

PREDETERMINATION SETTLEMENT AGREEMENT

CP# 02-16-68656
HUD# 07-16-4240-8

PARTIES TO THE SETTLEMENT AGREEMENT:

RESPONDENTS

NOREEN E. GINGERICH

2683 Highway 1 SW
Iowa City, Iowa 52240

KENNETH A. GINGERICH

2683 Highway 1 SW
Iowa City, Iowa 52240

COMPLAINANTS

SILVIA AND ISRAEL CUEVAS

214 South Avenue D
Washington, Iowa 52353

and

IOWA CIVIL RIGHTS COMMISSION

400 East 14th Street
Des Moines, Iowa 50319

Description of the Parties:

Complainants allege discrimination in the area of housing on the basis of familial status. Complainants allege, on November 19, 2015, Respondent Noreen Gingerich was enthusiastic about renting to them until she learned they had minor children. Complainants further allege, on November 21, 2015, Respondent Gingerich told them, “It isn’t going to work out because of your children.” Complainants allege they were denied rental and subjected to a discriminatory statement based on familial status. Respondents own and manage the subject property, a seven-unit apartment complex, located at 415 East Washington Street, Washington, Iowa 52353.

A complaint having been filed by Complainants against Respondents with the Iowa Civil Rights Commission (hereafter referred to as the Commission) under Iowa Code Chapter 216 and there having been a preliminary inquiry, the parties do hereby agree and settle the above-captioned matter in the following extent and manner:

Acknowledgment of Fair Housing Laws

1. Respondents agree there shall be no discrimination, harassment, or retaliation of any kind against Complainant or any other person for filing a charge under the “Iowa Civil Rights Act of 1965” (ICRA); or because of giving testimony or assistance, or participating in any manner in any investigation, proceeding or hearing under the ICRA; or because of lawful opposition to any practice forbidden by the ICRA. Iowa Code § 216.11(2).
2. Respondents acknowledge the ICRA makes it unlawful to refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the race, color, creed, sex, sexual orientation, gender identity, religion, national origin, disability, or familial status of such person. Iowa Code § 216.8(1)(a).

Respondents acknowledge the Fair Housing Act, (FHA) makes it unlawful to refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of the of race, color, religion, sex, familial status, or national origin. 42 U.S.C. 3604§ 804 of the Fair Housing Act).

3. Respondents also acknowledge that the ICRA makes it unlawful to make, print, or publish, or cause 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 race, color, religion, sex, disability, familial status, national origin, sexual orientation or gender identity, or an intention to make any such preference, limitation, or discrimination. Iowa Code § 216.8(1)(c).

Respondents acknowledge that the FHA, as amended, makes it unlawful to make, print, or publish, or cause 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 race, color, religion, sex, disability, familial status, national origin,, or an intention to make any such preference, limitation, or discrimination. 42 U.S.C. 3604(c) (Section 804(c) of the Fair Housing Act).

Voluntary and Full Settlement

4. The parties acknowledge this Agreement is a voluntary and full settlement of the disputed complaint. The parties affirm they have read and fully understand the terms set forth herein. No party has been coerced, intimidated, threatened or in any way forced to become a party to this Agreement.

5. The parties enter into this Agreement in a good faith effort to amicably resolve existing disputes. The execution of this Agreement is not an admission of any wrongdoing or violation of law. Nor is the execution of this Agreement an admission by Complainant that any claims asserted in their complaint are not fully meritorious.
6. The parties agree the execution of this Agreement may be accomplished by separate counterpart executions of this Agreement. The parties agree the original executed signature pages will be attached to the body of this Agreement to constitute one document.
7. Respondents agree the Commission may review compliance with this Agreement. And as part of such review, Respondents agree the Commission may examine witnesses, collect documents, or require written reports, all of which will be conducted in a reasonable manner by the Commission.
8. The parties acknowledge, if the Commission or the U.S. Department of Housing and Urban Development (HUD) has reasonable cause to believe that Respondent has breached this Agreement, the Commission may refer the matter to the Iowa Department of Justice - Office of the Attorney General and HUD may refer the matter to the U. S. Department of Justice.

