

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

James M. Tich,

Court File No. 27-CV-HC-20-1651

Plaintiff,

vs.

,

Defendants.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

The above-entitled matter came duly before the Honorable Christian Sande, Judge of the above-named court, on Thursday, October 15, 2020 at the Hennepin County Government Center, Minneapolis, Minnesota.

Joel Van Nurden, Attorney at Law appeared on behalf of the Plaintiff.

Ali Jeffer, Attorney at Law appeared on behalf of the Defendants.

Based upon all the files, records, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. Defendant's Motion to Dismiss is hereby **GRANTED**.
2. The attached Memorandum is incorporated by reference in this Order.
3. All prior and consistent orders shall remain in full force and effect.
4. Service of a copy of this order shall be made upon self-represented parties by first class U.S. mail at their address(es) last known to the Court Administrator, or to attorneys by e-service, which shall be due and proper service for all purposes.

Dated: November 16, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to read 'C Sande', written over a horizontal line.

Sande, Christian
2020.11.16 16:01:46
-06'00'

Christian Sande
Judge of District Court

MEMORANDUM

Mr. Tich commenced this action on October 2, 2020 by filing Complaint and Eviction Summons. A Notice of Eviction dated August 24, 2020 and addressed to the Defendant's attorney was also included with the Complaint. On October 7, 2020, Mr. Tich filed Affidavit of Service on Ms. [REDACTED]. On October 13, 2020, Ms. [REDACTED] filed an Affidavit for Proceeding In Forma Pauperis, Notice of Motion and Motion to Dismiss, and Notice to Remove Referee, thereby removing Referee Labine. On October 13, 2020, Mr. Tich filed a Notice to Remove Referee, thereby removing Referee Sedillos. On October 14, 2020, this matter was reassigned to the Honorable Christian Sande and a Notice of Hearing, setting a hearing for October 15, 2020 was served on the parties

On October 15, 2020, counsel appeared for the hearing. During the hearing, Counsel for Mr. Tich first argued that Ms. [REDACTED] is not a tenant at will, but rather a tenant, and Mr. Tich is a residential Landlord.¹ Alternatively, counsel argued that Ms. [REDACTED] is akin to a guest in Mr. Tich's home. Mr. Tich's counsel argued that Executive Order 20-79 allows residential landlords to properly evict a tenant with seven days' notice upon a need a personal need occupy the property they own.² Counsel argued that notice was sufficient under the Executive Order and under Minn. Stat. § 504B.181 because Ms. [REDACTED] was aware of the action for over thirty days.³ Counsel admitted that the parties were previously in a romantic relationship, wherein Ms. [REDACTED] was invited to reside in the home, but that the relationship deteriorated.⁴ As a result of an altercation

¹ Eviction Action Complaint (October 2, 2020) at 3 ¶ 13.

² *Id.* at 2-3 ¶ 10-15.

³ *Id.* at 3 ¶ 14.

⁴ *Id.* at 1 ¶ 2-5.

that occurred in the home, an Order for Protection⁵ was entered against Mr. Tich, on June 4, 2020, excluding him from the residence.⁶ Mr. Tich has since been homeless and attempting to evict Ms. [REDACTED] and regain possession of the home. *Id.* at 2 ¶ 7. The home is owned by Mr. Tich, and Ms. [REDACTED] has never paid rent. *Id.* at 1 ¶ 1. Counsel advised the Court that Mr. Tich previously provided Ms. [REDACTED] with Notice to Vacate sometime in June; however, the only record provided to the Court in this matter was a Notice to Vacate dated August 24, 2020, which was served on Ms. [REDACTED] lawyer.⁷ Counsel did not file an Affidavit of Service for the Notice to Vacate indicating when it was served on Ms. [REDACTED] and there is no Waiver of Service or other document indicating that Ms. [REDACTED] attorney accepted service of the Notice on her behalf.

During the hearing, Ms. [REDACTED] counsel argued that Ms. [REDACTED] is a tenant at will, and therefore, Mr. Tich is required to provide Ms. [REDACTED] with three months' notice to vacate, and Mr. Tich's current filings constitute insufficient notice.⁸ As Mr. Tich failed to provide Ms. [REDACTED] with adequate notice, counsel for Ms. [REDACTED] argued that the Court should properly dismiss the present action.⁹ Ms. [REDACTED] has resided at the home since September 2018, and therefore, could not be considered a guest after residing there for such a significant period of time. Counsel argued that all of these factors when taken into consideration, demonstrate that Ms. [REDACTED] is properly categorized as a tenant at will. Counsel conceded at the hearing that Ms. [REDACTED]

⁵ On June 4 2020, Ms. [REDACTED] obtained an order for protection that excludes Mr. Tich from her residence. Court File [REDACTED] v. James Michael Tich, 27-DA-FA-20-2844.

⁶ Eviction Action Complaint (October 2, 2020) at 1 ¶ 2-5.

⁷ *Id.* at Exhibit A.

⁸ Notice of Motion and Motion to Dismiss (October 13, 2020) 1 ¶ 4-5.

⁹ *Id.* at 2 ¶ 6.

██████ will need to vacate the property at some point in the near future and confirmed that she intends to do so.

