

Bender, Ruth
Feb 2 2021 2:41 PM

State of Minnesota

In District Court

County of Crow Wing

Ninth Judicial District
Case Type: Eviction (UD)

Amber Roggenkamp, Jake Roggenkamp, and
A and J Investments,

Court File No.: 18-CV-21-95

Plaintiffs,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
ORDER FOR JUDGMENT
AND JUDGMENT**

vs.



Defendants.

The above-captioned matter came before the Court on January 27, 2021, for a Court Trial. Edward Shaw, attorney, appeared with and on behalf of Plaintiffs. Laurence Chamberlain, attorney, appeared with and on behalf of Defendants.

Based upon all of the files, records and arguments of counsel, and being fully advised in the premises, the Court now makes its:

FINDINGS OF FACT

1. In June 2017, Amber and Jake Roggenkamp were married. Amber had two minor children from a prior relationship, namely, JRH (currently age 14) and LJH (currently age 11). The children's father is one "Mr. Harrington".
2. After June 2017, Amber and Jake resided in their marital home, in Breezy Point, Minnesota. As best the Court can discern, Amber's children were spending some of the time with her and Jake, and some of the time with Mr. Harrington.
3. On March 1, 2018, [REDACTED] began renting the subject rental property, located in Pequot Lakes, Minnesota. As best the Court can discern, the landlord owned three rental units on the property; and, two of the units (a one bedroom and a two bedroom) could either

be split or rented as one three-bedroom unit. [REDACTED] were renting the two units that combined as a three-bedroom. This was per a one-year lease. ([REDACTED] presently have five (5) minor children, ranging from infant to age 10.)

4. On March 31, 2019, the one-year lease ended; and thereafter, [REDACTED] occupied the rental property on a month-to-month basis.
5. On March 23, 2020, Governor Tim Walz issued Emergency Executive Order 20-14, which prohibits property owners from filing eviction actions, terminating residential leases or refusing to renew leases during the pendency of the Order, with limited exceptions.
6. On July 14, 2020, Governor Walz issued Executive Order 20-79, which replaced Order 20-14, and which allowed a new type of situation in which non-renewals of leases (and subsequent evictions) could be pursued. Specifically, it stated that a residential landlord could elect to not renew a residential lease that was about to end, so long as the landlord and / or one of his family members had “the need” to move into the premises. In such cases, a violation of the Order would not occur if the landlord or his family member moves into the premises within 7 days after being vacated by the tenant.¹
7. On August 12, 2020, Amber and Jake formed “A & J Investments LLC”, a Minnesota Limited Liability Company. (The Court also notes that Jake is a certified public accountant and owns an accounting firm called “Roggenkamp & Associates”. Evidently, at all times relevant hereto, Amber has worked as a staff person at the firm.) A & J Investments LLC was set up for the purpose of owning some residential rental properties.

¹ The Executive Order does not state that the landlord is required to inform the tenant that there is “a need” to renew the lease – particularly if the tenant does not ask. Thus, the Executive Order arguably allows the landlord to simply advise the tenant that the lease will not be renewed – and then, if the tenant does not ask about a need and does not vacate – to start an eviction action and explain in the Complaint, “the need” for him or his family member to move in. However, it would seem that in most cases, sound practice (and indeed, good faith) would call for the landlord to give the tenant at least some information about “the need”, so that the tenant can discern whether the landlord’s choice is or is not a violation of the Executive Order.

8. On October 29, 2020, Amber and Jake, through A & J Investments LLC, purchased the subject rental property in Pequot Lakes. As such, A & J Investments LLC became [REDACTED] landlord, per the above-referenced lease. At some point, A & J also bought a residential rental unit in Bemidji, Minnesota, and another one in Brainerd, Minnesota.
9. Evidently during this same time (still in late October / early November 2020), circumstances had developed that were disruptive to Amber and Jake's marriage, including:
 - a. Evidently, by early November 2020, something occurred which gave rise to a Tribal Court Custody Case, concerning Amber's children. As best the Court can discern, something occurred or some circumstance existed, such that Jake was not allowed to be around Amber's children. Also, it appears that by some point, Amber herself, was also not allowed to see her children.
 - b. Also evidently, by about this same time, Amber and Jake decided they were going to be divorced.
10. Evidently, during this same time period (late October / early November 2020), Amber's and Jake's plans included **(a)** that they were going to get divorced; **(b)** that at some point, as part of the divorce, the marital home in Breezy Point was going to be put for sale; **(c)** that they were going to sell the Bemidji and Brainerd rental properties;² **(d)** that, as part of the divorce settlement, Amber was going to be awarded the subject combined three-bedroom rental unit occupied by [REDACTED] – and, soon as possible, Amber (hopefully with her children) was going to move into that premises;³ **(e)** that, once the marital home was sold, Jake was going to move into a guest home owned by his parents; and **(f)** that once the divorce was final,

² Amber and Jake currently have the Bemidji rental unit sold, and the closing date for the sale is February 5, 2021. They have the Brainerd rental property listed for sale. Tenants currently reside at that property.

³ Amber and Jake's marital home is in Breezy Point, in the Pequot Lakes School District. Evidently, coming into the 2020 – 2021 school year, Amber's children attended school at Pequot Lakes. The rental property in question is also located in the Pequot Lakes School District.

Amber would no longer be working as a staff person for Roggenkamp and Associates, but rather, she would be attempting to start a career in real estate with Edina Realty.⁴

11. Amber claims that in late October / early November 2020, she and Jake sent [REDACTED] a notice, stating Amber was planning to move into their rental unit; and that accordingly, they would have to start looking for other housing. She claims that with this notice, they provided an “information sheet” that [REDACTED] were supposed to return with their forwarding address on it. Erika and Kale claim they never received this.
12. Amber claims that, after a short while [REDACTED] still had not returned the form with their forwarding address; that Jake therefore contacted them to inquire about the status of the form; and that [REDACTED] texted Jake back, that they never received any notice.
13. On November 16, 2020, Jake texted [REDACTED] to make sure he had their correct mailing address; and [REDACTED] responded, providing him the address.⁵
14. On or about that same date, November 16, 2020, Amber and Jake sent a second notice by UPS / overnight delivery. The notice did not state anything about Amber having a “need” to move into the property. The notice stated:

Notice to Vacate
(2nd Notice)

[REDACTED]
4590 Main St.
Pequot Lakes, MN 56472

This letter is to inform you that we will not be renewing your month to month lease. You are required to vacate the premises by December 6, 2020.

⁴ The evidence regarding Amber’s work situation is confusing. On one hand, she testified that she was going to continue working for Roggenkamp & Associates until the divorce was final. On the other hand, she testified that she had only been at Edina Realty for a couple months, and because she did not yet have clientele built up, her income was limited.

⁵ Amber testified the address provided, was the same address to which she and Jake had send the first notice in late October / early November 2020.

After inspection of the property, your security deposit will be forwarded to you.

Please return this form with our forwarding address indicating your understanding of this notice.

This notice was not dated.

15. On November 30, 2020, Amber sent another notice (dated Nov. 27) to [REDACTED], both by email and by U.S. Mail. The notice did not state anything about Amber having a “need” to move into the property. The notice stated:

Notice to Vacate
(Updated)

November 27th, 2020

[REDACTED]
[REDACTED]
4590 Main St.
Pequot Lakes, MN 56472

This is your notice to vacate by no later than 11:59 p.m. on December 31st, 2020.

We had earlier discussed your vacating by December 17, 2020.

If you inform us, by December 5th, 2020, that you will vacate by December 17th, 2020, you will not owe any rent for December 2020.

If we do not hear from you that you will vacate by the 17th, we will assume that you will vacate by the 31st. If that is the case, December rent must be paid in full by no later than December 8th, 2020.

16. Amber claims that by this time (November 30, 2020), she had heard from the Tribal Court that it was not going to allow any contact between her children and Jake; and that therefore, she desperately needed to move out of the marital home. Again, she and Jake were still living in that home together, even though they were planning to divorce. During trial, [REDACTED] attorney asked her on cross-examination, why Jake could not just move

into his parent's guest home immediately (rather than after the home would be sold); and, why she (rather than Jake) could not just remain in the marital home. Amber's answer, was that she had been told by the Guardian Ad Litem (in the Tribal Court custody case) that she could not have her children move in with her into any property that had Jake's name associated with it. The Court finds that this testimony makes no sense and also that it is not credible. Certainly, if Amber was awarded temporary sole and exclusive possession of the home pending the time it would be sold, the mere fact that Jake's name was still "on paper regarding it", would not be a reason for a court to not allow the children to reside there with Amber.

