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INVESTIGATIVE REPORT

VHRC Case No.: HV20-0023 and HUD Case No.: 01-20-5481-8

Complainant: Tonya Bailey

Respondent: Marijo's Properties

Charges: Disability Discrimination in Housing – Reasonable Accommodation
Retaliation, Sexual Harassment in Housing

SUMMARY OF COMPLAINT

Tonya Bailey is an individual with a disability. She experiences depression and severe anxiety which impact her major life activities. Ms. Bailey moved into an apartment owned by Marijo's Properties on or about December 1, 2017. Mary Albarelli and Daniel Valyou are married and are the owners of Marijo's Properties located in Burlington, Vermont. Ms. Albarelli handles the management of the business and Mr. Valyou handles the maintenance of the property.

Ms. Bailey complains that multiple times during her tenancy Mr. Valyou sexually harassed her by saying inappropriate things about her body and attempting to kiss her on one occasion. Further, on November 6, 2019, Ms. Bailey made a reasonable accommodation request for an emotional support animal to Ms. Albarelli. Ms. Albarelli failed to respond, and instead, less than one week later, (November 12), Ms. Albarelli presented Ms. Bailey with a termination of lease notice.

SUMMARY OF RESPONSE

Background

Ms. Albarelli denies that her husband, Mr. Valyou sexually harassed Ms. Bailey. She accused Ms. Bailey of being very vulgar and stated that much of what Ms. Bailey says could be viewed as sexual harassment as well.

Ms. Albarelli acknowledges that Ms. Bailey made a reasonable accommodation request and claims that she told Ms. Bailey that there was nothing she could do about it and therefore she

did not deny the reasonable accommodation request. Ms. Albarelli disputes Ms. Bailey's claim that the request was the reason for the termination of lease notice. Instead she claimed that on December 1, 2018, Ms. Bailey's lease was up, and she had asked Ms. Bailey many times if she wanted to sign a new lease. Ms. Albarelli was trying to sell the property and was advised that having active leases for all the tenants would be beneficial for selling the property. She decided it was time to have Ms. Bailey leave if she would not commit to a one-year lease.

PRELIMINARY RECOMMENDATIONS

This investigation makes a preliminary recommendation to the Human Rights Commission to find that there are **reasonable grounds** to believe that Marijo's Properties discriminated against Tonya Bailey based on her reasonable accommodation request, retaliation for that request and sexual harassment as set forth in Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(a)(1), (a)(10) and 9 V.S.A. §4506 (e):

Documents

- Complaint
- Response to Complaint
- October 28, 2019 notice from Tonya Bailey to Mary Albarelli of no trespass
- Request for emotional support animal from Sarah Morse, PMHMP; sent on October 14, 2019
- October 28, 2019 request from Tonya Bailey to Mary Albarelli for a reasonable accommodation of an emotional support animal
- October 28, 2019 letter from Tonya Bailey to Mary Albarelli outlining permissible landlord access to apartment
- November 12, 2019 Notice of Termination for No Cause from Mary Albarelli to Tonya Bailey

Interviews

- Tony Bailey, via telephone May 27, 2020
- Mary Albarelli, via telephone June 1, 2020
- Dan Valyou, via telephone June 1, 2020
- Alita Bailey, via telephone June 18, 2020
- Mark Kuprych, via telephone June 10, 2020
- Carl Albarelli, via telephone June 10, 2020
- Michael Wells, via telephone June 19, 2020
- Bill Bissonette, July 2, 2020

FACTS

Ms. Albarelli has owned the 8-unit apartment complex in Burlington since approximately 1987.¹ Mr. Valyou later became an owner after he married Ms. Albarelli.² Ms. Albarelli and Mr. Valyou live in a house on the land where the apartments are located.³ Ms. Albarelli handles the management aspect of the business and Mr. Valyou handles the maintenance.⁴

Tonya Bailey, Mary Albarelli and Dan Valyou had been friends for a few years before Ms. Bailey began renting an apartment from Ms. Albarelli and Mr. Valyou.⁵ Ms. Bailey was friends with Ms. Albarelli's daughter and cleaned apartments for Ms. Albarelli.⁶

In November 2017, Ms. Bailey approached Ms. Albarelli about renting an apartment.⁷ Ms. Albarelli was hesitant because she did not like to rent to friends or family, but finally agreed and lowered the rent (by approximately \$50 or \$100 dollars) in order to assist Ms. Bailey in affording the rental.⁸ Ms. Bailey moved into one of Marijo's Properties apartment units on or about December 1, 2017.⁹

Ms. Bailey is an individual with diagnosed psychiatric disabilities. She experiences depression and severe anxiety, which impact major life activities such as sleeping, eating regularly, and interacting socially with others.¹⁰ Ms. Albarelli was aware of her disabilities prior to Ms. Bailey moving into the apartment.¹¹

The friendship between Ms. Bailey and Ms. Albarelli went downhill after she moved into the apartment.¹² Ms. Bailey reported that she had trust issues with Ms. Albarelli.¹³ Ms. Bailey felt that Ms. Albarelli was entering her apartment when she was not home.¹⁴ Ms. Albarelli and Mr. Valyou deny this allegation.¹⁵

