

State of Minnesota

Hennepin County

District Court

Judicial District:	Fourth
Court File Number:	27-CV-HC-21-195
Case Type:	Housing

Michelle Paquin,
Plaintiff,

vs.

Order

[REDACTED]
Defendants.

This matter came on for a motion hearing before the Honorable Melissa Houghtaling, Referee of District Court, on May 4, 2021. The issues before the Court are Defendants' motion to dismiss or for summary judgment and Plaintiff's motion for summary judgment.

Plaintiff was represented by Chris Kalla, Esq. Defendants were present and represented by Julia Zwak, Esq.

Based upon all of the files, records, and proceedings, the Court makes the following:

DECISION

1. This eviction action involves residential property located at 9516 Newton Avenue North, Brooklyn Park, Hennepin County, Minnesota, 55444.

2. At the hearing on May 4, 2021, the Court denied the cross-motions for summary judgment but heard argument regarding Defendants' motion to dismiss for failing to comply with Minn. Stat. § 504B.321 and failing to state an exception to Executive Order 20-79.

3. It is undisputed that Defendants resided in the property with their mother/grandmother, Lois Lorraine Paquin, prior to her death in January 2020 and continue to reside in the property as of the date of the hearing.

4. From January 2020 through October 28, 2020 the property was owned by the Estate of Lois Lorraine Paquin. See Court File No. 27-PA-PR-20-214.

5. Plaintiff was the executor of the Estate of Lois Lorraine Paquin.

6. On October 28, 2020 the property was transferred to Plaintiff as part of the distribution of estate assets. See Exhibits A & B to Plaintiff's Complaint.

7. Plaintiff and Defendant [REDACTED] are sisters. Plaintiff is Defendant [REDACTED] aunt.

8. On January 21, 2021, Plaintiff sent Defendants a "Notice to Vacate" indicating that because there "is not a lease." See Exhibit C to Plaintiff's Complaint.

Appendix PED-54

9. On April 5, 2021, Plaintiff commenced an eviction action against Defendants, alleging that Defendants are in violation of Minn. Stat. § 504B.301 in that they have “unlawfully and forcibly occupied and taken possession of the property.”

10. When reviewing a motion to dismiss for failure to state a claim on which relief can be granted, the court must determine whether the pleadings set forth a legally sufficient claim for relief. *Hebert v. City of Fifty Lakes*, 744 N.W.2d, 229 (Minn. 2008); Minn. R. Civ. P. 12. The Court must accept “the facts [alleged in the pleadings] as true and all reasonable inferences are construed in favor of the nonmoving party.” *Radke v. County of Freeborn*, 694 N.W.2d 788, 793 (Minn. 2005). “A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.” *Walsh v. U.S. Bank*, 851 N.W.2d 598 (Minn. 2014).

11. Defendants lived in the property with the permission of decedent Lois Paquin and continued to do so during the administration of the estate.

12. A new owner takes the land with the rights and liabilities which existed between the old owner and the tenant. *Glidden v. Second Avenue Investment Co.*, 147 N.W. 658, 659 (1914). A purchaser of real estate in the possession of a tenant has notice of all the interest and rights of the tenant. *Sassen v. Haegle*, 147 N.W. 445 (1914).

13. Plaintiff submitted text messages in support of her motion for summary judgment wherein on July 6, 2020 she states, “I would like to have access to the house by August 31st. Where are you guys with finding housing? I don’t want you on the street.” *See Plaintiff’s Affidavit in Support of Motion for Summary Judgment*.

14. On August 8, 2020, Plaintiff told Defendants “I will give you until 9/15/2020 and have to inspect the house as well.” *Id.*

15. On August 10, 2020, Defendant asked Plaintiff, “Can’t move into apartment until October 1st. I’m truly sorry about the mistake and wanna ask if we can stay until then and do inspection after the first?” *Id.*

16. On August 14, 2020, Plaintiff responded, “I apologize for the delay. Can you be out by 12pm noon on 10/1/20?” *Id.*

17. It is clear from these text messages and the assertions of both parties that Defendants have not “unlawfully and forcibly occupied and taken possession of the property.”

18. Defendants have been in possession of the property first by Lois Paquin, then the Estate of Lois Paquin, and finally by Plaintiff.

19. It is not possible for Plaintiff to produce evidence that would support a finding that Defendants’ are in violation of Minn. Stat. § 504B.301 in that Defendants took possession of the property with permission and therefore could not have unlawfully or forcibly occupied the property.


20. There are no allegations in the complaint sufficient to establish an exception to Governor Tim Walz's Executive Order 20-79.

Order

1. The cross-motions for summary judgment are DENIED as explained on the record.
2. Defendants' motion to dismiss is GRANTED. This matter shall be dismissed without prejudice.
3. SERVICE OF ORDER: The Clerk of Court shall serve/e-serve a copy of this Order on all parties or their attorneys as appropriate.
4. EXPUNGEMENT: Landlord's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case. Expungement is clearly in the interests of justice and those interests are not out-weighed by the public's interest in knowing about the record. Minn. Stat. §484.014. Minn. Stat. §504B.345, subd. 1(c)(2) authorizes the Court to expunge the file at the time judgment is entered.

Let Judgment Be Entered Accordingly


Recommended By:

 Date: 2021.05.06
15:34:58 -05'00'

Melissa J. Houghtaling
District Court Referee

May 6, 2021

By the Court:


May 06, 2021

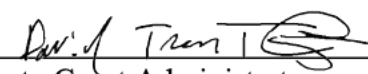
District Court Judge

Dated:

Judgment

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

Dated: May 06, 2021

By: 
Deputy Court Administrator