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INVESTIGATIVE REPORT

HRC Case No. HV19-0018

COMPLAINANT: Osheita Weygant

RESPONDENT: James Deery

CHARGE: Housing Discrimination based on [REDACTED]
[REDACTED] receiving public assistance

SUMMARY OF COMPLAINT

In 2016, Ms. Weygant rented an apartment for herself and her young daughter, who is autistic. Ms. Weygant began receiving Section 8 housing assistance in June of 2017. In May of 2018, the owner and landlord, Mr. Deery, told Ms. Weygant that he would no longer be accepting Section 8 voucher payments. Ms. Weygant believes Mr. Deery terminated their tenancy and treated her differently than other tenants because of [REDACTED]
[REDACTED] she receives a Section 8 voucher, in violation of the Vermont Fair Housing and Public Accommodations Act.

SUMMARY OF RESPONSE

[REDACTED]
[REDACTED], Mr. Deery admitted that he stopped accepting Section 8 because he didn't want to agree to changes in the Bennington Housing Authority's rules for landlords. [REDACTED]
[REDACTED]

PRELIMINARY RECOMMENDATIONS

[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
- 2) This investigation makes a preliminary recommendation to the VHRC to find there are **reasonable grounds** to believe that Mr. Deery discriminated against Ms. Weygant based on her receipt of public assistance in violation of the Vermont Fair Housing and Public Accommodations Act (VFHPAA), 9 V.S.A. §4503(a)(1).

INTERVIEWS

- James Deery – 6/13/2019
- Penny Taylor, Bennington Housing Authority – 6/17/2019
- Osheita Weygant – 6/25/2019
- Aaron Lundy – 6/25/2019

DOCUMENTS

INVESTIGATION

- Complaint – 5/30/2019
- Response – 6/6/2019

ADDITIONAL DOCUMENTS

- Rent Agreement – 1/7/2016
- Initial Evaluation of Ms. Weygant's daughter from Vermont Department of Health – 2/28/2017
- Lease Agreement – 6/15/2017
- Bennington Police Report – 7/15/2017
- Bennington Police Report – 10/26/2017
- Notice of Change in Rent – 4/3/2018
- Rental Notes from Mr. Deery – 2018

FACTS

Osheita Weygant and her daughter, who was around two years old, moved into an apartment at 138 Dewey Street in Bennington, Vermont, in January of 2016.¹ The apartment building has four units and James Deery, the owner and landlord, lives in the house behind the apartment building.²

Ms. Weygant stated in her complaint that she paid Mr. Deery an \$800 security deposit.³ In her interview, Ms. Weygant said she knew she needed \$1600 to move in and that she and Mr. Deery did not clearly define whether part of the money was a security deposit.⁴ Mr. Deery denies that

¹ Interview with Mr. Deery, 6/13/2019.

² *Id.*

³ Complaint.

⁴ Interview with Ms. Weygant, 6/25/2019.

he received a security deposit, but he says he received \$1600 for first and last month's rent.⁵ Mr. Deery and Ms. Weygant had a "rent agreement," dated January of 2016, that states, "I paid rent first and last month on Jan 5th for Jan."⁶ Mr. Deery's rental notes, dated January of 2018, state:

"Reference Security Deposit
Received \$800 on 1/1/16"⁷

A subsequent lease agreement, covering June 2016 to June 2017, also stated that Mr. Deery collected a "security deposit" of eight hundred dollars.⁸ When asked why his notes referred to a security deposit, Mr. Deery said, "call it whatever she says it is, but it was the first and last month...between her and United Counseling, I got a check for \$1600."⁹

Generally, Mr. Deery does not have a lease with tenants, and the agreement he has with tenants "is a handshake."¹⁰ Mr. Deery said, "Ms. Weygant asked for an agreement because she had to have something on paper because United Counseling was footing the bill."¹¹ Ms. Weygant recalled that Mr. Deery provided the rent agreement, and she said that the father of the child helped her pay the money needed in order to move into the apartment.¹²

