

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)
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 hearing on February 26, 2021. Plaintiffs appeared together with their attorney Jude Schmit. Defendants are represented by attorney William Paul who appeared with agents Dr. Eric Ringsred and Sandy Pavelka, who testified. Plaintiffs Mercedes McGee, Oshay Graves and Page Koski also testified on the issue of whether they meet the definition of “residential tenants” as defined by Minn. Stat. 504B.001, Subd. 12. The Court further addressed Defendants’ Motion to certify “important and doubtful” questions to the Minnesota Court of Appeals pursuant to Minn. R. Civ. App. P. 103.03(i) following this Court’s denial of their Motion for Summary Judgment by Order filed January 20, 2021.

Now, therefore, based on the testimony of the witnesses offered at the hearing, the written submissions, and on all of the files, records and proceedings herein the Court hereby issues the following:

Order

- 1) Defendants' Motion to certify questions to the Minnesota Court of Appeals as "Important and Doubtful" pursuant to Minn. R. Civ. P. 103.03(i) is hereby DENIED.
- 2) It is the finding of this Court, as further explained herein, that Oshay Graves, Mercedes McGee and Page Koski are "residential tenants" as defined by Minn. Stat. 504B.001, Subd. 12, and therefore have standing to continue to be Plaintiffs in this Emergency Tenant Remedies Action.
- 3) Defendants shall continue to provide the Plaintiffs with safe lodging until such time as the heat at the St. Regis is operable and they can legally occupy the property. They shall pre-pay in an amount sufficient such that Plaintiffs are not harassed and threatened with eviction by management in the places they are housed.
- 4) In light of Plaintiffs' failure to pay any rents into escrow, with the exception of \$166.00 by Plaintiff McGee, Defendants are not obligated at this time to provide extras such as gas cards, bus passes and food stipends.
- 5) All other provisions of the Court's prior orders not amended by this Order remain in full force and effect.
- 6) This matter shall be set for review/Motion hearings via ZOOM on **Monday, April 5, 2021, at 3:00 p.m.**, with a 90 minute hearing setting should any additional testimony also be appropriate.
- 7) The attached Memorandum is incorporated herein and expressly made a part hereof.

IT IS SO ORDERED.

RECOMMENDED BY:

BY THE COURT:

John B. Schulte
Referee of Housing Court

Honorable Judge of District Court

Memorandum

This is an ongoing Emergency Tenant Remedies' Action pursuant to Minn. Stat. 504B.381, Subd. 1, based on the loss of heat at the buildings collectively known as the "St. Regis" owned by Defendants Temple Corporation. A loss of heat is an expressly provided ground supporting an ETRA. Id. Since November 2020 this Court has ordered that Defendants continue to provide safe alternative lodging arrangements for Plaintiffs until such time as the heating system is repaired and they can return to their units. The Court has further ordered that Plaintiffs should pay their portion of the rent into Court. With a few exceptions, specifically \$166.00 paid by Ms. McGee, this has largely not occurred. Defendants have consistently maintained, among other arguments, that Plaintiffs' breaches of their leases in the form of non-payment of rent, among other alleged breaches, defeats their Emergency claims and excuses Defendants from their continued obligation to provide housing and allows them to Counterclaim for possession as contemplated by the somewhat related Rent Escrow Statute, Minn. Stat. 504B.385, Subd. 2. They further claim that these arguments/defenses, and the relative lack of any appellate guidance interpreting these statutes, create "important and doubtful" questions that should be certified to the Minnesota Court of Appeals pursuant to Minn. R. Civ. App. P. 103.03(i). The Court denied Defendants' previous Motion for Summary Judgment by order filed January 20, 2021.

These issues are not as complicated as the Defendants continually maintain. The provision of heat is a basic landlord covenant. Minn. Stat. 504B.161. This is not a controversial notion. Once the landlords could not maintain a safe level of heating at the St. Regis they are obligated under the law to house their tenants somewhere they can do so. This obligation is independent of the Plaintiffs' obligation to pay ongoing rent, an obligation which has never

terminated. For the Defendants to fail to provide their tenants with safe lodging with adequate heat, or to refuse to do so, would be an illegal de-facto eviction putting Plaintiffs out on the street. This is not something the Defendants are permitted to do under the law. Specifically, Executive Order 20-79, signed by Governor Tim Walz on July 14, 2020, provides as follows:

The ability of property owners, mortgage holders, or other persons entitled to recover residential premises to file an eviction action on the grounds that a residential tenant remains in the property after a notice of termination of lease, after a notice of nonrenewal of a lease, after a material violation of a lease, after the termination of the redemption period for a residential foreclosure, or after nonpayment of rent, is suspended. Nothing in this Executive Order relieves a tenant's obligation to pay rent.

Defendants, therefore, do NOT have the current right to eviction/possession. The Order contains certain exceptions allowing eviction in cases of, for example, controlled substance use, property damage, danger to others, etc., and should Defendants believe any of the Plaintiffs have committed acts that give rise to said exceptions there is nothing preventing them from filing an eviction action. They cannot, however, evict for non-payment. Period.