17. On November 30, 2020, [REDACTED] sent Amber a text, stating that she and [REDACTED] had looked for a lot of potential rental places.
18. On December 1, 2020, [REDACTED] sent Amber a text, which stated: "I will know for sure by Saturday (Dec. 5) afternoon if we are able to move this month. Looking at a couple more places this week. I'll let you know ASAP and possibly send rent at that time."
19. On December 21, 2020, the Tribal Court filed an Order in the case involving the custody of Amber's children. As best the Court can discern, Mr. Harrington had, at least temporary, sole physical custody of the children. The Order stated:
 1. Supervised visits between [Amber] and her daughters . . . , is allowed under the supervision of Kristy LeBlanc. There will be a minimum of two visits before the hearing scheduled in this matter in January 2021.
 2. The ongoing court case is not to be discussed in the presence of the children.
 3. [The child KRH, age 14] may opt out of the visits if she wants to.
 4. There will be no contact between Jacob Roggenkamp and the girls.

20. At some point in December 2020, [REDACTED] tendered their rent payment for December 2020, and Amber and Jake accepted that payment.
21. On January 1, 2021, Amber's and Jake's (and A & H Investment LLC's) attorney, Mr. Shaw, sent a letter to [REDACTED], stating that because they had not vacated the rental property, he was going to start an eviction action against them on behalf of Amber and Jake. As far as the Court can discern, this was the first time [REDACTED] were given written notice of the reason the lease was not being renewed – specifically, Mr. Shaw's letter stated: "Your landlord, Amber Roggenkamp, is getting divorced and needs a home to move into, she will be moving into your home." Mr. Shaw's letter also included a copy of Governor Walz's Executive Order 20-79.
22. Also in early January 2021, [REDACTED] offered to pay the January 2021 rent, but Amber and Jake declined to accept it, as their intention was to not renew the lease.
23. Sometime in early January 2021, Jake's and Amber's marital home was listed for sale. Amber and Jake continued to live in the home together.
24. On January 14, 2021, Mr. Shaw had the Eviction Summons and Complaint personally served on [REDACTED]. There were at least two problems with the Complaint, and they included: **(a)** First, it named Amber as the sole "plaintiff", when it was "A & K Investments LLC" that owned the property; and **(b)** second, it stated that [REDACTED] were given notice that the lease would be "terminated on December 31, 2020 due to [Amber] needing to move into the property", when in fact, none of the notices said anything about such "need".
25. On January 20, 2021, Elizabeth Odette, an Assistant Attorney General with the Minnesota Attorney General's Office, emailed a letter to Mr. Shaw.
26. On January 21, 2021, Laurence Chamberlain, as attorney for [REDACTED] served an

Answer to the Complaint on Mr. Shaw.

27. On January 22, 2021, Amber and Jake, both acting without counsel, filed a Joint Petition for Divorce, along with their Agreement (as to the terms of their divorce), which asked the Court to enter a judgment dissolving their marriage accordingly.
28. On January 25, 2021, Mr. Shaw filed and served an Amended Eviction Complaint. This attempted to address one of the problems in the first Complaint, specifically, it named the plaintiffs as “Amber Roggenkamp, Jake Roggenkamp, and A and J Investments”. It continued to wrongly assert, however, that the November 27 (or 30) notice advised, that the lease would be “terminated on December 31, 2020 due to [Amber] needing to move into the property”.
29. Again, the Court Trial was held on January 27, 2021. The Court heard testimony from Amber Roggenkamp, Jake Roggenkamp, and [REDACTED] and, Exhibits were admitted into evidence as noted by the record. As of this time, Amber and Jake continued to live together in their marital home in Breezy Point. Amber, according to her testimony, had not seen her children “for a few months now”.⁶
30. The Court finds that the Plaintiffs, Amber and Jake, have not established a “need” contemplated by Governor Walz’s Executive Order 20-79, allowing them to evict and therefore displace a family with young children, in the midst of the pandemic. **First**, the Court sees no reason why Jake cannot move into his parent’s guest home pending the divorce (and the sale of the marital home), so as to allow Amber to continue residing in the marital home. **Second**, if Jake having contact with the children was the Tribal Court’s sole concern, this Court sees no reason why the Tribal Court would not allow Amber’s children to move