Neither Ms. Weygant nor Mr. Deery reported having problems with one another during the first year Ms. Weygant lived in Mr. Deery's apartment.¹³ Mr. Deery said, "Ms. Weygant used to make stuff and bring it over to [Mr. Deery] and [his] wife."¹⁴ He also said Ms. Weygant used to come over and sit with Mr. Deery's wife on the front porch.¹⁵ Ms. Weygant said, "I got along with [Mr. Deery] and his wife...I was there at his house every single day talking with his wife. We had a good relationship initially."¹⁶

Ms. Weygant began receiving Section 8 housing assistance through Bennington Housing Authority (BHA) in June of 2017.¹⁷ In June of 2018, BHA changed the method by which landlords of tenants with Section 8 would receive their payment.¹⁸ Instead of allowing landlords to receive payment by check, BHA began requiring landlords to use direct deposit.¹⁹ In May of 2018, Mr. Deery told Ms. Weygant that he would no longer be accepting Section 8 voucher payments.²⁰ Mr. Deery stated that he stopped taking Section 8 because of the changes in their rules, explaining that Section 8 was going to require him to use direct deposit, which he did not

⁵ Interview with Mr. Deery, 6/13/2019.

⁶ Rent Agreement, 1/7/2016.

⁷ Rental Notes from Mr. Deery, 2018.

⁸ Lease Agreement, 6/15/2017.

⁹ Interview with Mr. Deery, 6/13/2019.

¹⁰ *Id.*

¹¹ *Id.*

¹² Interview with Ms. Weygant, 6/25/2019.

¹³ Interview with Ms. Weygant, 6/25/2019; interview with Mr. Deery, 6/13/2019.

¹⁴ Interview with Mr. Deery, 6/13/2019.

¹⁵ *Id.*

¹⁶ Interview with Ms. Weygant, 6/25/2019.

¹⁷ Interview with Ms. Taylor, 7/17/2019.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Complaint.

want to use.²¹ Mr. Deery declined to explain specifically why he did not want to use direct deposit, stating, “[f]or personal reasons, I didn’t want direct deposit.”²² Mr. Deery admitted that Section 8 of was “one of the reasons” that he asked Ms. Weygant to leave.²³

Ms. Weygant’s complaint stated that Mr. Weygant told her the reason for the termination was because he was selling the building.²⁴ Mr. Deery owns 136-138 Dewey Street, and he has rented the four apartments in his building since 2002. He has been trying to sell the building since 2016.²⁵ The apartment was vacant for a while because the house was in the process of being sold.²⁶ Someone was ready to buy it; however, because of complications in dealing with the state of Vermont, the sale was delayed, and Mr. Deery rented the apartment to someone else.²⁷ Mr. Deery denied that the sale of the home was the reason for the termination.²⁸

[REDACTED]

Mr. Deery explained, “I got nothing against her except she’s loud. [Ms. Weygant]’s a nice lady...she’s loud, very, very loud, and she’s a drinker. The child’s father brings [Ms. Weygant] booze every day. She’d sit on her back porch on the phone. She’d talk on the phone for hours. We couldn’t sit on our front porch without hearing all of her conversation. If it got too loud, a lot of the time, I would just go over and say ‘you know, I can hear everything you’re saying’ [and she’d say] ‘oh, okay’, she was fine and she’d quiet down.”³⁶

²¹ Interview with Mr. Deery, 6/13/2019.

²² *Id.*

²³ *Id.*

²⁴ Complaint.

²⁵ Interview with Mr. Deery, 6/13/2019.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Complaint.

³⁰ Interview with Ms. Weygant, 6/25/2019.

³¹ *Id.*

³² *Id.*

³³ Interview with Ms. Weygant, 6/25/2019; Initial Evaluation of Ms. Weygant’s daughter from Vermont Department of Health, 2/28/2017.

³⁴ Interview with Mr. Deery, 6/13/2019.