In December 2018, Ms. Albarelli asked Ms. Bailey to sign a new lease as hers had come to an end.¹⁶ Ms. Bailey told Ms. Albarelli that she did not want to sign a new lease and instead

¹ Interview of Mary Albarelli

² Interview of Mary Albarelli

³ Interview of Mary Albarelli

⁴ Interview of Mary Albarelli

⁵ Interview of Mary Albarelli and Tonya Bailey

⁶ Interview of Mary Albarelli and Tonya Bailey

⁷ Interview of Mary Albarelli

⁸ Interview of Mary Albarelli

⁹ Complaint and Interview of Mary Albarelli

¹⁰ Interview of Tonya Bailey

¹¹ Response to Complaint

¹² Interview of Mary Albarelli

¹³ Interview of Tonya Bailey

¹⁴ Interview of Tonya Bailey

¹⁵ Interview of Mary Albarelli and Dan Valyou

¹⁶ Interview of Mary Albarelli

planned to move.¹⁷ Ms. Bailey told this investigator that she wanted to move because she did not trust Ms. Albarelli anymore.¹⁸ Her lease then went month to month.¹⁹ Ms. Bailey did not end up moving at that time or signing a new lease.²⁰ Ms. Bailey always paid the rent in a timely fashion.²¹

Sexual Harassment

Ms. Bailey alleges that Mr. Valyou was inappropriate toward her on many occasions throughout her tenancy. Below is a list of the instances to the best of her memory (there were instances where she could not remember specific dates/times):

- Ms. Bailey would request a repair for something in her apartment and set a time for Mr. Valyou to come to the apartment to fix it. Mr. Valyou would come at different times when Ms. Bailey was not expecting it. On at least one occasion Ms. Bailey was in the shower when he arrived, and Mr. Valyou did not leave.
- On May 22, 2019, Ms. Bailey was locked out of her apartment and asked Mr. Valyou to let her in. While they were walking to the apartment together, Ms. Bailey asked Mr. Valyou if he knew who was entering her apartment and moving things around when she was not home. He said it “ain’t fucking me.” He then leaned over to try to kiss her with his keys still in his hand. It was unclear if he was trying to kiss her on the cheek or mouth. Ms. Bailey reported that she smelled alcohol on him and frequently found him to be drunk when she encountered him. Ms. Bailey dodged the kiss and pushed him aside.
- When Ms. Bailey was pregnant, Mr. Valyou made inappropriate comments about her body. On one instance, he stared at her chest and asked her, “How much weight have you gained in those things?”
- On or around July 2019, Mr. Valyou entered Ms. Bailey’s apartment while she was wearing a towel. Ms. Bailey told him that she was uncomfortable, and he told her that “this was not the first nearly naked woman he had seen in his life.” He remained in the apartment even though Ms. Bailey told him she was uncomfortable.
- After Ms. Bailey’s son was born and began learning how to walk, Mr. Valyou was present when her son took a tumble and started to cry. As she picked up her son, he laid his head on her chest, and Mr. Valyou remarked, “I bet he just wants to cuddle those for the rest of the day.”
- On October 28, 2019, Ms. Bailey became so distressed by Mr. Valyou’s random appearances in her apartment that she provided him with notice that he was not authorized to enter her apartment without expressed permission. (She filed this notice with the police as well).

¹⁷ Interview of Mary Albarelli and Tonya Bailey

¹⁸ Interview of Tonya Bailey

¹⁹ Interview of Mary Albarelli

²⁰ Interview of Mary Albarelli

²¹ Interview of Mary Albarelli

- Ms. Bailey reported that Mr. Valyou made other comments about her chest on multiple occasions.
- Ms. Bailey became reluctant to inform Mr. Valyou when she had maintenance issues because she feared his inappropriate behavior.²²

Ms. Albarelli responded that she believed that Ms. Bailey was responsible for many of these uncomfortable encounters. She testified that Ms. Bailey and Mr. Valyou would set up times for him to come over to fix things and then Ms. Bailey would reschedule or not be available. She reports that eventually she started going to Ms. Baileys with Mr. Valyou because Ms. Bailey was accusing him of going through her stuff and he was not.²³

On October 28, 2019, Ms. Bailey provided Ms. Albarelli with a no trespass notice that she drafted and filed at the Police Department, as she did not want either Ms. Albarelli or Mr. Valyou entering her apartment anymore when she was not there.²⁴ Ms. Bailey felt that Ms. Albarelli was coming in the apartment and looking through her things (she claims that Ms. Albarelli had done that with other tenants as well).²⁵ She was also uncomfortable with Mr. Valyou entering her apartment without warning because of his inappropriate behavior toward her.²⁶

Ms. Albarelli felt that Ms. Bailey encouraged her husband's behavior and that Ms. Bailey acted differently around men, and stated that Ms. Bailey was crude and talked openly about sex. She testified that she heard Mr. Valyou make the comments about Ms. Bailey's chest, but that Ms. Bailey made comments too that were sexual in nature, even about her own body.²⁷

Mr. Valyou reports that prior to Ms. Bailey becoming a tenant, that when she was working for them they would sit on the porch together smoking cigarettes and chatting.²⁸ So he felt like they were friends before she became a tenant.²⁹ He reported that they joked around and talked about sexual things and he does not recall her ever asking him to stop.³⁰ He stated that it could be construed as inappropriate.³¹ However, his impression was that it was "construed as two people that know each other talking to each other like they are friends."