⁶ The Court is unable to discern whether she might have had up to two supervised visits with her children by this time, per the Tribal Court Order dated December 21, 2020. See, Trial Exhibit 8.

into the marital home with her, as long as there was a Court Order (which Jake and Amber could agree to) stating that Amber was temporarily awarded sole and exclusive possession of the home.⁷ **Third**, Amber's claim – that all that needs to happen for her to have her children living with her, is for her to succeed in this eviction action and then move into the rental property – is not supported by the evidence. (As Trial Exhibit 8 indicates, she was to just start having supervised visits with the children in January 2021 – and one of the children (JRH, the 14-year-old) has the right to “opt out” of even those supervised visits if she wants to.)

31. Currently, Governor's Walz's Executive Order 20-79 is declared to be effective through February 12, 2021, and it is unknown whether he will extend the Order (or any modification of it) beyond that date.

Based on the foregoing Findings of Fact and based on the application of law to those Findings of Fact, the Court now makes the following:

Conclusions of Law

1. The notice that the Plaintiffs sent in mid-November 2020 (see Finding 14), purportedly directing the Defendants to vacate the premises by December 6, 2020, was insufficient. See, Minn. Stat. §504B.135(a).
2. The Plaintiffs, Amber and Jake, have not established a “need” contemplated by Governor Walz's Executive Order 20-79, allowing them to evict and therefore displace the Defendants in the midst of the pandemic, so that Amber can move into the premises.

⁷ Even if such an Order did not give Amber exclusive temporary possession of the home, if it was at least worded in such a way that Jake could only be at the home in limited circumstances (including, never, when the children were there), this Court has trouble understanding why the Tribal Court would consider that to be an obstacle to Amber having her children with her.

3. Eviction actions may be brought only by the “person entitled to the premises.” Minn. Stat. §504B.281, subd. 1(a). The legal person who can allege entitlement to the premises is A & J Investments, LLC. An LLC cannot have a “family member” with “a need” to move into a rental property.

Based on the foregoing Findings of Fact and Conclusions of Law, the Court now makes the following:

ORDER FOR JUDGMENT

1. The Plaintiffs have failed to prove the allegations in their Amended Complaint.
2. The Plaintiffs’ Amended Complaint is hereby dismissed with prejudice.
3. The Defendants may seek to tax their allowable costs and disbursements herein.⁸
4. If the Defendants wish to seek an expungement of the eviction record herein, they may serve and file the appropriate Notice of Motion and Motion for Expungement in this Court File No. 18-CV-21-95, and the Court will address it accordingly.⁹
5. Because there is no reason to delay entry of judgment, there is no need to effectuate the automatic stay provision of Rule 125 of the General Rules of Practice for the District Courts. As such, the Court Administrator shall enter judgment without delay.

Dated: February 2, 2021

 Askegaard, Erik
Feb 2 2021 2:34 PM

The Honorable Erik J. Askegaard
Judge of District Court

⁸ In their Answer, Defendants requested that the Court “Award costs to Plaintiff”. Clearly this was a typographical error and the request was clearly that if Defendants prevailed, that they would want to be awarded tax costs and disbursements, and presumably, a judgement for the same.

⁹ The Court notes that the Defendants did ask for expungement of the record in their Answer. The Court is uncertain how to address the issue of expungement at a time when further proceedings in this case may be possible.

JUDGMENT


Based on the above Order, it is hereby ORDERED, ADJUDGED AND DECREED, that said Order shall constitute the Judgment of this Court.

WITNESS the Honorable Erik J. Askegaard, Judge of District Court, and my hand and seal this 2nd day of February, 2021.

Dated: _____

Alice R. Middendorf

Crow Wing County Court Administrator

By:  McCuskey, Britny
Feb 2 2021 3:12 PM