³⁵ *Id.*

³⁶ *Id.*

However, Mr. Deery stated that asking her to quiet down didn't always work, and that "she was loud and really belligerent...the more she drinks the louder she gets".³⁷ Mr. Deery stated that he told Ms. Weygant he was going to have to call the police and she said, "Call the police."³⁸ Mr. Deery called the police at least twice, and he said he may have called three times but couldn't remember.³⁹ Once, he said three police officers responded, and they threatened to arrest her because "she got belligerent with them".⁴⁰ Mr. Deery said he was standing in the driveway when the police responded, and he stated, "I'm very aware of what's going on in my apartments."⁴¹ He stated that the other time he called the police, they just told her to keep the noise down.⁴²

Another issue that Mr. Deery reported he had with Ms. Weygant was underage drinking, and he explained that "[m]y big thing was the underage drinkers...I just won't have that."⁴³ Although Ms. Weygant is old enough to drink legally, Mr. Deery stated that she had underage visitors who would drink while at her apartment.⁴⁴ Mr. Deery knew they were underage because he knows the identities of the individuals.⁴⁵

After Mr. Deery talked to Ms. Weygant about the underage drinking, he said, "they'd sneak in the other door, and they'd party all night long."⁴⁶ He said he knew they were sneaking in because another tenant told him that people were sneaking in and out, and Mr. Deery also saw them himself as well as the beer cans they would leave outside.⁴⁷

Mr. Deery said he doesn't have hours when people are supposed to be quiet, and that, prior to Ms. Weygant's tenancy, he had never needed to have quiet hours.⁴⁸ He said that other tenants have guests but are considerate of everybody.⁴⁹

The Bennington Police responded to complaints from Mr. Deery about Ms. Weygant in July and October of 2017.⁵⁰ The July police report states that Mr. Deery told Officer Diotte that Ms. Weygant "is extremely intoxicated and continues to yell and scream."⁵¹ Mr. Deery also told the officer that Ms. Weygant was yelling profanities at him and wouldn't stop.⁵² Sergeant Grande spoke to Ms. Weygant, who was drinking a beer at the time.⁵³ The report stated that, "Weygant at times would yell and advised 'I speak loud because I'm from New York City.'"⁵⁴ The report

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Bennington police report, 10/26/2017; Bennington Police Report, 7/15/2017.

⁵¹ Bennington Police Report, 7/15/2017.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

also stated that Ms. Weygant “was being disorderly at times,” and the situation ended when Ms. Weygant “was convinced to take a ride with her child’s father.”⁵⁵ The October police report was in response to a complaint from Mr. Deery about underage drinking at Ms. Weygant’s apartment.⁵⁶ Officers responded to Ms. Weygant’s apartment and met with Ms. Weygant and two other adults.⁵⁷ Officers Legacy and Sharshon entered the apartment with Ms. Weygant’s permission and did not find any juveniles.⁵⁸

Mr. Deery also suggested that Ms. Weygant was going to have to move anyway because she needed a two-bedroom apartment, stating, “I was told by Section 8 that [Ms. Weygant] had to have a two-bedroom apartment.”⁵⁹ Mr. Deery explained that all of the units in his buildings only have one bedroom, but Mr. Deery did let Ms. Weygant know that there were two-bedroom units available to rent in the area from some nearby landlords.⁶⁰ Mr. Deery said, “that was my understanding [from talking to Ms. Taylor].”⁶¹ Penny Taylor is the Section 8 program director for the Bennington Housing Authority.⁶² Ms. Taylor did say that she talked to Mr. Deery, but she stated that she told Mr. Deery that it was Ms. Weygant’s choice whether she wanted to live in a one bedroom apartment even if she qualified for a two bedroom apartment.⁶³

