

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF PINE

TENTH JUDICIAL DISTRICT

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State of Minnesota, by its Attorney  
General, Keith Ellison,  
Plaintiff,

vs.

Howard W. Mostad,  
Defendant.

Court File No. 58-CV-20-175

**AMENDED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

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The above-captioned matter came before the Court for motion hearing before the Honorable Krista K. Martin, Judge of District Court, the 2<sup>nd</sup> day of February, 2021, via Zoom. Assistant Attorney General Caitlin Micko appeared on behalf of the Plaintiff. Defendant appeared personally and through his counsel, Richard Eskola.

Based upon the arguments of counsel and all the files, records, and proceedings herein, the Court hereby makes the following:

**FINDINGS OF FACT**

1. The Defendant owned the property at 9679 Grindstone Lake Road in Sandstone, Minnesota at the time this action was filed. The property includes a home, sheds, barns, garages, a grain bin building, and land.
2. On October 1, 2019, Defendant began renting the home to a family of three that included Lindsay Seidling, Cody Fett, and their four-year old daughter (hereinafter referred to as the “Tenants”). The lease called for a six-month term that would convert to a month-to-month lease beginning on April 1, 2020.

3. On February 28, 2020, Defendant informed the Tenants that he would not renew the lease or enter into a month-to-month tenancy and instructed the Tenants to vacate the home by April 1, 2020.
4. On March 13, 2020, Governor Tim Walz declared a peacetime emergency in the State of Minnesota as a result of the COVID-19 pandemic. Subsequently, on March 23, 2020, Governor Walz signed Executive Order 20-14 which prohibits landlords and property owners from filing eviction actions or terminating residential tenancies during the pendency of the peacetime emergency, with only narrow exceptions.
5. On April 2, 2020, Defendant knocked on the Tenants' door and stated he was going to show the home to a prospective buyer. When he was refused access for the showing, Defendant entered the house, walked to the home's fuse box in the boiler room and used a screwdriver to remove breakers from the fuse box, thereby disconnecting the electricity to the home. Defendant was upset with the Tenants for not paying their electric bill, which was overdue. As a result of Defendant's actions, the Tenants were without electricity in the home.
6. After the Tenants were left without electricity in the home, the Tenants contacted the State Attorney General's Office.
7. On Friday, April 3, 2020, the State Attorney General's office contacted Defendant regarding the complaint it received from the Tenants. The State informed Defendant that turning off a tenant's utilities is against the law, including a violation of Executive Order 20-14. The State informed Defendant that if he did not promptly restore utilities to Tenant's home that the State would seek emergency relief from the Court.
8. On April 3, 2020, Plaintiff filed this action with the Pine County District Court and made application for emergency relief under Minn. Stat. § 504B.381, in addition to seeking relief

for violation of Executive Order 20-14. On April 7, 2020, the Court signed and issued an ex-parte order based upon Executive Order 20-14, not Minn. Stat. § 504B.381. The ex-parte order was then served upon Defendant.

9. Defendant hired an electrician and restored the electricity to the home on April 4, 2020, two days after dismantling the fuse box.
10. The Tenants did not vacate or abandon the premises on April 2, 2020, after the electricity was terminated at their leased property, or after their electricity was restored.
11. In the deposition of Defendant taken on November 2, 2020, Defendant admits that he was aware that dismantling the fuse box would deprive the Tenants of electricity. Micko Aff. Ex. C at 21:7-9. When asked if Defendant expected the Tenants to live at the property with no electricity, Defendant stated: “No. They could go into town and go under a bridge, I don’t care.” Micko Aff. Ex. C at 24:7-9. Defendant went on to say: “I ain’t paying for it. I have to feed all you nonproductive pigs of the earth anyway, being a farmer for all these years.” Micko Aff. Ex. C at 24:11-13.

## **CONCLUSIONS OF LAW**

### *Summary Judgment Standard*

1. “The court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.01. Courts view the facts in favor of the non-moving party in summary judgment proceedings. *Oflerdahl v. University of Minnesota*, 426 N.W.2d 425, 417 (Minn. 1988). Summary judgment is appropriate when the non-moving party “fails to prove an element that is essential to the non-moving party’s case, and for which the non-moving

party will bear the burden of proof at trial.” *Rouse v. Dunkley & Bennett*, P.A., 520 N.W.2d 406, 410 (Minn. 1994). “[W]hen determining whether a genuine issue of material fact for trial exists, the court is not required to ignore its conclusion that a particular piece of evidence may have no probative value, such that reasonable persons could not draw different conclusions from the evidence presented.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).

2. To defeat a motion for summary judgment, the “nonmoving party must offer significant probative evidence tending to support its complaint.” *Horton v. Township of Helen*, 624 N.W.2d 591, 594 (Minn. Ct. App. 2001). No genuine issue of material fact exists where “the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party’s case to permit reasonable persons to draw different conclusions.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). A non-moving party cannot preserve a right to trial on the merits merely by referring to “unverified or conclusory allegations,” or by speculating about evidence that may be developed at trial. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995).

*The Attorney General’s Standing to Bring This Action*

3. Under Executive Order 20-14, the attorney general is permitted to seek any relief available pursuant to Minn. Stat. § 8.31. In Minn. Stat. § 8.31, subd. 1, the attorney general shall “investigate violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade . . . and assist in the enforcement of those laws as in this section provided.”

4. “The attorney general is the chief law officer of the state. His powers are not limited to those granted by statute but include extensive common-law powers inherent in his office. He may institute, conduct, and maintain all such actions and proceedings as he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights.” *Slezak v. Ousdigian*, 110 N.W.2d 1, 5 (Minn. 1961). The attorney general has the authority under Minn. Stat. § 8.01 and § 8.31, subd. 1, to bring an action to enforce the Governor’s Executive Order.

*Plaintiff’s Claim That Defendant Violated Executive Order 20-14*

5. Under Executive Order 20-14, no “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 . . . 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.”
6. In *Colonial Court Apartments, Inc. v. Kern*, 163 N.W.2d 770 (Minn. 1968), the Supreme Court held that “[a] constructive eviction occurs when the beneficial enjoyment of the premises by the lessee is so interfered with by the landlord as fairly to justify an abandonment. It does not suppose an actual ouster or dispossession by the lessor.” *Id.* at 771 (citing *Santrizos v. Public Drug Co.* 173 N.W. 563, 564 (Minn. 1919)).
7. It is undisputed that while the tenants were quarantining in their leased space, Defendant made his way into the residence and disconnected the tenants’ electricity, cutting off their access to heat and running water. It is reasonable to believe that if the attorney general’s office had not intervened, the tenants would have been forced to move, because the leased space would have been uninhabitable for them and their child.

*Defendant's Claim that Plaintiff Does Not Have Standing Under Minn. Stat. 504B.221*

8. Under Minn. Stat. § 504B.221, a tenant may recover damages from the landlord for interrupting or causing the interruption of electricity, heat, gas, or water services to the tenant. Tenants are entitled to treble damages or \$500, whichever is greater.
9. There is no provision in Minn. Stat. § 504B.221 granting the attorney general's office the power to file suit for damages on behalf of the tenant. In Minn. Stat. § 504B.205, subd. 6, there is specific language authorizing the attorney general to act. Additionally, in Minn. Stat. § 504B.381, subd. 1, the language does not specify only the tenant, rather, it encompasses a list of authorized persons found in Minn. Stat. § 504B.395, subd. 1. If the legislature had intended there to be express authority for the attorney general to seek monetary damages for the tenants, such a provision would have been included.
10. Furthermore, the statute limits the tenant to actual damages if after giving notice, the landlord reinstates the service within a reasonable period of time. Minn. Stat. § 504B.221(a)(2). Notice was given on April 3, 2020 and the electrical service was restored on April 4, 2020. That is a reasonable period of time. Additionally, there is no evidence of actual damages in the record.

*Defendant's Claim That Plaintiff Does Not Have Standing Under Minn. Stat. § 504B.381*

11. Under Minn. Stat. § 504B.381, subd. 1, "[a] person authorized to bring an action under section 504B.395, subdivision 1, may petition the court for relief in cases of emergency involving the loss of running water, hot water, electricity, sanitary facilities, or other essential services or facilities that the landlord is responsible for providing." Under Minn. Stat. § 504B.395, subd. 1(4), a "state, county, or local department or authority, charged

with the enforcement of codes relating to health, housing, or building maintenance” may bring an action in district court.

12. As previously stated above, the attorney general “may institute, conduct, and maintain all such actions and proceedings as he deems necessary for the enforcement of the laws of the state, the preservation of order, and the protection of public rights.” *Slezak*, 110 N.W.2d at 5. Additionally, under Minn. Stat. § 504B.225, it is a crime to intentionally interrupt electrical, heat, gas, or water services to the tenant with the intent to remove the tenant from lands or tenements. Given that the attorney general has the power to bring an action for the enforcement of the law and protection of public rights, the attorney general would therefore have the ability to enforce codes relating to health, housing or building maintenance.

