

**State of Minnesota**

Hennepin County

**District Court**

Judicial District:	Fourth
Court File Number:	27-CV-HC-20-567
Case Type:	Housing

LO2, LLC,

Plaintiff,

vs.

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

 Defendant.

This matter came on for trial before the Honorable Melissa Houghtaling, Referee of District Court, on July 16, 2020.

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

Scott Swanson, Attorney for Landlord, appeared.

Mary Kaczorek, Attorney for Tenant, appeared.

Carlos Bernardino, Certified Spanish Interpreter, provided interpretation of the proceedings.

Jennifer Strand (Property Manager) appeared as a witness for Landlord.

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**

1. This matter involves residential property located at 3013 Grand Avenue, #301, Minneapolis, Hennepin County, Minnesota, 55408.

2. On January 31, 2020, Landlord commenced an eviction action against Tenant, alleging:

- a. Nonpayment of May 2019 and June 2019 rent plus utilities for a total due of \$2,421.70:
  - i. May 2019 rent owed: \$985.00;
  - ii. June 2019 rent owed: \$985.00;
  - iii. Utility payments owed: \$24.99, \$21.01, \$16.38, \$19.78, \$23.64, \$5.55, \$14.33, \$24.01 (total of \$149.70); and
  - iv. Statutory costs: \$302.00.

3. Tenant has deposited \$1,970.00 into Court reflecting February and March 2020 rent.

4. Tenant asserted the defenses of waiver and lack of rental license.
5. The parties entered into Lease 1 effective January 4, 2019 and Lease 2 effective July 1, 2019.
6. Lease 1 is a month-to-month term commencing January 4, 2019 with rent in the amount of \$985.00 due on the first of the month during the term of the lease.
7. Lease 2 is a 12 month term commencing July 1, 2019 with rent in the amount of \$985.00 due on the first of the month during the term of the lease. *Exhibit 2*.
8. The premises was not a licensed rental unit prior to May 13, 2019. *Exhibit 4*.
9. Pursuant to Minneapolis City Ordinance 244.1810(a) “[n]o person shall allow any dwelling unit to be occupied, or let or offer to let to another any dwelling unit for occupancy, or charge, accept or retain rent for any dwelling unit unless the owner has a valid license...”
10. Accordingly, Lease 1 is void and Landlord was unable to “retain rent” for the months of January 2019 through May 2019. Additionally, there could be no written agreement as it relates to utilities for the premises and therefore utilities are not rent. *See* Minn. Stat. § 504B.215.
11. Between January 2019 and June 2019, Landlord unlawfully retained \$1,970 in rental fees. *See Exhibit 3*
12. Between May 13, 2019 and July 1, 2019, Tenant was a “tenant at will”. Lease 2 did not commence until July 1, 2019.
13. Pursuant to Minn. Stat. § 504B.291, subd. 1(c) “the parties may agree only in writing that partial payment of rent in arrears which is accepted by the landlord prior to issuance of [an] order granting restitution of the premises may be applied to the balance due and does not waive the landlord's action to recover possession of the premises for nonpayment of rent.”
14. There was no written agreement prior to July 1, 2019 and therefore the Landlord waived its rights to possession of the premises for nonpayment of rent for any months prior to July 1, 2019.
15. Ms. Strand credibly testified that she sent Lease 2 to the Tenant and he returned it at some point in in late June or early July. She did not remember what day she signed the agreement and there is no signature date for Ms. Strand on Lease 2. *Exhibit 2*.
16. Ms. Strand credibly testified that the building is a single-metered building with 17 units. Utilities are considered additional rent per paragraph 2 of Lease 2. *Id.* The utilities referenced by the Landlord are for gas and water. Ms. Strand explained that “gas is divided per unit based on square feet” and “water is divided equally”.
17. Pursuant to Minn. Stat. § 504B.251, subd. 2a:

A landlord of a single-metered residential building who bills for utility charges separate from the rent:

(1) must provide prospective tenants notice of the total utility cost for the building for each month of the most recent calendar year;

(2) must predetermine and put in writing for all leases an equitable method of apportionment and the frequency of billing by the landlord;

(3) must include in the lease a provision that, upon a tenant's request, the landlord must provide a copy of the actual utility bill for the building along with each apportioned utility bill. Upon a tenant's request, a landlord must also provide past copies of actual utility bills for any period of the tenancy for which the tenant received an apportioned utility bill. Past copies of utility bills must be provided for the preceding two years or from the time the current landlord acquired the building, whichever is most recent; and

(4) may, if the landlord and tenant agree, provide tenants with a lease term of one year or more the option to pay those bills under an annualized budget plan providing for level monthly payments based on a good faith estimate of the annual bill. . . .