Disclosure

9. Because, pursuant to Iowa Code §216.15A(2)(d), the Commission has not determined that disclosure is not necessary to further the purposes of the ICRA relating to unfair or discriminatory practices in housing or real estate, this Agreement is a public record and subject to public disclosure in accordance with Iowa's Public Records Law, Iowa Code Chapter 22. See Iowa Code §22.13.

Release

10. Complainant hereby waives, releases, and covenants not to sue Respondents with respect to any matters which were, or might have been alleged as charges filed with the Iowa Civil Rights Commission, the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, or any other anti-discrimination agency, subject to performance by Respondents of the promises and representations contained herein. Complainant agrees any complaint filed with any other anti-discrimination agency, including the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, which involves the issues in this complaint, shall be closed as Satisfactorily Adjusted.

Fair Housing Training

11. Respondents agree Noreen and Kenneth Gingerich, and each of their current employees or agents who are involved in the management or operation of Respondents' residential rental properties will receive training on the requirements of State and Federal Fair Housing Laws within 90 days of their receipt of a Closing Letter from the Commission. The training will address all aspects of fair housing law, but will emphasize the laws regarding the prohibition of discrimination against prospective tenants and tenants based on familial status. The training shall be conducted by a qualified person, approved by the Commission or the U.S. Department of Housing and Urban Development.

Respondents also agree to send documentation to the Commission, verifying the fair housing training has been completed, within ten (10) days of completing the training.

Occupancy Standards

12. The Keating Memo. In 1991, Frank Keating from the Office of General Counsel at HUD issued a memorandum to Regional Counsel regarding maximum occupancy cases. The Keating Memo was not meant to be a hard and fast rule with regard to occupancy standards. Instead, the Memo states, “[T]he Department believes that an occupancy policy of two persons in a bedroom, as a general rule, is reasonable under the Fair Housing Act.” If the standard is more restrictive, it must be examined “to determine whether it operates unreasonably to limit or exclude families with children.” The Memo goes on to state other considerations include the size of the bedrooms and the unit; the age or ages of the children; the configuration of the unit; other physical limitations, such as septic and sewer capacity; state and local law; and other relevant factors. Other relevant factors that may be considered in determining whether the landlord's two-per-bedroom rule is discriminatory include whether the housing provider has made statements indicating a bias against families with minor children, has taken steps to discourage families with children from living in its rental units, or has enforced occupancy policies only against families with minor children. The Keating Memo was later codified on December 14, 1998 and became the accepted law for determining if an occupancy standard is unreasonable and, if as applied, discriminatory.

The City of Washington, Iowa has adopted The 2009 *International Building Code* (IBC). IBC is a model code that provides minimum requirements to safeguard the public health, safety, and general welfare of the occupants of new and existing buildings and structures. Per the IBC Table 1004.1.1, page 220 states a standard of 200 square feet per occupant, which means up to five people could occupy a 1,000 square foot apartment provided all other requirements of the code are also met.

Confusion can arise for housing providers and tenants when a city adopts maximum occupancy standards that exceed the Keating Memo's two-per-bedroom rule and can result in discrimination complaints based on familial status. That is why it is important that housing providers take into consideration the size of the bedrooms and the size of the unit, the age or ages of the children, and the configuration of the unit before strictly applying a two-per-bedroom rule.

If the two-per-bedroom rule has a disparate impact on families with minor children, then the housing provider must prove that the two-per-bedroom rule is justified, i.e., it is necessary to achieve a substantial, legitimate, nondiscriminatory interest. The interest may not be hypothetical or speculative. The housing provider must be able to provide evidence of such interest and must provide evidence its two-per-bedroom rule actually achieves that interest. If the housing provider successfully proves its two-per-bedroom rule is necessary to achieve its substantial, legitimate, nondiscriminatory interest, the burden shifts back to the prospective tenant to prove that such interest could be served by another practice that has a less discriminatory effect.

