

State of Minnesota

Hennepin County

District Court

Judicial District:	Fourth
Court File Number:	27-CV-HC-20-1742
Case Type:	Housing

Susanne Duke,
Plaintiff,

vs.


Defendant.

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

This matter came on for trial before the Honorable Tiffany Sedillos, Referee of District Court, on December 15, 2020.

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

Brian Hage, Attorney for Landlord, appeared.

Mark Iris, 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:

PROCEDURAL HISTORY AND FINDINGS OF FACT

1. This matter involves residential property located at 4032 Quail Avenue North, Robbinsdale, Hennepin County, Minnesota, 55422, and garage (hereinafter “Property”).

2. Tenant entered a written lease agreement for the Property beginning September 1, 2019 with Pikovsky Properties, LLC. Ex. 1. The rental amount for the Property was \$1,350.00 per month. The lease agreement states that “unless terminated the Agreement shall be automatically renewed monthly until August 30, 2020.” Ex. 1, ¶ 4. “After the expiration of the leasing period, this agreement is automatically renewed from month to month, but may be terminated by either party giving to the other a 30-day written notice of intention to terminate.” Ex. 1, ¶5.

3. On September 30, 2020, Landlord sent a “Notice of Sale and Lease Termination” to Tenant. Ex. 2. The Notice advised that “your tenancy-at-will is being terminated as of Oct 31, 2020. This termination is being issued as an exception to Minnesota Executive Order (“EO”) 20-79, because the owner or member of the owner’s family plans on moving into the property.” Ex. 2. The Notice indicated it was from Michael Pikovsky and Susanne Duke. Ex. 2.

4. On November 1, 2020, counsel for Landlord sent Tenant an email indicating that it was a 7-day notice that an eviction action would be filed as required by EO 20-79. Ex. 3.

5. On November 10, 2020, Landlord commenced an eviction action against Tenant, alleging that Tenant was holding-over after being given a notice to quit, the termination was issued as the owner or member of the owner's family plans on moving into the Property.

6. Both parties appeared on November 23, 2020 at the initial hearing in this matter. Tenant denied the allegations and the Court set this matter for a December 15, 2020 court trial.

7. At trial on December 15, 2020, Tenant raised defenses as follows: improper 30 day notice was given under Minnesota Statutes section 504B.135, Landlord Duke has no rental license and therefore no rent was due, the notice to vacate was given to Tenant in retaliation, and there is no need for the owner to move into the property.

8. Michael Pikovsky was the Plaintiff's first witness. Mr. Pikovsky testified that he is the former owner of the Property. He purchased the Property about 14 years ago and has had 4 or 5 different tenants during that period of time. Mr. Pikovsky testified that the Property was inspected every two years as part of the rental licensing process. Mr. Pikovsky testified that in September 2019 he rented the Property to Ms. [REDACTED] Ex. 1.

9. Mr. Pikovsky testified that he sold the property on September 29, 2020 to Ms. Duke. Ex. 6. Mr. Pikovsky testified that there were multiple reasons he decided to sell the property including poor health and the difficulty in taking care of multiple houses. In September 2020, emails about other rental properties owned by Mr. Pikovsky, he indicated that "Im closing business its to much hassle. Tenants cause damage, are sloppy, I have to beg for rent, things they break want fixed right now", "As of yesterday I have not seen oct 2020 rent from tenant. This is why I am getting out of the rental business, late payments, houses tore up, 20 year items are broken in less than 5 years. I am closing up shop by 12-31-2021." Ex. 9.

10. Finally, Mr. Pikovsky testified on cross-examination that he had received a few complaints from Tenant regarding drain issues and more recently about an egress window cover that was broken.

11. Susanne Duke, testified that she purchased the Property from Mr. Pikovsky in September 2020 and that prior to that they had no relationship. Ms. Duke testified that she has never met or spoken to Tenant, but was aware that there was a tenant in the Property when she purchased it. Ms. Duke testified that she purchased the Property with the intent for her daughter and herself to live there. Ms. Duke testified that she requested homestead status on the Property because it was going to be her residence. Ex. 8. Ms. Duke testified that she never had contact with Ms. [REDACTED] about any issues with keys, garbage cans, or any repair or violation issues at the Property. Ms. Duke testified that the Property was transferred to her by warranty deed on September 29, 2020. Ex. 6. Ms. Duke testified that she never requested rent from Ms. [REDACTED] Ms. Duke testified that she and her daughter are currently living in a one bedroom apartment with a friend, Mr. Weaver. Ms. Duke testified that she has been furloughed from her job for the

past 6 months approximately. Ms. Duke testified that she does not consider herself a Landlord and does not have a rental license.