Mr. Valyou acknowledged that he would "key himself in" if he was going to fix something in her apartment and Ms. Bailey did not answer the door. He "sort of" remembered

²² Interview of Tonya Bailey and Complaint

²³ Interview of Mary Albarelli

²⁴ October 28, 2019 notice from Tonya Bailey to Mary Albarelli of no trespass

²⁵ Interview of Tonya Bailey

²⁶ Interview of Tonya Bailey

²⁷ Interview of Mary Albarelli

²⁸ Interview of Dan Valyou

²⁹ Interview of Dan Valyou

³⁰ Interview of Dan Valyou

³¹ Interview of Dan Valyou

entering when she was in a towel and continuing to do his work. He did not recall if she asked him to leave or told him she was uncomfortable.³²

As to the allegation by Ms. Bailey that Mr. Valyou attempted to kiss her after she was locked out of her apartment, Mr. Valyou reports that Ms. Bailey and her daughter often locked themselves out of their apartment and he opened the door for them on many occasions. But he does not remember trying to kiss her and “was not sure why he would have wanted to kiss her.”³³

This investigator also interviewed Ms. Bailey’s daughter (Alita-who recently turned 18) at Ms. Bailey’s request.³⁴ Alita reported that she was in school and received a text from her mom asking if she had received any notifications from the camera in the living room that motion had been detected. Alita had the application on her phone that monitored this camera.³⁵ Alita texted back that it had not. When Ms. Bailey did not respond, Alita called her because she was concerned. When she spoke to her mother, Ms. Bailey said that Mr. Valyou had attempted to kiss her after he opened the door for her when she was locked out. Alita testified that her mother was very upset.³⁶ Ms. Bailey testified that she later discovered that the camera was not on.³⁷

In terms of comments about Ms. Bailey’s chest, Mr. Valyou acknowledged that he may have made those comments. He testified that he likely said, “Those are growing up pretty nicely now that you are pregnant.”³⁸ When asked if he made the comment related to Ms. Bailey’s baby snuggling into her chest, he said he could not recall if he said that or not. But “it would not have been uncommon for him to say something like that.” He stated that these were the types of comments that he made in passing. Mr. Valyou did not deny any of the instances alleged but did testify that he did not recall all of them or that if they occurred, he did not feel that they made Ms. Bailey uncomfortable.³⁹

Mr. Valyou mentioned during his interview that he had done maintenance work for many landlords over the years. He later provided this investigation a list of other landlords that he worked for in the past. This investigator interviewed the four individuals that Mr. Valyou provided the names/contact information for to see if they had received any complaints of inappropriate behavior by Mr. Valyou. This investigator spoke to Mark Kuprych, Carl Albarelli, Michael Wells, and Bill Bissonette. They all reported that Mr. Valyou had worked for them doing maintenance, in which he was required to enter tenant’s apartments to fix things. None of

³² Interview of Dan Valyou

³³ Interview of Dan Valyou

³⁴ Because mother and daughter have the same last name, when this investigator is referring to Tonya Bailey, she uses Ms. Bailey. When referring to Alita Bailey, so refers her as Alita.

³⁵ Interview of Alita Bailey

³⁶ Interview of Alita Bailey

³⁷ Interview of Tonya Bailey

³⁸ Interview of Dan Valyou

³⁹ Interview of Dan Valyou

the landlords had ever had a tenant complain about Mr. Valyou's behavior and all had positive things to say about his work.⁴⁰

Marijo's Properties never evicted Ms. Bailey. Ms. Albarelli gave her three to four months to find a new place.⁴¹ She found a new place and moved out in February 2020.⁴²

Emotional Support Animal

Marijo's Properties has a no-pet policy.⁴³ On November 6, 2019, Ms. Bailey provided Ms. Albarelli in person with a written reasonable accommodation request for an emotional support animal that included a note from her doctor.⁴⁴

Ms. Bailey experiences depression and severe anxiety which impact her major life activities. She and her therapist had discussed her getting an emotional support animal for a few years.⁴⁵ She finally got the documentation from her doctor and decided to pursue it while she was living in her apartment at Marijo's Properties. She was under a great deal of stress and both she and her doctor believed that the dog would help relieve some of the anxiety.⁴⁶ She was very concerned about both Mr. Valyou and Ms. Albarelli coming into her apartment and thought the dog could be a good alert system.⁴⁷ This was in part due to the sexual harassment that Ms. Bailey had experienced coming from Mr. Valyou.

