

Judicial District:	Fourth
Court File Number:	27-CV-HC-20-1412
Case Type:	Housing

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. [REDACTED] unit. Mr. Stockert testified that Ms. [REDACTED] 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. [REDACTED] 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. [REDACTED] 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.

11. Ms. [REDACTED] testified that despite the fact that Ms. Symko and her were on the same lease agreement they had separate units at the Property. Ms. [REDACTED] testified that Ms. Symko lived in the lower level unit and that Ms. [REDACTED] did not have a key to the lower unit, and Ms. Symko did not have a key for Ms. [REDACTED] upper level unit. Ms. [REDACTED] stated that she had smelled marijuana coming from the lower unit but she did not know who was in the downstairs unit besides Ms. Symko. Ms. [REDACTED] stated that Ms. Symko no longer lives at the Property.

12. Ms. [REDACTED] testified that Mr. Stockert came to fix the door on May 6, 2020, but denies that anyone was smoking marijuana or that she allowed marijuana into her unit. Ms. [REDACTED] testified that herself, her ten-year old son, and her adult daughter, were in the unit on May 6, 2020.

13. Tenant's daughter, [REDACTED] testified that herself, Ms. [REDACTED] Ms. [REDACTED] brother, and Ms. [REDACTED] son were at the Property on May 6, 2020. Ms. [REDACTED] testified that she was resting in a bedroom while Mr. Stockert was there fixing the door. Ms. [REDACTED] testified that no one was smoking marijuana in Ms. [REDACTED] unit and that she has never seen marijuana in Ms. [REDACTED] unit.

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).

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. [REDACTED] and Ms. [REDACTED] 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-weighted 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:

 Dec 1 2020 4:49 PM



Tiffany Sedillos

Dec 02, 2020

District Court Referee

December 1, 2020

District Court Judge

Dated:

Judgment

I hereby certify that the above Order constitutes the entry of Judgment of the Court.

Dated: Dec 02, 2020

By:



Deputy Court Administrator