12. Richard Pearson, testified that he is employed as a Community Development Coordinator for the City of Robbinsdale and he supervises rental licensing and code enforcement. Mr. Pearson testified that as long as a purchaser of property in the City takes steps to make the property owner-occupied, such as filing for homestead, they would not need to get a rental license. Mr. Pearson testified that under the City Code rental licenses are not transferable, and that if a property is sold and is going to be rented out they need to apply for a license within 10 days.

13. Matthew Weaver, testified for the Plaintiff. Mr. Weaver testified that he currently lives with Ms. Duke and her daughter, and that because Ms. Duke was looking to buy a house and move soon, they had downgraded to a one bedroom apartment from a two bedroom. Mr. Weaver testified that he is currently sleeping on the living room sofa to allow Ms. Duke and her daughter to sleep in the bedroom.

14. Ms. [REDACTED] testified that she is currently living in the Property with her two children. She testified that she signed the rental agreement presented as Exhibit 1. Ms. [REDACTED] testified that she always paid rent to Mr. Pikovsky and that he was her point of contact for the Property. Ms. [REDACTED] testified that she did receive the letter indicating that the Property was sold to Ms. Duke. Exhibit 2. Ms. [REDACTED] testified that she has not requested that Ms. Duke fix anything at the Property and she has never paid any rent to Ms. Duke. Ms. [REDACTED] testified that she has never spoken with Ms. Duke. Ms. [REDACTED] testified that she believes Ms. Duke is retaliating against her because she may have received information from Mr. Pikovsky.

15. Ms. [REDACTED] testified that on July 8, 2020, her son was injured on the Property when he stepped on an egress window cover and it broke. Ms. [REDACTED] notified Mr. Pikovsky that her son had been injured on the Property. Ms. [REDACTED] testified that Mr. Pikovsky repaired the issue with the egress window after two-days. Ms. [REDACTED] testified that she received a first notice to vacate from Landlord on July 27, 2020, with a vacate date of August 30, 2020. Ms. [REDACTED] testified that she did not leave because her and her children are Type 1 diabetics she did not want to go to a shelter because of the pandemic. Ms. [REDACTED] testified that on September 3, 2020, she sent Mr. Pikovsky a copy of the Governor's Executive Order which prohibits the termination of a lease agreement during the peacetime emergency except in limited circumstances. EO 20-79, ¶ 3. Ms. [REDACTED] testified that Mr. Pikovsky called the police to the Property on September 3, 2020, but they did not take any action to remove her from the Property. Ms. [REDACTED] testified that Mr. Pikovsky kept giving her termination notices to move out of the Property throughout September 2020. Ms. [REDACTED] testified that Mr. Pikovsky downsized her trash containers to the smallest size which she believed was a tactic to get her to move out. Ms. [REDACTED] testified that she never told Ms. Duke about her concerns because she did not believe that Ms. Duke was a real person.

16. The Court requested additional briefing by the parties on the legal issues raised by the language of paragraph 21 of the Lease agreement. Both parties submitted legal briefs on January 5, 2021.

CONCLUSIONS OF LAW

17. An eviction action is a summary proceeding to determine only the extant possessory rights to property. Minn. Stat. § 504B.001 subd. 4. 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”; only if, the termination of lease was due to the need to move the property owner into the property and where the property owner moves into the property within 7 days after it is vacated by the tenant. Minn. Stat. §504B.285 subd. 1(2), EO 20-79, ¶ 4.

18. The parties agree that Tenant is a tenant-at-will. When terminating a tenancy-at-will, “[t]he time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less.” Minn. Stat. § 504B.135(a) and (b). The parties disagree about whether Landlord was required to give Tenant, 30 days notice of termination or 3 month’s notice under Minnesota Statutes section 504B.135.

Lease Agreement Assignment

19. The language of the lease agreement in paragraph 21, states that, “[t]he Tenants shall not assign this Agreement, or sub-let or grant any license to use the House or any party thereof without the prior written consent of the Landlord. Consent by the Landlord to one such assignment, sub-letting or license shall not be deemed to be a consent to any subsequent assignment, sub-letting or license. An assignment, sub-letting or license without the prior written consent of the Landlord or an assignment or sub-letting by operation of law shall be absolutely null and void and shall, at the Landlord option, terminate this Agreement.”

20. The only other language in the lease regarding assignment is, “[i]f the Landlord sells or assigns the House, the Landlord shall have the right to transfer the Tenants deposit to the new owner or Assignee to hold under this Lease...” Ex. 1, ¶ 3.

