

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NIKITA D. SMITH,

Plaintiff,

vs.

WASATCH PROPERTY MANAGEMENT,
INC., and WASATCH POOL HOLDINGS,
LLC,

Defendants.

No.

COMPLAINT FOR UNLAWFUL
HOUSING DISCRIMINATION

Introduction

1. Rental housing providers in King County, Washington, typically deny admission to rental applicants with certain characteristics, such as adverse credit history, criminal records, or—especially—involvement in residential eviction lawsuits, such as unlawful detainer actions.

2. Indeed, having been named as a defendant in a past unlawful detainer action often dooms a rental application. Almost all housing providers tend to treat applicants who have been sued for unlawful detainer less favorably, and many King County landlords categorically refuse to accept any such applicants as tenants—without regard to the facts, outcomes, or surrounding circumstances of those cases.

3. As scholars have observed in numerous U.S. cities, eviction is a significant social problem that disproportionately affects African-Americans, particularly urban dwellers, and the harshest impacts fall upon African-American women. See, e.g., Desmond, Matthew, "Eviction and the Reproduction of Urban Poverty," 118 American Journal of Sociology 88 (July 2012);¹ see Hartman, Chester and David Robinson, "Evictions: The Hidden Housing Problem," 14 Housing Policy Debate 461, 467 (2003).² As renowned Harvard scholar and MacArthur Genius Grant winner Matthew Desmond has written:

If incarceration has become typical in the lives of men from impoverished black neighborhoods, eviction has become typical in the lives of women from these neighborhoods. Typical yet damaging, for the consequences of eviction are many and severe: eviction often increases material hardship, decreases residential security, and brings about prolonged periods of homelessness; it can result in job loss, split up families, and drive people to depression and, in extreme cases, even to suicide; and it decreases one's chances of securing decent and affordable housing, of escaping disadvantaged neighborhoods, and of benefiting from affordable housing programs. In inner-city neighborhoods, it is women who disproportionately face eviction's fallout.

Desmond, 118 American Journal of Sociology at 91.

4. The disproportionate effects of evictions are likewise present in King County, where African-Americans are almost four times more likely than white renters to have been sued for unlawful detainer. African-American women in King County are sued for unlawful detainer more than five times as often as households headed by white men.

5. Because African-Americans, and African-American women in particular, are significantly more likely to be sued for unlawful detainer than their white counterparts, rental admissions policies that treat applicants who have been sued for unlawful detainer less favorably

¹ This article is available for free on-line at: <http://scholar.harvard.edu/files/mdesmond/files/desmond.evictionpoverty.ajs2012.pdf>.

² This article is available for free on-line at: <http://content.knowledgeplex.org/kp2/cache/kp/10950.pdf>.

1 have a discriminatory effect upon African-American renters and especially upon African-
2 American women.

3 6. Rental housing providers may have a valid interest in avoiding tenants who are
4 unlikely to perform well in the proposed new tenancy. But categorically denying all applicants
5 with unlawful detainer records is not necessary to achieve this interest. Instead, a housing
6 provider could examine the nature and recency of an applicant's prior record. For instance,
7 housing providers can review applicants with unlawful detainer records individually and refrain
8 from excluding applicants who lacked culpability, who were sued and evicted many years ago, or
9 who present other information showing they are likely to perform well as tenants
10 notwithstanding a past eviction proceeding. See generally *Green v. Missouri Pacific Railroad*
11 *Co.*, 523 F.2d 1290, 1298 (8th Cir. 1975) (employer's interest in avoiding problem employees
12 did not justify a policy of denying employment to all applicants with criminal records).

13 7. A housing practice which disproportionately excludes persons from rental
14 housing because of race or sex (or both) violates the Fair Housing Act unless that practice is
15 necessary to achieve a valid interest. See *Texas Dept. of Housing & Community Affairs v.*
16 *Inclusive Communities Project, Inc.*, __ U.S. __; 135 S. Ct. 2507, 2523 (2015). Categorically
17 denying admission to all prospective tenants with unlawful detainer case records is not necessary
18 to achieve a valid interest.