The Court subsequently took this matter under advisement. On October 22, 2020, Ms. ██████ counsel filed correspondence advising the Court of a previous admission made by Mr. Tich's counsel in a prior eviction action wherein counsel conceded that Ms. ██████ is a tenant at will.¹⁰ On October 22, 2020, Mr. Tich's counsel filed correspondence objecting to defense counsel's correspondence as being untimely, prejudicial, and filed without leave of Court, in addition to improperly referencing the record in an eviction action that has been expunged.¹¹ As such, Mr. Tich's counsel asked the Court to decline to consider the letter from Ms. ██████ attorney in ruling on the present motions. *Id.* at 1 ¶ 1.

I. Prior Admissions

According to Mr. Tich, the record upon which Ms. ██████ relies in the October 22, 2020 correspondence has been expunged. Mr. Tich's attorney appears to be correct in asserting that this matter has been expunged. Expungement is defined as "the removal of evidence of the court file's existence from the publicly accessible records." Minn. Stat. § 484.014, subd. 1. Therefore, any admission which may have been made by Mr. Tich or his attorney during the prior proceeding cannot properly be considered by this Court, and shall not be considered, as the matter has been expunged pursuant to Minn. Stat. § 484.014, subd. 2.

II. Tenancy Type

Executive Order 20-79 refers to residential landlords and authorizes "[t]he ability of property owners, mortgage holders, or other persons entitled to recover residential premises to file

¹⁰ Defendant's Correspondence (October 22, 2020) 1 ¶ 2.

¹¹ Plaintiff's Correspondence (October 22, 2020).

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 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.”¹²

In this case, Ms. [REDACTED] never signed a lease and never paid rent to Mr. Tich, both of which are undisputed facts. When applied to Executive Order 20-79, these factors tend to demonstrate that Ms. [REDACTED] is not a tenant and Mr. Tich is not a residential landlord. Additionally, Executive Order 20-79 authorizes evictions where the property has been significantly damaged. *Id.* The Court heard no evidence during the October 15, 2020 hearing which implicated that Mr. Tich’s property has been damaged by Ms. [REDACTED], and when specifically asked about potential property damage or hazardous conditions at the property, counsel for Plaintiff denied the existence of these factors.

Under Minn. Stat. § 504B.135, a tenancy at will in which no rent is due may be terminated only upon notice of at least three months to the tenant. An individual who holds possession of the premise by permission of the landlord but without fixed term is a tenant at will. *Wiedemann v. Brown*, 1933, 190 Minn. 33, 250 N.W.724.

Neither party contests that Mr. Tich initially invited Ms. [REDACTED] to reside in the home and that Ms. [REDACTED] has never paid rent to Mr. Tich. Ms. [REDACTED] has resided at the home since September 2018—over two years. Mr. Tich failed to provide any legal citations that support a determination that Ms. [REDACTED] is not a tenant at will, or that Ms. [REDACTED] is properly considered

¹² Emergency Exec. Order 20-79, Rescinding Emergency Exec. Orders 20-14 and 20-73, Modifying the Suspension of Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency at 2 ¶ 6.

a residential tenant. Therefore, the Court finds that Ms. [REDACTED] is considered a tenant at will, and Mr. Tich must provide Ms. [REDACTED] with three months' notice to vacate the home.

While the record indicates that Mr. Tich's lawyer gave Ms. [REDACTED] lawyer Notice to Vacate on August 24, 2020,¹³ the record is unclear as to whether or when Ms. [REDACTED] was actually served with the Notice of Vacate. Counsel did not file an Affidavit of Service of the Notice to Vacate indicating that it was served on Ms. [REDACTED] and there is no Waiver of Service or other document indicating that Ms. [REDACTED]' attorney accepted service of the Notice on her behalf. As such, the Court cannot conclude when the three month notice period commenced in order to determine the date that Ms. [REDACTED] must vacate the premises.

III. Motion to Dismiss Standard

A claim is sufficient against a motion to dismiss for failure to state a claim if evidence can be produced to grant the relief demanded. *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014). A pleading is dismissed only if it appears to a certainty that no facts, consistent with the pleading, exist that would support granting the relief demanded. *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019). When considering a motion to dismiss, a court is limited to consideration of the pleadings but may consider documents referenced in a complaint when considering a motion to dismiss. *Northern States Power Co. v. Minnesota Metro. Council*, 684 N.W.2d 485, 490–91 (Minn. 2004) (citing *Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 739 n.7 (Minn.

¹³ Eviction Action Complaint (October 2, 2020) p. 4-5, Ex. A

2000)). The court must construe all reasonable inferences in favor of the nonmoving party when considering a motion to dismiss. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008).

Upon review of the pleadings, Mr. Tich has failed to offer any facts or legal citations which would support finding that Ms. [REDACTED] is not a tenant at will, who is entitled to three months' notice to vacate. Ms. [REDACTED] has met her burden to show that a Motion to Dismiss is appropriate in this case. Therefore, the Court shall grant Ms. [REDACTED]' Motion to Dismiss, as Mr. Tich's current filings provide insufficient notice pursuant to Minn. Stat. § 504B.135.

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