

FILED

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CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CALVIN L. SALEM and ALICE B. SALEM
FAMILY TRUST and CALVIN L. SALEM,
Individually and as Trustee of the Calvin L.
Salem and Alice B. Salem Family Trust,

Defendants.

CIVIL ACTION NO. 15-4137

COMPLAINT and JURY DEMAND

The United States of America alleges as follows:

NATURE OF ACTION

1. The United States brings this action to enforce Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.* (“Fair Housing Act”). This action is brought on behalf of Daniel Loring (“Mr. Loring”), pursuant to 42 U.S.C. § 3612(o).

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 3612(o).

3. Venue is proper in this District under 28 U.S.C. § 1391(b) because the events or omissions giving rise to the United States’ claims occurred there, and the property that is the subject of this suit is located there.

PARTIES AND PROPERTY

4. Salem Apartments is located at 812 S. Sherman Avenue in Sioux Falls, South Dakota. Salem Apartments is an eight-unit apartment complex.

5. The “Subject Property” is apartment number four in the Salem Apartments.

6. At all relevant times, Defendants Calvin L. Salem and Alice B. Salem Family Trust (“Salem Family Trust”) and Calvin L. Salem (“Salem”) were the owners of the Subject Property. Defendant Salem managed the day-to-day operations of the Subject Property and is the trustee of the Salem Family Trust.

7. The units at Salem Apartments are “dwelling[s]” within the meaning of the Fair Housing Act, 42 U.S.C. § 3602(b).

8. Mr. Loring is and has been a person with a disability as defined by the Fair Housing Act, 42 U.S.C. § 3602(h). Mr. Loring has partial quadriplegia and typically uses a walker to assist with mobility. Mr. Loring’s mobility was further limited by an injury occurring in January 2014.

FACTUAL ALLEGATIONS

9. On or about August 22, 2013, Mr. Loring leased the Subject Property, a one-bedroom apartment at Salem Apartments, from Defendants. Mr. Loring moved into the Subject Property on or about September 2, 2013, at which time he ambulated with the assistance of a walker.

10. On or about January 15, 2014, Mr. Loring fractured his left tibia. Because of his disability and the injury to his left leg, Mr. Loring was admitted to and rehabilitated at Covington Heights, a skilled nursing facility located at 3900 South Cathy Avenue in Sioux Falls, South Dakota, from approximately January 18, 2014, until April 29, 2014.

11. During his rehabilitation, Mr. Loring used a wheelchair. The duration of his need for a wheelchair was unclear at the time.

12. Sometime in mid-February 2014, Defendant Salem visited Mr. Loring at Covington Heights, during which visit Defendant Salem and Mr. Loring discussed Mr. Loring's health.

13. Sometime in mid-February 2014, after visiting Mr. Loring at Covington Heights, Defendant Salem wrote a letter to the nursing facility's staff, which stated in part that Mr. Loring was not capable of living independently, that he should be in a nursing home, and that he should not return to the Subject Property.

14. The mid-February 2014 letter written by Defendant Salem also stated that Mr. Loring could not return to the Subject Property while using a wheelchair as a wheelchair would cause damage to the Subject Property's carpet.

15. In telephone conversations with Mr. Loring's mother, Marlene Loring, in February and March 2014, Defendant Salem stated that Mr. Loring could not return to the Subject Property in his wheelchair because the wheelchair would cause damage to the carpets.

16. In a telephone conversation with Mr. Loring on March 11, 2014, Defendant Salem again stated that Mr. Loring could not return to the Subject Property while using a wheelchair. At that time, Mr. Loring asked Defendant Salem if he could stay in the apartment if he was able to walk by the end of March. Defendant Salem told Mr. Loring that he could continue to live at the apartment as long as he was not in a wheelchair.

17. On multiple occasions, Mr. Loring asked Defendant Salem to allow him to remain in the Subject Property, either with or without the use of a wheelchair.

18. Defendant Salem has admitted to HUD that he was concerned about “damage to [the] carpets . . . because of [Mr. Loring’s] wheelchair.”

19. Mr. Loring’s rent for the Subject Property was paid in January, February, and March 2014, despite the fact that Mr. Loring was residing at Covington Heights.

20. On or about March 13, 2014, Mr. Loring permitted a friend, Jeff Kadinger (“Kadinger”), to temporarily stay at the Subject Property. Kadinger was in need of a temporary place to stay while he recovered from an out-patient surgery and was a guest, not an occupant, at the Subject Property.

21. Defendant Salem initiated eviction proceedings against Mr. Loring by having him served with a Notice to Quit and Vacate on or about March 18, 2014. The Notice to Quit and Vacate stated that Mr. Loring’s right to possess the Subject Property was terminated because he “allow[ed] unauthorized occupants to reside in the leased premises.”

22. Immediately after receiving the Notice to Quit and Vacate, Mr. Loring cured any potential lease violations by telling Kadinger he could no longer stay at the Subject Property. Mr. Kadinger left the Subject Property on or about March 19, 2014.

23. After receiving the Notice to Quit and Vacate, Mr. Loring called Defendant Salem to tell him that he did not believe that allowing a friend to stay at the apartment was grounds for eviction, but that he would nonetheless move out at the end of the month.

24. On March 25, 2014, Mr. Loring received a second Notice to Quit and Vacate.

25. On March 26, 2014, Mr. Loring called Defendant Salem to say that he would be moving out on March 29, 2014.

26. Based upon the Notices to Quit and Vacate, Mr. Loring moved out of the Subject Property on March 29, 2014.

27. In a telephone conversation on March 29, 2014, Mr. Loring provided Defendant Salem with a forwarding address at Covington Heights and asked that his security deposit be sent there. The address provided to Defendant Salem was the same address to which Defendant Salem had sent previous letters and the March 18 2014, Notice to Quit and Vacate.

