

State of Minnesota**District Court**

Hennepin County

Judicial District:	Fourth
Court File Number:	27-CV-HC-20-1517
Case Type:	Housing

Little Earth of United Tribes Housing
Corporation,
Plaintiff,
vs.

**ORDER DENYING
MOTION TO DISMISS**

[REDACTED]
Defendant.

This matter came on for a motion hearing before the Honorable Melissa Houghtaling, Referee of District Court, on September 4, 2020. Defendant moves this court to dismiss the action.

Plaintiff is represented by Christopher Kalla, Esq. Plaintiff shall hereinafter be referred to as Landlord. Defendant is represented by Julia Zwak, Esq. Defendant shall hereinafter be referred to as Tenant.

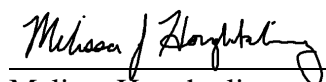
Order

1. Tenant's motion to dismiss is DENIED.
2. The Court Administrator shall contact the attorneys for the parties and set this matter on for a remote trial via Zoomgov.com at the earliest available time.
3. MEMORANDUM: The attached Memorandum of Law is fully incorporated in this Order.
4. PROPOSED EXHIBITS: The parties shall email all proposed exhibits (evidence) for trial (including photographs, documents, video, audio, etc.) to 4thRefereeHoughtalingChambers@courts.state.mn.us by 12:00 p.m. the day before the trial. Plaintiff shall pre-mark exhibits 1-100. Defendant shall pre-mark exhibits A-ZZ.
5. SERVICE OF ORDER: The Clerk of Court shall serve/e-serve a copy of this Order on all parties or their attorneys as appropriate.

Recommended By:

2020.09.1


By the Court:



Melissa Houghtaling
District Court Referee

5 10:55:27

September 15, 2020



District Court Judge

Dated:

Sep 15, 2020

Appendix PED-31

MEMORANDUM

On August 3, 2020, Landlord filed an eviction complaint pursuant to Emergency Executive Orders 20-14 and 20-73 against Tenant alleging Tenant has violated Minn. Stat. § 504B.171, subdivision 1 (2020) by allowing controlled substances in the premises and allowing stolen property in the premises or in the common area and curtilage of the premises.

Effective March 24, 2020, all residential eviction actions were suspended pursuant to Emergency Executive Orders 20-14 and 20-73 subject to certain exceptions. *See EO 20-14 (filed March 23, 2020) & EO 20-73 (filed June 5, 2020)*. Emergency Executive Order 20-73 states, “This suspension does not include eviction actions where the tenant seriously endangers the safety of others on the premises, including the common area and the curtilage of the premises, if the serious endangerment of others who are not residents is a material violation of the lease, or for violations of Minnesota Statutes 2019, section 504B.171, subdivision 1.” *Id.*

The Court shall grant a party’s motion to dismiss when the facts as alleged in the complaint do not set forth a legally sufficient claim for relief. Minn. R. Civ. P. 12. The Court must accept “the facts of the complaint [] as true and all reasonable inferences are construed in favor of the nonmoving party.” *Radke v. Cty. of Freeborn*, 694 N.W.2d 788, 793 (Minn. 2005).

There is no time limitation stated in Minn. Stat. § 504B.171, subd. 1 as to when the illegal activity is forbidden – it is a general prohibition of the violation to the non-waivable covenants. There is insufficient information as to whether the issues in Minn. Stat. § 504B.171, subd. 1 as alleged by the Landlord are ongoing but paragraph 3(h) of the Complaint as clearly written in the present tense and satisfies the notice pleading requirements in Minnesota. Additionally, while the burden of proof in a criminal case is beyond a reasonable doubt, here the Landlord must prove the allegations in the Complaint by a preponderance of the evidence. Finally, while the Court agrees that an allegation of substantial endangerment may require the endangerment to be a present and immediate concern, a violation of the covenants outlined in Minn. Stat. § 504B.171 are ongoing and not modifiable. *See* Minn. Stat. § 504B.171, subd. 3 (2020).

Tenant’s motion to dismiss is denied.

M.H.