



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: HOha14120961
HUD No.: [REDACTED]

JAMAL L. SMITH, in his official capacity as
EXECUTIVE DIRECTOR of the
INDIANA CIVIL RIGHTS COMMISSION,
Complainant,

v.

Herman & Kittles Properties, Inc./Franklin Place Apartments,
Respondent.

NOTICE OF FINDING and
ISSUANCE OF CHARGE

The Executive Director of the Indiana Civil Rights Commission (“Commission,”) pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Reasonable cause exists to believe that an unlawful discriminatory practice occurred in this instance. A Charge is therefore issued in accordance with 910 IAC 2-6-6(b).

On December 19, 2014, [REDACTED] (“Complainant”) filed a Complaint with the Commission against Herman & Kittles Properties and Franklin Place Apartments (“Respondent”) alleging discrimination on the basis of disability in violation of the Indiana Fair Housing Act (Ind. Code § 22-9.5, *et seq.*), the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*), and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Executive Director now finds the following:

There are several issues pending before the Commission. The first issue before the Commission is whether Respondent evicted Complainant because she has a disability as contemplated under the law. In order to prevail, Complainant must show that: 1) she is a member of a protected class; 2) she was qualified, ready, willing, and able to continue her tenancy with Respondent in accordance with its reasonable terms and conditions; 3) she made a bona fide offer to continue her tenancy with Respondent; 4) Respondent refused Complainants’ offer; and 5) Respondent treated similarly-situated tenants without disabilities more favorably under similar circumstances. It is evident that Complainant is a member of a protected class by virtue of her disability. However, evidence shows that she was unwilling to continue her tenancy with



Respondent in accordance with its reasonable terms and conditions. Moreover, no evidence has been provided or uncovered to show that similarly-situated tenants without disabilities were treated more favorably under similar circumstances.

By way of background, Complainant began her tenancy with Respondent on or about January 1, 2014. At all times relevant to the Complaint, Complainant's lease prohibited threats, intimidation, or harassment toward Respondent's employees, guests, and other residents. The lease also provided that all rule violations constitute a breach of lease which could result in the termination of the lease and possible eviction proceedings. Complainant was aware of these provisions as evidenced by her signature on the lease on or about January 1, 2014. Nonetheless, Complainant failed to meet Respondent's legitimate tenancy expectations. Specifically, during her tenancy, Respondent received numerous complaints from other tenants and staff regarding Complainant's behavior. Evidence shows that on or about March 26, 2014, Respondent received a complaint from another resident alleging that Complainant was seen screaming and yelling at kids on the playground. Shortly thereafter, on or about April 5, 2014, Respondent received another complaint from a resident asserting that Complainant forced her way into his apartment while intoxicated and started a fight with his wife. Less than a month later, on or about April 21, 2014, Respondent observed Complainant screaming and using explicit language toward staff. Similarly, Complainant wrote the following on her own vehicle regarding Respondent: "Franklin Place Apartments have...black toxic mold. Stan Burton is a Slumlord." After several additional instances of Complainant engaging disturbing, threatening, and belligerent behavior toward staff and other residents, Respondent filed eviction proceedings on or about May 9, 2014 for disturbing the quiet enjoyment of other residents. Ultimately, the proceedings were dropped after Complainant voluntarily vacated the premises on or about June 5, 2014.

Despite Complainant's assertions, there is insufficient evidence to support her claims. Rather, evidence shows that she engaged in threatening behavior and disturbed the quiet enjoyment of the residence in contravention of Respondent's policies and procedures. No evidence has been provided or uncovered to show that similarly-situated tenants without impairment were treated more favorably under similar circumstances. As such and based upon the aforementioned, there is no reasonable cause to believe that Respondent violated the laws as alleged with respect to the first issue. Complainant may appeal the above no reasonable cause finding regarding the first issue to the full Commission. 910 IAC 1-3-2(g). The written appeal must be filed with the Commission within fifteen (15) days of receipt of this Notice and must include any new and additional evidence relied on by Complainant to support the appeal.

