

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

KATHY CLEAVES MILAN,)
)
Plaintiff,)
)
v.)
)
AIMCO ELMCREEK L.P.,)
AIMCO HOLDINGS, L.P.,)
AIMCO HOLDINGS QRS, INC.,)
APARTMENT INVESTMENT AND)
MANAGEMENT COMPANY,)
and JAN WINTERS,)
)
Defendants.)

Case No. _____

JURY DEMANDED

COMPLAINT

1. This action arises out of sex discrimination in unlawfully terminating the tenancy of Kathy Cleaves-Milan, based on Ms. Milan’s sex and her status as a victim of domestic violence. Ms. Milan brings this action to enforce her rights under the federal Fair Housing Act and the Illinois Human Rights Act.

JURISDICTION AND VENUE

2. This Court has jurisdiction over Ms. Milan’s claims pursuant to 28 U.S.C. § 1331 (federal question), 42 U.S.C. § 3613 (fair housing), and 28 U.S.C. § 1367 (supplemental jurisdiction).

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) as the events giving rise to Plaintiff’s claims occurred within the District.

JURY DEMAND

4. Ms. Milan demands a jury trial on each and every claim to which she is so entitled.

PARTIES

5. Plaintiff Kathy Cleaves-Milan (“Ms. Milan”) was a tenant at Elm Creek Apartment Complex, a private rental housing apartment complex in Elmhurst, Illinois. Ms. Milan lived there with her young daughter, “T. M.”, and her ex-fiance from September 15, 2007 until October 6, 2007, when she was forced to move from the complex due to the unlawful termination of her tenancy.

6. On information and belief, at all times relevant to this action, Defendant AIMCO Elm Creek L.P., a Delaware limited partnership, was the owner and manager of Elm Creek Apartment Complex, and an agent of AIMCO Holdings, L.P., AIMCO Holdings QRS, Inc., and the Apartment Investment Management Company.

7. On information and belief, at all times relevant to this action, AIMCO Holdings L.P., a Delaware limited partnership, was general partner of AIMCO Elm Creek L.P.

8. On information and belief, at all times relevant to this action, AIMCO Holdings QRS, Inc., a Delaware Corporation, was general partner of AIMCO Holdings, L.P.

9. On information and belief, Defendant Apartment Investment and Management Company (“AIMCO”), a Maryland corporation, is a corporation related to AIMCO Elm Creek, L.P. that participated in the facts set forth in this complaint.

10. On information and belief, at all times relevant to this action, Defendant Jan Winters was the on-site resident manager of Elm Creek Apartment Complex and an employee of Defendants AIMCO Elm Creek, L.P., and AIMCO.

STATEMENT OF FACTS

11. Elm Creek Apartment Complex is a large rental apartment complex located in Elmhurst, Illinois.

12. On September 15, 2007, Ms. Milan moved into the Elm Creek Apartment Complex in Elmhurst, Illinois with her daughter T. M. and her fiancé Allen Creasy. Ms. Milan and her fiancé moved to the Elm Creek Apartment Complex because it was a safe community close to the Timothy Christian Academy, a private Christian school they wanted Ms. Milan's daughter to attend. They were also attracted to the apartment complex's many on-site amenities, including a swimming pool, dry cleaners, recreational activities, and internet café.

13. Shortly before moving to the complex, Ms. Milan enrolled her daughter, T. M., at Timothy Christian Academy. T. M. attended some of the school's orientation programs for new students. Due to the Defendants' termination of Ms. Milan's tenancy T. M. did not begin her school year at Timothy.

14. Soon after moving into the complex, Mr. Creasy began to behave erratically and became increasingly paranoid and aggressive towards Ms. Milan.

15. On the morning of September 19, 2007, Mr. Creasy became angry with Ms. Milan for not waking him up in morning and shoved her into a wall in the apartment.

16. On September 26, 2007, Mr. Creasy raped Ms. Milan in their bedroom. After the sexual assault, Ms. Milan contacted T. M.'s father and asked him to take T. M. for the coming weekend so she could end her relationship with Mr. Creasy.

