



Maine Human Rights Commission

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INVESTIGATOR'S REPORT

MHRC No.: H19-0314; HUD No.: 01-19-4627-8

November 27, 2019

Cheryl M. Miller (Farmington)

v.

David Dunn (Biddeford)

I. Summary of the Case:

Cheryl Miller alleged that David Dunn discriminated against her based on her sex by subjecting her to a hostile housing environment and evicting her. Respondent denied discrimination, alleging that Complainant was an equal participant in the sexual banter and was evicted because she was behind on rent. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, an Issues and Resolution Conference ("IRC"), and requests for information. Based on this information, the Investigator recommends a finding that there are reasonable grounds to believe that Respondent subjected Complainant to a hostile housing environment and discriminated against her based on her sex by evicting her.

II. Summary of Investigation:

- 1) Dates of alleged discrimination: October 2018 – January 2019
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): August 21, 2019.
- 3) Respondent is subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act ("FHA"), as well as state and federal housing regulations.
- 4) Complainant is represented by Ashley Perry, Esq. Respondent is represented by Roger M. Champagne, Esq.

III. Development of Facts:

- 1) Complainant provided the following in support of her claims:

Complainant moved into 401 Main Street, Unit 101, Biddeford, ME 04405 (the "Premises") in August 2017 with her then-boyfriend ("Former Boyfriend"). While she was a tenant, Respondent verbally sexually harassed her. The harassment got worse in September 2018 when Former Boyfriend moved out. For example, when Complainant would go to Respondent's apartment to pay rent, as he requested, Respondent would be sitting with his penis exposed. In October 2018, Complainant and Respondent made an agreement wherein Complainant used her October rent to make a down payment on a car and would pay Respondent an additional \$50/month for the following months. In October 2018, Complainant got a new boyfriend ("Boyfriend") and the harassment got worse. Respondent sent numerous sexually explicit text messages, including a picture of himself with his pants down. In January 2019, Respondent became mad at Complainant for leaving her car in the parking lot when he was trying to plow snow, which had never been an issue before. Complainant moved out of the apartment in January 2019, fearing for her safety. In February 2019, Respondent evicted Complainant, allegedly for failure to pay back rent.

2) Respondent provided the following in support of his position:

Respondent owns and operates the Premises. Respondent sent sexually explicit text messages to Complainant, who was an equal participant in the exchanges. Furthermore, Complainant offered to have sex with Respondent rather than paying rent. In October 2018, Respondent and Complainant made an agreement wherein Complainant would skip October rent to pay for her car, but would pay Respondent an additional \$500/month in the following months. Complainant did not pay rent in November, December, or January. Respondent attempted to evict Complainant in February 2019, because Complainant moved in with Boyfriend, but Complainant's property remained in the apartment until March 2019.

3) The Investigator made the following findings of fact based on the submissions and IRC:

- a) Complainant lived at the Premises from August 2017 until January 2019.¹
- b) When she was a tenant, Complainant offered to exchange labor for rent payments.
- c) Respondent sent Complainant numerous sexually explicit text messages from October 2018 until January 2019.²
- d) In October 2018, Complainant and Respondent made an agreement wherein Complainant would use her October rent on a down payment for a car. In return, she would pay the October rent off in the following months.³

¹ Respondent alleged that Complainant abandoned the apartment in January 2019, but continued to store her property in the apartment until March 2019. Complainant admitted that she left her property in the apartment until March 2019, but provided that she stopped residing at the Premises in January 2019 after she received an eviction notice.

² A selection of Landlord's most egregious text messages is attached as Exhibit 1.

³ The parties disputed how much money Complainant was to pay back each month: Complainant alleged it was \$50; Respondent alleged it was \$500 (although his original answer to the complaint referenced the \$50 amount).

- e) In January 2019, Respondent yelled at Complainant for leaving her car in the parking lot when he was trying to plow the snow. Complainant alleged that this had never been an issue before, to which Respondent agreed; however, the basis of his agreement was dependent on the fact that Complainant did not have a working car until that winter season.
- f) On or around February 1, 2019, Respondent provided Complainant with an eviction notice, alleging failure to pay rent.

IV. Analysis:

- 1) The MHRA requires the Commission to “determine whether there are reasonable grounds to believe that unlawful discrimination has occurred.” 5 M.R.S. § 4612(1)(B). The Commission interprets the “reasonable grounds” standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA makes it unlawful for any owner to discriminate against any individual because of sex in the “price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations.” 5 M.R.S. § 4582.

