

STATE OF MINNESOTA**FOURTH JUDICIAL DISTRICT****COUNTY OF HENNEPIN****DISTRICT COURT**CBC 202 Limited Partnership dba Summit
Point,

Plaintiff,

vs.

ORDER**Court File: 27-CV-HC-20-1301**

Defendant.

This matter came on for hearing before the Honorable Tiffany Sedillos, Referee of District Court, on July 14, 2020 via Zoom.

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

Laurel Pugh, Attorney for Landlord, appeared.

Mary William, Attorney for Tenant, appeared.

Based upon the written motions, oral argument, testimony and all of the files, records, and proceedings in this case, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On April 1, 2020, Landlord filed an eviction action against Tenant.
2. The parties entered into a settlement agreement which was approved by the Court and incorporated into the Court's April 28, 2020 Order.
3. On June 19, 2020, Landlord filed a Declaration of Noncompliance asserting that Tenant violated two or more "Category A" violations, namely being visibly intoxicated in the common areas, and Tenant violated at least one "Category B" violation, by engaging in conduct that seriously endangers other residents, in violation of the settlement agreement. Landlord is seeking a Writ.
4. On June 23, 2020, Tenant filed an Affidavit objecting to the declaration of non-compliance.
5. Pursuant to paragraph 9 of the parties' April 28, 2020 settlement agreement, Tenant requested this matter be set for an evidentiary hearing.

6. Paragraph 9 of the April 28, 2020 Settlement Agreement stated that if Tenant files an objection to Landlord's Affidavit of Non-Compliance, the Court will set the matter for an evidentiary hearing. "At such hearing, the issue to be determined is whether Mr. [REDACTED] violated [the] Agreement, except that the Court may consider other evidence to determine if the writ complies with any laws or orders regarding writs in the time of COVID-19 that are in existence at the time of issuance." *See April 28, 2020 Eviction Action—Findings of Fact, Conclusions of Law, Order and Judgment*, p. 4-5 ¶9.

7. On July 14, 2020, the parties participated in an evidentiary hearing on these issues. Plaintiff's called Dr. Jonathan Calkwood, whose mother is a resident at Summit Point and Ms. Sheila Ellis, Assistant Property Manager at Summit Point, as witnesses to testify. Defendant called himself, [REDACTED] as a witness to testify.

8. The parties stipulated at the hearing to the following facts: the Landlord did not give Mr. [REDACTED] any written notices of lease violations in May or June of 2020, no police reports were generated based on the incidents in May or June, and Mr. [REDACTED] was not arrested or charged with anything criminal based on his conduct in May or June.

9. Dr. Calkwood testified that his elderly mother is a resident at Summit Point. In mid-May 2020, Dr. Calkwood testified that there was an incident with Mr. [REDACTED] and himself at the property. Dr. Calkwood observed Mr. [REDACTED] in a common area not wearing a mask. Dr. Calkwood told Mr. [REDACTED] to wear a mask and Mr. [REDACTED] yelled at him while not wearing a mask.

10. In another incident on May 30, Dr. Calkwood credibly testified that he took a picture of Mr. [REDACTED] speaking to a person inside the building without a mask. After Dr. Calkwood took a picture of Mr. [REDACTED] both parties testified that Mr. [REDACTED] went to Dr. Calkwood's mother's apartment and knocked on the door. Dr. Calkwood credibly testified that he did not open the door and Mr. [REDACTED] left. Dr. Calkwood also credibly testified that Mr. [REDACTED] did not verbally threaten him with physical harm but that Ms. [REDACTED] presence in the common areas causes him anxiety.

11. Ms. Ellis testified that she has worked at Summit Point for approximately nine months. Ms. Ellis credibly testified that she observed Tenant in May 2020, visibly intoxicated in the common areas of the premises on multiple occasions. Ms. Ellis testified that she saw Mr. [REDACTED] smoking one time outside of the building, but outside of the property's designated smoking area/bench.

12. According to the parties' settlement agreement, Tenant agreed to the following terms, which are considered "Category A" violations:

- a. Should he use the public restrooms in the common areas of the premises, he will leave them clean;
- b. He will not sleep in the common areas of the premises;
- c. He will not be visibly intoxicated on the common areas of the premises; and
- d. He will not commit any other material breach of lease or repeated minor violations of the lease.

Id. p. 3 ¶5.

13. According to the parties' settlement agreement, Tenant agreed to the following terms, which are considered "Category B" violations:

- a. He will not engage in any conduct that seriously endangers other residents, including any verbal or written threats to residents that he would spread COVID-19 to them;
- b. He will not watch or display any pornographic material in the common areas of the premises; and
- c. He will not leave his unit if his stove is on.

Id. p. 4 ¶6.

14. The parties agreed that if Tenant committed any "Category B" violation or any two or more "Category A" violations, Landlord may file a declaration of non-compliance seeking a Writ. *Id.* p. 4 ¶7.

15. The Court finds that Landlord has proven by a preponderance of the evidence that Tenant was visibly intoxicated in the common areas of the premises on multiple occasions, and therefore that Tenant committed two or more "Category A" violations, as described by the parties' settlement agreement.

16. Further, the Court finds that Landlord has not proven by a preponderance of the evidence that Tenant's conduct seriously endangered the safety of other residents, or any other "Category B" violations.

ORDER


1. Plaintiff's request for the issuance of a Writ of Recovery of Premises is hereby **GRANTED** but stayed.

2. JUDGMENT: The Court Administrator shall enter judgment for Landlord for recovery of the premises. The issuance of the Writ of Recovery of Premises and Order to Vacate shall be stayed until officers are again permitted to execute non-priority writs of recovery (*See* Executive Orders 20-14, 20-73, and 20-79) and upon request and payment of fee.

3. The Clerk of Court shall serve/e-serve a copy of this Order on all parties or their attorneys as appropriate.

Let Judgment Be Entered Accordingly

Recommended By:

 2020.07.21
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Tiffany Sedillos
District Court Referee

By the Court:



District Court Judge
Dated: Jul 21, 2020

Judgment

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

Dated: Jul 21, 2020

By: 
Deputy Court Administrator