

State Headquarters
2966 Woodward Avenue
Detroit, MI 48201
Phone 313.578.6800
Fax 313.578.6811
Email aclu@aclumich.org
www.aclumich.org

Legislative Office
115 West Allegan Street
Lansing, MI 48933
Phone 517.372.8503
Fax 517.372.5121
Email aclu@aclumich.org
www.aclumich.org

West Michigan Regional Office
1514 Wealthy SE, Suite 242
Grand Rapids, MI 49506
Phone 616.301.0930
Fax 616.301.0640
Email aclu@aclumich.org
www.aclumich.org

December 5, 2013

Ernestine Carter
Director of Public Housing
Inkster Housing Commission
4500 Inkster Rd.
Inkster, MI 48141-3068
Facsimile: 313-561-2893
Email: cartere_4500@msn.com

VIA FIRST CLASS MAIL,
FACSIMILE AND EMAIL

Re: Evicting Survivors of Domestic Violence is Illegal

Dear Ms. Carter:

We are writing on behalf of the American Civil Liberties Union of Michigan and the Fair Housing Center of Southeastern Michigan about your tenant, Allison Ben. Ms. Ben is facing eviction because she is a domestic violence survivor. She has been attacked in her apartment by the father of her child, against whom she has a personal protection order. Rather than work with Ms. Ben to ensure that she and her child are safe, the Inkster Housing Commission has re-victimized her by attempting to evict her from her apartment – not because of anything she did, but because her batterer “disturbed the peace” and caused damage to property in the process of beating her up. In fact, Ms. Ben was specifically warned by a police officer for the Inkster Housing Commission that she should refrain from reporting any further assaults because the housing commission would evict her from her apartment if it learned about the violence..

As explained below, to evict Ms. Ben for the acts of her batterer violates the Violence Against Women Act, the Federal Fair Housing Act and the Michigan Elliott-Larson Civil Rights Act. Furthermore, evicting Ms. Ben during the holiday season for this reason is particularly cruel given that she is pregnant and expected to give birth on December 20. We therefore ask that you dismiss the eviction proceedings.

FACTS

Several months ago, Allison Ben was very excited to learn that she was pregnant and was going to be bringing a newborn home to her new apartment just before Christmas. However, what would ordinarily be a joyous time has turned into a nightmare. First, despite having obtained a restraining order in both 2009 and 2013, the father of her 4-year-old daughter has repeatedly abused and beaten her. And then, to add insult to injury, the Inkster Housing Commission decided to evict her from her apartment for the acts of her batterer. Now she faces the daunting prospect of trying to find a homeless shelter for her family and her newborn on Christmas.

In 2009, Ms. Ben lived with her daughter's father, Larry Gee, in Belleville. During that time, Gee engaged in a wide range of emotionally and physically abusive behavior ranging from keeping her isolated from her friends and family to punching and kicking her. Ms. Ben escaped the abuse temporarily when she moved to Inkster with her daughter and obtained a restraining order against Gee. Then in November 2012 she found a good home in the Canterbury Apartment Complex, owned and managed by the Inkster Housing Commission. She initially felt safe at Canterbury and was able to seek out opportunities for employment and education.

Unfortunately, over the past year Gee started to harass Ms. Ben again, coming to her home uninvited under the pretense of wanting to spend time with their daughter. On or about May of this year, Ms. Ben called the police when Gee tried to enter her home. After the Inkster Housing Commission police officer ordered Gee to leave, the officer discouraged Ms. Ben from calling them in the future because they might cause the Inkster Housing Commission to evict her.

In July, Gee forced his way into the apartment through the patio door and began to punch Ms. Ben in front of their daughter. Ms. Ben called the police and Gee fled. The police eventually arrested Gee and he was convicted for domestic violence, for which he received probation. Nonetheless, the police officer for the housing commission again warned Ms. Gee that if she reported another incident, she would be evicted.

