

State of Minnesota
Anoka County

District Court
Tenth Judicial District

Court File Number: 02-CV-20-4224

Case Type Eviction (UD)

Robert Borsay vs. [REDACTED]

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

This case was heard by the undersigned on December 14, 2020.
Date

PLAINTIFF:

- ☒ Appeared remotely.
☐ Appeared through agent
☐ Did not appear and is in default.

Represented by: ☒ counsel ☐ agent
Ronald E. Berglund, Esq.
Name

DEFENDANT:

- ☒ Appeared remotely.
☐ Did not appear and is in default.

Represented by: ☐ advocate ☒ counsel
Shelley D. Jensen, Esq.
Name

Defendant has ☐ admitted ☒ denied the allegations in the Eviction Action complaint.

Findings of Fact and Conclusions of Law

1. ☒ Plaintiff has failed to prove the allegations in the complaint.
 - a. Plaintiff has failed to prove that an exception under Executive Order 20-79 applies to this action that would allow for an eviction. Plaintiff asserted that he needed to move his minor daughter, age 14, into the Leased Premises, which is a room in the property located at 491 57th Ave. NE, Fridley, MN 55432.
 - b. Executive Order 20-79 prohibits evictions except under certain circumstances. One such exception allows landlords to issue a termination of lease or nonrenewal of lease due to the need to move the property owner or property owner's family member(s) into the property and where the property owner or property owner's family member(s) move into the property within 7 days after it is vacated by the tenant.
 - c. Although such an exception exists under Executive Order 20-79, Plaintiff has failed to establish that such a need exists in this case.
 - d. Plaintiff's daughter is currently living with him, although he asserts that she does not have her own room. Based upon Plaintiff's testimony, his daughter came to live with him in July 2020. This is not a case where the property owner or property owner's family member is homeless or will become homeless.
 - e. It is also evident that a room became vacant at the property located at 491 57th Ave. NE, Fridley, MN 55432, in September 2020. However, rather than moving his daughter into the vacant room, Plaintiff stated that his nephew to move into the vacant room.
 - f. Additionally, it is apparent that Plaintiff owns another property at 7716 Hampshire Ave. N, Brooklyn Park, MN. Plaintiff asserts that his ex-wife lives at that property.

Nonetheless, as the apparent property owner of 7716 Hampshire Ave. N, Brooklyn Park, MN, it is unclear why Plaintiff couldn't move his daughter into that property if such a need truly exists.

- g. Overall, Plaintiff has not established that a *need* exists to move his daughter into the leased premises and, even if such a need existed, Plaintiff has not established that moving his daughter into the leased premises would be his only option.
- h. Accordingly, Plaintiff has failed to prove that an exception exists in this matter that would allow for an eviction under Executive Order 20-79.

2. ☐ COMPLAINT:

Plaintiff proved the following allegations by a preponderance of the evidence.

- ☐ a. Compliance with Minn. Stat. § 504B.181.
- ☐ b. Defendant has failed and refuses to pay rent for the month(s) of _____ in the amount of \$_____ per month payable on the _____ day of each month for a total due of \$_____.
- ☐ c. Notice to vacate was properly given and Defendant has failed to vacate said property.
- ☐ d. Defendant has broken the terms of the rental agreement and Defendant has failed to vacate the property.
- ☐ e. Defendant defaulted on the mortgage and the property has been sold at a Sheriff's sale. The Redemption period has expired and Plaintiff is entitled to possession.
- ☐ f. Defendant defaulted on a contract deed and is holding over after proper cancellation of the contract.
- ☐ g. Other: _____.

3. ☐ DEFENSES:

Defendant(s) proved the following defenses by a preponderance of the evidence.

- ☐ a. Improper service by _____
- ☐ b. Violation of the covenants of habitability by _____
- ☐ c. Improper notice because _____
- ☐ d. Waiver of _____ by _____
- ☐ e. Other: _____

4. ☐ SETTLEMENT: **No judgment to be entered at this time.**

The parties have reached a settlement, which is approved and incorporated in this Decision and Order.

- ☐ Settled through Mediation (See attached settlement agreement)
- ☐ Settled by the Litigants (See attached settlement agreement)
- ☐ Settlement terms are as follows: _____

Order

- 1. ☐ The settlement is hereby approved as agreed upon.
- 2. ☐ JUDGMENT:
The Court Administrator shall enter judgment for:

02-CV-20-4224

☐ **Plaintiff** for recovery of the premises. The Writ of Recovery of Premises and Order to Vacate shall be:

- ☐ i. issued immediately upon request and payment of fee.
☐ ii. stayed until

Date

☐ **Defendant** to remain in possession of the premises.

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

3. ☒ **DISMISSAL:**

The case is dismissed ☒ **WITH** ☐ **WITHOUT** prejudice and the Court Administrator shall enter Judgment accordingly.

4. ☐ **REDEMPTION:**

Defendant may redeem the premise (for nonpayment of rent) by paying to the Plaintiff \$_____ by _____. If not, a judgment and writ shall issue by default.
Date

5. ☐ **RENT ABATEMENT:**

Defendant has had diminished use and enjoyment of the premises. Rent is abated for the months of _____ by a total of \$_____, and is abated by \$_____ per month until the first month following completion of court ordered repairs.

6. ☐ **RENT DISBURSEMENT:**

The rent now on deposit with the Court shall be released as follows:

☐ \$_____ to Plaintiff ☐ \$_____ to Defendant.

☐ **HEARING:**

This is scheduled for ☐ court trial ☐ jury trial ☐ motion hearing on issues of _____ on _____, at _____ (a.m./p.m.) at _____.

7. ☐ **DISCOVERY:**

The parties shall provide to each other by _____, the following: a list of witnesses, with phone numbers and addresses, and the subjects about which they will testify, and copies of exhibits (documents, photographs, etc.) to be introduced at trial, and _____.

Parties must bring to trial three (3) copies of all exhibits.

8. ☐ **RENT INTO COURT:**

Defendant shall pay into Court the rent of \$_____ in cash or certified funds payable to the Court Administrator, on or before _____ (a.m./p.m.) on _____, _____, and all future rent by the _____ day of each month until further Order of the Court, or the Court will issue a Writ of Recovery of Premises and Order to Vacate.

9. ☒ OTHER:

The Court Administrator shall EXPUNGE court file number 02-CV-20-4224 by removing evidence of the court file's existence from the publically accessible records.

☒ **Let Judgment Be Entered Accordingly.**

Recommended by:

By the Court:

Housing Court Referee_____
Date_____
Judge_____
DateLogering, Nancy (Anoka
Judge)

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Judgment

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

Dated: _____

Lori O'Brien
Court Administrator

By: _____
Deputy