

State of Minnesota

Hennepin County

District Court

Judicial District:	Fourth
Court File Number:	27-CV-20-12615
Case Type:	Housing

Alain Bina,

Plaintiff,

**Eviction Action – Findings of
Fact, Conclusions of Law,
Order and Judgment
(Minn. Stat. §§ 504B.285, 504B.345)**

vs.

[REDACTED]

[REDACTED]

Defendants.

This matter came on for trial before the Honorable Mark Labine, Referee of Housing Court on October 28, 2020.

The Plaintiff Alain Bina was present. Plaintiff shall hereinafter be referred to as Landlord. The Defendants [REDACTED] were present. Defendants shall hereinafter be referred to as Tenants.

Lindsay Cremona, Attorney for Landlord, appeared.

Jonathon Nelson, Attorney for Tenants, 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 and Conclusions of Law

1. This matter involves property located at 410 Clifton Ave South, Minneapolis, Minnesota 55403, which is in Hennepin County.

2. The parties entered into a written lease effective from May 2018 to May 2020. The current rent amount is \$5,245.00 per month. Landlord alleges this was a commercial lease. Tenants allege it was both a commercial and residential lease.

3. It is currently forbidden under Governor Walz Emergency Order 20-79, extended by Emergency Order 20-92, for a Landlord to evict a residential Tenant from Leased Property for nonpayment of rent.

4. Minn. Stat. 504B.001 subd. 12, defines a "Residential tenant" as a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written,

that requires the payment of money or exchange of services, all other regular occupants of that dwelling unit, or a resident of a manufactured home park.

5. On October 1, 2020, Landlord commenced an eviction action against Tenants, alleging this is a commercial lease and alleging:

- a. Nonpayment of July, August, September, and October 2020 rent for a total due of \$20,980.00, plus late fees totaling \$1000 thru October.
- b. Breach of lease by failing to pay the water bill which is in excess of \$1,706.86. (See Exhibit 7).
- c. Holdover after notice to quit. Landlord gave written notice to Tenants on August 13, 2020 and September 22, 2020 to vacate the Property by September 30, 2020. Tenants have failed to vacate.

6. Tenants did not file a written answer to the complaint, but appeared on October 15, 2020 at the initial hearing in this matter to deny Landlord's allegations. The Court set this matter for a October 28, 2020 court trial.

7. The Court did not require Tenants to deposit rent into Court.

Residential vs. Commercial Lease

8. The Leased Property at issue here is zoned OR3 which allows for both office and residential use. (See Exhibit 12).

9. It seems clear from the language in the lease and the intent of the parties that this property was intended to be used for commercial purposes as well as allowing guests to reside in the property. (See Exhibit 3).

10. It is also likely that neither party expected that a moratorium would be imposed suspending the right of Landlords to evict residential Tenants for nonpayment of rent.

11. Landlord has lived in the Leased Property as a personal residence in the past and according to online property information he listed this property at one time as his homestead. (See Exhibit A). Landlord testified he stopped claiming the property as his homestead after he moved out of the property. Landlord also testified he rented out the property for residential purposes in the past.

12. [REDACTED] testified he currently resides at the Leased Property as a residential tenant.

13. [REDACTED] listed a separate address on the lease for notices at 4332 Brookside Avenue, Minneapolis, Minnesota 55436. However, this address was listed in 2018 and is not determinative of where [REDACTED] lives now. (See Exhibit 1, page 011).

14. The parties entered into a Minnesota Standard Residential Lease. (See Exhibit 1). This lease lists the Tenant as MyFormulary, LLC and also lists [REDACTED] and [REDACTED] as guarantors and Tenants.

15. The lease clearly contemplates that persons could reside in the Leased Property. On line 4 of the lease on its first page, it states that the property could be used to house employees, officers, directors or contractors when visiting.

16. [REDACTED] is an officer of MyFormulary, LLC. (see Exhibit 3, where [REDACTED] is listed as chairman)

17. Paragraph 1 of the lease allows Tenants and occupants to live in the Premises. (See Exhibit 1, paragraph 1 on page 003).

18. Adam Southam signed the lease as a Tenant. (See Exhibit 1, page 007). [REDACTED] signed the crime-free/drug-free housing addendum as a Tenant. (See Exhibit 1, page 008).

19. The definition of “Residential Tenant” does not contemplate any minimum amount of time required by the residential Tenant to meet this definition. It only requires that the Tenant is occupying the property.

20. There is nothing in the lease which prevents [REDACTED] from residing in the Leased Property. The very fact that the title on the lease is “Minnesota Standard Residential Lease” supports this finding.

21. Landlord argues that in fact [REDACTED] is not living at the Leased Property. However, the only evidence provided to this court was Mr. Bina’s testimony that the house is dark a lot and that he does not see a lot of activity at the property. This testimony must be weighed against the testimony of [REDACTED] who testified he actually resides at the Leased Property, plus the fact that the lease clearly contemplates occupancy in the property.

22. In the facts of this case presented to the court, the greater weight of the evidence supports this court’s finding that [REDACTED] is currently residing at the Leased Property and is therefore a residential Tenant.

Rent Owed

23. Defendants did not dispute that they have failed to pay rent for the months of July thru October 2020 and failed to dispute that they have an unpaid water bill at the Leased Property.

24. The current moratorium does not allow this court to evict Defendants at this time since [REDACTED] is residing in the Leased Property. However, this does not relieve Defendant’s obligation to pay the rent or to take legal action in the future to recover this unpaid rent from the Defendants.

Conclusions of Law

1. An eviction action is a summary proceeding to determine only the extant possessory rights to property. *See* Minn. Stat. §504B.001 subd. 4 (2016). A landlord is entitled to possession by eviction when a tenant holds over “contrary to the conditions or covenants of the lease or agreement under which that person holds.” Minn. Stat. §504B.285 subd. 1(2) (2016).

2. 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).

3. 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).

4. It is currently forbidden under Governor Walz Emergency Order 20-79, (extended by Emergency Order 20-92), for a Landlord to evict a residential Tenant from Leased Property for nonpayment of rent. Since the main cause of this action in this matter is non-payment of rent, Landlords request for possession must be denied at this time.

Order

1. JUDGMENT: The Court Administrator shall enter judgment for:

a. **Tenants** to remain in possession of the premises.

b. **Allowable costs and disbursements** to the prevailing party.

2. SERVICE OF ORDER: The Clerk of Court shall either give to the parties or mail to the parties by first class mail a copy of this Order, or e-serve the order to attorneys and/or parties if they are set up for e-filing.

☒ **Let Judgment Be Entered Accordingly**

Recommended by:

Approved by the Court:




Mark Labine, Referee
Dated: October 29, 2020

District Court Judge
Dated: Oct 29, 2020

Judgment

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

Dated: Oct 29, 2020

Court Administrator
By: David J. Tranter
Deputy