to requests that were generally comparable to the manner in which most maintenance services were requested and provided to persons of all races in Country Club Woods. Petitioner did not prove by a preponderance of the evidence that Respondent treated her differently than other residents of Country Club Woods based on her race.

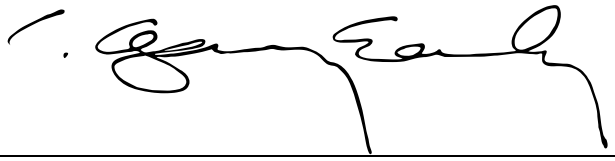
47. It should be noted that Petitioner's dissatisfaction with the condition of her unit was not entirely misplaced. It appears that the carpet was indeed in poor condition, and that some repairs could have been made faster. Nonetheless, Petitioner failed to present even a scintilla of evidence that she was discriminated against on the basis of her race. Even if the lack of written work orders was not the norm, such a mild departure from normal procedures would not, given the facts of this case, be sufficient to support Petitioner's claim. Boykin v. Bank of America Corp., 162 Fed. Appx. at 839; Randle v. City of Aurora, 69 F.3d 441, 454 (10th Cir. 1995).

48. The evidence demonstrated that the residents of Country Club Woods, including Petitioner, were treated fairly, without consideration of race, and that Respondent, Keys Property Management Enterprise, Inc., did not commit a discriminatory housing practice as to Petitioner, Eulinda M. Russ. Therefore the Petition for Relief should be dismissed.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a final order dismissing the Petition for Relief filed in FCHR No. 2012H0004.

DONE AND ENTERED this 16th day of February, 2012, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of February, 2012.

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.