

STATE OF MINNESOTA

IN DISTRICT COURT

COUNTY OF ST. LOUIS

SIXTH JUDICIAL DISTRICT
Case Type: Housing/Tenant Remedies

David M. Smith,
Mercedes Ann McGee (CV-20-1846)
Damien Perry (CV-20-1874)
Shane Downs (CV-20-1898)
Talia Bird (CV-20-1985)
Page Koski (CV-20-2008)
Cheryl Ann Olson (CV-20-2016)
Kelli Balduc and Robert Stanford (CV-20-2053)
Oshay Graves (CV-20-2212)

Court File No.: 69DU-CV-20-1845
Judicial Officer: Ref. John B. Schulte

Plaintiffs,

vs.

ORDER

Temple Corp, Inc., through their agents
Dr. Eric Ringsred, Miles Ringsred and
Sandy Pavelka

Defendants.

The above-entitled related matters, consolidated under Court File No. 69DU-CV-20-1845, came before the Court, Housing Referee John B. Schulte presiding, by ZOOM teleconference motion hearing on January 4, 2021, on the motion by Defendants for Summary Judgment dismissing these matters and for money judgments on their claims for damages. Plaintiffs oppose these requests. The Court left the record open until January 11, 2021, to allow the parties to submit additional written argument and evidence. Plaintiffs are represented by attorney Jude Schmit of Legal Aid Service of NE Minnesota. Defendants are represented by attorney William Paul of Duluth, MN. The Court also held hearings in these files on December 18, 2020, on November 18, 2020, and on November 9, 2020.

This matter comes before the Court on the Plaintiffs' Petition for Emergency Tenant Remedies pursuant to Minn. Stat. 504B.381, originally filed on October 23, 2020, and later amended on November 16, 2020. Defendants filed an Answer on December 1, 2020, denying liability, claiming Plaintiffs do not have the right to bring these actions insofar as they are also in breach of their respective leases, and counterclaiming for money damages and back rent. In

summary, the basis for this action is that all Plaintiffs were residents of a multi-unit building located at 117-29 N. 2nd Ave. E. in Duluth, MN, and known as the “St. Regis Apartments.” In October 2020 the heat system at the St. Regis, which Plaintiffs claim already had problems, fully failed. The building was condemned by the City of Duluth on or about November 16, 2020. Defendants have been providing Plaintiffs with interim lodging accommodations from the time of filing of this action to the present, largely by stipulation, but the parties no longer have any agreement on their respective rights and obligations leading to the current motion to dismiss.

Now, therefore, after a careful review of the numerous written submissions, the applicable law, and all arguments set forth by counsel and the parties, the Court hereby issues the following:

Conclusions of Law and Order

- 1) A “loss of heat” is an appropriate ground to file a Petition under Minn. Stat. 504B.381, Subd. 1, Emergency Tenant Remedies Action. Jurisdiction and venue in this case in Duluth and St. Louis County are proper under said statute. All parties have been fully served with all pleadings or waived the same.
- 2) Defendants’ Motions to Dismiss these matters under Summary Judgment, Minn. R. Civ. P. 56, are hereby DENIED. Plaintiffs’ claims at a minimum create genuine issues of material fact on, among other issues, whether they are all in fact “residential tenants” within the meaning of Minn. Stat. 504B.001, Subd. 12, whether the emergency can in any way be found to be the result of “the deliberate or negligent act or omission of a residential tenant...” Minn. Stat. 504B.381, Subd. 6, and what relief is appropriate under Minn. Stat. 504B.425 Subd. (b) through (g). Plaintiffs are correct in their argument that breach of contract and negligence are separate legal theories. *see Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 584 (Minn. 2012).
- 3) These matters shall be set for Court Trial on consecutive Fridays starting **Friday, January 29, 2021, at 1:15 p.m.**, and again on **Friday, February 5, 2021, at 1:15 p.m.** The parties shall in good faith confer before then to discuss stipulating to exhibits and disclosing any potential witnesses beyond the named parties in this matter to allow the hearings to proceed as smoothly as possible and hopefully be completed in the time set.
- 4) Defendants’ *cannot* counterclaim for possession of the premises as these actions were not brought under Minn. Stat. 504B.385, Rent Escrow Action to Remedy Violations. Defendants may file eviction actions as they deem appropriate but any such actions are fully subject to all service requirements and to the COVID-19 eviction moratorium set forth in Executive Order 20-79 dated July 14, 2020, which remains in effect following the most recent extension of the State of Emergency. *See* Executive Order 21-04 dated January 13, 2021.

