

STATE OF MINNESOTA**FOURTH JUDICIAL DISTRICT****COUNTY OF HENNEPIN****DISTRICT COURT**

James Michael Tich,
Plaintiff,

vs.

██████████,
Defendant.

**ORDER ON PLAINTIFF'S
MOTION TO REOPEN RECORD**

Court File: 27-CV-HC-20-1432

The written motion of Plaintiff came on for administrative review before the undersigned. Plaintiff was present by written motion of Plaintiff's attorney, Gregory Holly, Esq. Defendant was present by written correspondence by Defendant's attorney Jeffer Ali, Esq.

Plaintiff shall hereinafter be referred to as Landlord. Defendant shall hereinafter be referred to as Tenant.

Based upon the written motion, and all of the files, records, and proceedings in this case, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On June 30, 2020, Landlord filed an eviction action against Tenant alleging failure to vacate the property after notice was given and for engaging in behavior in violation of Minnesota Statutes section 504B.171.

2. On July 9, 2020, the parties appeared for an initial appearance. The parties agreed to a continuance of the initial appearance.

3. On July 15, 2020, the parties appeared for the continued initial appearance. Landlord was represented by Joel Van Nurden, Esq. and Tenant was represented by Jeffer Ali, Esq. The parties requested that the case be set for an evidentiary trial. After conferring with their clients, the parties agreed to schedule the trial for July 15, 2020 at 2:00pm, later that same day.

4. At 1:12pm, Gregory Holly, Esq. counsel for Landlord filed a letter with the Court requesting a continuance of the trial because a "critical witness" was unavailable.

5. Counsel for Landlord, Joel Van Nurden, Esq. and counsel for Tenant Jeffer Ali, Esq. appeared via Zoom for the 2:00pm trial. Landlord's counsel argued that he had requested a continuance because he was not trial counsel, Landlord's "only, indispensable witness" (Mr. Merchant) was only available by telephone, and because they wanted time to get a copy of a CHIPS file.

6. Tenant objected to the requested continuance as counsel had rearranged his schedule and gathered witnesses to prepare for trial. The Court denied the request for a continuance. At no time during the hearing did counsel request a continuance based on Mr. Tich's unavailability.

7. After the testimony of Landlord's witness, Mr. Merchant, Landlord's counsel noted that Mr. Tich was not in the Zoom hearing, and rested his case in chief. The Referee offered counsel a recess so that he could try to contact Mr. Tich. After the parties returned from a recess, Mr. Van Nurden stated that he was unable to reach his client on the phone, that it was possible his client was sleeping after working an overnight shift, and Landlord "was prepared to move forward" without Mr. Tich. The Tenant proceeded with her defense, and then rested. The Court allowed for a ten minute recess prior to closing arguments, closing arguments were heard and the case was taken under advisement by the Court.

8. On July 16, 2020, Landlord filed a letter with the Court requesting that the record be reopened to allow Mr. Tich the opportunity to testify. On July 17, 2020, Landlord filed a Motion to Reopen, along with another letter and two affidavits.

9. On July 17, 2020, Tenant filed a letter with the Court opposing the request to reopen the record, stating that Tenant would be "severely prejudiced" by the reopening of the record.

10. The affidavit of Mr. Tich states that he received the Court's July 15, 2020 scheduling order with the login information for the hearing. Mr. Tich avers that he attempted to call into the hearing beginning at 1:45pm but received an automated message stating the session had not started yet and then eventually his call was disconnected. Mr. Tich states that he and a friend tried calling back over and over but were unable to get connected.

11. The Court's scheduling order had instructions for what to do in the circumstances of technical difficulties with the remote hearing technology. "The Clerk of Court may be contacted by telephone 612-348-5882 for difficulties with accessing the hearing via Zoom on the day of the hearing."

12. Inexplicitly, Mr. Tich after having issues connecting to the hearing, did not call the Clerk's office or his own lawyers' office to alert the Court to the issue. Landlord's counsel did not request a continuance before or during the trial to secure Mr. Tich's participation and identified Mr. Merchant as their only witness. Tenant based her defense on the testimony of Mr. Merchant and would be prejudiced as a result of allowing Mr. Tich to testify.


13. Landlord does not cite to any authority-statutes, rules, or case law-that would allow or require the Court to reopen the record in this matter and the Court is unaware of any.

ORDER

1. Plaintiff's motion to reopen the record is **DENIED**.

2. SERVICE. The Clerk of Court shall serve/e-serve a copy of this Order on all parties or their attorneys as appropriate.

Recommended By:

 Jul 22 2020 10:58 AM

Tiffany Sedillos
District Court Referee

By the Court:



District Court Judge
Dated: Jul 22, 2020

Judgment

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

Dated: _____

By: _____
Deputy Court Administrator