

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

David Donner,

Plaintiff,

vs.

██,

Defendants.

Court File No.: 62-HG-CV-21-44

Case Type: Eviction

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**FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER**

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This matter came before the undersigned on April 21, 2021 for trial. Plaintiff David Donner (“Landlord”) was represented by Attorney Theresa Gerlach. Defendant ██████████ (“Tenant”) was represented by Attorney Wendy Willson Legge. The trial was held remotely via Zoom, pursuant to the Order Governing the Continuing Operations of the Judicial Branch, ADM20-8001, issued on March 22, 2021.

Based on the files, records, and proceedings herein, as well as the arguments of counsel, the court makes the following findings, conclusions and Order:

**FINDINGS OF FACT**

1. On February 10, 2021, Landlord filed this eviction action; however, he did not serve Tenant until April 6, 2021 with the Summons and Complaint.

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<sup>1</sup> Though Tenant is named in the Complaint and the Lease which was introduced into evidence as ██████████ she testified that is not and has never been her real name.

2. Landlord owns the home that is the subject of this eviction action, which is located at 59 King St. E. in Saint Paul, Minnesota. Tenant is currently residing at that location pursuant to a month-to-month Lease.

3. The Complaint alleges that Landlord demanded on November 7, 2020 that Tenant vacate the property by December 7, 2020. The reason provided by Landlord for the notice to vacate is that Tenant had repeatedly stated her intention to vacate, and due to Lease violations. The Complaint also alleges that Landlord “required the Property for use as [his] personal residence and the owners need to relocate to the Property immediately.” It also alleges that Tenant has “materially violated the lease causing damage to the property, endangering others, and causing the City of Saint Paul to issue multiple citations and assessments for the removal of nuisance materials from the Property,” and contends that Tenant has broken windows and stored hazardous materials on the property. Although Landlord disclosed an intention to relocate to the subject property, it did not list that as one of the “Grounds for Eviction” in the Complaint.

4. The court heard the testimony of Landlord, his daughter Francis Meyer (“Meyer”), and Tenant. It also received into evidence the Lease, the November 7, 2020 notice to vacate, a notice to file eviction dated January 29, 2021, a tax record for the home currently occupied by Landlord, his wife, Meyer, and Meyer’s children, and photographs of the outside of the property.

5. Landlord testified that had seen Tenant over the years at a St. Paul bar. They had some discussions at some point in the fall of 2018 regarding renting the subject property to Tenant. Landlord moved out of the subject property and Tenant moved in. At first, they did not have

a written Lease. Later, they memorialized their Lease in writing. The Lease is dated December 31, 2018; however, it is unclear when it was actually signed because it pertains to a six-month time frame in 2020. The Lease provided that after June 30, 2020, the Lease would be month-to-month. Landlord admitted that he has not registered the subject property as a rental property with the City of Saint Paul.

5. Landlord indicated that he and his wife moved from the subject property and into Meyer's home in Cottage Grove with her four children in late 2018. He and his wife have been living with Meyer at her Cottage Grove home since then. Although Landlord indicated that the Cottage Grove home was owned by Meyer exclusively, he admitted on cross-examination that it could be owned by both Meyer and his wife, as the Washington County property tax records suggest.

6. Landlord testified that his daughter "needs to have her house back" and that she intends to sell it and has actively marketed her home. He could not recall when Meyer asked them to move out. He thought that Meyer had put her home on the market in December of 2020 and that she had her "stuff" in storage.

7. Landlord testified that he and his wife intend to move back into the subject property. When asked when he intended to move back into the subject property, he indicated that "it depends upon the condition it is left in, I guess." When his attorney raised the requirement that he move in within 7 days after Tenant vacated the subject property pursuant to Executive Order 20-79, he agreed that he would move in within that time frame "if that is what it is." He expressed his intention to stay in the subject property until he had the opportunity to retire.

8. Landlord testified that Tenant has not paid rent since October of 2020.

9. Finally, Landlord testified that he had been to the subject property and had seen broken windows, wrecked cars, and other items on the subject property which rendered it a “complete mess.” He acknowledged, however, that it was “a little cleaned up now.”

10. The court next heard the testimony of Meyer. She contended that she owns the Cottage Grover property where she, her parents, and children live and she pays the mortgage; however, she acknowledged that her mother is on the title “in case” Meyer dies.

11. Meyer testified that her parents moved into her Cottage Grove home in the late summer or early fall of 2018. She wants to move to Arizona and has moved her “stuff” there. She testified that she has listed her home for sale and has had to decline at least one offer because her parents would be “homeless.” She also testified that she asked her parents to move out of her home in the summer of 2020. When her parents move out, her intention is to relist the Cottage Grove house for sale and move to Arizona. She indicated that there are no other impediments to her moving, other than the fact that her parents are living with her.

12. Tenant testified. She testified that her last name was not [REDACTED] as indicated on the Lease. She acknowledged that she needed a written Lease in order to participate in an energy program with Xcel Energy. She also acknowledged that two of the broken windows in the subject property were her responsibility; however, she denied that a third window was broken. She also testified that she cleaned up the subject property and that it is in significantly different condition than as described in the Complaint. Tenant testified regarding the improvements and upkeep she has made to the subject property. She acknowledged that she heard from some source that Landlord intended to move back into the subject property.

