

State of Minnesota
St. Louis County

District Court
Sixth District

Court File Number: **69DU-CV-20-1348**

Case Type **Eviction (UD)**

Munger Terrace, LLLP vs [REDACTED]
[REDACTED]

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

This case came on for Court Trial before the undersigned via ZOOM teleconference on September 18, 2020. All parties appeared as noted below and were fully audio and video capable.

PLAINTIFF:

- ☒ Appeared in person.
☒ Appeared through agent(s)

Represented by: ☒ counsel ☒ agent
Counsel Hal Spott and property manager Kim
Nerhaugen, plus maintenance employee
Christopher Sogn and neighbor witnesses
Pamela Johnson and Dale Ruona.
Name

DEFENDANT:

- ☒ Appeared in person.
☐ Did not appear and is in default.

Represented by: ☐ advocate ☒ counsel
Gwen Updegraff
Name

Defendant has ☐ admitted ☒ denied the allegations in the Eviction Action complaint.

Findings of Fact and Conclusions of Law

1. ☐ Plaintiff has failed to prove the allegations in the complaint.

2. ☒ COMPLAINT:

Plaintiff proved the following allegations by a preponderance of the evidence.

- ☒ a. Compliance with Minn. Stat. § 504B.181.
☐ b. Defendant has failed and refuses to pay rent for the month(s) of _____ in the amount of \$_____ per month payable on the _____ day of each month for a total due of \$_____.
☐ c. Notice to vacate was properly given and Defendant has failed to vacate said property.
☒ d. Defendant has broken the terms of the rental agreement and Defendant has failed to vacate the property – See attached Memorandum
☐ e. Defendant has defaulted on the mortgage and the property has been sold at a Sheriff's sale. The Redemption period has expired and Plaintiff is entitled to possession.

- ☐ f. Defendant defaulted on a contract deed and is holding over after proper cancellation of the contact.
- ☐ g. Other: _____.

3. ☐ DEFENSES:

Defendant(s) proved the following defenses by a preponderance of the evidence.

- ☐ a. Improper service by _____.
- ☐ b. Violation of the covenants of habitability by _____.
- ☐ c. Improper notice because _____.
- ☐ d. Waiver of _____ by _____.
- ☐ e. Other: _____.

4. ☐ SETTLEMENT: **No judgment to be entered at this time.**

The parties have reached a settlement, which is approved and incorporated in this Decision and Order.

- ☐ Settled through Mediation (See attached settlement agreement)
- ☐ Settled by the Litigants (See attached settlement agreement)
- ☐ Settlement terms are as follows: _____

Order

1. ☐ The settlement is hereby approved as agreed upon.

2. ☒ JUDGMENT:

The Court Administrator shall enter judgment for:

<input checked="" type="checkbox"/>	a. Plaintiff for recovery of the premises. The Writ of Recovery of Premises and Order to Vacate shall be:		
	<input type="checkbox"/>	i.	issued immediately upon request and payment of fee.
	<input checked="" type="checkbox"/>	ii.	stayed until October 6, 2020, at 5:00 p.m.
			Date
<input type="checkbox"/>	b. Defendant to remain in possession of the premises.		
<input type="checkbox"/>	c. Allowable costs and disbursements to the prevailing party.		

3. ☐ DISMISSAL:

The case is dismissed ☐ WITH ☐ WITHOUT prejudice and the Court Administrator shall enter Judgment accordingly.

4. ☐ REDEMPTION:

Defendant may redeem the premise (for nonpayment of rent) by paying to the Plaintiff \$_____ by _____. If not, a judgment and writ shall issue by default.

5. ☐ RENT ABATEMENT:

Defendant has had diminished use and enjoyment of the premises. Rent is abated for the months of _____ by a total of \$_____, and is abated by \$_____ per month until the first month following completion of court ordered repairs.

6. ☐ RENT DISBURSEMENT:

The rent now on deposit with the Court shall be released as follows:

☐ \$_____ to Plaintiff ☐ \$_____ to Defendant.

7. ☐ HEARING:

This is scheduled for ☐ court trial ☐ jury trial ☐ motion hearing on issues of _____ on _____, at _____ (a.m./p.m.) at _____

8. ☐ DISCOVERY:

The parties shall provide to each other by _____, the following: a list of witnesses, with phone numbers and addresses, and the subjects about which they will testify, and copies of exhibits (documents, photographs, etc.) to be introduced at trial, and _____.


