IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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CHARLIE L. HARDY,

Plaintiff,

v.

STONE HOUSE DEVELOPMENT,[1]

Defendant.

OPINION AND ORDER

12-cv-872-bbc

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In this proposed civil action, pro se plaintiff Charlie L. Hardy alleges that, because of her race, defendant Stone House Development threatened to evict her from her public housing apartment if she attended college. In an order entered on January 29, 2013, I dismissed plaintiff's complaint under Fed. R. Civ. P. 8 because it did not include enough allegations to state a plausible claim for relief under the Fair Housing Act, 42 U.S.C. §§ 3604 and 3617, or Civil Rights Act of 1866, 42 U.S.C. §§ 1981 and 1982.

Plaintiff has now filed an amended complaint, dkt. #14, which is ready for screening pursuant to 28 U.S.C. § 1915(e)(2). After reviewing the complaint, I conclude that it states a claim for discrimination in the terms of a lease under the Fair Housing Act, § 3604(a), and the Civil Rights Act, 42 U.S.C. §§ 1981 and 1982, but does not state a claim for retaliation

[1] Plaintiff's initial complaint included Angela Brockman and Kasie Sutterland as defendants but these individuals are absent from the caption of the amended complaint.

under either statute. However, I cannot permit plaintiff to proceed at this time because the proposed amended complaint does not include a request for relief.

ALLEGATIONS OF FACT

In August 2009, plaintiff Charlie Hardy and her son moved into Section 42 housing in the Marshall School Apartments, in Janesville, Wisconsin. Her son started college that fall. Defendant Stone House Development operated the Marshall School Apartments. For the past nine years, defendant had employed Angela Brockman as the manager of the Marshall School Apartments. Tashayanna Dixson, an "operations analyst," was Brockman's supervisor. Kasie Sutterland was Dixson's supervisor.

In July 2010, plaintiff decided to attend college at the University of Wisconsin-Rock County. When signing her new lease, she notified the apartment management of her intentions. At that time, Brockman told plaintiff that she could not attend college while living in her section 42 apartment because only one person per household in section 42 housing could attend college.

Plaintiff told her advisor about her situation, who told plaintiff to "get documentation." In the meantime, plaintiff had given her job two weeks' notice. Because she had quit her job but was unable to enroll in college, she lost her unemployment benefits and fell behind on her rent.

On October 7, 2010, Stone House served an eviction notice on plaintiff. A week later, plaintiff spoke with Dixson to set up a payment plan to catch up on her rent. Plaintiff

explained to Dixson that she fell behind on her rent because she had given up her job to attend school, but then was unable to attend school and lost her unemployment benefits. Dixson said that there were loopholes in section 42 and plaintiff should be allowed to attend college while living in the Section 42 housing.

On November 2, 2010, plaintiff met with Brockman again. Plaintiff told her that Dixson had explained that if plaintiff claimed her son as a dependent on her taxes, plaintiff should have been able to attend college. Brockman became upset, stated again that plaintiff could not attend school and said that she was going to call Sutterland, Dixson's supervisor, to ask her whether plaintiff could attend school. Plaintiff asked Brockman if she could have "documentation of her findings." After calling Sutterland, Brockman said that Sutterland said that plaintiff could not attend college and handed plaintiff "documentation."

At some time between November 2010 and August 2011, defendant fired Brockman. Defendant did not notify plaintiff and has not explained its reason for firing Brockman.

In July 2011, plaintiff contacted the Wisconsin Housing and Economic Development Authority to obtain information about student status and Section 42 housing. She spoke with Tyler Grover, who sent her information about student status for Section 42 housing.

In August 2011, plaintiff again asked defendant whether she could be allowed to attend college. This time, Dixson told plaintiff that she could live in Section 42 housing while attending college only if her son was a minor.

On September 26, 2011, Sutterland called plaintiff and said that they had made a mistake. Sutterland asked what Stone House could do for plaintiff, and plaintiff said she

wanted compensation for her losses in 2010, but Sutterland was not concerned about what happened to plaintiff in 2010. In a letter dated September 1, 2011, defendant's marketing coordinator sent plaintiff a letter explaining that plaintiff's household would qualify for the Section 42 program even if she attended college because her adult son was still a dependent because he is a full-time student. Dkt. #14-2.