*Defendant’s Claim That Proper Notice Was Not Given Under Minn. Stat. § 504B.381*

13. Under Minn. Stat. § 504B.381, subd. 1, “[a] person authorized to bring an action under section 504B.395, subdivision 1, may petition the court for relief in cases of emergency involving loss of running water, hot water, heat, electricity, sanitary facilities, or other essential services or facilities that the landlord is responsible for providing.” Under Minn. Stat. § 504B.381, subd. 4, the petitioner “must attempt to notify the landlord, at least 24 hours before application to the court, of the petitioner’s intent to seek emergency relief.”
14. Here, it is undisputed that the tenants’ electricity was turned off on April 2, 2020. The attorney general’s office contacted Defendant on April 3, 2020, after they received the complaint from the tenants. This action was filed on April 3, 2020, the same day that notice was given. Defendant restored the electricity on April 4, 2020. The emergency order was signed on April 6, 2020. The notice requirements of Minn. Stat. § 504B.381,

subd. 4 were not met. Thus, the Plaintiff is not entitled to Summary Judgment under Minn. Stat. § 504B.381, subd. 1.

*Defendant's Claim That Enforcement of the Executive Order By Plaintiff Constitutes An Unlawful Taking Under The United States Constitution and Minnesota Constitution*

15. Under the Fifth Amendment of the United States Constitution, “no person shall be . . . deprived of . . . property, without due process of law, nor shall private property be taken for public use, without just compensation. U.S. Const. amend. V. Regulatory takings are analyzed under the three part test in *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978), which includes: the economic impact of the regulation on the person suffering the loss, the extent to which the regulation interferes with the distinct investment backed expectations, and the character of the government actions to assess whether the complained action effected a taking of private property for public use. *Id.* at 124.
16. As a matter of law, there was no regulatory taking of Defendant’s rental property in this matter. Executive Order 20-14 has a clear provision that does not relieve tenants from their obligation to pay rent during the peacetime emergency. Additionally, Executive Order 20-14 has a clear purpose to prevent harm to the public during the peacetime emergency. The prevention of harm to the public’s health and safety by protecting tenants from COVID-19 during a global pandemic does not effect a taking of private property for public use.

*Defendant's Claim That Plaintiff Cannot Seek Civil Penalties*

17. In *State by Humphrey v. Alpine Air Products, Inc.*, 490 N.W.2d 888 (Minn. Ct. App. 1992), the Court determined that there are four factors to consider when determining the



size of a civil penalty: “(1) the good or bad faith of the defendant, (2) the injury to the public, (3) the defendant’s ability to pay; and (4) the desire to eliminate the benefits derived by the violations.” *Id.* at 897.

18. The Plaintiff has presented all of the information that they have regarding these factors, and they have not provided information to demonstrate that a \$25,000 civil penalty is just. The facts in the record as applied to the factors are:
  - a. The defendant did act in bad faith as demonstrated by his deposition testimony.
  - b. There was no injury to the public. The electricity was turned on two days later. The tenants did not move.
  - c. The Plaintiff has provided no information regarding the Defendant’s ability to pay the fine, and cites *State v. Future Income Payments, LLC*, 2018 WL 10374760 (Minn.Dist.Ct. 2018), indicating that under this case the ability to pay factor is neutral if no information is provided. However, in *Future Income Payments*, the Court clearly indicates that the Defendant stopped participating in the litigation, and that the Court therefore had no information as to the defendant’s ability to pay the civil fine. *Id.* at \*3. Here, the Defendant has continued to participate in the litigation, including sitting down for a deposition, responding to pleadings, and even filing this summary judgment motion. Therefore, as a matter of law, this factor is not neutral.
  - d. There were no benefits derived from the violation. The tenants did not move and the Defendant had to pay money two days later to restore the electricity.
19. Thus, a \$25,000 civil penalty is not warranted on these facts.

## **ORDER**

1. Plaintiff's motion for summary judgment as to Count I is hereby **GRANTED**.
2. Plaintiff's motion for summary judgment as to Count II is hereby **DENIED**.
3. Plaintiff's prayer for declaratory relief under the Emergency Executive Order 20-14 is hereby **GRANTED**. From the date of entry of this Order, when engaging in residential rental activities, Defendant shall comply with all Emergency Executive Orders relating to landlords and tenancy.
4. Plaintiff's request for civil penalties is hereby **DENIED**.
5. Plaintiff's prayer for costs of the State's investigation, reasonable attorney's fees and costs and disbursements is hereby **DENIED**. This case could have ended with the call to the Defendant under the notice requirements of Minn. Stat. § 504B.381, subd. 4. Defendant then restored the electricity the next day. That is how the statute is supposed to work. The rest of this litigation was for practical purposes unnecessary.
6. All other motions are hereby **DENIED**.

LET JUDGMENT BE ENTERED ACCORDINGLY

**BY THE COURT:**