13. In answer to the Commission's questionnaire, Respondent Noreen Gingerich stated, "All available units in our building since 2014 are one-bedroom units, and we ... have not allowed more than two persons at a time to occupy a single unit, which I believe is standard practice in Iowa rentals."

Within 60 days of their receipt of a Closing Letter from the Commission, Respondents agree to contact the City of Washington, to get a copy of the City's "maximum occupancy" rental code. Respondents agree, before establishing occupancy maximums for each of their rental units, they will take into consideration the size of bedrooms and the size of the unit; the age(s) of children in the household; the configuration of unit, the city maximum occupancy code, and the Keating Memo.

Relief for Complainant

14. Within seven days of receiving a Closing Letter from the Commission, Respondents agrees to pay Complainants \$1,500.00 without any deductions. Respondents agree the Settlement Check will be made out to Silvia and Israel Cuevas and will be mailed to Complainants at the address listed on page one of this Agreement.

Respondents also agree to send a copy of the Settlement Check to the Commission within seven (7) days of issuing the check to Complainant.

Future Advertising

15. Respondents agree they will only market the attributes of their rental properties and not reference a preferred type of tenant(s)/occupant(s). Respondents agree all future advertising in newspapers, pamphlets, brochures, other promotional literature, and on any Internet website will not state a preference for any particular type of tenant based on a personal characteristic.

For 12 months following the execution of this Settlement Agreement, Respondents agree all future advertisements in newspapers, pamphlets, brochures, other promotional literature, and on any Internet website for all rental units other than efficiency apartments will include the following language: "Families with children are welcome."

For 12 months following the execution of this Settlement Agreement, Respondents agree to send a copy of the first advertisement with the above stated language to the Commission, within ten (10) days of distributing the advertisement.

Respondents acknowledge property owners, managers, and agents cannot discourage families with children from seeking or making application for available rental units by making any statement, verbal or written, that indicates families with children are not welcome or not solicited as tenants. Families may not be restricted because of safety concerns. The safety of the children is the parents' responsibility, and the parents determine whether the unit is suitable for their family.

16. For 12 months following the execution of this Agreement, Respondents also agree to retain copies of all advertising in newspapers and Internet websites, pamphlets, brochures, and all other promotional literature (with the corresponding dates they were distributed) if requested by the Commission, Respondents agree to provide copies of all advertising in newspapers and Internet websites, pamphlets, brochures, other promotional literature, for any particular period of time within the 12-month period stated above, within thirty (30) days of such request.

Reporting and Record-Keeping

17. Respondents shall forward to the Commission objective evidence of the successful completion of fair housing training in the form of a Certificate or a letter from the entity conducting the training within ten (10) days of the completion of the training, as evidence of compliance with Term 11 of this Agreement.
18. Within seven business days of the date listed on the Commission's Closing Letter, Respondents will send a copy of the Settlement Check to the Commission, as evidence of compliance with Term 14 of this Agreement.
19. For 12 months following the execution of this Agreement, Respondents agree to send a copy of the first advertisement with the above stated language to the Commission, within ten (10) days of distributing the advertisement, as evidence of compliance with Term 15 of this Agreement.

All required documentation of compliance must be submitted to:

Don Grove, Supervisor of Housing Investigations
Grimes State Office Building
400 East 14th Street,
Des Moines, Iowa 50319

Signatures on the Following Page (Page 7)

Noreen Gingerich, RESPONDENT

Date

Kenneth Gingerich, RESPONDENT

Date

Silvia Cuevas, COMPLAINANT

Date

Israel Cuevas, COMPLAINANT

Date

Kristin H. Johnson, DIRECTOR
IOWA CIVIL RIGHTS COMMISSION

Date