Ms. Bailey claims that Ms. Albarelli said no because then she would have to let others have animals.⁴⁸ Ms. Albarelli claims she told Ms. Bailey that "there was nothing she could do about it if the doctor prescribed it."⁴⁹ Ms. Albarelli did not follow up with a written response and there was no further conversation between them.⁵⁰

On November 12, 2019, Ms. Albarelli sent Ms. Bailey a notice of termination of lease for no cause.⁵¹ Ms. Bailey felt this was to prevent her from getting an emotional assistance animal as well as in retaliation for the request.⁵² Ms. Albarelli testified that it was because Ms. Bailey had yet to sign the lease and she had been thinking about taking this action for many months.⁵³ Ms. Albarelli was thinking of selling the apartments and so wanted all of the units to have a current lease to increase the value of the property.⁵⁴ Ms. Albarelli testified that she had followed up

⁴⁰ Interviews of Mark Kuprych, Carl Albarelli, Michael Wells, and Bill Bissonette

⁴¹ Interview of Tonya Bailey

⁴² Interview of Mary Albarelli

⁴³ Interview of Mary Albarelli

⁴⁴ Interview of Tonya Bailey and Mary Albarelli

⁴⁵ Interview of Tonya Bailey

⁴⁶ Interview of Tonya Bailey

⁴⁷ Interview of Tonya Bailey

⁴⁸ Interview of Tonya Bailey

⁴⁹ Interview of Mary Albarelli

⁵⁰ Interview of Mary Albarelli

⁵¹ November 12, 2019 Notice of Termination for No Cause from Mary Albarelli to Tonya Bailey

⁵² Interview of Tonya Bailey

⁵³ Interview of Mary Albarelli

⁵⁴ Interview of Mary Albarelli

with Ms. Bailey about the lease several times, but she never signed a new lease.⁵⁵ It is worth noting that this *was almost a full year* after Ms. Albarelli had first inquired about Ms. Bailey signing a new lease.⁵⁶

LEGAL ANALYSIS

Sexual Harassment

Vermont law makes it illegal to deny a dwelling to a renter based on their sex. Sexual Harassment is a form of sex discrimination. Ms. Bailey states a claim against Marijo’s Properties for sexual harassment.

Vermont statute 9 V.S.A. §4503 reads in part:

(2) To discriminate against, or to harass any person in the terms, conditions, privileges, and protections of the sale or rental of a dwelling or other real estate, or in the provision of services or facilities in connection therewith, 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 intends to occupy a dwelling with one or more minor children, or because a person is the recipient of public assistance, or because a person is a victim of abuse, sexual assault, or stalking.

Prior to 2016, Courts relied on Title VII standards for sexual harassment in the workplace for sexual harassment in the housing context. Courts and HUD have now recognized that the workplace and home are two very different places, and that Title VII law is not always appropriate.⁵⁷ Therefore in 2016, the Department of Housing and Urban Development (HUD) has responded to these concerns through the rulemaking process by promulgating an FHA regulation specifically addressing both “Quid Pro Quo” and “Hostile Environment” sexual harassment in the housing context.⁵⁸ This is an important change because it makes it easier to win a case of sexual harassment in the housing context as opposed to the employment context.

This particular rule “formalizes standards to address harassment in and around one's home and identifies some of the differences between harassment in the home and harassment in the workplace[:.]”⁵⁹

“[w]hen sexual harassment occurs at work, at that moment or at the end of the workday, the woman may remove herself from the offensive environment. She will choose whether to resign from her position based on economic and personal considerations. In contrast, when the harassment occurs in a woman's home, it is a complete invasion in her life. Ideally, home is the haven from the troubles of the

⁵⁵ Response to Complaint

⁵⁶ Response to Complaint

⁵⁷ Housing Discrimination Law and Litigation §11C:2 July 2020 Update; Richard G. Schwemm

⁵⁸ 24 C.F.R. § 100.600

⁵⁹ 81 FR 63054

day. When home is not a safe place, a woman may feel distressed and, often, immobile. Moreover, the victim's feeling of powerlessness is exacerbated by the fact that in small apartments, duplexes, or rented rooms, there is usually only one owner, the harasser.... [T]he power to evict as well as the power to withhold repairs and services are in the hands of the harasser.”⁶⁰

There are two types of sexual harassment recognized under the Fair Housing Act and which have been adopted pursuant to the Vermont Fair Housing and Public Accommodations Act. The first type is “Quid Pro Quo” which HUD defines as “an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to: The sale, rental or availability of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction.”⁶¹

The second type is a hostile housing environment. Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with any of the following: the availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction.⁶²

HUD’s new rule is the following:

(2) *Hostile environment harassment.* Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with: The availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real estate-related transaction. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction.

(i) *Totality of the circumstances.* Whether hostile environment harassment exists depends upon the totality of the circumstances.

(A) Factors to be considered to determine whether hostile environment harassment exists include, but are not limited to, the nature of

⁶⁰ *People ex rel. City of Santa Monica v. Gabriel*, 186 Cal. App. 4th 882, 888, (2d Dist. 2010) as cited in 93 Causes of Action 2d 679 (Originally published in 2020)

⁶¹ 24 C.F.R. § 100.600(a)(1).

