

SIOUX CITY HUMAN RIGHTS COMMISSION

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Bridget McClure,

Complainant,

And

Sioux City Human Rights Commission

v.

Pavel Benedic,

Respondent.

DIA No. 13SCHRC002  
SCHRC Case No. 11-1195

BRIEF IN SUPPORT OF PROPOSED  
HEARING ORDER

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BACKGROUND AND PROCEDURE

On March 12, 2013 a public hearing was held on the above complaint before Administrative Law Judge Jeffrey Farrell. The Complainant and Respondent were both present and testimony and exhibits were received by the hearing officer. The hearing officer had the opportunity to observe the witnesses as they testified and to ask questions of the witnesses prior to the record being closed. On April 15, 2013 a Proposed Decision was issued. On May 2, 2013 the Commission was served with an appeal of the proposed decision by Respondent Pavel Benedic. The review of the proposed decision and the appeal are scheduled for consideration at the Sioux City Human Rights Commission's June 6, 2013 meeting. Pursuant to Sioux City Municipal Code, the Commission may adopt, modify, or reject the proposed decision or it may remand the case to the hearing officer with directions. The Commission may further elect to issue an affirmative order in addition to the proposed decision of the hearing officer. Pursuant to City Code and the interim rules of the Commission, only those issues actually raised before the hearing officer shall be considered by the Commission except in the case where the issue was either:

- a. Raised prior to the proposed decision by a party, but not ruled upon, or

b. Was discussed in the proposed decision, but not argued on brief by the parties.

In this case no briefs were filed with the hearing officer, and no was a request made for submission of briefs by the parties at the time of hearing.

### ARGUMENT

#### 1. THE HEARING OFFICER'S DETERMINATION AS TO CREDIBILITY SHOULD BE UPHELD.

The hearing officer in this case had to the opportunity to observe and assess the credibility of all witnesses who testified in this matter. Appellate courts of this state have consistently deferred to the trial court as to matters of credibility of witnesses as the trial judge or in the case the hearing officer has the advantage in assessment due to the ability to see, hear and assess the demeanor of the witnesses, their candor and their memory of events while the appellate court does not. Respondent's attempt to impugn the credibility of the Complainant is not only outside the scope of the record at the hearing, but also in violation of Iowa Rule of Evidence 5.609 which requires advance prior written notice of intent to use a conviction for impeachment purposes. Exhibit 1 as attached to the Respondent's Memorandum in Support should be stricken from consideration as it is beyond the record presented by Respondent at the hearing, and Respondent failed to provide notice of intent to use the conviction pursuant to the rules. Respondent further misstates the law regarding the prior conviction as Iowa Courts have specifically held that the offense for which Complainant was convicted is not an offense involving dishonesty or false statement. It should also be noted that by attaching the appeal and not the original sentencing order the Respondent appears to be attempting to circumvent the time limit restrictions found in Iowa Rule of Evidence 5.609 by attempting to characterize the Complainant's conviction as being less than 10 year old at the time of hearing, when in fact the Complainant was sentenced for the offense on November 12, 2002 more than ten years prior to the date of the hearing.

As for the testimony of the other former tenants, Ms. Pigott and Ms. Little, the hearing officer had the opportunity to observe the demeanor of both witnesses and both testified that the Respondent did not return their deposit. They further testified that the Respondent did not provide them with a written itemization as required by Iowa Code Section 562A.12(3) which states the following:

3. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the dwelling unit, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:

a. To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.

b. To restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

c. To recover expenses incurred in acquiring possession of the premises from a tenant who does not act in good faith in failing to surrender and vacate the premises upon noncompliance with the rental agreement and notification of such noncompliance pursuant to this chapter.

In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

Both witnesses testified that their concerns with Respondents statements, behavior, and concerns for the security of their persons and property in the apartment were the reason for terminating their tenancy. Those legitimate concerns existed well in advance of the Respondent's failure to return the rental deposit.