Tenant introduced and discussed photographs of the exterior of the subject property which are vastly different than those attached to the Complaint.

### **CONCLUSIONS OF LAW**

1. Effective August 4, 2020, “[t]he ability of property owners . . . entitled to recover residential premises to file an eviction action on the grounds that a residential tenant remains in the property after a notice of termination of lease, after a notice of nonrenewal of a lease, after a material violation of a lease . . . or after nonpayment of rent, is suspended.” Emergency Executive Order 20-79, issued on July 14, 2020 (the “EEO”), ¶ 2. This EEO has not been rescinded. The State of Minnesota remains in a “peacetime emergency” due to the effects of COVID-19.

2. There are several exceptions to the residential eviction moratorium described in the EEO, including where a tenant: (1) “[s]eriously endangers the safety of other residents;” (2) “[r]emains in the property past the vacate date after receiving a notice to vacate or nonrenewal under paragraph 4 of this Executive Order;” or (3) materially violates a residential lease because the tenant “[s]eriously endangers the safety of others,” or “[s]ignificantly damages property.” EEO, ¶ 2(a-d).

3. Paragraph 3 of the EEO provides that residential landlords “must not issue notices of termination of lease or nonrenewal of lease or terminate residential leases during the pendency of the peacetime emergency unless the termination or nonrenewal is based upon one of the grounds permitted by paragraph 2.”

4. Paragraph 4 of the EEO states that the eviction moratorium “does not apply to residential landlords who issue a termination of lease or nonrenewal of lease due to the need

to move the property owner . . . into the property and where the property owner . . . move[s] into the property within 7 days after it is vacated by the tenant.”

5. The threshold determination for this court is whether this eviction action falls within an exception to the EEO. If Landlord has not demonstrated, by a preponderance of the evidence, that this eviction action is not exceptional, there is no need for this court to address its merits.

6. Landlord offered two bases for exceptions under the EEO. The first is that Tenant materially violated the Lease “causing significant damage to the Property and resulting in the creation of conditions hazardous to others.” The second is that Tenant has failed to vacate the property after being provided written notice, due to the expressed intention of Landlord to “relocate to the Property immediately.”

7. It appears that Landlord effectively abandoned its original contention regarding “significant damage” and “conditions hazardous,” because the subject property, by all accounts, has been significantly cleaned up. The photographs regarding the current condition of the subject property produced at the trial bear little resemblance to those that were attached to the Complaint. It appears that this contention is now limited to two windows which were broken by Tenant and can be fixed for just over \$30.00. These broken windows do not seriously endanger the safety of others, nor do they constitute significant property damage. Accordingly, Landlord has not met his burden of proof on this exception to the eviction moratorium.

8. The thrust of Landlord’s remaining contention for an exception to the eviction moratorium is that he needs Tenant to vacate because he needs to move to the subject

property in light of his daughter's intention to sell the house that he and his wife are currently occupying. There are several problems with this contention. First, the notice to vacate which was allegedly served on Tenant in November of 2020 says nothing of their need or their intention to move back into the subject property, despite that Meyer asked them to move out in the summer of 2020. As such, Tenant did not receive a qualifying notice to vacate for the reasons stated in Paragraph 4 of the EEO. Second, the evidence is clear that Landlord's wife is one of the owners of Meyer's Cottage Grove home. Presumably, as a co-owner of the Cottage Grove home, Landlord's wife has control over whether there is a "need to move" into the subject property. Third, although there was some testimony that the Cottage Grove home had been listed and that an offer was received and rejected, there was no evidence of: (1) a Listing Agreement; (2) marketing; (3) the offer; or (4) the reasons for the rejection of the offer. It also does not appear from the testimony of Meyer that the Cottage Grove home is currently for sale because she indicated that she would "relist the house for sale and move to Arizona" when her parents move out. Fourth, when viewed in its totality, the evidence in the case demonstrates that the true reason for wanting Tenant to vacate the property is because she has not paid rent since October of 2020.

9. Landlord has not demonstrated that, by a preponderance of the evidence, this eviction action falls within the exception provided in Paragraph 4 of the EEO.

10. Because Landlord has not met this threshold burden, there is no need for this court to address the merits of whether there are statutory grounds for issuing a writ of recovery and restoring possession of the subject property to Landlord.

11. Landlord can renew this eviction action, assuming appropriate grounds exist to support it, upon expiration of the eviction moratorium of the EEO.

**ORDER**

1. Landlord's Complaint is **DISMISSED**.
2. Defendant's motion for expungement is **GRANTED**.
3. Pursuant to Minn. Stat. § 563.01, subd. 10, costs shall be entered in Defendant's favor.

Dated: April 22, 2021

BY THE COURT:



Gilligan, Thomas(Judge)  
Apr 22 2021 1:14 PM

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THOMAS A. GILLIGAN, JR.  
JUDGE OF DISTRICT COURT