⁶² 24 C.F.R. § 100.600 (a)(2)

the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the persons involved.

(B) Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment existed and, if so, the amount of damages to which an aggrieved person may be entitled.

(C) Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is evaluated from the perspective of a reasonable person in the aggrieved person's position.⁶³

In order to show that Ms. Bailey experienced a hostile housing environment she must meet the following:

Prima Facie Case, Sexual Harassment: Hostile Environment

1. Complainant was a member of a protected class
2. Complainant was subjected to unwelcome conduct that was sufficiently severe or pervasive as to interfere with either the terms, conditions, or privileges of the rental, or with the provision or enjoyment of the rental's services or facilities.
3. The unwelcome conduct was based on the member's protected class status.⁶⁴

Element 1: Ms. Bailey is a woman and therefore a member of a protected class.

Finding: Ms. Bailey meets element 1 of the prima facie case

Element 2: Ms. Bailey was subjected to unwelcome conduct by Mr. Valyou. While none of the contact could be classified as severe, it could be considered pervasive. One or two occasions of sexual harassment is not enough to create a hostile environment unless it is severe enough that sexual harassment can be found.⁶⁵ If the landlord's inappropriate conduct occurs frequently, it is more likely to create a hostile environment.⁶⁶

Under Title VII, a "sexually objectionable environment must be both objectively and subjectively offensive, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so."⁶⁷ Simple teasing, offhand comments, and isolated incidents that are viewed only as annoying or offensive are not sufficiently severe or pervasive to

⁶³ 24 CFR § 100.600

⁶⁴ *Harris v. Forklift Systems, Inc.* 510 U.S. 17, 20, 370 (1993)

⁶⁵ *DiCenso v. Cisneros*, 96 F.3d 1004, 1008-09 (7th Cir. 2006).

⁶⁶ *Tafoya v. State Human Rights Com'n*, 311 P.3d 70, 77 (Div. 2 2013), as amended, (Nov. 13, 2013) (finding hostile environment where plaintiff presented at least 14 instances of inappropriate behavior by landlord, showing that his conduct was a regular occurrence).

⁶⁷ *Faragher v. City of Boca Raton*, 524 U.S. 775, 787 (1998).

support a hostile housing environment claim. Rather, the conduct must be serious, persistent, and explicitly humiliating or threatening conduct.⁶⁸

In this case the available evidence consisted mostly of Ms. Bailey and her daughter's accounts and the responses from Mr. Valyou and Ms. Albarelli. There were no other witnesses. This is not unusual and generally, the Complainant's own testimony will be vital part of proving the landlord's harassment.⁶⁹ In this case, Mr. Valyou also admitted making inappropriate comments to Ms. Bailey. This is direct evidence that shows that the comments were made. This investigation must therefore look to see if the comments meet the standards for a prima facie case of sexual harassment under the HUD rules.

There are not many court decisions yet involving sexual harassment in housing. However, the new HUD rules seem to go beyond the protections of previous Title VII prohibitions in the context of employment complaints.⁷⁰ They take the home environment more seriously than the work environment. Therefore, we must next look closely at the totality of the circumstances as the HUD rule requires. Factors to be considered to determine whether hostile environment harassment exists include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationships of the persons involved.⁷¹

Nature of Conduct:

The question that we are looking at is whether the landlord's actions have rendered a tenancy less desirable.⁷² In this case, Ms. Bailey felt less comfortable in her apartment. She stopped asking for as many things to be fixed in her apartment, because she did not want Mr. Valyou entering her home. She also sent a no trespass letter and a letter about Vermont's law when landlords can enter a renter's apartment. These factors would indicate that the nature of the conduct by Mr. Valyou have made Ms. Bailey's tenancy less desirable.

The severity, scope, frequency, duration, and location of the conduct:

The location of the harassment will also carry weight in the analysis. As one court noted, a tenant's home is a place where a tenant is entitled to feel safe and secure and need not flee, making harassing conduct taking place in the tenant's home even more egregious.⁷³ This behavior was taking place in Ms. Bailey's apartment and therefore makes it more egregious. Ms.

⁶⁸ *West v. DJ Mortgage, LLC*, 271 F. Supp. 3d 1336, 1352 (N.D. Ga. 2017).

⁶⁹ *Quigley v. Winter*, 598 F.3d 938, 947 (8th Cir. 2010).

⁷⁰ Housing Discrimination Law and Litigation §11C:2 July 2020 Update; Richard G. Schwemm.

⁷¹ 24 CFR § 100.600

⁷² *Gnerre v. Massachusetts Com's Against Discrimination*, 524 N.E.2d 84, 88 (Mass. 1998).

⁷³ *Quigley v. Winter*, 598 F.3d 938, 947 (8th Cir. 2010). See also, e.g., *Noah v. Assor*, 379 F. Supp. 3d 1284, 1293 (S.D. Fla. 2019); *Salisbury v. Hickman*, 974 F. Supp. 2d 1282, 1292 (E.D. Cal. 2013) (noting that "harassment in one's own home is particularly egregious and is a factor that must be considered in determining the seriousness of the alleged harassment").