Ms. Taylor described talking to Ms. Weygant about why she moved out of Mr. Deery’s apartment. Ms. Taylor remembered that, on the day she signed the paperwork with the new landlord, Ms. Weygant said “she felt that [Mr.] Deery was discriminating against her.”⁶⁴ Ms. Taylor remembers Ms. Weygant saying “she felt he wasn’t taking section 8 because of her [REDACTED] and because it was not a two bedroom. He kept telling her she qualified for a two [bedroom].”⁶⁵ Ms. Taylor told Ms. Weygant that she could give her a discrimination form that Bennington Housing Authority uses.⁶⁶ Ms. Weygant told her “I just want to put this behind me.”⁶⁷

Ms. Taylor explained that a mother and a child qualify for two bedrooms and qualifying for two bedrooms does not depend on the age of the child.⁶⁸ Ms. Weygant and her daughter qualify for two bedrooms.⁶⁹ Ms. Taylor stated that Ms. Weygant came in and told her she wanted to look for a two bedroom “because it was getting quite full.”⁷⁰

⁵⁵ *Id.*

⁵⁶ Bennington police report, 10/26/2017.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Interview with Mr. Deery, 6/13/2019.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Bennington Housing Authority, <https://www.benningtonhousingauthority.org/about/staff/> (last visited 6/19/2019).

⁶³ Interview with Ms. Taylor, 6/17/2019.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

Ms. Weygant shared her apartment with her daughter, who was around two years old when they moved in.⁷¹ [REDACTED]

Another issue between Mr. Deery and Ms. Weygant was that Mr. Deery wanted to increase the amount of rent he was charging. Ms. Taylor said that Mr. Deery sent in a letter saying he wanted to raise rent to \$850 and she spoke to him and told him she couldn't allow that.⁸¹ In her interview, she explained that a landlord can raise the rent, but the tenant would have to pay the difference.⁸² Ms. Weygant and Ms. Taylor discussed the rent raise, and Ms. Weygant told Ms. Taylor, "I can't afford the extra money."⁸³ The portion of the rent paid by Ms. Weygant was \$424.⁸⁴

Another issue between Mr. Deery and Ms. Weygant was smoking. The rent agreement states that Ms. Weygant agrees that the apartment is nonsmoking.⁸⁵ Mr. Deery said that, when the weather was good, Ms. Weygant would smoke and drink on the back porch.⁸⁶ Mr. Deery said he knew she also smoked inside the house because he could smell it.⁸⁷

⁷¹ Interview with Ms. Weygant, 6/25/2019.

⁷² Complaint.

⁷³ Interview with Ms. Weygant, 6/25/2019.

⁷⁴ Interview with Ms. Weygant, 6/25/2019; Initial Evaluation of Ms. Weygant's daughter from Vermont Department of Health, 2/28/2017.

⁷⁵ *Id.*

⁷⁶ Interview with Ms. Weygant, 6/25/2019.

⁷⁷ *Id.*

⁷⁸ Complaint.

⁷⁹ Interview with Ms. Weygant, 6/25/2019.

⁸⁰ Interview with Mr. Deery, 6/13/2019.

⁸¹ Interview with Ms. Taylor, 6/17/2019.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Rent Agreement, 1/7/2016.

⁸⁶ Interview with Mr. Deery, 6/13/2019.

⁸⁷ *Id.*

When Mr. Deery asked Ms. Weygant to leave, she had more than a month's advance notice.⁸⁸ He said, "I've always been fair with [tenants], and I expect them to be fair with me."⁸⁹ Ms. Weygant moved out in June of 2018.⁹⁰

Although Mr. Deery denied receiving a security deposit, he explained that he would have returned \$800 to Ms. Weygant if her apartment had not needed to be repaired.⁹¹ He had to hire people to do the work on Ms. Weygant's apartment, and he said he regularly charges tenants for those types of costs.⁹²

He has terminated one other person's tenancy, around two years earlier. Mr. Deery said that the tenant was later arrested because he was a "drug lord."