Later that summer, Gee forced his way into the apartment and assaulted Ms. Ben in a particularly brutal manner. He dragged her by her hair up the stairs, and punched her repeatedly in the head until she fell to the ground. He then kicked her while she was on the ground. Because Ms. Ben feared eviction if she reported the incident to the police, she did not report that incident.

Within a few days, Ms. Ben saw Gee outside of the apartment again and became fearful for her life. Accordingly, she called the police to prevent another assault. When the police came and spoke to him, he left.

After this last incident, you called Ms. Ben into your office and told her that she was being evicted because she could not control her guests. You apparently also claimed, inaccurately, that Gee lived with her. You told her that there was a one-strike policy against violence in the apartment and said that people like Ms. Ben were ruining the neighborhood and did not deserve to live there.

The Inkster Housing Commission later served a Notice to Quit on Ms. Ben for violating the lease by allegedly having "boarders and lodgers," "disturbing the peace" and "destroying property." Although Gee has not violated the personal protection order against him since this summer, the housing commission recently filed a lawsuit to evict Ms. Ben from her apartment. The first hearing is this afternoon.

EVICTING A DOMESTIC VIOLENCE SURVIVOR BECAUSE SHE HAS BEEN ASSAULTED IN HER APARTMENT VIOLATES FEDERAL AND STATE LAW

As a public housing agency, the Inkster Housing Commission is bound by the the federal Violence Against Women Act ("VAWA"), which prohibits discrimination against survivors of domestic violence in public housing and subsidized housing. 42 U.S.C. § 14043e-11(a)(3). The housing protections were first enacted in 2006, and reauthorized in March of this year. 42 U.S.C. § 14043e-11(b)(2) provides:

An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as (A) a serious or repeated violation of a lease for housing assisted under a covered housing program by the victim or threatened victim of such incident; or (B) good cause for terminating the assistance, tenancy, or occupancy rights to housing assisted under a covered housing program of the victim or threatened victim of such incident.

Furthermore, 42 U.S.C. § 14043e-11(b)(3) states:

No person may deny assistance, tenancy, or occupancy rights to housing assisted under a covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of a tenant's household or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of that domestic violence, dating violence, sexual assault, or stalking.

Evicting Ms. Ben and her child based on Mr. Gee's conduct constitutes a clear violation of VAWA. Mr. Gee's "disruptive" and violent conduct cannot be construed as a serious or repeated violation by Ms. Ben of her lease and cannot serve as good cause for terminating her tenancy. In a similar case, a court in New York held that VAWA prohibited the eviction of a Section 8 tenant based on "nuisance" because the so-called nuisance involved domestic violence committed against her. *See Metro North Owners, LLC v. Thorpe*, 2008 N.Y. Slip Op. 28522 (N.Y. Civil Ct. 2008).

In addition to VAWA, both the federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, and the Michigan Elliott-Larsen Civil Rights Act, M.C.L. §§ 37.2501 *et seq.*, prohibit discrimination in rental housing on the basis of sex. These statutes forbid both actions based upon gender stereotyping or animus and those that have a discriminatory impact on women. The eviction of Ms. Ben is apparently based on gender stereotypes about battered women — namely, the stereotype that if a woman is experiencing domestic violence, it is necessarily her fault, because she must be inviting it or allowing it to happen. It appears from your statements and the Notice to Quit that you have made the inaccurate assumption that Mr. Gee is either a guest or a unauthorized "boarder or lodger," rather than the perpetrator of domestic violence. Such assumptions are based on discriminatory stereotyping. Further, because most domestic violence survivors are women, policies and practices that discriminate against survivors of domestic violence -- such as evicting individuals based on the disruptive conduct of their abusers -- have

an unlawful disparate impact on women under the Fair Housing Act and the housing provisions of Elliott-Larsen.