Bailey went to the effort of sending a letter to Marijo's Properties asking them not to trespass in the home she was paying rent for and in which she had a right to privacy.

While Ms. Bailey cannot remember the date of every instance of harassment, she was able to name many instances within a relatively short period of time. The courts have rejected imposing any numerosity requirement to these types of cases.⁷⁴ However, in this case there were quite a few instances of inappropriate behavior. This investigation also considered whether any of the behaviors alleged were physically threatening or humiliating.⁷⁵ In this case, Ms. Bailey made clear that she felt the behavior was humiliating and that she felt that Mr. Valyou's physical attempt to kiss her by putting his hands on her was threatening.

The relationships of the persons involved:

One thing that Mr. Valyou brought up in his interview that is worth noting is that he and Ms. Bailey used to be friends before Ms. Bailey began renting an apartment from Marijo's Properties. He pointed to a joking, friendly relationship. However, the relationship became a business relationship once Ms. Bailey became a tenant. The primary relationship shifted at that point so that Ms. Bailey had rights as a tenant, one of which included the right to feel secure and comfortable in her own apartment.

Considering these factors Ms. Bailey can meet the second element of the prima facie case.

Finding: Ms. Bailey meets element 2 of the prima facie case

Element 3: Mr. Valyou's comments were focused on Ms. Bailey's body, specifically her chest. The evidence suggests that he would not have made the same comments to a male, as they would not have been applicable. Also, there was no reason to believe, nor the suggestion from any witness, that Mr. Valyou was engaging in the same behavior of entering apartments without prior notice and while someone was in the shower, with all tenants. Therefore, Ms. Bailey can show that the unwanted behavior was based on her membership in a protected class (female).

Finding: Ms. Bailey meets element 3 of the prima facie case

Therefore, Ms. Bailey meets the prima facie case for sexual harassment.

Reasonable Accommodation Request

Both Vermont Fair Housing and Public Accommodations Act (VFHPAA) and the Federal Fair Housing Act make it unlawful to discriminate "in the sale or rental, or to otherwise make unavailable or deny, a dwelling" because of a renter or associated person's disability.⁷⁶ Vermont law follows federal law closely when it comes to discrimination in the rental of a dwelling.

⁷⁴ *Gnerre v. Massachusetts Com's Against Discrimination*, 524 N.E.2d 84, 88 (Mass. 1998)

⁷⁵ *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993).

⁷⁶ 42 U.S.C. §3604(f)(1).

Vermont statute 9 V.S.A. §4503 reads in part:

(a) It shall be unlawful for any person:

10) To refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including public and common areas.

Prima Facie Case:

Ms. Bailey states a claim against Marijo’s Properties for failure to make a reasonable accommodation based on her disability. The prima facie case is met by showing the following:

1. The complainant is a person with a disability;
2. The respondent knew or reasonably should have known that the complainant is a person with a disability;
3. The complainant requested a reasonable accommodation in the rules, policies, practices, or services of the respondent;
4. The requested accommodation may be necessary to afford the complainant an equal opportunity to use and enjoy the dwelling.
5. The respondent denied the reasonable accommodation.
6. The respondent’s refusal made housing unavailable to the complainant.⁷⁷

Element 1: Tonya Bailey is an individual with a disability. She experiences depression and severe anxiety which impact her major life activities.

Finding: Complainant meets Element 1 of the prima facie case.

Element 2: Ms. Albarelli testified that she was aware of Ms. Bailey’s disability status.

Finding: Complainant meets Element 2 of the prima facie case.

Element 3: Ms. Bailey produced a copy of the reasonable accommodation request that she made to Marijo’s Properties. Ms. Albarelli testified that she received the request.

Finding: Complainant meets Element 3 of the prima facie case.

Element 4: Ms. Bailey provided a note from her mental health care provider indicating that she needed an emotional support animal in order “to contribute to Tonya’s overall health and wellbeing.”⁷⁸

Finding: Complainant meets Element 4 of the prima facie case.

⁷⁷ *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997).

⁷⁸ Request for emotional support animal from Sarah Morse, PMHMP; sent on October 14, 2019

Element 5: It is disputed between the parties as to whether Ms. Albarelli ever responded at all to the reasonable accommodation request. However, only a few days after receiving the request, she issued the no cause eviction notice, so in effect, this would be a denial. Ms. Albarelli failed to provide any other written response.

Finding: Complainant meets Element 5 of the prima facie case.

Element 6: The respondent's refusal would have made life difficult for Ms. Bailey and may have forced her to find new housing on its own. But the notice of no cause eviction coming within days of the request made it clear that the requested reasonable accommodation was causing Ms. Bailey to lose her housing.

Finding: Complainant meets Element 6 of the prima facie case.