Sex Discrimination: Hostile Housing Environment

- 3) The Commission’s regulations provide that it is unlawful to “threaten, intimidate, or interfere” with a person’s enjoyment of a dwelling because of the sex of such persons, or of visitors or associates of such persons. *Me. Hum. Rights Comm’n Reg. § 8.09(B)(2)*.
- 4) A hostile housing environment claim is analyzed similarly to a hostile work environment claim. *See, e.g., Neudecker v. Boisclair Corp.*, 351 F.3d 361, 364-65 (8th Cir. 2003); *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996); *Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993).
- 5) Such a claim is actionable when unwelcome behavior because of protected class status unreasonably interferes with Complainant’s use and enjoyment of the premises. *See Honce*, 1 F.3d at 1090. “Hostile environment claims involve repeated or intense harassment sufficiently severe or pervasive to create an abusive [housing] environment.” *Doyle v. Dep’t of Human Servs.*, 2003 ME 61, ¶ 23, 824 A.2d 48, 57 (employment case). In determining whether an actionable hostile housing environment exists, it is necessary to view “all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance. . . .” *Doyle*, 2003 ME 61, ¶ 23, 824 A.2d at 57. It is not necessary that the inappropriate conduct occur more than once so long as it is severe enough to cause the housing environment to become hostile or abusive. *Id; Nadeau v. Rainbow Rugs*, 675 A.2d 973, 976 (Me. 1996) (employment). “The standard requires an objectively hostile or abusive environment—one that a reasonable person would find hostile or abusive—as well as the victim’s subjective perception that the environment is abusive.” *Nadeau*, 675 A.2d at 976.
- 6) The fact that the conduct complained of is unwelcome must be communicated directly or indirectly to the perpetrator of the conduct. *See Lipsett v. University of Puerto Rico*, 864 F.2d 881, 898 (1st

Cir. 1988) (employment). In some instances, Complainant's failure to respond to suggestive comments or gestures may be sufficient to communicate that the conduct is unwelcome. *Id.*

- 7) Complainant has established that she was subjected to a hostile housing environment on the basis of sex. Reasoning is as follows:
- a) Respondent sent numerous sexually explicit text messages over the course of months. The text messages were severe and pervasive. Complainant was subjectively offended by the conduct, which was also objectively offensive. *See Exhibit 1*. Complainant expressed that the messages were unwelcome verbally and by consistently failing to respond to the sexually explicit text messages.⁴
 - b) Respondent claimed that Complainant was an equal participant in sexual banter, including by allegedly offering to have sex with him instead of paying rent. While Complainant did say she would "work off" rent that was due, she did not offer Respondent sexual favors. Rather, she offered to provide services such as cleaning Respondent's apartments.

Finally, Respondent's position appears to be that because he did not condition Complainant's tenancy on her providing sexual favors, he did not violate the MHRA. This defense is wholly without merit. While one way of proving a sex discrimination claim is by showing a "quid pro quo" demand, other means are equally effective. Here, Respondent made pervasive offensive and unwelcome sex-based comments, creating a hostile housing environment. This is unlawful discrimination under the MHRA.

- 8) It is found that Complainant has established her hostile housing environment claim against Respondent.

Sex Discrimination: Eviction

- 9) A mixed-motive analysis applies in cases involving "direct evidence" of unlawful discrimination. *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6 (employment case); *Texas v. Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d 722, 730 (D. Tex. 2000) (Fair Housing Act). "Direct evidence" consists of "explicit statements by [Respondent] that unambiguously demonstrate [Respondent's] unlawful discrimination". *Doyle*, 2003 ME 61, ¶ 14, n.6. Where this evidence exists, Complainant "need prove only that the discriminatory action was a motivating factor in an adverse [housing] decision." *Patten v. Wal-Mart Stores East, Inc.*, 300 F.3d 21, 25 (1st Cir. 2002) (employment); *Doyle*, 2003 ME 61, ¶ 14, n.6. Upon such a showing, in order to avoid liability, Respondents must prove "that [they] would have taken the same action in the absence of the impermissible motivating factor." *Id.*; *Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d at 730. *Cf. Price Waterhouse v. Hopkins*, 490 U.S. 228, 276-77, 109 S. Ct. 1775, 1804 (1989) (O'Connor, J., concurring).

⁴ Respondent alleged that Complainant reciprocated the text messages. Based on the record, there is evidence that before October 2018, Complainant and Respondent had a friendly relationship. However, once Respondent began sending sexually explicit text messages to Complainant, she showed that they were unwelcome by consistently not responding.

- 10) Here, the direct evidence standard is applicable. Complainant has shown that her protected class was a motivating factor in Respondent's actions. Respondent sent Complainant sexually explicit text messages. The text messages were objectively hostile and were clear examples of discriminatory intent on the basis of sex. When Complainant did not respond to his messages, Respondent started to treat her differently, becoming angry and swearing at her. Complainant moved out in January 2019, before receiving the eviction notice, because she feared for her safety.
- 11) Respondent has not proven that he would have taken the same action regardless of Complainant's protected class (sex). Respondent alleged that the reason for Complainant's eviction was because she was behind on rent. However, both parties agreed that she would pay October's rent in monthly increments after using the money to buy a car. Furthermore, Complainant posits that she paid rent until January, when she stopped residing at the Premises, but neither party have records of rent payments.
- 12) It is found that Respondent discriminated against Complainant based on her sex.