19 8. The plaintiff in this action, Nikita Smith, is an African-American woman who was
20 denied admission to rental housing in 2015 because of a 2012 unlawful detainer action. Even
21 though the case record did not objectively suggest that Ms. Smith would perform poorly in a
22 future tenancy, and other information suggested she would perform well, the property
23 management company (Defendant Wasatch Property Management, Inc.) that operated the
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1 complex refused to even consider her application once Ms. Smith disclosed that she had
2 previously been sued for unlawful detainer. As its representative made clear, Wasatch Property
3 Management had a policy of denying admission to any tenant who had been named as a
4 defendant in a prior eviction lawsuit, irrespective of the circumstances or outcomes, and without
5 regard to mitigating factors or subsequent changes in the applicant's circumstances.

6 9. By this action, Ms. Smith challenges Defendants' policy of categorically denying
7 admission to rental applicants with unlawful detainer records under the Fair Housing Act (42
8 U.S.C. § 3604). She seeks an order declaring Wasatch Property Management's policy unlawful
9 and enjoining Wasatch Property Management from continuing to apply that policy. She also
10 seeks all damages to which she may be entitled, all costs of suit, and reasonable attorney fees.

11 **Parties, Jurisdiction, and Venue**

12 10. Plaintiff Nikita Smith is an African-American woman who lives in this District.

13 11. Defendant Wasatch Pool Holdings, LLC is a corporation that has carried on
14 continuous and systematic business activities in this District, including owning Wasatch Hills
15 Apartment Homes, a multi-family apartment complex in Renton, Washington, at the time of the
16 discriminatory actions described in this Complaint.

17 12. Defendant Wasatch Property Management, Inc. is a corporation that carries on
18 continuous and systematic business activities in this District, including operating several multi-
19 family apartment complexes in Renton, Washington. Defendant Wasatch Property Management,
20 Inc., managed the Wasatch Hills Apartment Homes complex at the time of the discriminatory
21 actions described in this Complaint.

22 13. Defendant Wasatch Property Management, Inc. was the agent of Wasatch Pool
23 Holdings, LLC at the time of the discriminatory actions described in this Complaint. All acts
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1 and omissions of Wasatch Property Management, Inc. alleged herein were undertaken within the
2 scope of its agency and with the actual or apparent authority of Wasatch Pool Holdings, LLC.

3 14. This Court has subject matter jurisdiction because the action seeks “[t]o recover
4 damages [and] secure equitable or other relief under [an] Act of Congress providing for the
5 protection of civil rights[.]” 28 U.S.C. § 1343(a). The case also involves a question arising under
6 the laws of the United States. See 28 U.S.C. § 1331 (“The district courts shall have original
7 jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United
8 States.”). This Court has supplemental jurisdiction over the Plaintiff’s state law claim. See 42
9 U.S.C. § 1367.

10 15. Venue is appropriate in this District because the substantial events giving rise to
11 this action took place in this District. See 42 U.S.C. § 1391(b)(2). The principal parties and
12 witnesses are also located in this District.

13 16. As the substantial events giving rise to the claims asserted in this action took
14 place in King County, this case is appropriate for assignment in Seattle under L.C.R. 3(d)(1).

15 **Facts**

16 17. Defendant Wasatch Pool Holdings, LLC, owned Wasatch Hills Apartment Homes
17 (hereafter “Wasatch Hills”), a residential apartment complex in Renton, Washington, with over
18 350 dwelling units, from 2007 to 2016.

19 18. Defendant Wasatch Property Management, Inc., managed the Wasatch Hills
20 property while it was owned by Wasatch Pool Holdings, LLC, including at the time of the events
21 described in this Complaint.