The second issue before the Commission is whether the Respondent unreasonably delayed or denied Complainant's request for a reasonable accommodation. In order to prevail, she must prove that 1) she has a disability as defined under the law; 2) Respondent was or should have been aware of Complainant's disability; 3) Complainant requested a reasonable accommodation necessary to afford her an opportunity to use and enjoy the premises; and 4) Respondent unreasonably delayed or denied the requested accommodation. As previously

stated, Complainant has a disability as defined under the law and Respondent was or should have been aware of Complainant's impairment. Moreover, Complainant requested a reasonable accommodation necessary to afford her the opportunity to enjoy her housing; however, Respondent unreasonably delayed or denied the request. As such, probable cause exists to believe that a discriminatory practice occurred with respect to the second issue.

By way of background and at all times relevant to the Complaint, Respondent's transfer policy prohibited residential transfers between units within the first six months of tenancy. While Respondent asserts that transfers may be permitted for "medical or Fair Housing reasons," evidence shows that Respondent denied several requests from Complainant to transfer to another apartment because of her medical condition. Specifically, on or about January 1, 2014, the first day Complainant moved into Respondent's residence, Complainant completed a "water damage, moisture, or indoor air quality notification form" indicating that the ceiling had major water damage and that several areas had mold. Complainant also noted that she had an "allergic reaction to the mold" and listed several symptoms of her condition. Moreover, Respondent admits that in February 2014, Complainant requested to transfer to another unit because she had a disability which was affected by mold in her apartment. Shortly thereafter, on or about February 6, 2014, the Johnson County Health Department inspected Complainant's unit and noted that it could "not specifically see or identify any visible mold" and that "the small discoloration noted on the light fixture in the room adjacent to the bathroom could not be positively identify as mold." However, the evaluation also stated that "based on [Complainant's] own personal concerns for the safety of this apartment, the Johnson County Health Department would encourage [Complainant] to relocate. The Johnson County Health Department will further suggest to the management of [Respondent] to have this apartment further evaluated for its safety." On or about March 5, 2014, the City of Franklin Community Development Specialist conducted another inspection and noted water damage throughout the interior of the apartment. The inspection further noted that "evidence of prior water intrusion could lead to possible future growth of mold if temperature, humidity, future moisture issues, and the ever present food source of dust/dirt get out of control" and instructed Respondent to "remediate any mold found in the process appropriately" as well as "repair any damage" to the property. No evidence has been provided or uncovered to show that Respondent made the repairs as requested or engaged in the interactive dialogue process with Complainant regarding her request.

Despite Respondent's assertions, there is insufficient evidence to support its claims. Respondent admits that Complainant requested a reasonable accommodation during her tenancy. While Respondent asserts that Complainant never disclosed the nature of her disability and did not appear to be disabled, Respondent admits that it was generally aware that Complainant had a disability. It is important to note that the law does not require a tenant to disclose the prognosis or diagnosis related to a condition; rather, the law requires a Respondent, once put on notice about a possible disability and need for an accommodation, to engage in the interactive dialogue process. However, no evidence has been provided or uncovered to show that Respondent engaged in this process. Simply stated, Respondent's

failure to engage in the interactive dialogue process after Complainant requested a reasonable accommodation constitutes a violation of the Fair Housing laws as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Fair Housing Act, the Indiana Civil Rights Law, and/or Title VIII of the Civil Rights Act of 1968, as amended, occurred in the aforementioned case. As permitted by 910 IAC 2-6-6(h), Respondent, Complainant, or an aggrieved person on whose behalf the Complaint is filed may elect to have the claims asserted in a civil action under Ind. Code § 22-9.5-6-12 in lieu of an administrative proceeding under 910 IAC 2-7. In the event the parties seek to pursue such an election, it must be made not later than twenty (20) days after the receipt of service of this Notice of Finding and Charge. The notice of any such election must be filed with the Commission and served on the Director, the Respondent, and Complainant in accordance with 910 IAC 2-6-6. If such an election is not timely made, the administrative proceedings initiated by the Charge will continue as scheduled. 910 IAC 2-6-6. Moreover, the Respondent shall have an opportunity to file an answer to this charge within thirty (30) days of service of this Charge. [REDACTED] and any other person aggrieved by this alleged discriminatory practice may participate as a party in the hearing by filing a request for intervention. All discovery in this matter must be completed fifteen (15) days prior to the date of hearing. If at any time following service of this charge Respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of this charge, Respondent must provide a copy of this charge to the person prior to entering into such contract, sale, encumbrance or lease. 910 IAC 2-7-4(e)(3).

June 12, 2015

Date



Jamal L. Smith
Executive Director
Indiana Civil Rights Commission