21. Tenant argues that the assignment of the lease by Mr. Pikovsky to Ms. Duke through the sale of the Property was an “assignment by operation of law” and that the assignment is void based on the language in paragraph 21 of the lease.

22. Landlord argues that the language of paragraph 21 was intended to void an assignment of the Tenant’s obligations under the lease, but not the Landlord’s obligations.

23. It is well-settled that “the goal of contract interpretation is to ascertain and enforce the intent of the parties. To this end, provisions of a lease should never be interpreted in isolation, but rather in the context of the entire agreement. When the language of a lease is unambiguous, it should be given its plain and ordinary meaning. And when language is ambiguous, it should be construed against the drafter.” *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 14-15 (Minn. 2012) (quotations and citations omitted).

24. The first two sentences of paragraph 21 both address tenants not assigning the lease agreement unless certain conditions are met.

25. The final sentence of paragraph 21 starts out by specifically addressing that an assignment without the consent of the Landlord shall be void “or an assignment or sub-letting by operation of law shall” be void. The paragraph allows “at the Landlord option, to terminate this Agreement” with no corollary option by the tenant. As Landlord argued in their brief, the Court agrees that, to “read that this sentence also limits the landlord’s right to assign would be to ignore the parts of the sentence ‘without the prior written consent of the Landlord’ and ‘at the Landlord option’.”

26. Additionally, the phrase in paragraph 21, “by operation of law” refers to cases where the title or right of property vests in a person, not by his own act or agreement, but by the single operation of law, as in the case of the devolution of title upon an administrator, or where the estate of an intestate is cast upon the heir.” *Burke v. Backus*, 51 Minn. 174, 178, 53 N.W. 458, 458 (1892). Although under Minnesota law “no particular form of words is required” for an assignment, “an intent to transfer must be manifested and the assignor must not retain any control over the fund or any power of revocation.” *Guar. State Bank of St. Paul v. Lindquist*, 304 N.W.2d 278, 280–81 (Minn. 1980). The Court finds that there was not sufficient evidence in the record, to show that the assignment of the lease by Mr. Pikovsky to Ms. Duke in this case was completed “by operation of law.” Ex. 5.

27. The Court finds that the language of paragraph 21, in the context of the entire agreement, is unambiguous and was intended to regulate the assignment of the lease from tenant A to tenant B, not from landlord A to landlord B.

28. The Court finds that the assignment of the lease is not void based on the language in paragraph 21 of the lease agreement.

Lease Agreement

29. Tenant argues that the lease is void and unenforceable on public-policy grounds because Ms. Duke did not get a rental license from the City of Robbinsdale. Landlord argues that no rental license was needed because Ms. Duke did not “operate, let, or cause to be let” the Property.

30. The Robbinsdale Property Maintenance Code (“PMC”) 425.31, subdivision 1 states that, “No person may operate, let, or cause to be let, a rental dwelling without first having obtained a license to do so from the City as hereinafter provided.” A new owner must register a building within ten days after acquiring it. PMC 425.31, subd. 7. An operating license is not transferable to another person or to another rental dwelling. Every person holding an operating license must give notice in writing to the enforcement officer within 72 hours after having legally transferred or otherwise disposed of the legal control of any licensed rental dwelling. The notice must include the name and address of the person succeeding to the ownership or control of such rental dwelling or dwellings. PMC 425.31, subd. 13. Any person who violates any of the provisions of the PMC by doing any act or omitting to do any act which constitutes a breach of any section of the PMC shall, upon conviction thereof, be guilty of a misdemeanor and subject to a fine or imprisonment. PMC 425.37.

31. In Minnesota, the general rule is that a contract entered into for business, in violation of a statute that prohibits such business if unlicensed, is void if the statute as a whole indicates that the legislature intended such a contract to be illegal. *Dick Weatherston's Assoc. Mech. Servs., Inc. v. Minn. Mut. Life Ins. Co.*, 100 N.W.2d 819, 824 (Minn. 1960). “Not every illegal contract must be voided in order to protect public policy,” and we must examine the particular contract “to determine whether the illegality has so tainted the transaction that enforcing the contract would be contrary to public policy.” *Isles Wellness, Inc.*, 725 N.W.2d at 92-93. Here, we examine “the nature and circumstances of the [lease] in light of the applicable ... ordinance.” *Lew Bonn Co. v. Herman*, 135 N.W.2d 222, 225 (Minn. 1965).