Plaintiff has met her prima facie case and therefore the burden shifts to the respondent to show whether the request was unreasonable, or caused an undue financial or administrative burden.⁷⁹

The determination of undue financial burden must be made on a case by case basis involving factors such as the cost of the requested accommodation, the financial resources of the provider, the benefits that the accommodation would provide to the requester, and the availability of alternative accommodations that would effectively meet the requester's needs.⁸⁰

Ms. Bailey provided a doctor's letter to Ms. Albarelli showing she was a person with a disability and that her doctor believed that she needed the reasonable accommodation of an exception from the "no pets rule." The only concern that Ms. Albarelli raised to Ms. Bailey was that if she let Ms. Bailey get an emotional support dog then everyone else would want one.⁸¹ This is not a sufficient reason to deny an individual an emotional support dog.⁸² An emotional support animal is not a pet.⁸³ If a landlord has a no-pets policy, a tenant may be provided a reasonable accommodation to modify that policy to have an emotional support animal.⁸⁴ This would not allow other residents to get dogs or cats; they too would have to have a disability where an assistance animal would afford such a person an equal opportunity to use and enjoy the dwelling.⁸⁵ Landlords are permitted and often required to provide reasonable accommodations that could be viewed as a preference for those with disabilities over other tenants.⁸⁶

⁷⁹ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-04 (1973).

⁸⁰ https://www.hud.gov/program_offices/fair_housing_equal_opportunity/reasonable_accommodations_and_modifications#_Reasonable_Accommodations

⁸¹ Interview of Tonya Bailey.

⁸² *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 397-399 (2002).

⁸³ *Gill Terrace Retirement Apartments, Inc. v. Johnson*, 177 A.3d 1087, 1091 (Vt. 2017)

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Giebler v. M & B Associates*, 343 F.3d 1143, 1154 (9th Cir. 2003).

Therefore, it does not make sense that Ms. Albarelli would have to let other tenants have a pet. If the other tenants had disabilities that required as assistance animal, Ms. Albarelli would have the right to ask for proper documentation. Ms. Albarelli's argument does not show that the emotional support animal would have caused an undue burden to the landlord. Therefore, Marijo's Properties cannot meet its burden of showing that the request was unreasonable or that it would be an undue financial burden.

Retaliation

9 V.S.A. §4506 (e):

(e) Retaliation prohibited. A person shall not coerce, threaten, interfere, or otherwise discriminate against any individual:

(4) who is exercising or enjoying a right granted or protected by this chapter;

The prima facie case for retaliation is as follows:

1. The Complainant engaged in an activity protected by the Act.
2. The Respondent subjected the Complainant to an adverse action.
3. Circumstantial evidence exists of a causal link between the protected activity and the adverse action (temporal link)⁸⁷

Element 1: Ms. Bailey engaged in a protected activity by requesting a reasonable accommodation based on her disability.

Finding: Complainant meets Element 1 of the prima facie case.

Element 2: Within six days of Ms. Bailey presenting her request for a reasonable accommodation, Ms. Albarelli presented Ms. Bailey with a notice of eviction for no cause.

Finding: Complainant meets Element 2 of the prima facie case.

Element 3: When interviewed, Ms. Albarelli stated that she had wanted to issue the notice of eviction for quite a while because Ms. Bailey had failed to sign a new lease in December 2018. However, she waited to take any action until immediately after Ms. Bailey presented her with the reasonable accommodation request. In retaliation cases there is rarely direct evidence of someone admitting that they are terminating a tenant because of a protected activity. Here, it was a request for an assistance animal. Therefore, the investigation must look at indirect evidence that can show that the two actions are related.

A causal connection can be established indirectly by showing that the protected activity was closely followed in time by the adverse action.⁸⁸ The Second Circuit has held in the past that multiple months can be too long to show a causal connection on its own.⁸⁹ However, in this case the no-cause eviction letter was presented six days after the request for reasonable

⁸⁷ *Walker v. City of Lakewood*, 272 F.3d 1114, 1128 (9th Cir. 2001).

⁸⁸ *Gorzynski v. JetBlue Airways Corp.*, 596 F.3d 93, 110 (2d Cir. 2010).

⁸⁹ *Id.*

accommodation. Therefore, Ms. Bailey can show that there was temporal proximity and that it was highly likely that she was served the notice of termination in retaliation for her reasonable accommodation request.⁹⁰

Finding: Complainant meets Element 3 of the prima facie case.

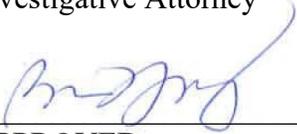
Plaintiff has met her prima facie case and therefore the burden shifts to the respondent to show a legitimate, non-discriminatory reason for the action. As cited above, Ms. Albarelli defends that she was planning to evict Ms. Bailey before she received the reasonable accommodation request. She was unhappy that Ms. Bailey had not yet signed a new lease. However, no mention of that was made when Ms. Albarelli provided the notice of no-cause eviction. Further, Ms. Bailey had been without a lease for approximately one year at this time and no action had been taken prior to Ms. Bailey requesting the reasonable accommodation. Neither Ms. Albarelli nor Mr. Valyou provided any evidence in support of their intent to terminate Ms. Bailey's lease prior to this point. Therefore, Respondent was not able to show that they had a legitimate, non-discriminatory reason for the no-cause eviction.