28. In a handwritten letter dated April 10, 2014, which was sent to Mr. Loring's address at Covington Heights, Defendant Salem informed Mr. Loring that he would not return Mr. Loring's \$350 security deposit because the entry doors of the Subject Property had to be re-keyed.

29. Defendant Salem did not re-key the entry doors of the Subject Property.

30. Defendant Salem has claimed to HUD that he did not return Mr. Loring's security deposit because Mr. Loring had not provided him with a forwarding address.

31. Defendant Salem has never returned Mr. Loring's \$350 security deposit.

32. On or about April 29, 2014, Mr. Loring moved out of Covington Heights and into a spare bedroom at the apartment of his friend, Marilyn Thomas ("Thomas"). Shortly thereafter, Thomas attempted to formally add Mr. Loring as a co-tenant to her lease so he could reside permanently in the unit.

33. On or about August 25, 2014, Defendant Salem provided a negative reference of Mr. Loring to the potential landlord, Vicki Douthit ("Douthit").

34. Based solely on Defendant Salem's negative reference regarding Mr. Loring, Douthit declined to add Mr. Loring to Thomas's lease, and Mr. Loring was forced to move out.

35. Since leaving Thomas's apartment, Mr. Loring has resided at motels and various other temporary housing arrangements.

HUD ADMINISTRATIVE PROCESS

36. On or around June 3, 2014, Mr. Loring filed a timely Fair Housing Complaint against Defendants Salem and Salem Family Trust with the United States Department of Housing and Urban Development (“HUD”). The complaint was served on Defendants on or around June 12, 2014.

37. On or around March 19, 2015, Mr. Loring filed an Amended Fair Housing Complaint against Defendants Salem and Salem Family Trust with HUD.

38. Pursuant to 42 U.S.C. § 3610, the Secretary of HUD conducted and completed an investigation of the complaint and amended complaint, attempted conciliation without success, and prepared a final investigative report. Based upon the information gathered in the investigation, the Secretary, pursuant to 42 U.S.C. § 3610(g)(1), determined that reasonable cause existed to believe that Defendants violated the Fair Housing Act. Therefore, on July 22, 2015, the Secretary issued a Charge of Discrimination, pursuant to 42 U.S.C. § 3610(g)(2)(A), charging the above-named Defendants with engaging in discriminatory housing practices on the basis of disability.

39. On or about July 30, 2015, Defendants elected to have the claims asserted in the HUD Charge of Discrimination resolved in a civil action pursuant to 42 U.S.C. § 3612(a). On July 31, 2015, the Administrative Law Judge issued a Notice of Election to Proceed in United States Federal District Court and terminated the administrative proceeding on Mr. Loring’s complaint.

40. Following the Notice of Election, the Secretary of HUD authorized the Attorney General to commence a civil action, pursuant to 42 U.S.C. § 3612(o).

COUNT ONE

41. Plaintiff re-alleges and incorporates by reference the allegations set forth above.

42. By the actions set forth above, Defendants have:

- a. Made, printed, or published statements related to the rental of a dwelling that indicated a preference, limitation, or discrimination based on disability, in violation of 42 U.S.C. § 3604(c);
- b. Discriminated in the rental, or otherwise made unavailable or denied a dwelling because of disability, in violation of 42 U.S.C. § 3604(f)(1);
- c. Discriminated in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, on the basis of disability, in violation of 42 U.S.C. § 3604(f)(2); and
- d. Interfered with Mr. Loring's ability to rent a subsequent apartment on account of Mr. Loring's engagement in a protected activity, in violation of 42 U.S.C. § 3617.

43. As a result of Defendants' conduct, Mr. Loring has been injured and is an "aggrieved person" as defined by 42 U.S.C. § 3602(i).

44. The discriminatory actions of the Defendants were intentional, willful, and taken in reckless disregard of the rights of Mr. Loring.

PRAYER FOR RELIEF

WHEREFORE, the United States of America requests that this Court:

1. Declare that the discriminatory conduct of the Defendants, as set forth above, violates the Fair Housing Act;

2. Enjoin Defendants, their agents, employees, successors, and all other persons in active concert or participation with any of them from:

- A. Making, printing or publishing, or causing to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on disability, in violation of 42 U.S.C. § 3604(c);
- B. Discriminating in the sale or rental, or otherwise making unavailable or denying, a dwelling to any buyer or renter because of disability, in violation of 42 U.S.C. § 3604(f)(1);
- C. Discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of disability, in violation of 42 U.S.C. § 3604(f)(2);and
- D. Coercing, intimidating, threatening or interfering with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by the Fair Housing Act, in violation of 42 U.S.C. § 3617.

3. Order Defendants to take such affirmative steps as may be necessary to restore, as nearly as practicable, Mr. Loring to the position he would have been in but for the discriminatory conduct;

4. Order Defendants to take such actions as may be necessary to prevent the recurrence of any discriminatory conduct in the future and to eliminate, to the extent practicable,

the effects of their unlawful conduct, including implementing policies and procedures to ensure that no applicants or residents are discriminated against because of disability;

5. Award monetary damages to Mr. Loring pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c)(1); and
6. Order such additional relief as the interests of justice may require.

Dated this 28th day of August, 2015.

Respectfully submitted,

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