22 19. In April 2015, Plaintiff Nikita Smith was issued a Housing Choice Voucher
23 through Renton Housing Authority. See 24 C.F.R. § 982.1 (describing the Housing Choice
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1 Voucher program). Under that program, Ms. Smith could lease an appropriate dwelling unit
2 from a rental housing provider and would pay about 30% of her income in rent and utilities each
3 month, and Renton Housing Authority would pay a subsidy directly to Ms. Smith's landlord that
4 would (generally) cover any remaining rent owed under her lease.

5 20. After being issued the voucher, Ms. Smith began searching for an appropriate
6 rental property at which to utilize the voucher. Her search led her to Wasatch Hills.

7 21. Ms. Smith visited Wasatch Hills on or about April 23, 2015. She met with a
8 Wasatch Property Management, Inc. representative, Robin Tucker, and toured two dwelling
9 units. After touring the units, Ms. Smith intended to apply for admission to the property.

10 22. After showing the apartments to Ms. Smith, Ms. Tucker began asking Ms. Smith
11 questions about her credit history and background. In the course of that discussion, Ms. Smith
12 disclosed that she had previously been sued for unlawful detainer.

13 23. Ms. Smith's prior unlawful detainer action would not lead an objective reasonable
14 person to conclude that she would not perform well in a future tenancy, because:

15 a. The unlawful detainer action was based solely on non-payment of rent; Ms.
16 Smith entered into a payment plan with the landlord to resolve the suit, and paid off the
17 landlord's claim in full shortly thereafter, as confirmed by a satisfaction of judgment filed
18 by the landlord. She was never evicted from the property—and, indeed, was still living
19 there at the time she sought housing from Wasatch Hills, more than two years later.

20 b. The reason Ms. Smith was even searching for new housing was that she had
21 been issued the Housing Choice Voucher. Not only would the associated subsidy reduce
22 the financial pressure on Ms. Smith and better enable her to afford other bills and
23 expenses, but the amount of her rent subsidy would increase if her income decreased. As
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1 such, having the voucher would make Ms. Smith much less likely to fall behind on rent
2 or utilities in the event she became unemployed or suffered some other kind of future
3 income disruption, compared with her circumstances at the time of the 2012 unlawful
4 detainer suit.

5 24. Ms. Tucker told Ms. Smith that the eviction suit would preclude Ms. Smith from
6 being admitted as a tenant, even if she met all the other criteria for admission. Ms. Tucker made
7 clear that Wasatch Hills would not consider any explanation or mitigating information Ms. Smith
8 might provide about the eviction case or her subsequently improved circumstances, and that the
9 basis for the eviction suit or the outcome of the case would not matter.

10 25. Also during the discussion, Ms. Tucker stated that Wasatch Hills would not admit
11 Ms. Smith as a tenant because of her reliance on a Housing Choice Voucher. Ms. Tucker made
12 that statement even though Wasatch Hills was, at the time, subject to a regulatory agreement
13 with the Washington State Housing Finance Commission which prohibited Wasatch Hills from
14 treating voucher holders less favorably than other applicants. Due to the regulatory agreement,
15 Defendants could not lawfully have denied admission to Ms. Smith because of her housing
16 voucher.

17 26. Because Ms. Smith's prior involvement in an eviction lawsuit would absolutely
18 bar her admission to Wasatch Hills, Ms. Tucker further refused to accept or process Ms. Smith's
19 written application (which would have entailed ordering a tenant-screening report about Ms.
20 Smith, for which a fee would have been charged).

21 27. Ms. Smith sustained economic losses because of this incident, including the loss
22 of the time and expenses she invested to visit Wasatch Hills and tour the property. She was also
23 denied the opportunity to live at Wasatch Hills, and had to continue her housing search. Ms.
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1 Smith also sustained significant mental and non-economic harm, because her civil rights were
2 violated and she felt humiliated and embarrassed.