Mr. Lundy was one of the other tenants during the time Ms. Weygant lived in Mr. Deery's building.⁹³ Mr. Lundy said he had lived there for ten years and said that he pays month-to-month and does not have a lease.⁹⁴ He perceives Mr. Deery to be an "excellent landlord."⁹⁵ Mr. Deery has raised Mr. Lundy's rent but not in the last several years.⁹⁶ Mr. Lundy does not have any pets and does not know if he is allowed to have pets.⁹⁷ He occasionally hears voices being raised but is not bothered by any of the tenants.⁹⁸ Mr. Lundy was aware of the building being for sale and said it had been for sale the previous year.⁹⁹ Mr. Lundy said that Mr. Deery fixes things when needed, he's good about clearing the driveway and steps, and looking out for seniors.¹⁰⁰ Mr. Lundy remembered Ms. Weygant and her daughter, and he described Ms. Weygant as "very pleasant and cheerful."¹⁰¹ He wasn't aware of any issues going on between Ms. Weygant and Mr. Deery.¹⁰²

ANALYSIS

The VFHPAA states:

(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 disability of a person, or because a person

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Interview with Mr. Lundy, 6/25/2019.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

intends to occupy a dwelling with one or more minor children, or because a person is a recipient of public assistance.¹⁰³

[REDACTED]

In cases where there is only circumstantial evidence of discrimination (as opposed to direct evidence), the evidence available is evaluated using the three-part burden-shifting framework used by the U.S. Supreme Court in *McDonnell Douglas Corp. v. Green*.¹⁰⁴ Pursuant to the *McDonnell Douglas* framework: (1) the complaining party must first establish a *prima facie* case of discrimination; (2) if the complainant succeeds in establishing a *prima facie* case, the burden shifts to the respondent to articulate some legitimate, non-discriminatory reason(s) for its action(s); (3) if the respondent successfully articulates a legitimate, non-discriminatory reason for its action(s), the burden shifts back to the complainant who must prove by a preponderance of the evidence¹⁰⁵ that the reason(s) offered by the respondent was/were not the true reasons for its actions, but were instead pretext(s) for discrimination – i.e. that its actions were not legitimate, but rather acts of discrimination against the person because of (in this case) Ms. Weygant's [REDACTED] receipt of public assistance [REDACTED].

In order to establish a *prima facie* case of discrimination without direct evidence, Ms. Weygant must prove the following:

- 1) Ms. Weygant is a member of a protected class;
- 2) Mr. Deery took adverse action against her; and
- 3) The adverse action took place under circumstances giving rise to an inference of discrimination.¹⁰⁶

Where there is direct evidence of discrimination, Ms. Weygant must show:

1. Mr. Deery stated that he took adverse action against Ms. Weygant because she is a member of a protected class.¹⁰⁷

¹⁰³ 9 V.S.A. § 4503(a)(1).

¹⁰⁴ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-803 (1973).

¹⁰⁵ According to Black's Law Dictionary (10th ed. 2014), "preponderance of the evidence" is defined as the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

¹⁰⁶ *Mazzocchi v. Windsor Owners Corp.*, 204 F. Supp. 3d 583, 615 (S.D.N.Y. 2016).

¹⁰⁷ Robert G. Schwemm, *Housing Discrimination Law and Litigation*, §10:2, pp. 10-8 and 10-9.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2) Mr. Deery took adverse action against Ms. Weygant.

Mr. Deery told Ms. Weygant that he would no longer be accepting Section 8 and asked her to leave the apartment she rented from him.¹¹⁹

Finding: Mr. Deery took adverse action against Ms. Weygant.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹¹⁹ Interview with Mr. Deery, 6/13/2019.

[REDACTED]

[illegible]

[REDACTED]

[illegible][illegible]

■ [REDACTED] [REDACTED]
 ■ [REDACTED] [REDACTED]
 ■ [REDACTED]
 ■ [REDACTED]
 ■ [REDACTED] [REDACTED]
 ■ [REDACTED]
 ■ [REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]

(b) (7)(C), (b) (7)(D)

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Mr. Deery's statements are direct evidence that he refused to continue to rent to Ms. Weygant because she is a recipient of public assistance. Mr. Deery stated in his response, "I told Ms. Weygant...I was no longer accepting Section 8."¹³⁶ In Mr. Deery's interview, he confirmed that he told Ms. Weygant he would no longer be accepting Section 8 voucher payments and stated that Section 8 was "one of the reasons" that he asked Ms. Weygant to leave.¹³⁷

The federal Fair Housing Act does not bar discrimination based on being a recipient of public assistance, but Vermont is one of several states that prohibit discrimination based on being a recipient of public assistance.¹³⁸ The VFHPAA states that it is unlawful to refuse to rent to someone because a person is a recipient of public assistance. Although Vermont has yet to specifically review public assistance discrimination in housing, several states have considered circumstances under which a landlord may lawfully choose not to accept Section 8 vouchers.¹³⁹ These are discussed below. The cases from jurisdictions other than Vermont are not intended to be authoritative but can act as guidance to help determine what Vermont would do.

¹³⁹ Armen H. Merjian, *Attempted Nullification: The Administrative Burden Defense in Source of Income Discrimination Cases*, 22 *Georgetown Journal on Poverty Law and Policy* 211, 217 (2015).

One of Mr. Deery's arguments for why his refusal to accept Section 8 from Ms. Weygant was lawful is that Ms. Weygant needed a two bedroom apartment, which Mr. Deery could not provide.¹⁴⁰ Mr. Deery suggested that Ms. Weygant was going to have to move anyway, stating, "I was told by Section 8 that [Ms. Weygant] had to have a two-bedroom apartment."¹⁴¹ A New York case found that the landlord had discriminated against a tenant receiving Section 8, in violation of a city code similar to Vermont's VFHPAA, by refusing to rent to someone because the landlord was concerned that the apartment size being rented did not match the size on the tenant's voucher.¹⁴² The court stated that the housing authority, not the landlord, had the authority to determine the applicability of a Section 8 voucher.¹⁴³ In this case, even if Mr. Deery's refusal to rent was motivated by his view that Ms. Weygant required a different number of bedrooms, the refusal would still be prohibited because it is the housing authority, not Mr. Deery, who is authorized to determine the applicability of Ms. Weygant's voucher. Additionally, Penny Taylor, the Section 8 program director for the Bennington Housing Authority, said she talked to Mr. Deery about Ms. Weygant's voucher and she told Mr. Deery that it's Ms. Weygant's choice whether she wanted to live in a one bedroom apartment.¹⁴⁴

Mr. Deery's refusal to accept Section 8 was also based on what he deemed an excessive burden of the administrative rules of Section 8 housing. Ms. Weygant began receiving Section 8 housing assistance through Bennington Housing Authority in June of 2017.¹⁴⁵ A year later, in June of 2018, the method by which landlords of tenants with Section 8 would receive their payment changed.¹⁴⁶ Instead of receiving a payment by check, Bennington Housing Authority required landlords to use direct deposit.¹⁴⁷ Mr. Deery stated that he stopped taking Section 8 because of the changes in their rules, explaining that Section 8 was going to require him to use direct deposit, which he did not want to use.¹⁴⁸ Mr. Deery declined to explain specifically why he did not want to use direct deposit, stating, "[f]or personal reasons, I didn't want direct deposit."¹⁴⁹

Cases in other states indicate that public assistance discrimination extends to refusal or failure to follow Section 8 required procedures, even when a landlord may object to those procedures. New York's Court of Appeals, analyzing a rent stabilization code, found that landlords are obligated to continue accepting a tenant's Section 8 rent subsidies and are not permitted to opt out of the federal Section 8 rent subsidy program simply because they disagree with the additional procedures.¹⁵⁰ In another New York opinion, the court found that a realty company discriminated against its tenant on the basis of the tenant receiving Section 8 when the realty company refused to complete a lead paint disclosure form that was required by the housing

¹⁴⁰ Interview with Mr. Deery, 6/13/2019.

