

District Court

Judicial District:	Fourth
Court File Number:	27-CV-HC-20-1632
Case Type:	Housing

VS.

Order on Motion

Defendants.

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

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

Gary Van Winkle, 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 and Conclusions of Law

1. This matter involves residential property located at 2601 Randolph St. NE, Apt. 2, Minneapolis, Hennepin County, Minnesota, 55418.
2. The parties entered a written lease effective from October 11, 2019 to September 30, 2020. The current rent amount is \$1,740.00 per month. Tenant receives Section 8 Assistance. Tenant pays \$433.00 per month and the Section 8 payment covers \$1,307.00 per month.
3. Landlord states that the parties have an agreement in which Landlord lowers the monthly rent price from \$3,000.00 per month to \$1,740.00 per month, in exchange for Tenant being the caretakers of the Property.
4. On September 24, 2020, Landlord commenced an eviction action against Tenants, alleging: nonpayment of July, August, and September 2020 rent for a total due of \$4,000.00; breach of lease; breach of the statutory covenants not to allow unlawful activities; and holdover after notice to quit.
5. On October 6, 2020, Tenant filed an Answer and Motion for Dismissal or Summary Judgment.
6. Both parties appeared on October 6, 2020 at the initial hearing in this matter.

7. On October 6, 2020, the Court issued an Order granting Tenant's motion to dismiss all claims with the exception of the claims related to alleged possession of drugs and stolen property.

8. The October 6, 2020 Order scheduled an additional hearing related to Tenant's Motion to Dismiss based on lack of service of notice of eviction proceedings on the MPHA ("Minneapolis Public Housing Authority") pursuant to the HUD ("U.S. Dept. of Housing and Urban Development") contract and Code of Federal Regulations.

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

10. On October 16, 2020, the parties appeared for the hearing on the Tenant's motion to dismiss.

11. Landlord testified at the hearing that she attempted to fax a copy of the eviction complaint from her home on September 24, 2020 to the MPHA, but it did not go through. Landlord testified that she resent the complaint to MPHA on October 6, 2020.

12. Tenant argues the case should be dismissed for Landlord's failure to provide MPHA with a copy of an "owner eviction notice" at or before the beginning of the court action to evict the tenant.

13. The Housing Assistance Payments Contract Part C, Tenancy Addendum states, "[a]t or before the beginning of a court action to evict the tenant, the owner must give the tenant a notice that specifies the grounds for termination of tenancy. The notice may be included in or combined with any owner eviction notice. The owner must give the PHA a copy of any owner eviction notice at the same time the owner notifies the tenant. Eviction notice means a notice to vacate, or a complaint or other initial pleading used to begin an eviction action under State or local law." HAP Contract, form HUD-52641, para. 11, p. 12 (7/2019); *see also* Ex. 4 to Complaint.

14. In considering a motion to dismiss pursuant to Rule 12.02(e), a district court must "consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Finn v. Alliance Bank*, 860 N.W.2d 638, 653 (Minn. 2015) (quotation omitted). Generally, documents outside the pleadings not referenced therein cannot be considered on a motion to dismiss without converting the motion to one for summary judgment. Minn. R. Civ. P. 12.02. However, the Court may consider any documents that are attached to the complaint. *Hardin Cnty. Sav. Bank v. Housing & Redevelopment Auth. of City of Brainerd*, 821 N.W.2d 184, 192 (Minn. 2012) (citing Minn. R. Civ. P. 10.03 and commenting that documents could be considered because they were specifically incorporated by reference into the complaint and rule 10 allows consideration of exhibits to a pleading). It may also consider documents that are referred to in a complaint but not attached to it. *Northern States Power Co. v. Metropolitan Council*, 684 N.W.2d 485, 490-91 (Minn. 2004).

15. Although 24 CFR § 982.310(e)(2)(ii) does not specify the time by which Landlord must serve the housing authority, 24 CFR § 982.452 does require Landlord to perform all of its obligations under the HAP contract. The Supreme Court has found such regulations mandatory under federal housing legislation. *See, Thorpe v. Housing Authority of Durham*, 393 U.S. 268, 275-77, 89 S.Ct. 518, 21 L.Ed.2d 474 (1969) (finding that specific circular issued by Department of Housing and Urban Development [HUD] was intended by HUD to be mandatory regulation)

16. The Court finds that Landlord's failure to comply with the service provision of their HAP contract as required by 24 CFR § 982.452, is a jurisdictional defect requiring dismissal of the eviction complaint. The defect must be considered jurisdictional in order to ensure that landlords do not receive subsidized funds after a tenant has been evicted.


Order

1. Tenants' Motion to Dismiss is GRANTED.
2. DISMISSAL: The case is dismissed WITHOUT prejudice. The Court Administrator shall enter Judgment accordingly.
3. 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. Minnesota Statutes section 504B.345, subdivision 1(c)(2) authorizes the Court to expunge the file at the time judgment is entered. The Court Administrator shall expunge [REDACTED] [REDACTED]rs from the record by removing evidence of that party's name from the publicly accessible records.
4. SERVICE. 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:

By the Court:

 Oct 29 2020 4:31 PM



Tiffany Sedillos
District Court Referee

October 29, 2020

Judge

Dated: Oct 30, 2020

Judgment

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

Dated: Oct 30, 2020

By: _____
Deputy Court Administrator