9. ☒ OTHER:

Any Writ of Recovery issued in this case shall be deemed a priority Writ under Minn. Stat. 504B.361 and 365. The attached Memorandum is incorporated herein and expressly made a part hereof.


☒ **Let Judgment Be Entered Accordingly.**

Recommended by:

By the Court:

 Schulte, John
Sep 29 2020 11:25 AM

Housing Court Referee Date

 Neo, Theresa
Sep 29 2020 11:58 AM

Judge Date


Judgment

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

Dated: _____

Amy Turnquist
Court Administrator

Cynthia Haseman

By:  _____
Deputy

Memorandum

The Court in this case finds for Plaintiff. Plaintiff proved that Defendant “significantly” damaged property when both his front and rear entry doors were kicked in, and subsequently damaged a second time, in late 2019. This is an allowable basis for eviction under Executive Order 20-79, Subd. 2(d)(ii). In addition, Plaintiff proved that Defendant “seriously endanger[ed] the safety of others” when he was arrested for a domestic assault that occurred at the unit on January 4, 2020. EO 20-79, Subd. 2(d)(i). While the Court understands that Defendant claims he was the victim of a break-in, the fact that the damage was (1) to BOTH the front and back doors, (2) per testimony occurred on at least 2 occasions, (3) that Defendant reported missing property but there is no evidence that he ever contacted law enforcement, (4) there is no evidence that any neighboring units experienced this problem, and (5) combined with the numerous admitted reports of many people coming and going from his unit, the Court finds it appropriate to hold the Defendant liable for this damage, which the evidence demonstrates will exceed \$2,000 despite the fact that to date the doors are not replaced. Plaintiff also presented evidence through photographs of damage to the interior of the unit including dog feces on the carpet and a unit kept in generally very poor condition.

Defendant argues that this Court is bound by the holding in the very recent Minnesota Court of Appeals ruling in Olson Property Investments v. Alexander, A20-1073 (Minn. Ct. App. Sept. 1, 2020). In Olson the District Court reviewed the file and declined to allow an eviction to proceed under the previous Executive Orders 20-14 and 20-73. Landlord appealed and requested a Writ of Mandamus compelling the case to go forward based on the allegations in the Compliant. That case is distinguishable. First, the Court in that case in its discretion *declined* to allow the case to proceed, meaning the Court of Appeals was asked to issue a Writ of Mandamus, expressly described as an “extraordinary remedy.” Second, the Olson Court was interpreting an earlier version of the Executive Order concerning evictions, one that did not include as an allowable ground significant damage to property. The Olson Court did hold that to

proceed with eviction requires a finding of some sort of current physical safety risk to other residents or others on the premises as opposed to just allegations of past occurrences. Current risk, however, must be evaluated based on all the facts and circumstances or else Plaintiff correctly argues that a landlord would theoretically be forced to amend their complaint up to the day of trial. In Olson the reviewing District Court Judge determined the case could not proceed under the E.O. then-in-effect based on the facts alleged in the Complaint in said case. In this case the Court reached a different conclusion.

In this case Plaintiff proved, up until January 2020, an ongoing pattern of property damage, noise complaints and a highly problematic tenancy, including thousands of dollars in damage to not one but two entry doors. While this Court limited evidence to that which occurred prior to the January 7, 2020, termination notice under applicable HUD regulations, that is not to say the Court cannot look at all the circumstances to determine whether eviction remains warranted in September 2020 under the most recent EO. Two neighbors testified. Both described fights, screaming, slamming doors and noises at all hours. Ms. Johnson expressed fear of Mr. [REDACTED] Ms. Ruona did not express fear but still described “lots of yelling and screaming” and numerous other issues. These were not isolated incidents. They went on for months. Noise complaints are not grounds for eviction in and of themselves but demonstrate a pattern of conduct supporting the case coming before the Court for trial.

On this record the Court finds Plaintiff proved what was required to evict under EO 20-79. There is no set period of time where incidents become “too stale.” The analysis is case-by-case. The eviction notice was sent less than 90 days before the pandemic hit in March when almost all eviction activity ground to a halt. Plaintiff then filed the case once the standing order allowed them to proceed. Had the doors been damaged in 2017 or 2018 the analysis is likely different. They were damaged in late 2019. Defendant was arrested for a domestic on January 4, 2020. The eviction notice issued on January 7, 2020. Judgment is granted for Plaintiff, subject to a 7-day stay pursuant to Minn. Stat. 504B.345, Subd. 2, so that Defendant may locate alternate arrangements for him and his pet.