

STATE OF MINNESOTA

Dec 4 2020 9:12 AM

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

File No. 19WS-CV-20-864

Bill Dunnigan,

Plaintiff,

v.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Defendants.

**EVICITION ACTION
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER FOR JUDGMENT,
AND JUDGMENT**

The above-entitled matter came before the Honorable Tracy L. Perzel, Judge of District Court, on November 13 and 16, 2020, for an evidentiary hearing on Plaintiff's eviction complaint. The hearing was held by Zoomgov remote video-conferencing as a result of the COVID-19 pandemic and the Orders of the State's Governor and the Chief Justice of the State's Supreme Court.

Plaintiff, Bill Dunnigan ("Landlord"), personally appeared and was represented by Theresa M. Gerlach, Esq. Defendant, [REDACTED] ("Tenant"), personally appeared and was represented by Thuzong T. Xiong, Esq. The other captioned defendants did not appear.

BACKGROUND

At the eviction hearing, Landlord and Tenant presented witness testimony and exhibits, including Exhibits 1 to 12 for Landlord and Exhibit 101 for Tenant. The Court took the matter under advisement at the conclusion of the two-day hearing.

Based on the evidence adduced at the hearing, the Court enters the following:

FINDINGS OF FACT

1. Landlord, William Dunnigan, has managed residential rentals since 1980.
2. Landlord purchased the residential property at 746 Livingston Avenue, West St. Paul, Minnesota ("Residence"), in 2009 and is the landlord of Residence.
3. On June 28, 2016, Tenant, [REDACTED] entered a residential lease ("Lease") with Landlord to lease Residence. The original term of the lease was July 1, 2016, to June 30, 2017. Tenant was the sole tenant who signed the lease for Residence. The lease provided, in relevant part, as follows:

6. RESIDENT'S PROMISES: 1) not to damage or misuse premises or waste the utilities provided by Management or allow his/her guest to do so; 2) not to make any alterations or additions or remove any fixtures or to paint the premises without the written consent of Management; 3) to keep the Apartment clean and tidy; * * * 7) to give written notice to Management of any necessary repairs to be made.

* * * * *

21. EVICTION: If Resident materially violates any of the terms of this Lease, he/she may be evicted immediately and without prior notice. In the event that Resident does not vacate voluntarily upon eviction, Management may commence a legal eviction.

4. There was no lease, written or oral, with [REDACTED]
[REDACTED]
5. Landlord provided, and Tenant knew, the name and address of the person authorized to manage the property and accept and give receipt for notices and demands at least 30 days before the filing of this action because this information was provided to Tenant in the Lease and remained accurate from that point forward.

6. At the evidentiary hearing, Landlord offered his own testimony and that of Dax Dickson, and Tenant offered his own testimony. As a whole, Landlord's testimony was more credible than that of Tenant.
7. Before Tenant leased Residence from Landlord, Residence had been extensively updated with new paint, flooring, light fixtures, cabinet handles, countertops, and appliances. This was demonstrated by Landlord's pictures of Residence, reflecting its clean and well-kept condition prior to Tenant's move-in. *See* Ex. 2. No one lived at Residence between the time the pictures were taken and Tenant moving into Residence.
8. Tenant has not paid rent since June 2020. Beginning June 2020, Tenant did not offer rent, and Landlord did not accept rent.
9. Landlord was first on notice of the identified damage to the property beginning in June 2020.
10. In June 2020, Landlord went to Residence with a realtor to discuss the potential sale of Residence. Landlord took pictures of Residence at that time, to include missing and broken cabinet drawer fronts in the kitchen, a broken bay window in the living room, the cracked and stained vanity in the lower-level bathroom, as well as dirt, mildew, and mold in the same bathroom. A second window in the same bay of windows had been broken and replaced, albeit ineffectually, by Tenant with the assistance of a handyman he procured in the fall of 2019.
11. On September 17, 2020, after receiving notice from the City of West St. Paul inspector concerning a broken garage door and rubbish at Residence (Ex. 6), Landlord went to

Residence and took additional pictures. These pictures show the double garage door of Residence closed with the top two panels missing, the two removed panels, the former and damaged rear door of the residence that was replaced with a new door in the fall of 2019, and, next to the garage, debris and a roof-line gutter. (Exs. 4, 7). Landlord had not removed the gutter. While taking these pictures of the garage, Landlord saw a wheelchair in the garage that bore the markings “Property of Goodwill Easterseals.” (Ex. 5). At the time Tenant leased Residence, the garage was empty and the garage door was in working order. Neither Landlord nor Tenant are affiliated with Goodwill/Easterseals; however, there is insufficient evidence that the wheelchair was stolen.