On September 29, 2011, plaintiff asked to see her file with defendant. When she saw the file, she found an envelope addressed to Gregg Investigations. She inferred from this that Angela Brockman had investigated plaintiff in November 2010.

Plaintiff raises several complaints about the service provided by the apartment managers, Brockman and Becky Egnoski. Egnoski did not provide an air conditioner for plaintiff when the central air failed in June 2011 and did not obtain service for plaintiff when her washer failed in June 2011. At other unspecified times, there was dog urine in front of her door, the locks on her doors were changed, the sidewalk was not shoveled on her side of the building and the lawn was not was mowed on her side of the building.

Plaintiff moved out of the Marshall School Apartments on March 1, 2012.

OPINION

Plaintiff alleges that because of her race, defendant Stone House Development refused to let her stay in the Marshall School Apartments while she attended college. In the initial complaint, plaintiff alleged only that defendant refused to allow her to remain in her Section 42 apartment while she attended college full time. Because federal regulations prohibit full-

time college students from receiving federal housing assistance, 24 C.F.R. § 5.612, I concluded that plaintiff's bare allegation that defendant applied this rule to her because of her race did not state a plausible claim for discrimination under Rule 8. Swanson v. Citibank, N.A., 614 F.3d 400, 404 (complaint must "present a story that holds together").

Plaintiff's amended complaint clarifies why plaintiff believed that defendant used this rule as a mask for racial discrimination. The regulation prohibiting a full-time college student from receiving federal housing subsidies does not apply if the student has a dependent child. 24 C.F.R. § 5.612. The regulations define "dependent" as a "member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student." 24 C.F.R. § 5.603. Because plaintiff's adult son was attending college, he qualified as a dependent child and plaintiff could attend college full time while receiving federal housing assistance. In light of these new allegations, plaintiff's allegations of racial discrimination presents a story that holds together, if just barely.

Plaintiff's allegations state a claim under § 3604(b) of the Fair Housing Act, which makes it unlawful "[t]o discriminate 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 therewith, because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(b). In addition, they state a claim under the Civil Rights Act of 1866, which provides that "all persons . . . shall have the same right . . . to make and enforce contracts,

as is enjoyed by white citizens" and "[a]ll citizens of the United States shall have the same right . . . as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C. §§ 1981 and 1982. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 436 (1968) (§§ 1981 and 1982 prohibit discrimination in property leases).

However, plaintiff's amended complaint does not state a claim for retaliation under § 3617 of the Fair Housing Act or § 1982. In her previous complaint, she alleged that the apartment managers harassed her after she filed a complaint with the Equal Rights Division. The amended complaint does not include any allegations about her complaint with the Equal Rights Division. She alleges that the managers provided poor service for her apartment but does not connect these grievances to any protected complaints about racial discrimination. Bloch v. Frischholz, 587 F.3d 771, 783 (7th Cir. 2009) (to state claim for retaliation, plaintiff must allege that defendant's conduct was motivated by plaintiff's attempts to exercise or vindicate her rights under Fair Housing Act).

Although plaintiff's allegations state a claim for racial discrimination, I cannot allow plaintiff to proceed at this time because the amended complaint does not include a request for relief. Under Fed. R. Civ. P. 8(a)(3), a pleading must contain "a demand for the relief sought, which may include relief in the alternative or different types of relief." Plaintiff may have two weeks to file a supplement to her complaint identifying the kind and amount of relief she seeks from defendant. Under the Fair Housing Act and §§ 1981 and 1982, a plaintiff may seek money damages as compensation or punishment, as well as equitable

relief, which would include an order enjoining defendant from taking certain actions or requiring defendant to take affirmative actions. 42 U.S.C. § 3613(c)(1) (setting forth relief available under Fair Housing Act); Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 239-40 (1969) (describing relief available under § 1982); Phillips v. Hunter Trails Community Association, 685 F.2d 184, 191 (7th Cir. 1982) (punitive damages available under § 1982).

ORDER

IT IS ORDERED that plaintiff Charlie L. Hardy's motion for leave to proceed in forma pauperis is STAYED. Plaintiff may have until July 12, 2012 to file a supplement to her complaint identifying the relief that she requests. If plaintiff files a supplement within that time, the court will screen the requested for relief and serve the complaint.

Entered this 28th day of June, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge