Filed in District Court
State of Minnesota
Dated 5-8-2020

State of Minnesota
Stevens County

District Court
Eighth Judicial District

Court File Number:	**75-CV-20-86**
Case Type	**Eviction (UD)**

Partners 388 LLC vs [redacted]

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

This case was heard by the undersigned on April 9, 2020.
Date

PLAINTIFF:
☐ Appeared in person.
☑ Appeared through agent
☐ Did not appear and is in default.

Represented by: ☑ counsel ☐ agent
Clarice Scarnecchia
Name

DEFENDANT:
☑ Appeared in person.
☐ Did not appear and is in default.

Represented by: ☐ advocate ☐ counsel
_____
Name

Defendant has ☐ admitted ☑ denied the allegations in the Eviction Action complaint.
All appearances were remote per COVID-19 protocols.

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.
   - ☐ 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: see attached memorandum

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:

☐	a. **Plaintiff** for recovery of the premises. The Writ of Recovery of Premises and Order to Vacate shall be:		
	☐	i.	issued immediately upon request and payment of fee.
	☐	ii.	stayed until _____ Date
☑	b. **Defendant** to remain in possession of the premises.		
☑	c. **Allowable costs and disbursements** to the prevailing party. See also #10, below.		

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 _____.

Parties must bring to trial three (3) copies of all exhibits.

9. ☐ RENT INTO COURT:
Defendant shall pay into Court the rent of $_____ in cash or certified funds payable to the Court Administrator, on or before _____(a.m./p.m.) on _____, _____, and all future rent by the _____ day of each month until further Order of the Court, or the Court will issue a Writ of Recovery of Premises and Order to Vacate.

10. ☑ OTHER: Plaintiff shall pay a $500.00 civil penalty into the court by 6-1-2020, per Minn. Stat. §504B.321, subd. 2 (d); see attached memorandum.
_____.

☑ **Let Judgment Be Entered Accordingly.**

Recommended by:

_____
Housing Court Referee Date

By the Court:

5-8-2020
_____
Judge Date

Judgment

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

Dated: 5-8-2020

Kim Sundbom-Trudeau
Court Administrator

By: _____
Deputy

MEMORANDUM

There are several problems with the merits of plaintiff's case, as well as how it came to court, which prevent plaintiff from prevailing and justify the imposition of a statutory penalty upon plaintiff.

Starting with the merits, there were two bases given for eviction: drugs and an "unauthorized" guest or guests.

Drugs. On February 20, 2020, Michelle Clark, Granite City Real Estate's resident property manager of Nature's Edge apartments, called law enforcement to defendant's apartment because Clark smelled the odor of marijuana. Defendant consented to a search by police. One plant stem that field-tested positive for marijuana, and two marijuana cigar butts ("roaches") were found in the apartment. Cumulatively, they constitute an exceedingly small amount of marijuana – obviously less than 42.5 grams, and therefore a "small amount" of marijuana under Minn. Stat. §152.01, subd. 16 (2019).

The small amount of marijuana found was not a particularly disturbing revelation to plaintiff, because it was not until March 19, 2020 that the notice to vacate was served on defendant. By no coincidence, the notice was not served until two days after defendant's sister, who also lives in the apartment complex, obtained an *ex parte* harassment restraining order against Clark in Stevens County District Court File #75-CV-20-79. (The Court takes judicial notice that in that case, it issued a harassment restraining order following an evidentiary hearing, upholding the *ex parte* order that had been issued by another judge. Other than noting the result of the hearing and the existence of

the case, however, the Court has taken pains not to use information it learned in that evidentiary hearing in deciding this case.)

This eviction therefore appears retaliatory and pretextual. Defendant's alleged drug use and possession was nearly a month prior to her receipt of the notice to vacate, demonstrating the small amount of marijuana was no imminent or serious concern to plaintiff.

Further, if one stem, two roaches, and the smell of marijuana were enough to evict, plaintiff would be a busy landlord indeed. Marijuana use is pervasive in society. A number of states have legalized recreational use. Minnesota has legalized "medical marijuana" (though this law does not apply to what defendant had here). Minnesota has, however, *decriminalized* use and possession of what defendant did possess. "A person who...unlawfully possesses a small amount of marijuana is guilty of a petty misdemeanor[.]" Minn. Stat. § 152.027, subd. 4(a) (2019). A petty misdemeanor is not considered a crime in Minnesota. *See*, Minn. Stat. §609.02, subds. 1, 4a (2019).

Since what defendant had in her apartment was a petty-misdemeanor amount of marijuana, it is understandable defendant would have consented to the search: she was committing no crime, and the marijuana present in the apartment must have seemed to her to be insignificant – which it was. She may also have wanted to take this opportunity to prove to plaintiff she was no criminal.

Defendant admitted smoking marijuana in her car, resulting in the odor of burnt marijuana pervading her apartment because she had just brought it in

on her person. There was no evidence she smoked on the grounds of the apartment complex.

Defendant's lease indicates the landlord can terminate the lease for "drug related *criminal* activity engaged in on or near the premises" or if the landlord determines "that a household member is illegally using a drug." *See,* Model Lease for Subsidized Programs, p. 8, ¶c3-4 (emphasis supplied). As noted above, the activity in which defendant engaged is actually not "criminal." Smoking marijuana in a car somewhere might still technically constitute "illegally using a drug," but the Court does not believe off-premises marijuana smoking can or should void a residential subsidized HUD lease.

The application of these lease provisions concerning off-premises marijuana use, in light of defendant's alleged violation – a petty misdemeanor – is simply unreasonable. Evicting defendant for such conduct effectively metes out a punishment far greater than what can be imposed by the State of Minnesota. *See, Richmond Tenants Org., Inc. v. Richmond Redevelopment & Hous. Auth.*, 751 F. Supp. 1204, 1213-14 (E.D. Va. 1990).

Unauthorized person. Clark indicated on March 26, 2020, defendant received another violation for having an unauthorized resident in her apartment. She said [redacted] the father of at least one of defendant's children, has been seen regularly and continuously at defendant's apartment. Defendant explained [redacted] is her invitee, and comes over to babysit while she works from 7:00 a.m. to 5:00 p.m. on weekdays

Plaintiff takes the position that [redacted] cannot even be inside petitioner's private apartment home, because it has issued a no-trespass order to him. This is a practice referred to as "trespassing" someone: plaintiff prepares a document and serves it, advising the subject he may not come upon the premises. When he is found anywhere on the premises, even in a tenant's apartment home, it is plaintiff's position that it can call police and have him removed and charged with trespass, and that it can "write up" the tenant for a lease violation.

The presence of [redacted] is not a basis for this eviction action because the landlord cannot lawfully exclude him from being in the apartment visiting or babysitting. This is true regardless of what the lease or tenant handbook says, or what plaintiff's policies are. One in possession of premises by permission of a tenant who is entitled to possession is not a trespasser but a licensee. *State v. Hoyt*, 304 N.W.2d 884, 890 (Minn. 1981).

The United States Supreme Court has recognized that people have the right of freedom of association in two respects: "expressive association" and "intimate association." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617, (1984). It is with intimate association we are concerned in this case: the ability of defendant and her child to associate with the child's father.

"The Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial

measure of sanctuary from unjustified interference by the State." *Id.* at 618 (citations omitted).

"Moreover, the constitutional shelter afforded such relationships reflects the realization that individuals draw much of their emotional enrichment from close ties with others. Protecting these relationships from unwarranted state interference therefore safeguards the ability independently to define one's identity that is central to any concept of liberty." *Id.* at 619 (citations omitted). "The personal affiliations that exemplify these considerations ... are those that attend the creation and sustenance of a family.... *Id.* (citations omitted).

The federal right of free association would include, certainly, to having one's child's father visit and babysit. It applies to defendant in this context because, as the Complaint reveals, her housing is government subsidized. She inhabits her apartment under a HUD lease which involves a public housing agency.

Put simply, people ought not to be treated as second-class citizens with regard to their associations within their homes, merely due to their poverty.

Accordingly, since [redacted] comes to the premises with a license granted by defendant, and since plaintiff cannot abridge her right to free association with him, the process of "trespassing" him from being inside her apartment home is illegitimate and his presence within the apartment cannot form the basis for an eviction.[1]

---

[1] If Hopkins has made trouble in common areas of the apartment complex in the past, it may be he can be "trespassed" from lingering in them.

Moratorium. There is another problem with this eviction action: Minnesota Governor Tim Walz's moratorium suspended such evictions. At the time this case was filed:

> for property owners, mortgage holders, or other persons entitled to recover residential premises after March 1, 2020 because a household remains in the property after a notice of termination of lease, after the termination of the redemption period for a residential foreclosure, after a residential lease has been breached, or after nonpayment of rent, the ability to file an eviction action under Minnesota Statutes 2019, section 504B.285 or 504B.291 is suspended. This suspension will allow households to remain sheltered during the peacetime emergency. Nothing in this Executive Order relieves a tenant's obligation to pay rent. This suspension does not include eviction actions based on cases where the tenant seriously endangers the safety of other residents or for violations of Minnesota Statutes 2019, section 504B.171, subdivision 1.
>
> 2. Beginning no later than March 24, 2020 at 5:00 pm, and continuing for the duration of the peacetime emergency declared in Executive Order 20-01 or until this Executive Order is rescinded, all residential landlords must cease terminating residential leases during the pendency of the emergency, except where the termination is due to the tenant seriously endangering the safety of other residents or for violations of Minnesota Statutes 2019, section 504B.171, subdivision 1.

Emergency Executive Order 20-14 of Minnesota Governor Tim Walz, March 23, 2020 (emphasis supplied).

There is no evidence or claim the safety of other residents was seriously endangered by defendant's conduct. This was clearly not the case. But Section 504B.171, subd. 1 (a)(1)(i) – referenced in the Governor's order – does speak of "unlawfully allow[ing] controlled substances" on the premises. Though not *criminal*, the possession of a

small amount of marijuana in the form defendant had it is could technically be termed *unlawful.*

The Court is absolutely confident that stem and two roaches are far from what Governor Walz had in mind, however, as he issued his order so as to allow people like the Johnson "household to remain sheltered during the peacetime emergency."

The Court allowed this hearing to go forward in the belief the case was exempted from the moratorium order, based upon the allegations contained in counsel's affidavit (discussed below). Now that it has heard the evidence, it concludes the matter did not qualify for an exception from the moratorium, and should neither have been filed nor heard. Accordingly, regardless of the merits, the landlord cannot prevail.

Expedited hearing. The only reason this case was even allowed to be filed, and the only reason the Court was willing to hear it, was because counsel for plaintiff filed an Affidavit in Support of Request for Expedited Hearing, pursuant to Minn. Stat. §504B.321, subd. 2 with the complaint on April 2, 2020.

That statute provides, in pertinent part:

> Subd. 2. Expedited procedure. (a) In an eviction action brought under section 504B.171 or on the basis that the tenant is causing a nuisance or other illegal behavior that seriously endangers the safety of other residents, their property, or the landlord's property, the person filing the complaint shall file an affidavit stating specific facts and instances in support of why an expedited hearing is required.
>
> (b) The complaint and affidavit shall be reviewed by a referee or judge and scheduled for an expedited hearing only if

> sufficient supporting facts are stated and they meet the requirements of this paragraph.
>
> (c) The appearance in an expedited hearing shall be not less than five days nor more than seven days from the date the summons is issued. The summons, in an expedited hearing, shall be served upon the tenant within 24 hours of issuance unless the court orders otherwise for good cause shown.
>
> (d) If the court determines that the person seeking an expedited hearing did so without sufficient basis under the requirements of this subdivision, the court shall impose a civil penalty of up to $500 for abuse of the expedited hearing process.

(Emphasis supplied)

The affidavit alleged defendant had engaged in "drug related criminal activity." As noted above, there was drug activity but it was not *criminal*, so the affidavit was not true. Had the Court understood the activity was so minor and almost innocuous in nature that it was not even criminal, it would not have scheduled the expedited hearing.

As counsel acknowledged in his affidavit:

> The Court WILL impose a penalty of up to $500 if the Court grants this request and later finds that this Affidavit was filed in bad faith or was an abuse of the expedited hearing process or that the person signing this Affidavit had no basis to believe that the facts claimed here are true....

(Emphasis in original)

And that's something close to what the law actually says. Minnesota Statutes §504B.321, subd. 2 (d) provides:

> If the court determines that the person seeking an expedited hearing did so without sufficient basis under the requirements of this subdivision, the court shall impose a civil penalty of up to $500 for abuse of the expedited hearing process.

(Emphasis supplied)

Since the Court finds there was insufficient basis, it is required to impose a civil penalty. And since plaintiff is a corporate landlord which rents out many units to low-income persons, and pursued this eviction action during the COVID-19 pandemic, nothing less than the maximum penalty should be assessed.

Conclusion. Landlords may consider circumstances surrounding a lease violation. 24 C.F.R. § 966.4(l)(5)(vii)(B) (2019). This landlord really should have done so. The "violations" here are minor, at best. This was not an emergency, and did not qualify to as an exception to the COVID-19 pandemic eviction moratorium. Attempting to evict defendant for these reasons, under these circumstances, and under the guise of it being a priority eviction is unconscionable.

CCG