STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009CH1263
	)	HUD NO.: 050900858
GREGORY SANCHEZ,	)	ALS NO.: 09-0512
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr. and Rozanne Ronen, presiding, upon the Petitioner's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")[1] of Charge No. 2009CH1263, Gregory Sanchez ("Petitioner"); and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request and supporting materials, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

(1) The Respondent's dismissal of Count A of the Petitioner's charge is **VACATED,** and Count A shall be **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION**; and,

(2) The Respondent's dismissal of Count B of the Petitioner's charge is **VACATED**, and Count B shall be **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** and for further processing in accordance with this Order and the Act.

In support of which determination the Commission states the following findings of fact and reasons:

1. On October 21, 2008, the Petitioner filed a charge of discrimination with the Respondent in which he alleged 2001 Fargo, Inc. ("Landlord") denied his request for a reasonable accommodation for his physical disabilities, Acquired Immunodeficiency ("AIDS") and peripheral neuropathy (Count A), and issued him a 30-day Notice of lease termination in retaliation for having opposed unlawful discrimination (Count B), in violation of Sections 3-102.1(C)(2) and 6-101(A) of the Illinois Human Rights Act (the "Act"). On August 14, 2009, the Respondent dismissed the Complainant's charge for Lack of Substantial Evidence. On September 17, 2009, the Petitioner filed this timely Request.

[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

2. The undisputed evidence in the investigation file shows that in September 2007, the Petitioner and his partner began leasing a two-bedroom third-floor apartment. The lease was set to expire in August 21, 2008. The Petitioner had to navigate several stairs in order to reach his third-floor apartment.

3. In January of 2008 the Petitioner requested in writing and verbally that the Landlord transfer him to a first-floor unit because his physical disabilities were causing him to have difficulty navigating the stairs. His physical disabilities caused the Petitioner to suffer from chronic pain and weakness in his arms and legs, and his condition was worsening.

4. In 2008, the Petitioner became aware of a first-floor unit, Unit # 7402, which the Landlord allegedly told him would be available for rent in August 2008. It is unclear from the file whether he saw this apartment in April 2008 or July 2008. In any event, the Petitioner states the Landlord agreed to rent him Unit # 7402, and that it would be available for occupancy in August 2008. Thereafter, the Petitioner contacted movers to prepare to move into Unit # 7402.

5. The Petitioner tried contacting the Landlord between August 13 and August 26, 2008 regarding his move to Unit # 7402.

6. On or about August 26, 2008, the Landlord, via its then property manager, Marek Loza, told the Petitioner that he would not be able to move to the first-floor unit as agreed.

7. On August 27, 2008, the Petitioner contacted the office of his local Alderman regarding the Landlord's denial of his request for a reasonable accommodation. That same day, one of the Alderman's assistants called Loza to discuss the matter, and specifically talked to him about accommodating the Petitioner's physical disabilities by moving him to the first floor. The staff member memorialized the conversation in a letter to the Petitioner, indicating that Loza seemed "very upset" that he had contacted the Alderman, that Loza claimed the Petitioner was a "difficult tenant" who was always requesting repairs to the unit, that there was never an agreement to move the Petitioner to a first-floor apartment, and that the Petitioner's mobility issues were…"not his problem."

8. Two days later, on August 29, 2008, the Landlord served the Petitioner with a 30-Day Notice of lease termination.

9. The Landlord contended the Petitioner was served with the 30-Day Notice because when the Petitioner and his partner occupied the third-floor unit, they were not ideal tenants. Specifically, the Landlord states it had issued them Five-Day Notices due to late rental payments on more than one occasion; the Petitioner and his partner kept an unauthorized pet, and they had poorly maintained the unit. The Petitioner and his former partner deny having poorly maintained the third-floor unit and claim the unit had many maintenance issues when they moved into the unit. The Petitioner claims the Landlord was always aware of the pet.

10. There is evidence in the file that the Landlord had issued at least three other tenants Five-Day Notices due to late rental payments. However, the file is silent on whether or not the Landlord subsequently failed to renew their leases for this reason.

11. In his charge and in his Request, the Petitioner argues the Landlord failed to reasonably accommodate his physical disabilities, and that the 30-Day Notice was issued to him as retaliation for having complained of the alleged civil rights violation to his Alderman.

12. In its response, the Respondent cites to federal law and argues there was no substantial evidence the requested accommodation was reasonable or necessary to afford the Petitioner equal opportunity to use and enjoy his dwelling. *See* Oconomowoc Residential Programs, Inc. v. City of Milwaukee, 300 F.3d 775, 783 (7th Cir. 2002). In particular, the Respondent argues there was no substantial evidence of a first-floor apartment available to rent as of August 2008. The Respondent argues there is also no substantial evidence to support the Petitioner's retaliation claim because it determined the 30-Day Notice was issued due to the Petitioner's late rental payments during his tenancy in the third-floor apartment.

Conclusion

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent' dismissal of the charge should be vacated and remanded for further action as herein specified.

As to Count A, the Commission finds that the file is unclear on the key issue of whether or not there was in fact a first-floor unit apartment available to rent as of August 2008. The Commission believes that if such an apartment had been available, the Landlord could have reasonably accommodated the Petitioner's disabilities by allowing him to rent this first-floor apartment. Further, the Commission is not persuaded by the Respondent's argument that moving the Petitioner to a first-floor apartment would not have "ameliorated the effects" of his disability. Clearly, given the nature of his physical disabilities, which is supported by medical documentation in the file, the fewer stairs the Petitioner had to navigate, the less pain he would have suffered. Therefore, the Commission instructs the Respondent to conduct further investigation into the issue of whether or not there was a first-floor apartment available for the Petitioner to rent, as of August 2008.

As to Count B, the Commission finds there is substantial evidence of retaliation. The Petitioner has clearly established a *prima facie* case of retaliation: there is substantial evidence in file that the Petitioner engaged in a protected activity, the Landlord took an adverse action against the Petitioner, and there was a casual nexus between the protected activity and the adverse action. See Carter Coal Co.v. Human Rights Commission, 261 Ill. App. 3d 1, 7, 633 N.E.2d 202 (5th Dist. 1994). In this case, the Petitioner complained of an alleged civil rights violation, the Landlord was aware of the protected acitivity, and two days after the Landlord became aware of the protected activity, the Landlord took

adverse action against the Petitioner by issuing him the 30-Day Notice of lease termination.

The Landlord offered a legitimate, non-retaliatory reason for its decision, namely that the Petitioner had a history of late rental payments and he caused damage to the two-bedroom unit. However, the Commission finds there is substantial evidence that this stated reason is pretextual.

While the Landlord offered evidence that it had issued three other tenants Five-Day Notices for late rental payments, there is no evidence in the file that the Landlord chose not to renew the leases of those three tenants as a result of their history of late rental payments. This is evidence that the Landlord would have been capable of producing in order to demonstrate that it treated the Petitioner the same as other similarly situated tenants who had not engaged in a protected activity. The Commission will not hold the lack of such evidence in the file against the Petitioner, as the Landlord was in the best position to produce this evidence during the investigation. Therefore, the Commission can only assume the Landlord renewed the leases of the three similarly situated tenants who were also issued Five-Day Notices for late payment of rent, but who had not engaged in a protected activity.

There is also a factual dispute over whether or not the Landlord had to make extensive repairs to the third-floor unit due the Petitioner's lack of care, or whether or not some repairs were necessary before the Petitioner had even assumed occupancy of the third-floor unit. The Commission cannot resolve that dispute at the investigatory level. Rather, this dispute must be resolved by a trier of fact.

Accordingly, the Commission finds the Petitioner's Request is persuasive. The dismissal of the Petitioner's charge shall be vacated and the charge shall be remanded to the Respondent for further action as herein instructed.

THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The Respondent's dismissal of Count A of the Petitioner's charge is **VACATED,** and Count A shall be **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION**; and,

(2) The Respondent's dismissal of Count B of the Petitioner's charge is **VACATED**, and Count B shall be **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** and for further processing in accordance with this Order and the Act.

This Order is Not Yet Final and Appealable.

STATE OF ILLINOIS)
) Entered this 24th day of March 2010.
HUMAN RIGHTS COMMISSION)

Commissioner Sakhawat Hussain

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen