

In true Montana spirit, the Chuckwagon...the newsletter to fill your fair housing appetite.



Montana Fair Housing is a private, non-profit, civil rights organization providing education, outreach, and enforcement activities throughout the state of Montana and elsewhere. MFH does not have an attorney on staff. Information contained in this newsletter should not be construed as legal advice and does not provide a legal opinion.

Tales Roun' the Campfire

A synopsis and/or update of cases filed with the Montana Human Rights Bureau (HRB), the Department of Housing and Urban Development (HUD), and/or federal or district court. This summary is not all inclusive . . .

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

In August 2015, a single mother of two sons, filed a complaint against the City of Surprise, Arizona, Michael Frazier, Chief of Police and Christopher Tovar, a police officer of Surprise.

The complaint alleged Nancy Markham was a victim of repeated domestic violence and needed to contact the Surprise police department for protection and assistance. In response, Defendants sought Ms. Markham's eviction.

The Surprise Municipal Code included two sections that lead the City of Surprise to pursue the eviction of Ms. Markham. The Nuisance Property Section defined nuisance properties and authorized officials to impose penalties on the property owner if the nuisance was not abated. The Crime Free Lease Section required crime free lease provisions that entitled landlords to evict tenants for an occurrence of any criminal activity.

Under Surprise's Nuisance Policy, nuisance offenses included four or more calls for police

service or commission of two crimes at a property that the tenant allegedly "allows," even if the tenant called to report and deter her attacker or was the victim of the criminal conduct. This policy also required that landlords be authorized to pursue evictions on this basis and authorized the City to impose penalties if landlords failed to do so. The policy had the effect of encouraging landlords to take steps before the Nuisance Property Section was triggered and to take actions to evict tenants engaged in prohibited behaviors.

In materials promoting the Nuisance Policy to landlords and the public, Surprise anticipated and advertised that the Nuisance Property Section and Crime Free Lease Section would work in tandem to significantly deter calls to police.

At the time of passage, the City Council was warned about potential negative impacts of the policy on domestic violence victims, the majority of whom are women. Community stakeholders, including the Chair of Surprise's Quality of Life Commission, raised concern that the policy could be enforced against domestic violence victims on the basis of crimes committed against them and the resulting calls to police. Despite these warnings, Surprise adopted the Nuisance Policy.

According to the complaint, Defendants' actions violated Ms. Markham's rights under the First Amendment to freedom of speech and to petition her government, and added that the policy disregarded the Fourteenth Amendment's requirements of due process and equal protection. The complaint also alleged that Defendants' policies and practices violated or conflicted with the federal Fair Housing Act.

From March 1, 2013 until February 28, 2015, Ms. Markham lived at 15526 West Ocotillo Lane in Surprise. Ms. Markham never called the police to the property for any reason other than domestic

violence, except for one occasion when she accidentally dialed 911 and hung up. She was not arrested for or charged with any crime at the property. At no point did any police officer mention the Nuisance Policy or Nuisance Property and Crime Free Lease Sections to Ms. Markham.

Ms. Markham first requested police assistance from the police on March 13, 2014. After arguing with Ms. Markham through the night, R.V. (her youngest son's father) choked her repeatedly, and punched her in the mouth. He left before the police arrived. Following this event, the police made visits to the property attempting to find and serve R.V. with a charge of aggravated assault.

In March and April 2014, police responded on three other occasions when Ms. Markham called for aid – once when she feared R.V. had returned to the property and twice when he was at the property, threatening her and refusing to leave. In July and August of 2014, the property was the subject of four police calls in thirty days – one on July 22, two on July 31, and one on August 1.

On or about July 22, 2014, Ms. Markham's son let R.V. into the home to get some personal items. R.V. and Ms. Markham began arguing and R.V. left, taking Ms. Markham's car without her permission. Ms. Markham called 911 to report the incident. Police officers responded to the call, which was coded as "domestic violence." The officers located the vehicle and spoke to R.V. who confirmed that he had argued with Ms. Markham. The officers impounded the car, advised R.V. not to go back to the property, and issued him a citation for driving with a suspended license. The officers did not serve him with the charge for aggravated assault from March 13, 2014.

On or about July 31, 2014, R.V. ignored officers' instructions not to go back to the property. R.V. argued with Ms. Markham, brandished a gun and refused to leave. Ms. Markham called the police at 8:39 p.m. and told the 911 operator that R.V. was refusing to leave the property and had a gun. When police responded, R.V. was already gone.

At approximately 11:06 p.m. that same evening, Ms. Markham called a second time reporting that R.V. had returned to the property and was trying

to get into her locked residence. R.V. was armed with a shovel and still had the handgun. Police responded and arrested R.V. Upon searching him the officers found two syringes. He was arrested and charged with disorderly conduct with a deadly weapon and possession of drug paraphernalia.

The next day police returned to the property when a neighbor called to report that he had found a phone nearby that he believed belonged to R.V. The phone was taken by police and held for R.V. to pick up when he was released from jail.

On August 4, Defendant Frazier directed Defendant Tovar to enforce the Nuisance Policy and contact Ms. Markham's Landlord. The decision to pursue enforcement allegedly involved a determination that Ms. Markham, the victim, should be held at fault for the domestic violence.

Officer Tovar informed the Landlord that "serious criminal problems" were occurring at Ms. Markham's rental home and warned that the property may be deemed a criminal nuisance if the problems were not corrected. In addition he sent a letter stating "should you fail to take reasonable steps to prevent future unlawful use of this property, you will not be considered an 'innocent owner/agent' in any future action . . ."

In later communications with the Property Manager, Officer Tovar advised Ms. Markham's home was the subject of "numerous calls for various incidents," including three where officers arrested R.V. He told the Property Manager that Ms. Markham "was the listed victim in each of these cases; however she would sometimes be uncooperative with the officers upon their arrival." Officer Tovar incorrectly assumed in conversations with Ms. Markham's Landlord and Property Manager that R.V. was invited to the property by Ms. Markham. Police also inaccurately described R.V. as Ms. Markham's "live-in boyfriend."

On August 14, some of Ms. Markham's neighbors wrote a letter to Chief Frazier expressing concerns about the police responses to the incidents at Ms. Markham's Property. The letter blamed Ms. Markham for the violence and demanded action be taken against her. On August 18th, Police Chief Frazier responded to the neighbors' letter and

stated that there were already a number of actions in progress that were designed to abate the issue and that police "have a strategy in place that should result in a permanent solution . . ."

On August 18, the Property Manager told Ms. Markham that "[t]he Surprise P.D. has put the owner in a position where they can no longer allow you to stay as a tenant." The Property Manager advised Ms. Markham that the Landlord would return her security deposit if she agreed to terminate the lease, but that if she did not voluntarily quit her apartment, the Landlord would pursue an eviction action against her.

On August 20, Ms. Markham again called the police. R.V. was at the property, intoxicated, refusing to leave and waving a knife. Police responded, arrested R.V. under the active warrant for aggravated assault and charged R.V. with two counts of Assault; two counts of Assault, Simple; two counts of Aggravated Injury; and Obstructing Justice. Ms. Markham subsequently obtained an Order of Protection against R.V. that same day.

Defendant Tovar continued to pressure the Landlord and Property Manager to take action against Ms. Markham. On August 21, Officer Tovar contacted the Property Manager asking if attempts to remove Ms. Markham from the property had been successful. Officer Tovar informed the Landlord and Property Manager that Ms. Markham had again called the police and that a letter was sent by some of Ms. Markham's neighbors demanding action.

On August 26, Ms. Markham responded to the Property Manager's threat of eviction, assuring him by email that the problems at her property had been resolved because of the protection order and because R.V. was now incarcerated.

The Property Manager indicated his willingness to work with her and requested that Ms. Markham send him a police report to verify this. On September 2, Defendant Tovar contacted the Property Manager to confirm the property was taking actions to evict Ms. Markham and to remind the Property Manager about the need for abatement of the nuisance. In response, the Property Manager told Defendant Tovar that Ms.

Markham had informed him that R.V., the cause of the disturbances, would no longer be able to return to the property because he had been arrested and Ms. Markham had obtained an order of protection against him. While Officer Tovar confirmed that R.V. was arrested and served with an order of protection, he told the Property Manager that this was not an adequate solution.

Despite Defendants' coercive tactics, the Property Manager recommended to the Landlord that Ms. Markham be allowed to stay as long as an inspection showed that her property was being maintained, noting that she had recently obtained an order of protection against the ex-boyfriend and that the rent was paid.

The Landlord emailed Defendant Tovar on September 8, for his response to the Property Manager's recommendation. Defendant Tovar reported he did not disclaim his previous statements to the Landlord and Property Manager, which urged Ms. Markham's eviction. On September 9, the Landlord directed the Property Manager to move forward with eviction.

On September 12, the Property Manager told Ms. Markham that the Landlord was not willing to let her stay and that she would be evicted in the next month if she failed to move before that time.

In response to Ms. Markham's request for a reason for the eviction, and her explanation that "[t]here was no criminal activity going on at [her] home, it was a domestic violence issue and [the abuser] was not living at the home," the Property Manager replied that he had no choice but to move forward. He acknowledged that: "[t]his is coming from the city," which "has a law on the books where they can designate a home with a lot of police activity a 'public nuisance' . . ."

Evidence supported that in a separate instance Defendant Tovar did not require eviction of a man who had been a subject of police responses for domestic violence. Defendants allowed him to stay and made no assertion or determination that the male victim had contributed to the incidents of domestic violence.

On October 2, 2014, through her counsel, Ms.

Markham sent Defendants a letter notifying Defendants of the unlawfulness of their actions under the Nuisance Policy and that enforcement of this policy violated Ms. Markham's constitutional rights and federal housing law. The October 2 letter demanded that Defendants cease enforcement of the Nuisance Property Section against Ms. Markham and Ms. Markham's Landlord, and suspend all enforcement of the Nuisance Policy in Surprise. Defendants responded by denying they had taken any action either against Ms. Markham or the Landlord to abate the "nuisance" at the property.

In March 2016 the parties executed a mutual release and settlement agreeing:

Defendants shall pay \$40,000 and plaintiff's counsel will petition separately for attorney's fees and costs;

The City of Surprise will repeal the ordinances at issue in the complaint and publish Ordinance #2016-07 repealing the ordinances;

The City of Surprise, Arizona agrees that it will not adopt an ordinance or policy that penalizes or punishes tenants, residents, or landlords for calls for police service, or penalizes or punishes them for criminal activity of which they are the victims;

The City of Surprise, Arizona agrees that it will not require crime-free lease addenda that would allow for penalizing or punishing residents or tenants for criminal activity of which they are the victim;

The agreement shall not be construed as an admission of any liability or wrongdoing.

See the full text of the complaint and/or agreement at <http://www.montanafairhousing.org/domvio.html>.

STATE EMPLOYEE CHARITABLE GIVING
CAMPAIGN

If you are a state employee, please consider supporting Montana Fair Housing's work, and encouraging others to as well!

Our giving campaign organization number is
5258.

THANKS TO ALL WHO CURRENTLY
GIVE TO MFH!

Discrimination in housing occurs when a housing provider makes a decision about a consumer's eligibility for services based on the consumer's protected class status.

A housing provider cannot deny a household services nor place different terms and conditions on that household **BECAUSE OF** membership in a protected class.

Federal protected classes include: Race, Color, National Origin, Religion, Sex (including sexual harassment and protections for victims of Domestic Violence), Familial Status (presence of children under the age of 18 or pregnancy), and/or Disability (Mental or Physical, including requests for reasonable accommodations and reasonable modifications). Fair Housing laws require owners, developers, architects, and contractors to design and construct multi-family housing of four or more units to be adaptable and accessible for persons using a wheelchair for mobility, if constructed for first occupancy after March of 1991.

In the state of Montana, in addition to the federally protected classes, it is a violation of the state's Human Rights Act to discriminate in housing related transactions based on marital status, age, and/or creed. In the cities of Butte, Missoula, Bozeman and Helena, a housing provider cannot discriminate against a household because of gender identity or sexual orientation.

For more information about Discrimination in Housing, Filing a Complaint, or Upcoming Workshops, contact:

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