3 28. African-Americans in King County are almost four times more likely than white
4 renters to have been sued for unlawful detainer. African-American women in King County are
5 sued for unlawful detainer more than five times as often as households headed by white men.
6 Thus, Defendants' practice of refusing to accept prospective tenants who have previously been
7 sued for unlawful detainer has a disproportionate adverse impact on African-Americans and
8 African-American women in King County.

9 29. Although the Wasatch Hills property has since been sold and is now under new
10 management, Defendant Wasatch Property Management, Inc. continues to manage multi-family
11 residential complexes in Washington—including three properties in Renton. On information and
12 belief, Wasatch Property Management, Inc. categorically refuses to admit rental applicants who
13 have previously been sued for unlawful detainer in at least two of its Renton properties.

14 **Claims for Relief**

15 **A. Race discrimination under the Fair Housing Act (42 U.S.C. § 3604)**

16 30. Plaintiff realleges and incorporates all foregoing allegations into this section.

17 31. The Fair Housing Act prohibits discrimination in rental housing on the basis of
18 race or color, including by refusing to rent, refusing to negotiate for the rental of, discriminating
19 against in the provision of services or facilities in connection with, or otherwise denying a
20 dwelling to a person because of race or color or by making any statement indicating an intent to
21 make "any preference, limitation, or discrimination based on race [or] color" with respect to the
22 rental of a dwelling. See 42 U.S.C. § 3604.

1 32. Defendants violated 42 U.S.C. § 3604 by refusing to receive or process an
2 application for the rental of a dwelling unit at Wasatch Hills from Nikita Smith, and by stating its
3 policy of categorically refusing to accept applicants with unlawful detainer records. This denial
4 of housing occurred because of race or color because Wasatch Property Management's policy of
5 not accepting tenants who have been previously sued for unlawful detainer has a discriminatory
6 effect on African-Americans, who are significantly more likely to be sued for unlawful detainer
7 than renters of other races. By following this policy, Defendants disproportionately deny
8 housing opportunities to African-Americans.

9 33. A practice that has a discriminatory effect on African-Americans violates the Fair
10 Housing Act unless the policy or practice is necessary to achieve a valid interest of the housing
11 provider.

12 34. On information and belief, Wasatch Property Management's policy of refusing to
13 consider admitting tenants who have been sued for unlawful detainer is intended to avoid leasing
14 to tenants who fail to pay rent or otherwise perform poorly in their tenancies. However, the
15 categorical exclusion of all applicants who have previously been sued for unlawful detainer is
16 not necessary to achieve this purpose because there are equally effective methods by which
17 Wasatch Property Management could avoid problem tenants while having less of a
18 discriminatory effect on African-Americans. For instance, Wasatch Property Management
19 could conduct individualized assessments of applicants with unlawful detainer records.

20 35. Wasatch Property Management's policy of categorically refusing to admit rental
21 applicants who have been sued for unlawful detainer is therefore an unfair housing practice that
22 violates the Fair Housing Act, 42 U.S.C. § 3604.

36. Ms. Smith, who is African-American, sustained economic and non-economic injuries as a direct and proximate result of Defendants' discriminatory housing practices. In particular, Defendants injured Ms. Smith by refusing to consider her application after she disclosed she previously had been sued for unlawful detainer, causing the denial of rental housing and accompanying frustration and mental distress. Ms. Smith's application could have been evaluated under a less discriminatory policy (such as one that takes changed circumstances into account, or that disregards unlawful detainer records when the tenant avoids eviction or settles the case to the landlord's satisfaction).

37. Ms. Smith has sustained economic and non-economic injuries (including the denial of rental housing and accompanying frustration and mental distress) as a direct and proximate result of Defendants' discriminatory housing practice.

B. Race and sex discrimination under the Fair Housing Act (42 U.S.C. § 3604)

38. Plaintiff realleges and incorporates all foregoing allegations into this section.

39. Wasatch Property Management's policy of not admitting rental applicants who have been previously sued for eviction has an even greater disproportionate effect on African-American women, who are named as defendants in King County unlawful detainer suits more than five times as often as households headed by white men.

