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INVESTIGATIVE REPORT

Complainant: Whitney and Bryan Tummings HV19-0002 & HUD # 01-18-0527-8

Respondent: Dana Stevens

Charge: Discrimination in Housing based on minor children [REDACTED]

SUMMARY OF COMPLAINT

Whitney Tummings was seeking housing for her husband Bryan and two small children in the South Burlington area during August 2018. She saw an advertisement for a two-bedroom, two-bathroom unit in a Trulia.com posting. She called the owner, Dana Stevens, and set up an appointment to see the unit the next day. While at the unit, Ms. Tummings told Ms. Stevens that she had two young children who were in Jamaica and she and her husband Bryan would be bringing them to Vermont once they found a place to live. Ms. Stevens stated she would like to meet Bryan Tummings before making any decision on renting the unit and they set a date. The next day, Ms. Stevens left a voicemail on Ms. Tummings's phone stating she did not want to rent to them because of the children. Ms. Stevens then called Ms. Tummings to make sure she got the message. Ms. Tummings spoke to her and Ms. Stevens made several statements about not wanting to rent to a family with small children. Ms. Tummings recorded that conversation and provided both the recorded message and the recorded conversation to the Human Rights Commission when she filed her complaint.

SUMMARY OF RESPONSE

[REDACTED]

[REDACTED] While she did not explicitly deny discriminating against the Tummings based on the presence of minor children, she responded that the fact that minor children would be occupying the premises was one factor that caused Ms. Stevens to change her mind about renting her unit at all, and subsequently took the unit off the rental market.

PRELIMINARY RECOMMENDATIONS

- 1) This investigation makes a preliminary recommendation to the Human Rights Commission to find there are **reasonable grounds** to believe that Dana Stevens discriminated against Whitney and Bryan Tummings based on intent to occupy a rental unit with minor children, in violation of the Vermont Fair Housing and Public Accommodations Act (VFHPAA) 9 V.S.A. §4503(a)(1).

- 2) This investigation makes a preliminary recommendation to the Human Rights Commission to find there are **reasonable grounds** that Dana Stevens made discriminatory statements against families with minor children, in violation of §4503 (a)(3).



INTERVIEWS

- Whitney Tummings – 12/12/18 and 2/22/19
- Dana Stevens - 3/19/19


DOCUMENTS & RECORDINGS

- Tummings Complaint of discrimination - 8/27/18
- Response – 9/11/18
- Trulia.com screen shots of Stevens' rental unit – 8/11/18 Updated listing
- Washington County Superior Court filings

Two recordings made by from Whitney Tummings – 8/28/18 (voicemail from Dana Stevens and live recording of conversation with Whitney Tummings). Docket No. 485-8-18 Wncv

I. INTRODUCTION: OVERVIEW OF THE COMPLAINT

On August 10, 2018, Whitney Tummings saw an advertisement on Trulia.com for a two-bedroom, two-bathroom, \$1800 a month rental in South Burlington, Vermont. She called the number provided and spoke with the owner, Ms. Dana Stevens. Ms. Tummings expressed interest in viewing the unit and set up an appointment for the next day. The listing was appealing to Ms. Tummings because of the size of the unit, the proximity to her and her husband's jobs and because of the good reputation of the South Burlington school district.¹

Ms. Tummings went to the appointment the next day. When Ms. Stevens came out to greet Ms. Tummings, Ms. Tummings stated that at first Ms. Stevens walked past her and then seemed taken back and slightly less willing to show her the rental 

¹ Interview with Whitney Tummings - 2/22/19.

[REDACTED]

During the showing, Ms. Tummings disclosed that she and her husband Bryan were in the process of bringing their two young children to Vermont from Jamaica to live with them.⁴ Toward the end of the meeting, Ms. Stevens told Ms. Tummings she wanted to meet Bryan and a date of August 15, 2018 was set. Ms. Tummings reported that Ms. Stevens did not give her an application to fill out before she left.⁵

On the afternoon of August 15, 2018, Ms. Tummings received a voicemail message from Ms. Stevens stating she was 'going to say no because the place was not suitable for little children' and that when 'she has her grandchildren there the place is a wreck, and with little children it's going to get dirty and all.'⁶ The Tummings have an audio recording of this message.

