



# Maine Human Rights Commission

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## INVESTIGATOR'S REPORT

MHRC Case No. H19-0427-A&B/HUD No. 01-20-3919-8

*May 6*, 2020

**Heidi McIntosh (Auburn)**

v.

**Twin Cities Group, LLC (Auburn) & Olga Dolgicer (Auburn)**

### I. Summary of Case:

Complainant Heidi McIntosh resided at 115 Pleasant Street, Apt. 1, Auburn, ME (the "Premises") which is owned and operated by the Twin Cities Group, LLC with Olga Dolgicer ("Dolgicer") as its agent (collectively "Respondents"). Complainant alleged that Respondents discriminated against her based on familial status<sup>1</sup> and on her association with persons based on their race and mental or physical disabilities when she was treated differently in the terms and conditions of her housing (including making housing unavailable). Complainant also alleged that Respondents made discriminatory statements and interfered with her housing rights. Respondents denied discriminating against Complainant; she was evicted her because the month to month lease ended, in addition to multiple lease violations. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, interviewing the parties, and requesting additional information. Based upon this information, the Investigator recommends that the Commission find that there are reasonable grounds to believe that Respondents discriminated and retaliated against Complainant based on her protected class statuses.

### II. Jurisdictional Data:

- 1) Dates of alleged discrimination: July 2019 through Fall 2019.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): November 1, 2019.
- 3) Respondents are subject to the Maine Human Rights Act ("MHRA") and the federal Fair Housing Act ("FHA"), as well as state and federal housing regulations.
- 4) Complainant is represented by Patricia Ender, Esq. Respondents are not represented by counsel.

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<sup>1</sup> Complainant's familial status claims appear to be based on the presence of Son and his guests at the Premises. The record does not support a finding that Complainant was discriminated against because of the presence of her minor child, rather than because of that child's disability and the race of his visitors. Respondents had other families with minor children in the building, and did not appear to be biased against families with children, treat them less favorably, or make housing unavailable to them. It seems plain from the record that Complainant and Son would not have been treated poorly if not for Son's disability and/or the race of his visitors. Accordingly, Complainant's familial status claims fail, and will not be analyzed further.

### **III. Development of Facts:**

- 1) Complainant provided the following in support of her claims:

Complainant's son ("Son") is disabled. Respondents knew about Son's disabilities. Complainant limits Son's outside activities based on his disability. Son's friends visited the Premises so that he had social interaction. Respondents entered Complainant's apartment to conduct surprise inspections when Son had friends over. Several of Son's friends are Black; Respondents made racist statements about them and published racially charged statements to a landlord group on social media. Respondents treated Complainant differently than other tenants, including by conducting surprise inspections, treating her visitors differently than those of other tenants, monitoring Complainant's visitors by video, and taking items from her home. Respondents accused Complainant and her visitors of being involved in drug trading. Respondents served Complainant with a 30-day notice to quit and later a 7-day notice to quit. Respondents withheld Complainant's security deposit. After she moved out, Complainant learned about the racially charged statement on social media. That statement told area landlords to not rent to Complainant. Complainant believes that she missed some housing opportunities because of Respondents' retaliation.

- 2) Respondents provided the following in support of their position:

Complainant's visitors were a nuisance. Respondents told Complainant that they needed quiet tenants. Complainant indicated that she was a quiet tenant. Respondents believed that Complainant allowed a social hub of children to congregate at the Premises during the daytime and evening hours. The ongoing visitors were a disturbance for other tenants and occupants of Respondents' inn which is adjacent to the Premises. Respondents served Complainant with eviction notices because Complainant's month to month lease ended and because Complainant violated the lease.

- 3) The Investigator made the following findings of fact based on the documentation submitted by the parties and the information gathered during party interviews:

- a) Son has mental and physical conditions, including one that is a disability without regard to severity under the MHRA. *See* 5 Maine Revised Statutes ("M.R.S.") § 4553-A(1)(B).
- b) Complainant told Respondents about Son's disability before she moved in. Complainant explained that because of Son's disability she does not like him to go outside for his own safety.<sup>2</sup> Since it was summertime, Son's friends came over to visit; some of his friends were Black. They were quiet and respectful, they played video games. Respondents described Son's visitors as non-stop and described the Premises as a social hub.
- c) Complainant told Respondents that she sometimes worked from home a couple of days a week as part of her job. When she worked at home the home needed to be quiet because she used a webcam. The noise level in the apartment was not disturbing and there were not a lot of people coming and going.

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<sup>2</sup> In Respondents' Answer, they state that: "When Heidi moved in, there was no mention that her son had a disability, nor were there any formal disability accommodations requested. Had there been any accommodations requested, we would have had an opportunity to further decide whether this residence was a good fit for both of us." When asked what was meant by that statement, Respondents deferred and said it was about the other children living in the home.

- d) Ten days after Complainant moved in the tensions and friction between the parties started. Respondents complained about the noise coming from Son's visitors calling it "not light traffic".<sup>3</sup> Respondents' employee expressed concern about the safety of his property in the adjacent barn, implying that some of his items may be stolen by Son's friends. Complainant talked to Son and asked him to be quieter.<sup>4</sup> Respondents told Complainant that people in the neighborhood may worry about the kids because they are Black. Complainant did not raise the race of the visitors to Respondents. Complainant alleged that Respondents said that Son had a lot of "colored" friends. Respondents deny the allegation.<sup>5</sup>
- e) Complainant introduced some of Son's friends to Respondents. Respondents indicated that they were good, cool kids. On July 23, 2019, some of Son's friends helped Respondents with tasks.
- f) On July 26, 2019, Respondents texted Complainant complaining again about the volume of Son's visitors. Respondents indicated that if the pattern did not change that Complainant and Son were not a "good match". The message implied that Complainant would need to move. That same day Respondents told Complainant that they could give her 30 days to move and get her security deposit. Respondents asked Complainant to pay rent for the month of August and stated that Respondents would return the security deposit ten days before Complainant moved.
- g) On July 31, 2019, Respondents entered Complainant's apartment when she was not home and complained to Son and his friends that the music was too loud. When Complainant and Respondents texted about the incident that same day, Respondents accused Complainant of lying about the music level.
- h) Respondents complained about the vehicles at the Premises, noting that one vehicle was a high-end vehicle and it was there often.
- i) Respondents served Complainant with a 30-day notice to quit. Complainant believed that if the behavior that Respondents were concerned about stopped she would no longer need to leave the Premises.
- j) On August 13, 2019 in the middle of the afternoon, Respondents told Complainant that she needed to remove all of her belongings from the basement and that the three children in the Premises needed to leave. Complainant alleged that Respondents previously gave her permission to use the basement as storage; the belongings were moved. Complainant told Respondents this was the second time that they entered the Premises uninvited. The parties exchanged multiple text messages and Respondent asked to

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<sup>3</sup> During the course of the investigation, Respondents mentioned that they had video footage of the constant traffic of visitors. One video clip was provided, from inside a different building, that was only seconds long showing what appeared to be three people exiting a building. When Respondents were asked to provide additional supporting documentation about the volume of visitors, Respondents replied: "38 days in 24/h format. I have memory sticks and it is too of giant work for me to do the viewing, sorting, copying ect. For this investigation it is deem irrelevant. You have many other media and correspondence and witnesses that talk about the same. You should get an idea. Heidi herself does not deny it. Lets not make here a big production show." (Reproduced as in original.)

<sup>4</sup> Respondent alleged that Son had up to ten to twenty visitors at a time. Complainant asserted that there were never large gatherings of people in the Premises.

<sup>5</sup> Respondents said that if all of Son's friends were White that their actions would be the same.

know about Complainant's plan to leave the Premises. Complainant asked Respondents to stop harassing her about Son's visitors.

- k) During the month of August, the communications between the parties continued to devolve with Respondents accusing Complainant of having additional individuals permanently residing in her home and alleging that Complainant allowed someone to live there who was just out of jail. Respondents told Complainant that they believed that she was violating her lease by allowing others to reside at the Premises.
- l) On September 1, 2019, Respondents texted Complainant about a party at the Premises. They alleged that Son was hosting a party with drinking and marijuana smoking.<sup>6</sup> Respondent heard loud noises on the stairs with doors slamming. Complainant stated that she had been out with her sister earlier in the evening and after she got home, her sister required help and Complainant left the Premises to pick up her sister and drive her home. Respondents gave Complainant a 24-hour notice that they would do an inspection the next morning. Respondents served Complainants with a 7-day notice to quit.
- m) Complainant alleged that someone associated with Respondents threatened to cripple one of her visitors.
- n) On September 2, 2019, Complainant stated that she could start to move out and asked for the security deposit. Initially Respondents agreed to give her the check, then told Complainant that she needed to move out first and return the key. When they met for the inspection, Complainant had witnesses with her and allegedly told Respondents that the deal was off. Respondents alleged that a laser pointer was pointed at Dolgicer's eyes. Respondents alleged that they recorded the conversation, but they failed to provide it when requested to do so.
- o) On September 6, 2019, a tenants' rights advocate contacted Complainant letting her know that she observed a post on a private landlord social media group that was about Complainant and Son. The posting made disparaging comments about Complainant, Son, and Son's friends, including singling out that most of Son's visitors were Black and that neighbors complained that a drug trade was run out of the Premises. *See Exhibit 1.*
- p) On September 8, 2019, Complainant moved out of the Premises and asked when a good time would be to leave the keys. Over the next few days, Complainant continued to inquire about when she could return the keys and get her security deposit. On September 12, 2019, Respondents acknowledged the message and said that they would reply shortly.
- q) Respondents filed an eviction action in the local court and did not dismiss it after Complainant vacated the Premises and the locks were changed causing Complainant to appear in court and lose time from work.
- r) On September 16, 2019, Respondents emailed Complainant explaining that they would not return her security deposit and accused Complainant of having squatters in the Premises. Respondents alleged that Complainant did not leave the building in good condition. Complainant provided photographs reflecting that the Premises was left clean.

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<sup>6</sup> Respondent Dolgicer had a cannabidiol plant planted in the ground outside of the Premises.

- s) On September 19, 2019, Respondents accused Complainant's visitors of stealing Dolgicer's cannabidiol plant. Respondents provided video footage to the local police. Complainant denied the allegations. No charges were filed based on the alleged theft.
- t) After Complainant moved out she attempted to rent an apartment near her mother. Complainant filled out an application for the unit. The prospective landlord asked if Complainant had been evicted by Dolgicer. Complainant was unable to rent the unit.
- u) Complainant alleged that other tenants were not subjected to the same scrutiny about guests or visitors. Respondents monitored her guests by video. Respondents alleged that they informed Complainant about the video footage before she moved in. The system is set up as a security measure for Respondents' inn. The angle of one of the cameras did also capture images at Complainant's front door. Complainant believed that another tenant routinely had overnight guests.
- v) Complainant alleged that Respondents entered the Premises several times without permission. On one such occasion, Complainant alleged that Respondents removed documents from her desk. Respondents denied entering the Premises without permission or removing items. Respondents alleged that Complainant routinely left her front door unlocked and open. Complainant denied leaving her door unlocked and open. When Respondents confronted Son about the volume of the music they entered the Premises without permission.
- w) Respondents were concerned about the strain on the water systems in the Premises with all of the extra visitors/uninvited tenants. Respondents also stated they are not racist; Dolgicer is an immigrant herself and she knows what it is like to be treated differently.
- x) In the month of July, the parties called or texted each other 99 times. In August they called or texted each other 127 times. In September they called or texted each other 77 times.
- y) The other tenants in the building were White. The tenant with the overnight guest was White as was her visitor.

#### **IV. Analysis:**

- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("M.R.S.") § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

#### *Discriminatory Statements*

- 2) The MHRA provides it is unlawful "[f]or any owner, lessee, sublessee, managing agent or other person having the right to sell or rent or manage a housing accommodation, or any agent of these" to "[m]ake or cause to be made any written or oral inquiry concerning the race ... physical or mental disability... or familial status of any prospective purchaser, occupant or tenant of the housing accommodation." 5 M.R.S.

§4581-A(1)(A). Discriminatory statements include, “[u]sing words ... which convey that dwellings are available or not available to a particular group of persons because of race...” 94 C.M.R. § 8.04(E)(3)(a).<sup>7</sup>

- 3) The MHRA provides it is unlawful “[f]or any owner, lessee, sublessee, managing agent or other person having the right to sell or rent or manage a housing accommodation, or any agent of these” to “[m]ake...any...statement...relating to the sale, rental or lease of the housing accommodation that indicates any preference, limitation or discrimination based upon race...physical or mental disability...or familial status...or an intention to make any such preference, limitation or discrimination.” 5 M.R.S. §4581-A(1)(C). Discriminatory statements include, “[u]sing words ... which convey that dwellings are available or not available to a particular group of persons because of race...” 94 C.M.R. § 8.04(E)(3)(a).
- 4) In this case, both Respondents made statements expressing a limitation in housing (or the benefits or privileges associate with housing, such as Complainant’s having visitors) on the basis of race. Complainant alleged that Dolgicer made multiple, derogatory statements using the word “colored,” and issued race-based statements in a social media. Respondents’ statements about Son’s visitors possibly stealing from the barn, that Dolgicer was worried about what neighbors would think about the race of Son’s visitors, and the assumption that the high-end vehicle of a visitor implied that they were involved in drug trading are all based on racial stereotypes of Black people. The statements reflect commonly held stereotypes. Respondents denied making any racist statements they said that the statements were descriptive, however, Respondents own texts and social media posts reflect otherwise.
- 5) During the course of this investigation Respondents made additional discriminatory statements stating a preference for nondisabled tenants when Dolgicer stated that if Complainant had asked for a reasonable accommodation that they may have decided that Complainant and Son were not a good fit.
- 6) Since Dolgicer owns and operates Twin Cities Group, LLC, her actions are the actions of the company, and the company is also liable for the discriminatory statements.
- 7) It is found that Respondents made discriminatory statements relating to Complainant’s tenancy.

#### Terms and Conditions Claim

- 8) The MHRA makes it unlawful for a covered housing provider to discriminate against any individual because of race, disability, or association with a person based on their protected class status in the “price, terms, conditions or privileges of the sale, rental or lease of any housing accommodations.” 5 M.R.S. § 4582. The Commission’s housing regulations provide that it is unlawful to “threaten, intimidate, or interfere” with tenants in their enjoyment of a dwelling because their disabilities. Me. Hum. Rights Comm’n Reg. Ch. 8, § 8.09(B)(2).

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<sup>7</sup> Consistent with the purposes of the MHRA, and with federal law, the Commission interprets the MHRA’s housing provisions broadly such that an individual Complainant - even if not themselves a member of a protected class - can be discriminated against by virtue of their association with another person (such as a family member) who is a member of a particular protected class, as this would be discrimination “because of” the protected class. See 5 M.R.S. § 4581. In 2019, the definition of “aggrieved person” under the MHRA changed to explicitly include claims of an individual associated with a member of a protected class. See 5 M.R.S. 4553 § 1-D. The Commission notes that the subsection of MHRA addressing discriminatory evictions, 5 M.R.S. § 4581-A(1)(E), does specifically refer to the protected class “of the tenant”, rather than “any person”, i.e. 5 M.R.S. § 4581-A(1)(D). Nonetheless, given the absence of any contrary authority from the Law Court, and in keeping with the principles described above, the Commission finds that all of Complainant’s “association with” claims are valid under the MHRA.

- 9) A mixed-motive analysis applies in cases involving “direct evidence” of unlawful discrimination. *Doyle v. Dep’t of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6 (employment case); *Texas v. Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d 722, 730 (D. Tex. 2000) (Fair Housing Act). “Direct evidence” consists of “explicit statements by [Respondents] that unambiguously demonstrate [Respondents’] unlawful discrimination. . . .” *Doyle*, 2003 ME 61, ¶ 14, n.6. Where this evidence exists, Complainant “need prove only that the discriminatory action was a motivating factor in an adverse [housing] decision.” *Patten v. Wal-Mart Stores East, Inc.*, 300 F.3d 21, 25 (1<sup>st</sup> Cir. 2002) (employment); *Doyle*, 2003 ME 61, ¶ 14, n.6. Upon such a showing, in order to avoid liability, Respondents must prove “that it would have taken the same action in the absence of the impermissible motivating factor.” *Id.*; *Crest Asset Mgmt., Inc.*, 85 F. Supp. 2d at 730. *Cf. Price Waterhouse v. Hopkins*, 490 U.S. 228, 276-77, 109 S. Ct. 1775, 1804 (1989) (O’Connor, J., concurring).<sup>8</sup>
- 10) Here, Respondents’ statements about Son’s disabilities and the race of his visitors constitute direct evidence of discrimination. Complainant has established that Son’s disability and the race of his visitors were motivating factors in the adverse treatment she experienced at the Premises, including surprise inspections, uninvited appearances in the Premises without proper notice, attempts to limit the number of visitors that Complainant could have in the Premises, and the issuance of the Notices. Complainant’s visitors were monitored via video camera, while no other tenants experienced this treatment. Respondents’ comments, most notably the ongoing race-based comments about visitors to the Premises, make plain that discrimination was a motivating factor in their actions.
- 11) Respondents have not established that they would have taken these adverse actions regardless of the discriminatory factor. The building’s other tenants were not monitored, and at least one was allowed to have a frequent overnight guest (who was White). Respondents made race-based assumptions about Complainant’s use of the Premises based on her Black visitors, such as that they would steal from a neighboring barn and that they were using the Premises for drug-relating transactions. Based on these discriminatory assumptions, they imposed unfair terms and conditions on Complainant’s tenancy.
- 12) Discrimination in the terms and conditions of housing based on race and disability is found.

*Making Housing Unavailable*

- 13) As discussed above, because there is direct evidence of discrimination, Complainant needs to show that discrimination was a factor in Respondents’ decision to terminate her tenancy. To defeat such a showing, Respondents must show that they would have taken the same action even in the absence of the discriminatory factor.
- 14) Complainant established that discrimination was a factor in Respondents’ actions to remove her from the Premises. Complainant was willing and qualified to continue her tenancy, and Respondents issued her several Notices to Quit and filed an eviction action in the local court. The record reflects that Respondents’ messages to Complainant regarding her moving out were directly tied to the perceived number of visitors and noise. It not a stretch to infer that the reason Respondents were concerned about the visitors was based,

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<sup>8</sup> The continued application of the mixed-motive analysis has been called into question as a result of the U.S. Supreme Court’s decision in *Gross v. FBL Financial Services, Inc.*, 129 S.Ct. 2343, 2348 (2009), in which the Court held that the burden of persuasion does not shift to defendant even with “direct evidence” of unlawful discrimination in a federal Age Discrimination in Employment Act case. That decision did not interpret the Maine Human Rights Act, however, and the guidance from the Maine Supreme Court in *Doyle* will continue to be followed.

at least in part, on their race, given the assumptions they made about the visitors, including a supposed likelihood that they would engage in criminal conduct at the Premises. Respondents also made clear that they would have reconsidered the tenancy had they known in advance of Son's disability, which was the reason he had frequent guests at the Premises.

- 15) Respondents have not established that they would have ended Complainant's tenancy even in the absence of the discriminatory factor. All of the alleged lease violations were based on Son's visitors, who were assumed to be noisy, inclined to steal, and involved with drugs; these mischaracterizations appear to be based on race. Respondents made clear that Son and Complainant may not have been welcome had they known of his disability in advance. Moreover, Respondents claim that the month-to-month lease had "ended", but the lease had no duration, making clear that this reason was merely pretextual.
- 16) Discrimination based on race and disability by making housing unavailable is found.

*Intimidation/Interference Claim*

- 17) The MHRA further provides that it is "unlawful for a person to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of the rights granted or protected by this Act." 5 M.R.S. §4633(2). A "person" is defined to include "individuals." 5 M.R.S. § 4553(7). The rights granted or protected by the MHRA include the right to be free from discrimination based on a protected class in housing. 5 M.R.S. §4581-A(1). Therefore, an individual whose conduct denies equal access to and enjoyment of housing may be liable in their individual capacity for interfering with the other's right to be free from that discrimination. 5 M.R.S. § 4633(2).
- 18) Here Respondents directly interfered with Complainant's right to be free from discrimination under the MHRA. Respondents posted a racially charged, derogatory post to social media warning other landlords to beware of Complainant and Son. Based on the post Complainant lost the ability to rent at least one unit that she applied for. That prospective landlord specifically asked if Dolgicer evicted Complainant.
- 19) Retaliation based on threatening, intimidation, or interference is found.

**V. Recommendation:**

For the reasons stated above, it is recommended that the Commission issue the following findings:

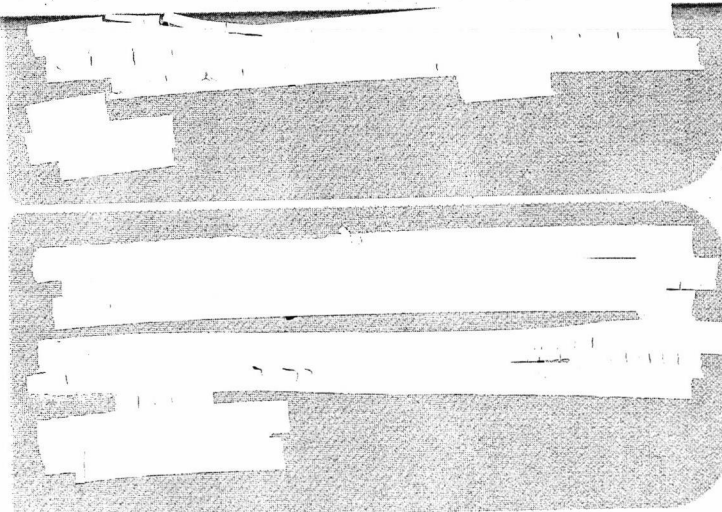
- 1) There are **No Reasonable Grounds** to believe that Twin Cities Group, LLC and Olga Dolgicer discriminated against Heidi McIntosh based on familial status, and that portion of the claims should be dismissed in accordance with 5 M.R.S. § 4612(2).
- 2) There are **Reasonable Grounds** to believe that Twin Cities Group, LLC and Olga Dolgicer discriminated against Heidi McIntosh based on her association with individuals based on their race and/or disability, by stating an unlawful preference in housing on the basis of race and/or disability;
- 3) There are **Reasonable Grounds** to believe that Twin Cities Group, LLC and Olga Dolgicer discriminated against Heidi McIntosh on the basis of race and/or disability (by association) in the terms and conditions of their housing and by making housing unavailable;
- 4) There are **Reasonable Grounds** to believe that Twin Cities Group, LLC and Olga Dolgicer unlawfully threatened, intimidated or interfered with Complainant's MHRA rights; and



5) Conciliation of these claims should be attempted in accordance with 5 M.R.S. § 4612(3).



Alice A. Neal, Chief Investigator



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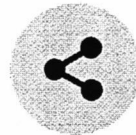
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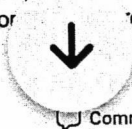
**Olga Dolgicer** ▸ **Maine Landlords Beware**

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I am evicting a tenant who has totally fooled me. Full time working, pleasant, with good manners. Took a lease for 2 b/r for herself and her 16 years old son in July. Soon after she moved in 2 displaced youth (16 and 19) with their girlfriends. Then the traffic of their friends and extended families ensured. Everyday there was upto 12 people listening music, smoking pot, going back and forth till 2 am. These two are whites, the guests are almost all are black youth from Lewiston. Neighbors started to complain of drug trade from the apt. She would not accept any responsibility for any wrongdoing doing. The boarding house she has created. Upto 8 people were sleeping at the apt. Pool of youth arrives by car, or by bike, on on foot. She tells me that she is proud of being a surrogate mother to those "kids". She had a lease at will that expired on Aug 31. She went to Pinetree after I served her papers to move out. Obviously she knows her game. Her name is Heidi Mcintosh. She moved from FL back to Maine. She looks for Auburn apartment for her 8 kids under umbrella of 2 people.



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