40. This troubling statistic is consistent with the findings of Professor Matthew Desmond, who has identified being "locked out" through residential evictions as black women's analogue to the mass incarceration of black men (or being "locked up."). See, e.g., Desmond, Matthew, "Evictions: a hidden scourge for black women," Washington Post (June 16, 2014).³

³ Article available for free on-line at: https://www.washingtonpost.com/posteverything/wp/2014/06/16/evictions-hurt-black-women-as-much-as-incarceration-hurts-black-men/?utm_term=.3022c5c81971, last visited Jan. 5, 2017.

41. It is well-established in the employment discrimination context that “Title VII prohibits discrimination not just because of one protected trait (e.g., race), but also because of the intersection of two or more protected bases (e.g., race and sex).” EEOC, Compliance Manual on Race and Color Discrimination, § 15-IV(C) (Apr. 19, 2006); see also *Lam v. University of Hawaii*, 40 F.3d 1551, 1561-62 (9th Cir. 1994). Similarly, liability may be established under the Fair Housing Act for housing practices that discriminate because of the intersection of multiple protected statuses. See generally *Pfaff v. U.S. Dept. of Housing & Urban Development*, 88 F.3d 739, fn1 (9th Cir. 1996) (courts interpreting Fair Housing Act “may look for guidance to employment discrimination cases”).

42. Accordingly, for substantially the same reasons as described in ¶¶ 30-37 of this Complaint, Wasatch Property Management’s policy of categorically refusing to admit tenants who have been previously sued for unlawful detainer also violates the Fair Housing Act, which prohibits discrimination based on race and sex, by disproportionately denying housing opportunities to African-American women. Despite causing this discriminatory effect on African-American women, Wasatch Property Management’s policy of categorically denying admission to people who have been sued for unlawful detainer is not necessary to achieve any valid interest.

43. Ms. Smith, who is an African-American woman, has sustained economic and non-economic injuries (including the denial of rental housing and accompanying frustration and mental distress) as a direct and proximate result of Defendants’ discriminatory housing practice.

Relief Requested

44. Based on the foregoing allegations, the Court should find and declare that Wasatch Property Management’s policy of refusing to accept or negotiate for the rental of

housing to any applicants who have been sued for unlawful detainer is unlawful due to its unjustified discriminatory effect on African-Americans and in particular on African-American women, and should enjoin Wasatch Property Management, Inc., from carrying on with that policy.

45. The Court should further award Ms. Smith damages in whatever amount the Court finds appropriate to compensate her for all of her economic and non-economic injuries.

46. The Court should further award Ms. Smith all costs of suit, including reasonable attorney fees.

47. This relief is authorized under 42 U.S.C. § 3613 and 28 U.S.C. § 2201(a), and is requested under all statutes.

48. Ms. Smith further requests any additional relief the Court may find appropriate in the interests of justice.

Respectfully Submitted this 30th day of March, 2017.

NORTHWEST JUSTICE PROJECT

ACLU OF WASHINGTON

/s/ Allyson O'Malley-Jones

By: Allyson O'Malley-Jones (WSBA #31868)

/s/ Matthew Brady

By: Matthew Brady (WSBA #27245)

Attorneys for Plaintiff Nikita Smith

/s/ Prachi Dave

By: Prachi Dave (WSBA #50498)

Co-Counsel for Plaintiff Nikita Smith

ACLU WOMEN'S RIGHTS PROJECT

VIRGINIA POVERTY LAW CENTER

/s/ Sandra S. Park

By: Sandra S. Park (pro hac vice forthcoming)

/s/ Lenora M. Lapidus

By: Lenora M. Lapidus (pro hac vice forthcoming)

Co-Counsel for Plaintiff Nikita Smith

/s/ Eric Dunn

By: Eric Dunn (WSBA #36622)

Co-Counsel for Plaintiff Nikita Smith