2. THE IMPOSITION OF A CIVIL PENALTY IN THE AMOUNT OF \$10,000 WAS APPROPRIATE IN THIS CASE AND FURTHER AN ORDER REQUIRING SUBMISSION TO MONITORING BY THE COMMISSION IS WARRANTED.

In the present case not only was a complaint made regarding housing discrimination, but based upon the actions of the Respondent, the complaint was later amended to add a claim for retaliation against the Complainant for filing the initial complaint. Cases in which it is found that a Complainant has been retaliated against for filing an initial

complaint are clearly those that the legislature and the City Council had in mind when adopting Iowa Code Section 216.15A which provides that for vindication of the public interest in housing cases by imposition of a civil penalty. Based upon the actions of the Respondent in terminating the tenancy of the Complainant unjustly and unlawfully based upon her filing of a complaint and for purposely refusing to make repairs relating to the safety of the premises, the imposition of the maximum civil penalty allowed by law is appropriate.

In addition to the civil penalty, the Respondent should also be ordered to submit to monitoring by the Commission for a period of a minimum of two years from the date of this decision to ensure compliance with the fair housing laws.

3. RETALIATION WAS CLEARLY ESTABLISHED BY THE EVIDENCE.

The testimony at the hearing clearly established Respondent's retaliation against Complainant for filing a complaint with the Commission. Respondent's refusal to make repairs related to safety, and his unsubstantiated complaint to the Housing Services Department in an attempt to disqualify Complainant from housing assistance following her filing of a complaint with the Commission support the finding of retaliation by the hearing officer. The Respondent terminated the Complainant's tenancy for the stated purpose of replacement of the stairway which provided the only point of entry into the apartment, however by his own admission he did not replace the stairs and simply added a few additional bolts to reinforce the stairway. According to the testimony of Ms. Haupt from the Housing Services Department, the Respondent has state that he could not afford to make any repairs, which was also clearly not the case.

4. AMOUNTS AWARDED TO COMPLAINANT FOR DAMAGES AND EMOTIONAL DISTRESS ARE JUSTIFIED, AMPLY SUPPORTED BY THE EVIDENCE AT THE HEARING AND SHOULD BE AFFIRMED BY THE COMMISSION.

The Complainant testified as to her monetary loss caused by the necessity of finding another place to reside and for storage of her belongings until a residence approved by the Section 8 Housing Program could be obtained. Ms. McClure testified as to the amount of the required deposit, the amount of monthly storage fees for her belongings, and the costs of obtaining labor and transportation of her belongings. The hearing officer found the amounts reasonable and her testimony as to those amounts credible. The hearing officer further found the detailed testimony by Ms. McClure of the emotional after effects of Respondent's actions against her to be credible and to amply support the award made for emotional distress. Ms. McClure testified about her anxiety as a result of the Respondent's actions which caused chest pains and loss of sleep. Ms. McClure ultimately sought counseling to attempt to assist her in dealing with the anxiety and with the aggravation of a pre-existing condition caused by the Respondent's behavior toward her.

### CONCLUSION

For the reasons set forth in the proposed decision by the Administrative Law Judge and for the reasons stated above, it is respectfully requested that the Commission adopt the findings of the proposed order as follows:

1. Awarding damages to the Complainant, Bridget McClure in the amount of \$11,090.
2. Assessing a civil penalty against the Respondent to be paid to the Commission in the amount of \$10,000.00.
3. Assess the costs of the action including the appeal against the Respondent.

It is further requested that the Commission also order that the Respondent submit to monitoring by the Commission for a minimum period of two years from the date of the decision by the Commission to insure compliance with the fair housing laws.

Respectfully submitted,

/s/ Connie E. Anstey

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#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served on each person listed below electronic service or by hand delivery in Sioux City, Iowa, on the 6th day of June, 2013.

Copies to:

Christopher Barondeau      e-mail  
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ATTORNEY FOR RESPONDENT

Bridget McClure              hand delivery  
COMPLAINANT

Karen Mackey, Director      e-mail  
Sioux City Human Rights Commission

Individual Members of the Commission      e-mail and hand delivery

/s/ Connie E. Anstey