12. Landlord had filed a prior residential eviction action as to Tenant and Residence prior to the instant action. Landlord had not provided Tenant the seven-day notice before filing that eviction action, as required by Executive Order 20-79 (EO 20-79) of Governor Tim Walz, resulting in dismissal of the action. However, the judge presiding over that matter ordered Tenant to cooperate with Landlord in allowing Landlord to enter Residence to assess the damage. Landlord did enter Residence on October 13, 2020, and Landlord took additional pictures of Residence. (Ex. 11). Landlord observed the kitchen butcher-block countertop with extensive cutting marks, a ceiling light fixture dangling by the wires and without the globe, broken glass on the inside of the front bay window (the same glass Landlord had asked Tenant to remove four months prior for the safety of Tenant’s children/family), dents on the side of the refrigerator as well as damage to the refrigerator’s gasket, and numerous spherical dents

to the lower portion of the back door, even though the door was newly replaced following damage to the old door in the fall of 2019.

13. Tenant's two sons live with him occasionally at Residence, and Tenant has willingly allowed others, including [REDACTED] to occupy and use areas of the Residence such as the garage.
14. Tenant knew [REDACTED] removed the garage door. When Landlord was at Residence sometime in or after June 2020, [REDACTED] told Landlord that he did so to get his van into the garage. Tenant took no action to prevent either the removal of the garage door or damage to the door by his invited houseguest – [REDACTED] – even though Tenant is the sole responsible party on the Lease. The removal of the garage door caused damage and bending of the garage door, such that it would cost in excess of \$2,400.00 to repair.
15. The broken front bay window panel resulted from Tenant's sons playing catch. Tenant is responsible for supervising his children. This second incident of a broken bay window panel follows the breaking of a different window panel in the same bay window in the fall of 2019. Tenant attempted to fix that prior broken window, ineffectually, with Plexiglass.
16. Tenant and/or his children, along with others he has allowed onto the property, have irresponsibly damaged Residence in a manner that, in total, is significant. Tenant – as the sole tenant on the lease and the parent to his sons when they are at the Residence – failed to prevent the same, whether by declining to allow [REDACTED] to use Tenant's garage and/or by properly observing his children and others he has allowed onto the property.

17. The damage, in total, and under the circumstances existing here, is not normal wear and tear.
18. Tenant's claim that he kept Residence in "pristine" condition is incredible.
19. On October 14, 2020, Landlord provided notice of intent to file a residential eviction action against Tenant and subsequently filed this eviction complaint on October 21, 2020.
20. On October 26, 2020, Landlord's agent personally served Tenant with the instant eviction action summons and complaint.
21. Tenant claims Landlord wishes to evict Tenant because of unpaid rent and that the instant eviction-action claims are mere pretext for such a rent-based eviction, presently prohibited by the Governor's Executive Order limiting residential eviction.

CONCLUSIONS OF LAW

1. A landlord is entitled to recover possession by eviction when a tenant holds over "contrary to the conditions or covenants of the lease or agreement under which that person holds." Minn. Stat. § 504B.285, subd. 1(2) (2000).
2. Landlord has met the requirements of Minn. Stat. § 504B.181 regarding statutory disclosures to Tenant, as well as the requirements of EO 20-79 regarding the requisite seven-day notice to Tenant of an impending eviction action.
3. Emergency Executive Order 20-79 has placed limitations on the ability of landlords to evict a tenant under this statute during the COVID-19 pandemic. EO 20-79, in relevant part, states the following:

The ability of property owners, mortgage holders, or other persons entitled to recover residential premises to file an eviction action on the grounds that

- a residential Defendant 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, after the termination of the redemption period for a residential foreclosure, or after nonpayment of rent, is suspended. Nothing in this Executive Order relieves a Defendant's obligation to pay rent. This suspension does not include eviction actions where the Defendant:
- a. Seriously endangers the safety of other residents;
 - b. Violates Minnesota Statutes 2019, section 504B.171, subdivision 1;
 - c. Remains in the property past the vacate date after receiving a notice to vacate or nonrenewal under paragraph 4 of this Executive Order; or
 - d. Materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises:
 - i. Seriously endangers the safety of others; or
 - ii. Significantly damages property.
4. This case implicates the EO 20-79 exception for a material violation of the residential lease by significant damage to property.
 5. "Significant damage" is not defined in Minnesota Statute, nor has case law addressed the meaning of this phrase in relation to an unlawful detainer action brought during the existence of the relevant Executive Order. Minnesota law provides that "words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning . . . are construed according to such special meaning or their definition." Minn. Stat. § 645.08(1).
 6. *Merriam-Webster* defines "significant" as "of a noticeably or measurably large amount" or "probably caused by something other than mere change". *The Merriam-Webster*

Dictionary (New ed. 2016). “Significant” is defined in *Black’s Law Dictionary*; however, that definition is unhelpful in the context of this case.