¹⁴¹ *Id.*

¹⁴² Florentino v. Nokit Realty Corp., 906 N.Y.S.2d 689, 696 (N.Y. Sup. Ct. 2010).

¹⁴³ *Id.*

¹⁴⁴ Interview with Ms. Taylor, 6/17/2019.

¹⁴⁵ Interview with Ms. Taylor, 7/17/2019.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Interview with Mr. Deery, 6/13/2019.

¹⁴⁹ *Id.*

¹⁵⁰ Rosario v. Diagonal Realty, LLC, 8 N.Y.3d 755, 761 (N.Y. 2008).


authority in order to be able to process the tenant's section 8 voucher.¹⁵¹ A Connecticut court opinion explained its reasoning for refusing to accept a landlord's administrative burden argument, stating, "[w]e should not read into a remedial statute an unstated exception that would undermine the legislature's manifest intent to afford low income families access to the rental housing market."¹⁵²

In this case, Mr. Deery admitted in both his response and his interview that his refusal to continue to rent to Ms. Weygant was because she received section 8. While there appears to be minimal precedence on the issue, the VFHPAA statute is clear that it is unlawful to refuse to rent to someone because a person is a recipient of public assistance. Furthermore, guidance from other circuits indicate that a refusal to follow procedures related to Section 8 vouchers equates to discrimination on the basis of public assistance. Mr. Deery's arguments that he was allowed to stop accepting Section 8 either because of the number of rooms Ms. Weygant required or because of the administrative burden of accepting direct deposit is no defense and therefore, does not relieve him of his obligations under the VFHPAA.

Finding: Mr. Deery stated that he took adverse action against Ms. Weygant because she is a member of a protected class.

CONCLUSION - PUBLIC ASSISTANCE DISCRIMINATION

Ms. Weygant established sufficient direct evidence to support her claim that Mr. Deery stopped renting to her based on her receipt of public assistance. Thus, this investigation makes a preliminary recommendation to the Human Rights Commission to find there are **reasonable grounds** to believe that Mr. Deery discriminated against Ms. Weygant on the basis of her receipt of public assistance.


Cassandra Burdyslaw, Staff Attorney/Investigator

8/30/19
Date

Approved by:


Bor Yang, Executive Director & Legal Counsel

8/30/2019
Date

¹⁵¹ Rakhman v. Alco Realty L.P., 916 N.Y.S.2d 581, 582 (1st Dep't 2011).

¹⁵² Commission on Human Rights & Opportunities v. Sullivan Associates, 250 Conn. 763, 781-782 (1999); affirmed by Commission on Human Rights & Opportunities v. Sullivan, 285 Conn. 208, 239 (2008).

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Osheita Weygant,)	
Complainant)	
)	
v.)	HRC Complaint No. HV19-0018
)	
James Deery,)	
Respondent)	

FINAL DETERMINATION

Pursuant to 9 V.S.A. 4554, the Vermont Human Rights Commission enters the following Order:

The following vote was taken on a motion to find that there are **reasonable grounds** to believe that James Deery, the Respondent, unlawfully discriminated against Osheita Weygant, the Complainant, based on her receipt of public assistance, in violation of Vermont's Fair Housing and Public Accommodations Act.

Kevin Christie, Chair	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Nathan Besio	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Joan Nagy	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Donald Vickers	For <input checked="" type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input type="checkbox"/>
Dawn Ellis	For <input type="checkbox"/>	Against <input type="checkbox"/>	Absent <input type="checkbox"/>	Recused <input checked="" type="checkbox"/>

Entry: ☒ Reasonable grounds ☐ Motion failed

Dated at Montpelier, Vermont, this 26th day of September, 2019.

By: VT HUMAN RIGHTS COMMISSION

Kevin B. Christie

Kevin Christie, Chair

Nathan Besio

Nathan Besio

Joan Nagy

Joan Nagy

(absent)

Dawn Ellis

Donald R. Vickers

Donald Vickers