32. Tenant entered into a lease with Mr. Pikovsky and Mr. Pikovsky had a valid rental license. Ms. Duke testified that when she purchased the home, it was to be her primary residence and not to operate as a rental unit. Ms. Duke and Mr. Pikovsky took steps to terminate the rental agreement within one day of sale of the Property and provided Tenant with a month’s notice. Mr. Pearson, testified that the City would not require Ms. Duke to get a rental license in the circumstances presented here. The Property was licensed while Ms. [REDACTED] was living in the Property until the sale of the Property, and Ms. [REDACTED] was provided with a notice of termination the very next day.

33. Even though Ms. Duke did not obtain a rental license, the Court finds that in the unique set of circumstances of this case, the lease agreement is not void as violating public policy.

34. The Court finds that because the lease agreement was not void, Tenant was obligated to continue paying rent monthly under the Lease agreement she signed in August 2019.¹

Retaliation Defense

35. It is a defense to an action for recovery of premises following the alleged termination of a tenancy by notice to quit for the defendant to prove by a fair preponderance of the evidence that: (1) the alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, under the laws of the state or any of its governmental subdivisions, or of the United States; or (2) the alleged termination was intended in whole or part as a penalty for the defendant's good faith report to a governmental authority of the plaintiff's violation of a health, safety, housing, or building code or ordinance. If the notice to quit was served within 90 days of the date of an act of the tenant coming within the terms of clause (1) or (2) the burden of proving that the notice to quit was not served in whole or part for a retaliatory purpose shall rest with the plaintiff. Minn. Stat. 504B.285, subd. 2.

36. Tenant provided testimony that in July of 2020 after receiving a notice of termination from Mr. Pikovsky, she was in contact with the Attorney General’s Office and had sent the Landlord a copy of the Governor’s Executive Order 20-79, which prohibits landlords from

¹ Even where a tenant enters into the possession of land under a void lease, the contract regulates the terms of the tenancy, as respects the rent to be paid. *Goodwin v. Clover*, 91 Minn. 438, 440, 98 N.W. 322, 323 (1904).

terminating lease agreements during the peacetime emergency except in very specific circumstances.

37. A landlord must establish by a fair preponderance of the evidence a substantial nonretaliatory reason for the eviction, arising at or within a reasonably short time before service of the notice to quit. A nonretaliatory reason is a reason wholly unrelated to and unmotivated by any good-faith activity on the part of the tenant protected by the statute (e.g., nonpayment of rent, other material breach of covenant, continuing damage to premises by tenants, or removal of housing unit from the market for a sound business reason). *Parkin v. Fitzgerald*, 307 Minn. 423, 430, 240 N.W.2d 828, 832–33 (1976).

38. In this case, Mr. Pikovsky sold the Property to Ms. Duke, who credibly testified that she was planning to live in the property. The Court finds that Landlord proved by a preponderance of the evidence that the sale of the Property, the desire of Ms. Duke to live in the Property, and the subsequent notice to terminate were substantial nonretaliatory reasons for eviction.

39. Landlord has proved by a preponderance of the evidence that they have a right to possession of the Property pursuant to Minnesota Statute section 504B.285, and that the case meets an exception to the Governor's Executive Order 20-79, because the owner will be moving into the Property within seven days.

Order

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

a. Landlord for recovery of the premises. The Writ of Recovery of Premises and Order to Vacate shall be stayed for seven days due to the hardships demonstrated by Tenant during trial.²

b. Allowable costs and disbursements to the prevailing party.


2. SERVICE OF ORDER: The Clerk of Court shall serve/e-serve a copy of this Order on all parties or their attorneys as appropriate.

3. EXHIBITS: Parties are informed, pursuant to Rule 128 of the Minnesota General Rules of Practice for the District Courts, it is the duty of the party offering exhibits during a trial to remove the exhibits from the custody of the Court. Parties may request the return of their exhibits after 15 days from the time allowed for appeal of the final decision has passed. Failure to request removal of the exhibits could result in the exhibits being part of the public record or could result in the exhibits being destroyed by the Court.

² Tenant credibly testified that she and her two children have health issues and are at greater risk of serious illness due to COVID-19, the Court finds that this is a substantial hardship and stays the issuance of the writ for seven days. Minn. Stat. § 504B.345, subd. 1(d).

☒ **Let Judgment Be Entered Accordingly**

Recommended By:

 Jan 8 2021 4:36 PM

Tiffany Sedillos
District Court Referee

January 8, 2021

By the Court:



District Court Judge

Dated:
Jan 08, 2021

Judgment

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

Dated: Jan 08, 2021

By: 
Deputy Court Administrator