

Filed in District Court
State of Minnesota

Syvcrud, Michael
Jan 7 2021 11:12 AM

State of Minnesota
Ramsey County

District Court
Second Judicial District

File Number: **62-HG-CV-20-920**

Vailwood, LLC vs [REDACTED]
[REDACTED]

Decision and Order

This case was heard by the undersigned Judge of District Court on January 6, 2021.

Parties and Participant(s) Present:

Don Perron, Esq., Jeff Buesing, Plaintiff, present

Pounnaphone Phomtalikhith, Esq., [REDACTED]
Defendant, present

Additional Parties Present: Witness Jim Nellis

THE COURT FINDS AND ORDERS THAT:

☒ the allegations of the complaint are ☒ true / ☐ not true.

☐ the tenant has breached lease as follows: .

☐ the parties have reached a settlement as follows: ; OR per settlement agreement filed into the court today. This agreement shall be incorporated into this order.

☐ upon compliance and filing of affidavit this case may be expunged.

☐ the statutory covenants of habitability have been breached as follows: ; OR

☐ Dismissed ☐ for non-appearance / ☐ by motion / ☐ for payment.

☒ other: Plaintiff alleges that Defendant [REDACTED] has materially violated his lease and seriously endangers the safety of others based on several incidents that took place at the subject property in which Mr. [REDACTED] allegedly interacted with members of the property management company in an aggressive, verbally abusive, and threatening manner. Plaintiff's subject property maintenance manager, Jim Nellis, testified that he had verbal altercations three times with Mr. [REDACTED] around 6/10/2020, on 8/18/2020, and on 11/20/2020. The Court finds that only the incident on 11/20/20 rises to the level of a material lease violation, and that the other incidents Plaintiff testified to do not rise to the level of a lease violation, let alone a material lease violation. Mr. Nellis testified that on 11/20/20 Mr. Nellis heard shouting on the subject property and found Mr. [REDACTED] in a shouting match with other tenants on the property. Mr. Nellis testified that Mr. [REDACTED] saw Mr. Nellis observing the incident and then followed Mr. Nellis into Mr. Nellis' maintenance shop on the subject property. Mr. Nellis testified that he told Mr. [REDACTED] repeatedly he was not allowed in the maintenance shop and to leave, which Mr. [REDACTED] refused to do. Mr. Nellis testified that Mr. [REDACTED] followed him into a second room in the maintenance shop, got very close to Mr. Nellis, cornered him, and aggressively yelled at him and threatened him. Mr. Nellis testified that he then showed Mr. [REDACTED] a BB gun he had and called 911 for his own safety. Mr. Nellis testified that Mr. [REDACTED] threatened to get his own gun and then left the maintenance shop. Police responded to Mr. Nellis' 911 phone call but ultimately made no arrests. Mr. Nellis testified that the 911 operator recommended sending an ambulance to the subject property following the incident because Mr. Nellis was having a hard time breathing due to fear and nerves. The Court finds Mr. Nellis' testimony regarding the 11/20/20 incident credible.

Mr. [REDACTED] testified that during the 11/20/20 incident he did follow Mr. Nellis into the maintenance shop, but cannot recall Mr. Nellis asking him to leave the shop. Mr. [REDACTED] testified that inside the maintenance shop Mr. Nellis called him a racial slur, pointed a gun in his face, and threatened

to kill him. Mr. [REDACTED] testified that he maintained an even tone and did not raise his voice with Mr. Nellis during the 11/20/20 incident. The Court makes an adverse credibility finding as to Mr. [REDACTED] testimony regarding the 11/20/20 incident.

Mr. [REDACTED] lease with Plaintiff includes a Crime Free Lease Addendum in which Mr. [REDACTED] agreed not to engage in "threatening, intimidating, or assaultive behavior...that jeopardizes the health, safety, and welfare of the landlord, his agent or other residents..." The Court finds that the 11/20/20 incident was a material violation of the Crime Free Lease Addendum by Mr. [REDACTED] that seriously endangered the safety of others. Accordingly, while there is a general eviction moratorium pursuant to Governor Walz's Executive Order No. 20-79, under para. 2(d) this matter is excluded from that moratorium. The Court order that judgment be entered for Plaintiff in this matter and that an immediate writ of recovery be issued but stayed for one week and not executed until 1/13/2021.

☒ Plaintiff is entitled to recovery of the property plus filing fees and service costs paid for this court action.

THE WRIT OF RECOVERY:

- ☒ issued immediately but stayed until 1/13/2021.
☐ will be issued on ☐ children/other hardship
☐ issued if any of the above settlement conditions are not met

The foregoing shall constitute the entry of the order of the Court.

☒ Let Judgment Be Entered Accordingly.

Dated: January 6, 2021



Nelson, Laura (Judge)
Jan 6 2021 3:29 PM

Recommended by Referee

Judge of District Court
Laura Nelson

I hereby Certify that the above Order Constitutes the entry of Judgment of the court.

Michael F. Upton, Court Administrator

Michael F. Upton
Jan 7 2021 10:11 AM

Deputy

Date