State of Minnesota **District Court** Hennepin County Judicial District: Fourth 27-CV-HC-20-1412 Court File Number: Case Type: Housing BBS LLC, Plaintiff, **Eviction Action – Findings of** Fact, Conclusions of Law, VS. Order and Judgment (Minn. Stat. § 504B.285, 504B.345)

This matter came on for trial before the Honorable Tiffany Sedillos, Referee of District Court, on November 16, 2020.

Plaintiff shall hereinafter be referred to as Landlord. Defendant was present. Defendant shall hereinafter be referred to as Tenant.

Sean Mansfield, Attorney for Landlord, appeared.

Defendants.

Zachary Alter, Attorney for Tenant, appeared.

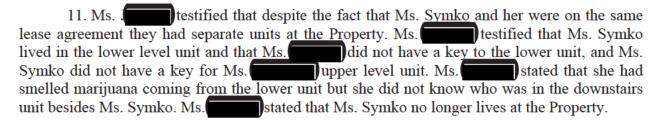
Based upon the verified petition, testimony, evidence, and arguments presented, and all of the files, records, and proceedings, the Court makes the following:

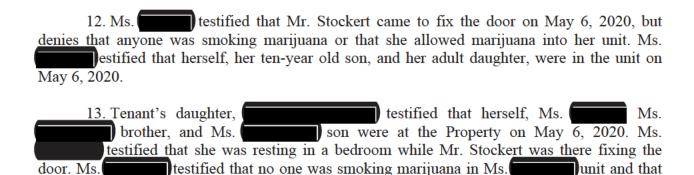
FINDINGS OF FACT

- 1. This matter involves residential property located at 5955 Penn Avenue South, Minneapolis, Hennepin County, Minnesota, 55419.
- 2. The parties entered a written lease effective from November 1, 2019 to June 1, 2020. Tenant states the current lease is month-to-month. The current rent amount is \$1,875.00 per month.
- 3. On June 22, 2020, Landlord commenced an eviction action against Tenants. On August 18, 2020, Landlord filed an Amended Complaint, alleging: breach of the statutory covenants not to allow unlawful activities by allowing controlled substances on the Property. According to the Complaint, Landlord and Landlord's authorized handyman have smelled marijuana emanating from the Property beginning in May 2020.
- 4. On September 9, 2020, Tenant filed an Answer. Tenant raised the following defenses: Landlord's Complaint fails to state a claim upon which relief can be granted; Landlord's Complaint fails to state facts sufficient to authorize recovery of the Premises under the exceptions included in Executive Order 20-79; Landlord's Complaint fails to allege facts sufficient to support the allegation that Tenants violated Minn. Stat. §504B.171; Landlord's

Complaint is retaliatory; Landlord's Complaint is barred because it discriminates against Tenant on the basis of race; Landlord's Complaint was filed in bad faith; Landlord failed to serve Tenants in compliance with Minn. Stat. §504B.331; Landlord failed to file a Power of Attorney; and Landlord failed to properly notify Tenants of any grounds for eviction.

- 5. Both parties appeared on August 25, 2020 at the initial hearing in this matter. After several continuances the Court set this matter for a October 27, 2020 court trial on the issues of whether Tenant allowed controlled substances on the premises in violation of Minnesota Statutes section 504B.171, subdivision 1(a)(1)(i) and defenses.
- 6. On July 14, 2020, the Governor signed Emergency Executive Order 20-79 ("EO 20-79") which became effective August 4, 2020, and states, "[t]his suspension does not include eviction actions where the tenant: seriously endangers the safety of other residents; violates Minnesota Statutes 2019, section 504B.171, subdivision 1; remains in the property past the vacate date after receiving a notice to vacate or nonrenewal under paragraph 4 of this Executive Order; or materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises: seriously endangers the safety of others, or significantly damages property."
- 7. Landlord called Gary Stockert as his only witness. Mr. Stockert testified that he has been a handyman at the Property for the approximately four years. Mr. Stockert described the Property as having two units on the main floor and a third unit in the lower level.
- 8. On May 6, 2020, Mr. Stockert went to the Property to repair a door at Ms. unit. Mr. Stockert testified that Ms. was present at the unit, along with her boyfriend. Mr. Stockert testified that he is familiar with the smell and look of marijuana because he has used marijuana in the past. Mr. Stockert testified that he noticed that the Ms. unit and the lower level unit smelled like burned marijuana. Mr. Stockert also testified that he saw a bag of marijuana on the kitchen counter in Ms. unit. Mr. Stockert testified that he never saw anyone smoking marijuana at the Property.
- 9. Mr. Stockert testified that he did not take any pictures of the marijuana on the counter, he did not talk to the Tenant about the marijuana smell or the bag on the counter, or call the police about marijuana at the Property.
- 10. Mr. Stockert's testimony was contradicted by his affidavit filed on September 23, 2020, with the Court. In the affidavit, Mr. Stockert swore under oath that he "personally witnessed the use and consumption of marijuana while attempting to make the repairs. Additionally, on May 6th, 2020, I witnessed the open possession of marijuana in the living room of the residence..." Aff. of Gary Stockert, ¶ 2 and 3.