17. On the night of September 29, 2007, Ms. Milan informed Mr. Creasy that their relationship was over and encouraged him to move out as soon as he found a place to live.

18. Mr. Creasy became upset and spent several hours that evening trying to convince Ms. Milan not to end their relationship. Ms. Milan eventually retreated with her dog to her daughter's bedroom and locked the bedroom door.

19. Early the next morning on September 30, 2007, Ms. Milan took her dog for a walk. When she returned from the walk, Mr. Creasy said he wanted to speak with her.

20. Mr. Creasy begged her not to break up with him and insisted that they could work things out. After Ms. Milan refused to reconcile, Mr. Creasy told her he was going to "prove [his] love for [her]" and went into their bedroom.

21. Mr. Creasy returned with a gun, pointed at him and Ms. Milan, and said words to the effect of "if I can't have you no one can." He said he intended to kill himself and Ms. Milan.

22. In fear for her life, Ms. Milan attempted to convince Mr. Creasy that they could reconcile. She eventually retrieved the gun from him and told him to lay down in the bedroom under the guise that she would make him breakfast. Ms. Milan then took the gun into the bathroom, locked the door, and called 911.

23. On information and belief, the police entered the apartment complex through the main entrance near the leasing office and were allowed entry by an employee of the complex.

24. The police arrived at the home and suggested that Mr. Creasy be involuntarily committed to a hospital for a psychiatric evaluation. Later that same day, Ms. Milan went to the hospital to have Mr. Creasy placed on a 72 hour hold for evaluation.

25. That same day Ms. Milan had a brief conversation with Bob Frischmann, the leasing agent for the complex, about the incident. At that time, Mr. Frischmann asked Ms. Milan "what had happened" because, on information and belief, management was aware that the police had been to the premises. Ms. Milan explained to Mr. Frischmann that Mr. Creasy had been violent with her and that Mr. Creasy was in the hospital getting help. Ms. Milan told Mr. Frischmann that Mr. Creasy would not be returning to the development. Ms. Milan further stated that she would be seeking an Order of Protection, and needed management's help in removing Mr. Creasy from the lease. Ms. Milan also told Mr. Frischmann that she would need to rent a storage unit for Mr. Creasy's property. Ms. Milan followed Mr. Frischmann to the management office, where she signed a lease for the storage space. Mr. Frischmann told Ms. Milan that he had to speak with Jan Winters and that afterwards he would call to follow-up with Ms. Milan regarding removing Mr. Creasy from the lease.

26. The next day, on October 1, 2007, Ms. Milan went to the Elmhurst police station to determine if she could have Mr. Creasy arrested for threatening to kill her and to obtain some help with permanently removing him from her home. On October 2, 2007, Ms. Milan sought and obtained an Order of Protection against Mr. Creasy. Ms. Milan also continued to pursue criminal charges against Mr. Creasy for the threat on her life and the sexual assault.

27. That same day, Mr. Frischmann contacted Ms. Milan and asked her to come down to the leasing office. When she arrived at the office, Ms. Milan again explained that Mr. Creasy had tried to kill her and himself, and that she had an Order of Protection against him. On information and belief an employee of the management company made a copy of the Order of Protection.

28. During this conversation, Ms. Milan told Mr. Frischmann again that she wanted to continue to live at the Elm Creek Apartment Complex but that she needed help removing Mr. Creasy from the lease and apartment. Mr. Frischmann explained that the complex would allow her to remove Mr. Creasy from the lease and stay in the apartment on her own, as long as she could show that she had the minimum income required by the complex to lease a unit.

29. Ms. Milan indicated that proof of requisite income would not be a problem and asked that she be given until October 15, 2007 to produce this information. Mr. Frischmann said that time frame was fine and asked that Ms. Milan also speak with the property's manager and his supervisor, Jan Winters ("Defendant Winters").

30. Ms. Milan then went next door to Defendant Winters's office and began discussing her situation. Defendant Winters said she had spoken with Mr. Frischmann and was aware of what had occurred and the Order of Protection. At that time, Ms. Milan also explained that she had not yet paid her October 2007 rent because of terrible events over the last few days. She promised to pay the rent the next day to which Defendant Winters agreed. Ms. Milan had not received a notice of termination of tenancy for non-payment of rent.

31. The following day, on October 3, 2007, Ms. Milan went to her local bank to obtain a cashier's check for her rent, which was \$1610.00 per month. Because of fees related to the storage unit, Ms. Milan contacted Defendant Winters from the bank to confirm the amount of rent owed for October. It was at that time that Defendant Winters informed her that she could not accept her rent because Elm Creek Apartment Complex was evicting her. Ms. Milan asked why this was happening. Defendant Winters informed her that the "corporate office" said that anytime there is a crime in an apartment the household must be evicted.

32. Upon being told that she was being evicted for Mr. Creasy's domestic violence against her, Ms. Milan immediately left the bank and drove to the complex's leasing office. Defendant Winters said she could not speak to her any further about the matter and that the eviction notice was going through corporate.

33. On October 3, 2007, Ms. Milan received a ten-day notice of termination of tenancy from "Elm Creek Apartments/AIMCO" and signed by Jan Winters taped across her front door. The notice alleged that both Ms. Milan and Mr. Creasy violated the terms of the lease as a result of the September 30, 2007 incident of criminal activity by Mr. Creasy. Because the termination notice was partially torn, Ms. Milan contacted the leasing office to obtain another copy. During this conversation, Defendant Winters explained that Ms. Milan would be responsible for the rent for the unit through December. Attached to the new ten-day notice was a copy of Ms. Milan's Order of Protection against Mr. Creasy.

34. On October 6, 2007, Ms. Milan moved her and her daughter's belongings out of the Elm Creek Apartment Complex. Because she had no where to live, she was forced to move in with her estranged husband on the south side of Chicago.

35. Because they were forced to move by the defendants due to the incident of domestic violence, T. M. never had the opportunity to attend Timothy Christian Academy. T. M. had no choice but to attend a school on the south side of Chicago, where the academics, teachers, and curriculum were substandard to the quality of Timothy.

36. Ms. Milan paid \$1000 per month plus utilities for her housing with her husband. Ms. Milan's estranged husband's condominium recently went into foreclosure, forcing Ms. Milan and her daughter to move yet again. They now live in Park Ridge, Illinois, where Ms. Milan pays \$1800 per month for rent, plus utilities, totaling approximately \$2600 in household expenses a month. The family was recently notified that the home they rent is now in foreclosure and they will likely have to move again.

37. On July 13, 2009, Ms. Milan received a call from a collections agency, Fair Collections and Outsourcing, on behalf of the defendants. Defendants are seeking \$3790.01, including a \$3180 lease termination fee for the apartment she was unlawfully evicted from due to her status as a victim of domestic violence.

38. As a result of the termination of her tenancy, Ms. Milan experienced great emotional and psychological distress, which manifested in physical symptoms, including more frequent bouts of pouchitis related to her continent ostomy, which causes skin irritation and stomach pain.

39. Before terminating the lease, Defendants knew that Ms. Milan is a woman. Further, Ms. Milan was ready, willing, and able to continue renting the apartment in which she was living at the time that Defendants terminated her tenancy. Defendants also knew this as a result of communications Ms. Milan had with Defendants regarding her desire to continue renting. Indeed, Ms. Milan had even begun to take the steps necessary to continue renting the apartment in which she was living.

40. Before terminating the lease, Defendants also had knowledge that Ms. Milan was a victim of domestic violence by Mr. Creasy. They also had knowledge that Ms. Milan had taken multiple active steps to prevent Mr. Creasy from entering the property again, including obtaining an Order of Protection that legally barred him from her home and taking active steps to remove him from her lease.

41. On information and belief, at all times relevant to this action, there was no rule, policy, or practice of Defendants to terminate or otherwise adversely affect the tenancy of victims of crimes committed by strangers.

42. Defendants' acts demonstrate an intent to discriminate against Ms. Milan on the basis of sex and specifically on the basis of gender stereotypes about women who are victims of domestic violence. These gender stereotypes hold battered women accountable for the acts of abusers and attribute to a battered woman responsibility for the actions of those who abuse her.

43. Defendants' policy of holding domestic violence victims responsible for the criminal acts of their abusers has a disproportionately adverse impact on women. National statistics indicate that 90-95% of domestic violence victims are women and women are eight times more likely than men to be victims of domestic violence.

44. Defendants' policy of holding domestic violence victims responsible for the criminal acts of their abusers is not required by law or justified by business necessity, particularly in circumstances such as here where the victim of violence takes active steps to secure their safety.

45. The acts and failures of Defendants were intentional, wanton, malicious, oppressive, reckless, and callously indifferent to the rights of Ms. Milan, thus entitling her to an award of punitive damages against Defendants.

CLAIMS FOR RELIEF

COUNT I: VIOLATION OF THE FAIR HOUSING ACT, 42 U.S.C. § 3604

46. Plaintiff re-allege the paragraphs 1 to 45 of this Complaint and incorporate them herein.

47. By terminating Ms. Milan's tenancy based on the criminal acts of domestic violence perpetrated against her, Defendants intentionally discriminated against Ms. Milan on the basis of sex, by denying her the opportunity to rent a dwelling and adversely affecting the terms, conditions, and privileges of the rental housing, in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (b).

COUNT II: VIOLATION OF THE FAIR HOUSING ACT, 42 U.S.C. § 3604

48. Plaintiff re-allege the paragraphs 1 to 45 of this Complaint and incorporate them herein.

49. By adopting a policy or practice of holding tenants who are domestic violence victims responsible for the criminal behavior of their abusers, Defendants engaged in a pattern and practice that has a disparate impact on women, because the great majority of domestic violence victims are women. Defendants actions therefore

discriminate on the basis of sex in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (b).

**COUNT III: VIOLATION OF THE ILLINOIS HUMAN RIGHTS ACT,
775 ILCS 5/1-102(A) & 5/3-102 (A), (B)**

50. Plaintiff re-allege the paragraphs 1 to 44 of this Complaint and incorporate them herein.

51. By terminating Ms. Milan's tenancy based on the criminal behavior of Ms. Milan's perpetrator, Defendants intentionally discriminated against Ms. Milan on the basis of sex, by denying her the opportunity to rent a dwelling and adversely affecting the terms, conditions, and privileges of the rental housing, in violation of the Illinois Human Rights Act, 775 ILCS 5/3-102 (A), (B) & 775 ILCS 5/1-102(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

- (a) Declare that the discriminatory practices of the Defendants, as set forth above, violate the Fair Housing Act, 42 U.S.C. § 3604, and the Illinois Human Rights Act, 775 ILCS 5/3-102 (A), (B) and 5/1-102(A);
- (b) Enjoin Defendants, their agents, employees, and successors, and all other persons in active concert or participation with them, from discriminating on the basis of sex against any person in any aspect of the rental of a dwelling, including but not limited to continuing to evict tenants because they are victims of domestic violence;
- (c) Order Defendants to take such affirmative steps as necessary to restore Ms. Milan as nearly as practicable to the position she would have been in but for the discriminatory conduct and to take such affirmative steps as may be necessary to prevent such discrimination, harassment, and retaliation against other victims of domestic violence in the future;
- (d) Award compensatory damages to Plaintiff pursuant to 42 U.S.C. § 3613(c)(1) and 775 ILCS 5/10-102(C)(1) in an amount to be determined at trial;

- (e) Award punitive damages to Plaintiff pursuant to 42 U.S.C. § 3613(c)(1) and 775 ILCS 5/10-102(C)(1), in an amount to be determined at trial;
- (f) Award Plaintiff reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 3613(c)(2) and 775 ILCS 5/10-102(C)(2); and
- (g) Grant such other and further relief as this Court deems just and proper under the circumstances.

Dated: October 1, 2009

Respectfully Submitted,

/s/ Samantha Tuttle
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