For these reasons, HUD concluded that application of one-strike policies or zero tolerance for crime policies against domestic violence survivors can violate the Fair Housing Act. It issued guidance to its staff in February 2011, alerting them that Fair Housing Act claims could successfully be brought by domestic violence survivors. See U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA)* 2 (2011), available at <http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf>. Moreover, courts and agencies considering the question have repeatedly found that housing practices that impact survivors of domestic violence unlawfully discriminate on the basis of sex. For instance, in *Bouley v. Young-Sabourin*, 394 F. Supp.2d 675 (D. Vt. 2005), a case litigated by the ACLU, the district court denied defendant's summary judgment motion in a sex discrimination Fair Housing Act claim, based on plaintiff's showing that her landlord issued her a notice to quit after her husband assaulted her. Shortly after this ruling, the case settled with an award of damages and attorneys' fees.

Similarly, in a federal case in Oregon litigated by the ACLU, the U.S. Department of Housing and Urban Development determined that when an apartment management agency took action against an individual based upon her status as a survivor of domestic violence, it discriminated on the basis of sex, because most survivors of domestic violence are women. See *HUD v. CBM Group, Inc.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001). That case resulted in a consent decree, under which the federal government monitored the apartment management corporation for five years to ensure that its practices and policies in relation to survivors of domestic violence complied with the Fair Housing Act. In addition, the apartment management corporation was required to pay compensatory damages and attorneys' fees, to refrain from evicting or otherwise discriminating against tenants because they have been survivors of violence, and to train its employees about discrimination and fair housing law.

In 2007, the ACLU brought a federal lawsuit against an owner, management company, and housing manager in Detroit on behalf of a tenant who was evicted based on the conduct of her abusive ex-partner. See *Lewis v. North End Village et al.*, 07 Civ. 10757 (E.D. Mich. 2007). As in Ms. Ben's situation, the landlord in *Lewis* held the tenant responsible for the home invasion perpetrated by her ex-partner. That case resulted in a settlement agreement under which the defendants agreed to pay \$45,000 in compensatory damages and attorneys' fees and to adopt a comprehensive policy addressing the rights of survivors of domestic violence, dating violence, sexual assault, and stalking, including giving tenants the right to early lease termination and relocation.¹

And in 2002, the ACLU of Michigan collaborated with the Fair Housing Center to file a federal lawsuit against the Ypsilanti Housing Commission for evicting a woman named Aaronica

¹ See <http://www.aclumich.org/issues/womens-rights/2008-02/1253>.

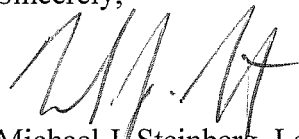
Warren after she called the police to report that her ex-boyfriend beat her up and caused property damage to the apartment. The case was settled for damages, attorneys' fees and policy changes.²

Given these precedents, the Inkster Housing Commission's attempt to evict Ms. Ben and her child clearly violates federal and state law. Moreover, its actions will force her and her children from their home during a time of significant emotional trauma.

We hope that we can resolve this matter amicably. Therefore, we ask that you dismiss your eviction case. We also ask that the Inkster Housing Commission amend its policies and practices to ensure that tenants who are survivors of domestic violence will not be subject to eviction based on experiencing abuse and be made aware of their rights and recourse under the Violence Against Women Act.

We look forward to your prompt response.

Sincerely,



Michael J. Steinberg, Legal Director
American Civil Liberties Union Fund
of Michigan
2966 Woodward Ave.
Detroit, MI 48201
(313) 578-6814



Pamela A. Kisch, Director
Fair Housing Center of Southeastern Michigan
P.O. Box 7825
Ann Arbor, MI 48107
734-994-3426

cc: by facsimile and mail to:

Louis Berra, Acting Field Office Director
HUD Field Office Director
McNamara Federal Building
Floors 16 & 17
477 Michigan Avenue
Detroit, MI 48226
Facsimile: (313) 226-5611

Michigan State Housing Development Authority
735 E. Michigan Ave
P.O. Box 30044
Lansing, Michigan 48909
Facsimile: (517) 335-4797

² See <http://www.aclumich.org/issues/womens-rights/2002-02/964> and <http://www.aclumich.org/issues/womens-rights/2003-12/1040>.