she has never seen marijuana in Ms.

CONCLUSIONS OF LAW

14. In an eviction proceeding, "the only issue for determination is whether the facts alleged in the complaint are true." *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 555 (Minn. Ct. App. 1985) review denied (Minn. February 19, 1986). A landlord must prove grounds for eviction by a preponderance of the evidence. *Parkin v. Fitzgerald*, 240 N.W.2d 828, 832 (Minn. 1976).

unit.

- 15. On review of a district court judgment in an eviction action, the Court of Appeals shall defer to the district court's credibility determinations and rely on its factual findings unless they are clearly erroneous. *See Cimarron Village v. Washington*, 659 N.W.2d 811, 817-18 (Minn. Ct. App. 2003).
- 16. While the Court found some of the testimony of Mr. Stockert to be credible, his affidavit and his in court testimony on the subject of marijuana in the Property were clearly in conflict. One the one hand, Ms. Stockert stated that he saw someone consuming marijuana but in court he said he did not see anyone consuming marijuana. As both statements were given under oath the Court finds that Mr. Stockert's testimony as it relates to marijuana in the Property is not credible. Landlord provided no other evidence beyond Mr. Stockert's testimony.
- 17. Ms. and Ms. testimony of the events of May 6, 2020 were similar and the Court finds that their testimony was more credible.
- 18. The Court finds that Landlord has not proven by a preponderance of the evidence that Tenant violated Minnesota Statutes section 504B.171, subdivision 1(a)(1)(i) by unlawfully allowing controlled substances in the Property or in the common area and curtilage of the Property.

Order

- 1. DISMISSAL: The case is dismissed WITH prejudice. The Court Administrator shall enter Judgment accordingly.
- 2. SERVICE OF ORDER: The Clerk of Court shall serve/e-serve a copy of this Order on all parties or their attorneys as appropriate.

- 3. EXHIBITS: Parties are informed, pursuant to Rule 128 of the Minnesota General Rules of Practice for the District Courts, it is the duty of the party offering exhibits during a trial to remove the exhibits from the custody of the Court. Parties may request the return of their exhibits after 15 days from the time allowed for appeal of the final decision has passed. Failure to request removal of the exhibits could result in the exhibits being part of the public record or could result in the exhibits being destroyed by the Court.
- 4. EXPUNGEMENT: Landlord's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case. Expungement is clearly in the interests of justice and those interests are not out-weighed by the public's interest in knowing about the record. Minn. Stat. §484.014. Minn. Stat. §504B.345, subd. 1(c)(2) authorizes the Court to expunge the file at the time judgment is entered. The Court Administrator shall expunge Court File HC20-1412 by removing evidence of the Court File's existence from the publicly accessible records.

Let Judgment Be Entered Accordingly

Recommended By:		By the Court:			
J Sub Dec 1 2020 4:49 PM		Tolder S. Bainto			
Tiffany Sedillos			Dec 02, 2020		
District Court Referee	December 1, 2020	District Court Ju	ıdge	Dated:	
Judgment					
I hereby certify that the above Order constitutes the entry of Judgment of the Court.					
Dec 02,	2020	Ву:	1.1 Tren 16	2	
		Deputy Cou	ırt Administrato	r	