Later that same day, Ms. Stevens called to make sure Ms. Tummings had received her voicemail about her decision not to rent to our family. During this conversation Ms. Stevens made several discriminatory statements about not wanting to rent to a family with small children, much of which focused on safety due to the fact there was an attached balcony as well as concern about "wear and tear."⁷ Ms. Tummings made an audio recording of this conversation. In total, Ms. Stevens made 14 discriminatory statements against families with children:

1. I'm going to say no because I don't think my place is suitable for little children.
2. When I have my grandchildren here, the place is a wreck and I just feel like with little children, it's going to get kind of dirty and all.
3. I've just decided that I really don't want to have children because of the balcony and my own grandkids come and the place is kind of trashed.
4. A three-year-old drops food on the carpet and that's kind of the thing that I'm feeling.
5. I'm more concerned about the safety of the balcony and kids climbing and falling.
6. It's not really suitable for children.
7. I don't want to take that responsibility.
8. I'm feeling like I want to be renting to one person or two without children because of wear and tear...because of my furniture and all of that.
9. No, no, I think I'm just going to say no children.
10. I don't want to have the risk of children.
11. I don't want my place to get overused, if you know what I mean with a family.
12. I'm thinking of a like a single person.
13. I'm afraid that with little children, I have my grandchildren here overnight occasionally, I just feel like it's not really a great place for little kids.

² *Id.*

³ Interview with Dana Stevens – 3/19/19.

⁴ Interview with Whitney Tummings - 2/22/19.

⁵ *Id.*

⁶ Recorded voicemail from Whitney Tummings phone -

⁷ Recorded live conversation between Whitney Tummings and Dana Stevens -

14. I will talk to some of the people who rent to people and see what their track history is as far as renting to a family with two little kids and see what they say.

Despite Ms. Tummings offer to pay for the storage of any of Ms. Stevens' personal belongings in the apartment, or to have the unit professionally cleaned upon vacating, Ms. Stevens remained adamant in her decision not to rent to anyone having minor children.⁸

Ms. Tummings subsequently contacted the Vermont Human Rights Commission to report her interactions with Ms. Stevens and provided the recordings of the phone message and her conversation with Ms. Stevens. A complaint of discrimination was filed and the Human Rights Commission filed a complaint and motion for injunctive relief in court. This procedural decision was made because of the existence of the recordings and the unambiguously discriminatory statements Ms. Stevens made against renting to a family with minor children and at the time, Complainants were homeless and Ms. Steven's rental unit remained opened

LEGAL ANALYSIS

1) Minor children

The Vermont Fair Housing and Public Accommodations Act (VFHPAA) prohibits discrimination based on minor children at 9 V.S.A. §4503(a)(1):

(a) It shall be unlawful for any person:

(1) To refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling or other real estate to any person because of the race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national origin, or handicap of a person, ***or because a person intends to occupy a dwelling with one or more minor children***, or because a person is a recipient of public assistance.

It is relatively rare to have direct evidence of discrimination.⁹ However, in this case, there is ample "direct evidence" of discrimination against renting to a family with minor children found on the two recordings made by Whitney Tummings, thus, there is no need to go through the burden-shifting *McDonnell-Douglas* framework so often associated with discrimination complaints.¹⁰ The defenses offered by Ms. Stevens are more focused on mitigation of damages than any legal defense to violating the statute. In the response, her counsel represented the following:

Ms. Stevens only became aware that young children would be occupying the apartment at the very near end of the visit with Ms. Tummings. The apartment is on the third floor of a condo unit with a balcony with little to no safety measures. After a few days of worrying about the welfare and safety of young kids in the apartment and where

⁸ *Id.*

⁹ *Human Rights Com'n v. LaBrie, Inc.*, 164 Vt. 237, 244 (1995). *LaBrie* was a housing case which involved proof of direct discrimination in housing based on minor children through use of occupancy limit rules.

¹⁰ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-803 (1973). The burden-shifting framework includes the requirement that the complainant first establish a *prima facie* case of discrimination, then that the respondents produce evidence of a "legitimate non-discriminatory reason" for its actions, which, if shown, shifts the burden back to the complainant to show that those reasons are pretexts for discrimination.

Ms. Stevens would park her car during her 3 month [sic] trip, and getting all of her personal items out of her condo in a short period of time, she concluded that she just should not rent at all. Ms. Stevens also factored in her health concerns (recently diagnosed with kidney disease). She believed if she rented to anyone she would return home in December with no place to live. If Ms. Stevens had decided to rent the unit to anyone the situation was going to place a lot of stress on her physically -given her age and health condition-as she would have to move everything herself. Between August 11, 2018 and the time she decided not to rent the apartment, Ms. Stevens spent a lot of time thinking about her own grandchildren climbing on chairs on her 3rd floor balcony and leaning over the railing and about the child who fell to his death a few years back. Ms. Stevens also continually thought about how much wear and tear occurs when her grandchildren come to stay for just one night. Ms. Stevens decided to call Ms. Stevens and cancel their meeting for that afternoon. Ms. Stevens had read in many rental listings that some property is "not suitable for young children") and felt that was the case with her unit. Ms. Stevens was being honest with Ms. Tummings when she told Ms. Tummings that she did not think she should go forward with the rental. Ms. Stevens was not aware that she could not rent her unit as a result of minor children living there.- Based on the totality of the above circumstances and not exclusively as a result of the minor children occupying the premises, Ms. Stevens decided not to rent her unit to anyone and have her unit available to her when she arrives back to Vermont in December.

Although Ms. Stevens' response claimed there were little to no safety measures with respect to the balcony, she stated in her interview there was a locked door¹¹ and the photos from the Trulia.com advertisement clearly show the lock.¹² Furthermore, she emphasized in her interview that her daughter told her not to rent the apartment out to someone with children and that she did not know that refusal to rent to people with minor children violated fair housing laws.¹³ However the law is clear with respect to whether or not a violation has occurred, and Ms. Stevens' reasons are in the form of damage mitigation, not defenses. Thus, considering the direct evidence on the two recordings, it is clear that Ms. Stevens discriminated against the Tummings based on their intent to rent the unit with their minor children.

FINDING: Dana Stevens violated the VFHPAA by refusing to rent to Whitney and Bryan Tummings because they intended to rent with their minor children.

3. "Statements against" the Tummings based on their membership in a protected class

Vermont's fair housing statute make it unlawful to:

(3) To *make*, print, or publish, or cause to be made, printed, or published any notice, *statement*, or advertisement, with respect to the sale or rental of a dwelling or other real estate *that indicates any preference, limitation, or discrimination* based on race, sex, sexual orientation, gender identity, age, marital status, religious creed, color, national

¹¹ Interview with Dana Stevens – 3/19/19.

¹² Trulia.com ad for Dana Steven's rental unit, screenshot.

¹³ *Id.*

origin, or handicap of a person, or *because a person intends to occupy a dwelling with one or more minor children*, or because a person is a recipient of public assistance.

Multiple jurisdictions, including one federal district court within the Second Circuit have made it clear that a "statement" can be defined to include both printed material (advertisements), or verbal statements.¹⁴ The same direct evidence used as proof of discrimination based on minor children applies to this section of Vermont's fair housing statute.¹⁵ There is significant evidence on the recordings to indicate Ms. Stevens made "statements against" the Tummings due to their intent to occupy a dwelling with their minor children.

FINDING: Dana Stevens violated the VFHPAA by making statements against the Tumblings due to their intent to rent her unit with their minor children.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁴ *Thurmond v. Bowman*, 211 F.Supp.3d 554, 566 (W.D.N.Y. 2016)("Toombs' statement that he would 'not be able to rent to [her] because of [her] two small children,' plainly would suggest to the ordinary listener that Toombs had a preference against Plaintiff's tenancy because of her familial status.").

¹⁵ See *supra* notes 9 and 10 above. When there is direct evidence of discrimination, no burden shifting analysis is required.

¹⁶ Interview with Whitney Tumblings - 2/22/19.

¹⁷ Written response submitted by counsel for Dana Stevens - 9/11/18.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁸ *Id.*

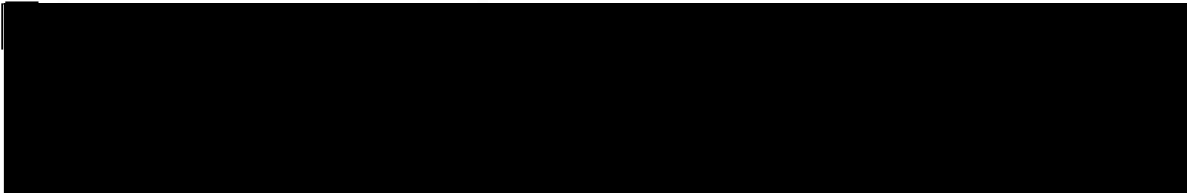
¹⁹ *Id.*

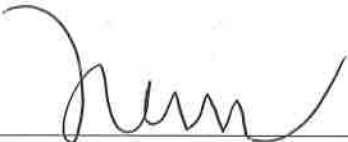
²⁰ *Id.*

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Nelson M. Campbell
Supervising Attorney

4/30/19
Date

Approved by:


Bor Yang, Executive Director
& Legal Counsel

4-30-19
Date