



Summers v. Tamarack Apartments

2008 | Cited 0 times | New Jersey Superior Court | January 7, 2008

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

Submitted December 17, 2007

Before Judges Parrillo and Graves.

Appellant Samuel Summers appeals from a final decision of the Director of the Division on Civil Rights (Division) finding no probable cause to credit appellant's complaint against respondent Tamarack Apartments (Tamarack) of unlawful discrimination in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. We affirm.

Tamarack is an apartment complex in Camden of over 500 units, which is funded in part by the New Jersey Housing and Mortgage Financing Agency (NJH&MFA). Summers has lived in one of these units at 2011 Ferry Avenue since Spring 1984. On May 6, 2005, Summers and Tamarack's representative entered into an agreement to renew Summers' lease from June 1, 2005 through May 31, 2006 at a rate of \$544 per month. Payment was to be made on the first day of every month. At the end of 2005, however, unable to find suitable employment, Summers fell two months behind in his rent.

Consequently, Tamarack commenced eviction proceedings in November 2005. By agreement of December 1, 2005, signed by Summers and Tamarack's attorney, Summers agreed to relinquish possession of the apartment immediately, and in exchange he would be relieved of paying the arrears. A warrant directing Summers "to remove all persons and property" from the premises was entered on December 21, 2005.

Shortly afterwards, however, Summers sought assistance from the State Homelessness Prevention Program (HPP).¹ Having deemed Summers eligible, on January 5, 2006, the HPP, pursuant to its client contract with Summers, agreed to pay Tamarack a total of \$1285, representing rent for November and December 2005, a late fee, attorneys fees and court costs. About the same time, Summers was granted a stay of eviction until January 17, 2006, at which time he would be obligated to pay all money owed by then or be evicted.

What follows is subject to some dispute. According to Tamarack, the money from HPP did not represent the full amount owed because it did not include payment of the January 2006 rent which was also overdue by then. At the time Summers came to the office of Tamarack's property manager, Beth Mills, on January 5, 2006, the amount due was \$1632. Tamarack was willing to accept the HPP



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payment as long as Summers could tender the difference. When he did not, the HPP payment was not accepted and Summers was evicted.

According to Summers, Mills had not asked him for the January rent, did not inform him of the total amount due, but simply told him that the HPP contract would not be signed, although she gave no reason. When Summers then contacted NJH&MFA about his eviction, Mills called him about his inquiry. Mills again refused to sign the paperwork for HPP and supposedly told him to give her \$1000 to resolve the matter. Summers refused and was finally evicted on January 17, 2006.

In an affidavit refuting Summers' version, Mill attested that Summers was not evicted because his rental payment would come from HPP, but because the amount HPP had agreed to pay did not cover Summers' full arrearage. Summers was told the total amount due, but chose not to pay the balance remaining after application of the HPP payment.

As a result of his eviction, Summers filed a verified complaint with the Division on January 26, 2006, charging Tamarack with unlawful discrimination in violation of the LAD. Specifically, he alleged that Tamarack had discriminated against him by refusing to accept a source of lawful income or rent subsidy, namely funds from the HPP, in violation of N.J.S.A. 10:5-12(g)(4). This provision makes it unlawful for the owner, managing or other agent, or employee to refuse to rent or deny real property to any person because of the source of lawful income of such person. Tamarack answered the complaint, denying any discriminatory conduct. The Division then commenced its investigation into whether "probable cause" existed to credit Summers' allegation of discrimination. The Division's investigation concluded on November 9, 2006 with a "Finding of No Probable Cause." Specifically, the Division determined that the amount of assistance proffered by HPP would not have fully compensated Tamarack for the overdue rent payments Summers owed. This appeal follows.

Our standard of review of the determination of an administrative agency is limited. We are required to defer to it if it is supported by credible evidence in the record, is not arbitrary, capricious or unreasonable, and is consistent with the legislative mandate and relevant considerations of State policy. See, e.g., *R. & R. Mktg., L.L.C. v. Brown-Forman Corp.*, 158 N.J. 170, 175 (1999) (citation omitted); *In re Musick*, 143 N.J. 206, 216 (1996); *L.T. v. New Jersey Dep't of Human Servs., Dir. of Family Dev.*, 134 N.J. 304, 320-21 (1993).

We are dealing here with an agency determination of whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the LAD as reasonable grounds for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. *Frank v. Ivy Club*, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. denied, 498 U.S. 1073, 111 S.Ct. 799, 112 L.Ed. 2d 860 (1991). A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. *Sprague v.*



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Glassboro State Coll., 161 N.J. Super. 218, 226 (App. Div. 1978). See also Frank, *supra*, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination.

We are persuaded that there is no warrant in the statute or this record for our interference with the agency determination of no probable cause. The record reasonably admits that Tamarack did not evict Summers because he sought to pay with HPP funds, but because those funds were insufficient to settle his account. Indeed, Summers admits knowing that he had to be current with his rent by January 17, 2006, and he does not dispute that the HPP funds would not have fully compensated Tamarack for the overdue payments Summers owed. In this regard, where the assistance will not cover all of the prospective tenant's rent, the landlord has the right to look at the tenant's ability to pay the balance. *Pasquince v. Brighton Arms Apartments*, 378 N.J. Super. 588, 598 (App. Div. 2005). Here, the source of Summers' income was not the issue, simply the amount, and therefore the finding of no "probable cause" was amply supported.

Affirmed.

1. The HPP is part of the New Jersey Department of Community Affairs, Division of Housing and Community Resources.