The Court understands that Defendants are frustrated and that housing the Plaintiffs is expensive. The Court understands that it has ordered Plaintiffs to pay rent into Court and this has largely not occurred. The Court is not excusing any non-compliance with its Orders. At the time when any retroactive rent abatement is considered this fact will be taken into account in determining any appropriate equitable relief under Minn. Stat. 504B.425(e). What non-payment of rent does not do, however, is give Defendants the right to evict. That is expressly forbidden by the eviction Moratorium when read in conjunction with the Tenant Remedies statutes. These questions are not doubtful. They are clear. Defendants must provide this lodging until such time as Plaintiffs can safely return to the St. Regis, which hopefully is very, very soon. The motion to certify must be, and hereby is, denied. This matter shall remain at the District Court.

The Court next turns to the issue of whether three of the named Plaintiffs are “residential tenants.” Minn. Stat. 504B.001, Subd. 12, defines a residential tenant as “a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, that requires the payment of money or the exchange of services, all other residents of that dwelling unit, or a resident of a manufactured home park.” If a party was found to not be a residential tenant they would lack sufficient standing to bring an Emergency Tenant Remedies action under Minn. Stat. 504B.381.

Plaintiff Mercedes McGee is clearly a residential tenant. She signed a lease. Defendants argue that she signed the lease under false pretenses as she intended to have Mr. Graves also reside with her despite him not being a party to the lease. Although Mr. Graves did spend time there while she was caring for a loved one she denies he was a full-time resident or that the lease was signed under any fraudulent intent. Plaintiff’s counsel is absolutely correct, however, that this presents a question of contract law that would be litigated in an eviction proceeding where Ms. McGee is accused of violating her lease. It is not a factual issue that the Court will rule upon in summary fashion depriving Ms. McGee of her tenancy status. She is “under a lease or contract...that requires the payment of money...” She is a tenant.

Plaintiff Page Koski is also a residential tenant. He moved into the St. Regis sometime around April 2020. There is not a written lease. Defendants state he was only supposed to stay in apartment B5 for one week because he was in an emergency housing situation. Mr. Koski states the understanding was that he would stay in B5 until eventually moving into B7 and that he would work for Temple Corporation and did in fact work for Temple Corporation until at least July 2020. His understanding was that rent would be withheld from wages although this did not occur. He did not pay any rent. He was never asked to move or vacate after a week or

even after several months. He was provided at least two Notices to Quit in Summer 2020 that identified him as a tenant. He was provided a statement detailing the amount of rent he supposedly owes. From all the testimony the Court finds the parties had an oral lease that required the payment of money or the exchange of services in exchange for housing. The fact that money was not paid does not change the formation of the contract. That is again a breach issue. Communication here could and should have been more clear, but, Mr. Koski established a tenancy at the St. Regis and has now held this status for nearly one year.

The facts surrounding Oshay Graves are highly similar to that of Page Koski. He moved into unit B7 around October 2020 after a falling out with his significant other. The understanding of the parties was an oral lease where he would work for Temple Corporation and rent would be deducted from his checks. This did not occur but this appears to have been because this all took place right about the time this case began. He still considers himself an employee. St. Regis took in Mr. Graves as a tenant with an oral lease and with the expectation that rent would be paid through the payment of money or the provision of services. Again, while this did not happen it does not change the fact that Mr. Graves meets the statutory definition of a tenant and is a tenant. Further, David Smith states it is a common practice of Defendant Temple Corp. to house their employees and have them live on site where they generally provide maintenance, repair and other services.

The Court wants to use these last paragraphs to discuss the current status of this matter. While early hearings were generally civil affairs with counsel working together to look for solutions, recent hearings have become highly contentious affairs with continuous claims of bad faith, untruthfulness, and terms like “contempt” and “sanctions” being casually tossed out with frequency by BOTH parties. This HAS to stop. The Court does not have the power to

incarcerate as part of a civil constructive contempt request unless it follows a careful two-step process AND provides the opportunity to cure the contempt through compliance. Mower County Human Services o/b/o Swancutt v Swancutt, 551 N.W.2d 219 (Minn. 1996). This begs the question – *what is the remedy?* There would be zero point in assessing additional monetary fines to parties who already owe thousands of dollars and struggle financially (Plaintiffs). There would be zero point in assessing monetary fines to parties who need the money to provide lodging and make repairs (Defendants). What needs to happen is that the repairs, nearly complete, need to be finished ASAP! Plaintiffs' counsel has stated once they return to their housing that potential funds are likely available. The Court has no reason to doubt this. The parties simply need to make it happen.

The idea that Plaintiffs enjoy living out of lower and mid-tier motels and are somehow attempting to delay this matter is absurd. They want to go home or find alternative housing. Discussions need to happen. Calls need to be returned. Some level of cooperation similar to the early days of this case **must** return. Continuous letters threatening contempt and sanctions accomplish nothing. That energy should be spent getting these people back into their homes and going from there. The parties need to knock it off and bring this case across the finish line.

Once the heat is back on and the Plaintiffs have moved back in, the financial aspects of this case can be finalized, and again, the Court will take careful note of what has and has not been paid. The Court has tried to be nothing but fair to the concerns of both sides. But the facts of this case are such that it *cannot* support eviction or removal whether used offensively or as a defense to a claim. The moratorium prevents this. These Plaintiffs must be provided with safe lodging. That is the bottom line that Defendants seem wholly unwilling to accept.

J.B.S.