- 5) Defendants may present evidence regarding unpaid rent obligations insofar as rent abatement is one of the remedies set forth in Minn. Stat. 504B.425(e), and the amount of rent owing may be relevant to the issue of rent abatement, but, it is not the intention of the Court that the trials set forth herein turn into hearings where the main issue in dispute is the amount of rent owed. The Court anticipates that the parties will present a summary of what each believes is owed, along with a basis for that claim, and go forward from there. This Court does NOT have the authority to award money judgments to Defendants for unpaid rent in the context of an Emergency Tenant Remedies Action.
- 6) As originally ordered, Plaintiffs SHALL pay into the Court at least the amount of rent they would personally owe apart from any HRA/Section 8 subsidy, if possible retroactive to November 1, 2020. The Court will consider this in determining equitable relief for Plaintiffs including additional monetary relief beyond lodging and storage such as gas subsidies, etc. In other words, if a party has a \$120 monthly rent obligation, and fails to pay it into escrow, the Court will take this into account in whether it would allow, for example, for a \$120 gas subsidy. Minn. Stat. 504B.425, Subd. (g).
- 7) Pending trial the parties shall continue operating under the last temporary Order and Defendants shall continue to provide to the Plaintiffs safe, habitable lodging as previously ordered.
- 8) Plaintiffs **shall**, as soon as possible and in good faith apply for any aid/relief funds that might be available from any public or private agency, including under the last round of COVID stimulus funds recently approved by Congress. Should any funds be received the parties shall discuss in good faith whether they might be used to offset the cost of repairs to the hearing system.
- 9) Defendants shall continue to diligently work towards repairing the defective heating system and installing the replacement boiler(s), and shall be prepared at the hearing to detail their ongoing efforts to do so.
- 10) Defendants shall make the St. Regis housing units available to Plaintiffs **by arrangement** for the retrieval of any personal property. Plaintiffs may not have unlimited access to a condemned property nor use it for the purpose of lodging, food preparation, etc.. All parties shall act in good faith. If a Plaintiff makes an arrangement to come by the property at a certain time they will make every effort to appear at the set date and time.
- 11) Defendants' reliance on Fritz v. Warthen, 213 N.W.2d 339 (Minn. 1973), while understandable, is misplaced. Fritz arises in the context of an eviction and a tenant's requirement to pay into Court the undisputed unpaid rent if they wish to raise a habitability defense. Defendants are correct that the covenants to pay rent, and of habitability, operate in concert with one another. Again, however, this case involves the loss of heat which Defendants are obligated to provide pursuant to Minn. Stat. 504B.161. This obligation exists *whether or not* the tenants are behind on rent.

- 12) Plaintiffs for their part, unless they intend to return to St. Regis, shall diligently search for alternative housing, and Defendants will assist in this effort, including providing financial assistance if appropriate as this may represent savings to Plaintiff in the long run. Defendants' obligations need to have a fair and sensible end date.
- 13) Nothing in this Order should be read to preclude Defendants from pursuing financial remedies from Plaintiffs in a separate civil action, if appropriate, including for back rent or other financial damages. Again, however, these are not appropriate counterclaims in an Emergency Tenant Remedies Action and will not be addressed at the trials set forth herein.
- 14) Minn. Stat. 504B.131 is inapplicable to this action. Minn. Stat. 504B.125 regarding the obligation to pay rent applies. There is no question under the statute that Plaintiffs still have a rent obligation, and this is also made clear in Executive Order 20-79. Again, however, a breach of this obligation does NOT relieve Defendants of the obligation to meet the covenants of Minn. Stat. 504B.161, including heat, and to provide appropriate remedies when they cannot. This proposition seems to represent the primary dispute between the parties boiled down to a single concept. Otherwise put, Defendants cannot do as Defendants (constructively evict by having the Court dismiss this ETRA action), what they would be unable to do as Plaintiffs (evict based on nonpayment of rent under E.O. 20-79).

IT IS SO ORDERED.

RECOMMENDED BY:

BY THE COURT:

John B. Schulte
Referee of Housing Court

Honorable Judge of District Court