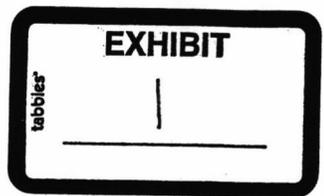
VI. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following finding:

- 1) There are **Reasonable Grounds** to believe that David Dunn discriminated against Cheryl Miller on the basis of sex by subjecting her to a hostile housing environment and evicting her, and conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).



Alexandra R. Brindley, Investigator



AT&T Wi-Fi

1:31 PM

66%



Cheryl >

Tue, Oct 30, 7:13 PM

Get ur hands out
of his pants

Not happening

already

Nope not
happening ever

What

Subject

I'll be back this
week to finish up

24/100



AT&T Wi-Fi

1:31 PM

66%



Cheryl >

Wed, Oct 31, 12:12 PM

Make sure u get
some candy

The only candy I
have is in my
pants

That's a popsicle

That's a big
popsicle

Subject

I'll be back this
week to finish up





Cheryl >

Fri, Nov 16, 1:52 PM

Quit playing with
that young mans
penis your going
to wear
It out

He's plowing
he's not even
here

He's been

Subject

I'll be back this
week to finish up

35/160



AT&T Wi-Fi

1:32 PM

66%



Cheryl >

Sat, Nov 17, 9:06 AM

Why the fuck is
[REDACTED] made at
me

[REDACTED] just called
and said you
called and said
she was mad at
me

Your getting more

Subject

I'll be back this
week to finish up

35/160



AT&T Wi-Fi

1:32 PM

66%



Cheryl >

sex than she is

No he loves my
low jobs

Is it true you can
suck the chrome
off a trailer hitch

Ya I guess that's
true

Stop using [REDACTED]
for sex

Subject

I'll be back this

35/160

week to finish up



AT&T Wi-Fi

1:32 PM

66%



Cheryl >

I'm still jerking off
and kissing my
hand

Sun, Nov 18, 2:56 PM

You still riding the
poor guy he's
going to
overdose on
pussy

Subject

I'll be back this
week to finish up

35/160



AT&T Wi-Fi

1:32 PM

66%



Cheryl >

Sun, Nov 18, 5:53 PM

Cheryl leave his
dick alone

Tue, Nov 20, 4:03 PM

Dave stop when u
get home



Subject

I'll be back this
week to finish up

35/160



AT&T Wi-Fi

1:32 PM

66%



Cheryl >

Wed, Nov 21, 2:06 PM

It fits

Sat, Nov 24, 4:08 PM

I hope ur not going to overdose on penis this weekend

No but last night

Subject

I'll be back this week to finish up

35/160



AT&T Wi-Fi

1:32 PM

66%



Cheryl >

No but last night
was the best ever

Has he got a big
one or do you

No

Do you tell him
fuck me give me
12" and make it
hurt

Subject

I'll be back this

35/160

week to finish up



AT&T Wi-Fi

1:33 PM

66%



Cheryl >

Your bad

Sat, Dec 1, 4:37 PM

Take that thing
out of ur mouth
he's going end up
with a sore on it

Cutting up deer
all day

Don't throw away

Subject

I'll be back this
week to finish up

35/160



AT&T Wi-Fi

1:33 PM

66%



Cheryl

**Don't throw away
the heart I make
pickled heart and
send it back Just
boil for 1 hr and
bring it home**

Sat, Dec 8, 6:58 PM

**Cheryl leave his
penis alone**

Subject

**I'll be back this
week to finish up**

3:57 PM



AT&T Wi-Fi

1:33 PM

66%



Cheryl >

Sun, Dec 9, 4:35 PM

Cheryl he's going to have a sore on it

Mon, Dec 10, 5:33 PM

U want to eat supper at [REDACTED]

I just put on supper

Subject

I'll be back this

35/160

week to finish up



AT&T Wi-Fi

1:34 PM

66%



Cheryl >

Fri, Dec 21, 6:23 PM

Did u run away

Yes

Big itch

Sat, Dec 22, 3:35 PM

What's up

Call me

Subject

I'll be back this
week to finish up

15/160



AT&T Wi-Fi

1:34 PM

66%



Cheryl >

Why

Because I said so

Not talking in front of [REDACTED] just tell. Me what u want

Then have call me

No

Subject

I'll be back this week to finish up

35/160



AT&T Wi-Fi

1:34 PM

66%



Cheryl >

No

WTF

What did I do now

ITS WHAT U
HAVENT DONE
LIKE CALL ME

What do u need
to tell me

Subject

I'll be back this
week to finish up

35/160



AT&T Wi-Fi

1:34 PM

66%



Cheryl >

Call me

No just tell me

NO NO

Tell me now

WHAT DONT U
UNDERSTAND
ABOUT CALL ME

I'm not calling so

Subject

I'll be back this
week to finish up

35/100



AT&T Wi-Fi

1:34 PM

66%



Cheryl >

I'm not calling so
whatever



Is that what u
wanted to tell me
about the
Christmas party

Sorry I can't

Subject

I'll be back this

35/150

week to finish up



SAMSUNG

81% 8:29 AM

← David Dunn
(207) 307-6038



Happy
Birthday

5:00 PM MMS

Your so



160/1