(c) A failure by the landlord to comply with this subdivision is a violation of sections [504B.161, subdivision 1](#), clause (1), and [504B.221](#).

18. There is no provision in Lease 2 explaining the utility apportionment requirements per Minn. Stat. § 504B.251.

19. Paragraph 1 of Lease 2 provides “Tenant agrees that partial payment of rent shall not prevent Landlord from initiating eviction proceedings on the basis of the remaining balance due.” *Id.*

20. Paragraph 14 of Lease 2 provides “Tenant and Landlord agree that prior to this Lease Agreement Tenant held continuous possession of the Premises under either a previous lease agreement, a tenancy at-will, or both and that this Lease Agreement is an extension of that tenancy. Tenant agrees that Landlord applied for a Rental License on a timely basis, said application was never denied and that rent was earned and due during the period between application and issuance of the license.” *Id.*

21. The Court could not find authority allowing a Landlord to circumvent Minneapolis Ordinance 244.1810(a) by merely including a paragraph in a lease contrary to the law. *See Wajda v. Schmeichel*, A18-0060 (Minn. Ct. App. Nov. 26, 2018) (“These ordinances are designed to ensure that dwellings meet minimum health and safety standards. *See* MCO § 244.1910 (licensing standards). While respondent seeks only eviction, deeming the lease valid would directly contradict the city ordinances and signals to landlords that they may sidestep the minimum health and safety standards inherent in rental licensure. It is simply illogical to conclude that appellant breached her duty to pay rent when MCO § 244.1810 prohibits respondent from charging or accepting rent. Respondent cannot rely upon the lease to seek eviction.”)

22. It is undisputed that Tenant paid, and Landlord accepted rent for the months of July 1, 2019 through January 2020.

23. Tenant owes no utilities as Landlord failed to comply with Minn. Stat. § 504B.215.

24. Tenant has deposited February 2020 and March 2020 rent with the Court.

25. Landlord impermissibly retained rent in 2019 when it did not have a valid rental license in the amount of \$1,970. Those amounts shall be applied to April 2020 and May 2020 rent.

26. On March 24, 2020, Governor Walz issued Emergency Executive Order 20-14 suspending all eviction actions in Minnesota that did not otherwise qualify as an exception. Executive Order 20-14 was clarified by Executive Order 20-73 in June 2020 and replaced by Executive Order 20-79 August 4, 2020.

27. Minnesota remains under a moratorium on evictions related to non-payment of rent. None of Governor Walz's Orders excuse a Tenant from paying rent.

28. Tenant has not paid rent for June, July, August, September or October 2020 and shall remit such payment to the Landlord. Landlord shall accept the payment from the Tenant.

29. Landlord has failed to prove that Tenant owed rent for May 2019 and June 2019.

30. Even if Landlord had proven such, Tenant has proven that Landlord waived the right to possession based on non-payment of rent for failing to comply with Minnesota Statutes §§ 504B.291, 504B.215, and Minneapolis City Ordinance 244.1810.

### **Conclusions of Law**

1. An eviction action is a summary proceeding to determine only the extant possessory rights to property. *See* Minn. Stat. §504B.001 subd. 4 (2016). 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." Minn. Stat. §504B.285 subd. 1(2) (2016).

2. On review of a district court judgment in an eviction action, the Court of Appeals shall defer to the district court's credibility determinations and rely on its factual findings unless they are clearly erroneous. *See Cimarron Village v. Washington*, 659 N.W.2d 811, 817-18 (Minn. Ct. App. 2003).

3. In an eviction proceeding, "the only issue for determination is whether the facts alleged in the complaint are true." *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 555 (Minn. Ct. App. 1985) review denied (Minn. February 19, 1986).

### **Order**

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

a. **Tenant** to remain in possession of the premises.

b. **Allowable costs and disbursements** to the prevailing party.

2. **RENT DISBURSEMENT:** The rent now on deposit with the Court shall be released as follows: \$1,970.00 to Landlord as rent for February 2020 and March 2020.

3. Nothing in this Order shall be construed to indicate that Tenant does not owe rent for June 2020 through the date of this Order and said amounts should be paid directly to Landlord. Failure to make said payment may result in the Landlord filing an eviction action for non-payment of rent following the lifting of the Peacetime Emergency.

4. **SERVICE OF ORDER:** 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:

Melissa J. Houghtaling 2020.10.02  
17:40:11  
-05'00'

District Court Referee

October 2, 2020

By the Court:

Todd L. Barnett

District Court Judge

Oct 05, 2020

Dated:

### Judgment

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

Dated: Oct 05, 2020

By: Dan J. Tranter  
Deputy Court Administrator