CONCLUSION & RECOMMENDATION

Mr. Valyou made inappropriate sexual comments about Ms. Bailey and made her very uncomfortable in her home to the point where she needed to leave. Ms. Bailey also requested a reasonable accommodation to be allowed to have an emotional support animal. Marijo's Properties rejected her request and then six days later sent her a letter for no-cause eviction. Therefore, this investigation makes preliminary recommendations to the Human Rights Commission to find that there are **reasonable grounds** to believe that Marijo's Properties discriminated against Ms. Bailey by refusing her a reasonable accommodation in violation of the Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(a)(10), retaliated against her for this request in violation of the Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(a)(1) and created a hostile housing environment, in violation of the Vermont Fair Housing and Public Accommodations Act, 9 V.S.A. §4503(a)(2).



Melissa Horwitz
Investigative Attorney



APPROVED:
Bor Yang
Executive Director & Legal Counsel

⁹⁰ *Hazelwood v. Highland Hosp.*, 763 F. App'x 60, 62–63 (2d Cir. 2019).

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Tonya Bailey,)
Complainant)
)
v.) HRC Complaint No. HV20-0023
)
)
Marijo's Properties,)
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 Marijo's Properties, the Respondent, illegally discriminated against Tonya Bailey, the Complainant, on the basis of a reasonable accommodation request for a disability, in violation of Vermont's Fair Housing and Public Accommodations Act.

Kevin Christie, Chair	For <u>X</u>	Against ___	Absent ___	Recused ___
Nathan Besio	For <u>X</u>	Against ___	Absent ___	Recused ___
Donald Vickers	For ___	Against <u>X</u>	Absent ___	Recused ___
Dawn Ellis	For <u>X</u>	Against ___	Absent ___	Recused ___
Joan Nagy	For <u>X</u>	Against ___	Absent ___	Recused ___

Entry: X Reasonable grounds ___ Motion failed

Dated at Montpelier, Vermont, this 28th day of January, 2021.

BY: VERMONT HUMAN RIGHTS COMMISSION

/s/ Kevin Christie
Kevin Christie, Chair

/s/ Nathan Besio
Nathan Besio

/s/ Donald Vickers
Donald Vickers

/s/ Dawn Ellis
Dawn Ellis

/s/ Joan Nagy
Joan Nagy

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Tonya Bailey,)
Complainant)
)
)
v.) HRC Complaint No. HV20-0023
)
)
Marijo's Properties,)
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 Marijo's Properties, the Respondent, illegally retaliated against Tonya Bailey, the Complainant, for making a reasonable accommodation request, in violation of Vermont's Fair Housing and Public Accommodations Act.

Kevin Christie, Chair	For <u>X</u>	Against ___	Absent ___	Recused ___
Nathan Besio	For <u>X</u>	Against ___	Absent ___	Recused ___
Donald Vickers	For ___	Against <u>X</u>	Absent ___	Recused ___
Dawn Ellis	For <u>X</u>	Against ___	Absent ___	Recused ___
Joan Nagy	For <u>X</u>	Against ___	Absent ___	Recused ___

Entry: X Reasonable grounds ___ Motion failed

Dated at Montpelier, Vermont, this 28th day of January, 2021.

BY: VERMONT HUMAN RIGHTS COMMISSION

/s/ Kevin Christie
Kevin Christie, Chair

/s/ Nathan Besio
Nathan Besio

/s/ Donald Vickers
Donald Vickers

/s/ Dawn Ellis
Dawn Ellis

/s/ Joan Nagy
Joan Nagy

STATE OF VERMONT
HUMAN RIGHTS COMMISSION

Tonya Bailey,)
Complainant)
)
)
v.) HRC Complaint No. HV20-0023
)
)
Marijo's Properties,)
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 Marijo's Properties, the Respondent, illegally discriminated against Tonya Bailey, the Complainant, on the basis of sex, in violation of Vermont's Fair Housing and Public Accommodations Act.

Kevin Christie, Chair	For <u>X</u>	Against ___	Absent ___	Recused ___
Nathan Besio	For <u>X</u>	Against ___	Absent ___	Recused ___
Donald Vickers	For <u>X</u>	Against ___	Absent ___	Recused ___
Dawn Ellis	For <u>X</u>	Against ___	Absent ___	Recused ___
Joan Nagy	For <u>X</u>	Against ___	Absent ___	Recused ___

Entry: X Reasonable grounds ___ Motion failed

Dated at Montpelier, Vermont, this 28th day of January, 2021.

BY: VERMONT HUMAN RIGHTS COMMISSION

/s/ Kevin Christie
Kevin Christie, Chair

/s/ Nathan Besio
Nathan Besio

/s/ Donald Vickers
Donald Vickers

/s/ Dawn Ellis
Dawn Ellis

/s/ Joan Nagy
Joan Nagy