7. “Damage” has many different definitions and is referenced in many different contexts. The “relevant definition of a term depends on the context in which the term is used.” *Getz v. Pearce*, 934 N.W.2d 347, 355 (Minn. 2019) (quoting *State v. Nelson*, 842 N.W.2d 433, 437 n.2 (Minn. 2014)); see also *Wong v. Am. Family Mut. Ins. Co.*, 576 N.W.2d 742, 745 (Minn. 1998) (A court may ascertain the meaning of doubtful words “by reference to their association with other associated words and phrases” (quotation omitted)). The general definition of “damage” in *Black’s Law Dictionary* defines it as “[l]oss or injury to . . . property”. *Black’s Law Dictionary* (11th ed. 2019). Because the definition of damage is general, its meaning is restricted by the word “significant.” Minn. Stat. § 645.08(3) (“general words are construed to be restricted in their meaning by preceding particular words”).
8. Therefore, significant damage to property, as required by EO 20-79, is damage of a noticeably or measurably large amount, and excludes obscure or indeterminate damages because those would not effectuate the executive’s intent with EO 20-79 to limit residential eviction actions during the pandemic.
9. The Court considers the damage in total. See e.g. *Cameron v. Evans*, 62 N.W.2d 793, 799 (Minn. 1954) (“Peculiar facts of each case must serve to measure damages”); *Rinkel v. Lee’s Plumbing & Heating Co.*, 99 N.W.2d 779, 783 (Minn. 1959) (“When property is not totally destroyed, the ordinary measure of damages is the difference in value before and after the loss, or the cost of restoration, whichever is less.”)

10. Here, the damage *in total* is significant, constitutes a material violation of the Lease provision that Tenant shall not damage the property, and includes, but is not limited to:

- a. a bent and broken double garage door following removal not authorized by Landlord;
- b. a broken glass panel in the bay window;
- c. a cracked lower-level bathroom vanity;
- d. removed, broken, and/or now non-existent cabinet drawer fronts in the kitchen;
- e. a dented back door;
- f. a removed gutter;
- g. a dented and gasket-damaged refrigerator; and
- h. a damaged basement light fixture.

11. Accordingly, Tenant has materially violated Lease and has not vacated Residence.

12. Tenant argues that the damage must have been caused intentionally, maliciously, or irresponsibly based on the use of those terms in the covenants of habitability set forth at Minn. Stat. § 504B.161, which addresses the types of damage Landlord does *not* have the duty to repair. The Court concludes that the wide-ranging damage to various elements of Residence was caused, at minimum, irresponsibly, whether by Tenant, others he has allowed at the property, or a combination of the two. In total, the damage is inconsistent with responsible day-to-day living that may leave minor dings or scrapes on walls, removable stains on carpeting, or even a one-time broken window from an

errantly-thrown ball. Responsible day-to-day living does not result in removal and bending of garage door panels, dents and gasket damage to a refrigerator, a newly-replaced back door with multiple spherical dents, and a cracked bathroom vanity, among other damage. Collectively, the damage here exceeds normal wear and tear.

13. Waiver is an affirmative defense to an unlawful detainer action. *Priordale Mall Investors v. Farrington*, 411 N.W.2d 582, 583 (Minn. App. 1987). Generally, a landlord who accepts rent while knowing that breaches of the lease are occurring waives the right to rely on those breaches in an action for unlawful detainer. *Id.* at 584. A principal reason for the waiver rule is to provide a sense of security for the tenant that the lease remained in effect. *Id.*

14. Waiver is inapplicable here, as Landlord did not accept rent (nor did Defendant offer rent) from June 2020 forward, and Landlord was not on notice of the instant damage until June 2020.

ORDER

1. The Court Administrator shall enter **judgment for Landlord/Plaintiff** for recovery of the premises.
2. The **writ of recovery** shall be issued immediately upon request by Landlord/Plaintiff and payment of the required fee.
3. Landlord/Plaintiff is awarded **allowable costs and disbursements**.

Let Judgment Be Entered Accordingly.

Dated: December 4, 2020

BY THE COURT:

Perzel,

Tracy

Digitally signed by
Perzel, Tracy

Date: 2020.12.04

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Tracy L. Perzel

Judge of District Court

Judgment

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

Dated: _____

Maria Jost
Court Administrator

By: 

Deputy
Dec 4 2020 9:13 AM