

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Douglas J. Williams and Kathleen R.
Williams as trustees of The Trust Agreement
of Douglas and Kathleen Williams, Douglas
J. Williams and Kathleen R. Williams, as
individuals,

Court File No.: 27-CV-HC-20-1513

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

Plaintiffs,

v.

██████████,

Defendant.

The above-entitled matter came on for a court trial, held remotely via Zoom videoconferencing technology upon the agreement of all parties, before the Honorable Laurie J. Miller, Judge of District Court, on September 21, 2020.

Mary William, Esq. and Mary Kaczorek, Esq. appeared by Zoom on behalf of Defendant. Defendant ██████████ also appeared via Zoom.

Douglass Turner, Esq. appeared by Zoom on behalf of Plaintiffs. The individual plaintiff Douglas Williams also appeared.

The Court heard testimony from Plaintiff Douglas Williams and from Yegor Kovalev. Two exhibits were received into evidence. Exhibit 1, a copy of the lease agreement between Plaintiffs and Defendant, was received into evidence by stipulation. Exhibit 2, a statement entitled “Tenant’s Breach of Covenants as in Minn. Stat. 504B.171,” was received into evidence over Defendant’s objection, as it was already included in the record as an attachment to the complaint, but it was not considered for the truth of its contents.

Upon the conclusion of Plaintiff's case in chief, Defendant moved to dismiss the case with prejudice. After a recess, the Court granted Defendant's motion on the record, and dismissed the case with prejudice. Following the Court's ruling on Defendant's motion to dismiss, Defendant moved to have the matter expunged, citing Minn. Stat. § 484.014, subd. 2. Plaintiff opposed the requested expungement. The Court took the motion for expungement under advisement and issues the following order and memorandum to rule on the issue of expungement and to memorialize the Court's bench ruling on the eviction action.

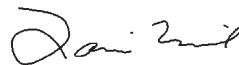
After considering the motion papers submitted by the Parties, the arguments of counsel, and the entire file in this matter, the Court enters the following:

ORDER

1. Defendant's motion to dismiss the complaint with prejudice is **GRANTED**.
2. Defendant's motion for expungement under Minn. Stat. § 484.014, subd. 2 is **GRANTED**.
3. Defendant shall be awarded mandatory costs of \$200.00 under Minn. Stat. § 549.02.
4. The attached Memorandum is incorporated herein.

BY THE COURT:

Miller, Laurie



2020.10.06

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Dated: October 6, 2020

Laurie J. Miller
Judge of District Court

MEMORANDUM

I. Findings of Fact

On May 30, 2020, Plaintiffs Douglas J. Williams and Kathleen M. Williams entered into a residential lease agreement, on behalf of the trust through which they own the subject property, with Defendant [REDACTED]. Defendant rented from the Williams Apartment #3 at 2716 Xylon Ave. N., New Hope, Minnesota. (*See* Exhibit B to Amended Eviction Complaint filed herein on August 14, 2020 (“Am. Compl.”)). On August 3, 2020 Plaintiffs filed this action, seeking to evict Ms. [REDACTED]. As grounds for eviction, the initial eviction complaint listed both nonpayment of rent and violation of Minn. Stat. § 504B.171. Defendant filed an answer on August 12, 2020, averring that she had tendered the August rent to the landlord on August 3, 2020, and noting that Executive Order 20-79 does not allow for nonpayment-of-rent evictions at this time. Defendant also noted that the eviction complaint improperly listed Douglas and Kathleen Williams as the landlords, pointing out that public property records reflect that the subject property is owned by the “D & K Williams Trust.”

Thereafter, on August 14, 2020, Plaintiffs filed their Amended Eviction Complaint, dropping nonpayment of rent as a ground for eviction, and expanding the caption to include their positions as trustees of the D & K Williams Trust, which owns the subject property. On August 25, 2020, Defendant then filed a motion to dismiss the Amended Eviction Complaint, seeking either dismissal, a more definite statement, or summary judgment due allegedly insufficient factual allegations. In addition, Defendant asked for an order compelling Plaintiffs to respond to her discovery requests by September 8, 2020 at 9:00 a.m., so that Defendant would have the responses in time to prepare for the trial. In an order

issued on September 8, 2020, the Court denied Defendant's motion to dismiss, motion for summary judgment, and motion for a more definite statement, and granted in part Defendant's motion to compel.

This is not the first eviction action commenced by Plaintiffs against Defendant. Plaintiffs filed an earlier eviction action, Court File No. 27-CV-HC-20-1466, on July 13, 2020, alleging that Defendant "unlawfully allowed use of controlled substances in the building common areas and curtilage of the property." At a hearing on July 28, 2020, the Hennepin County District Court granted Defendant's motion to dismiss the earlier action and ordered it expunged, based "on grounds that Plaintiffs failed to state the facts with enough specificity in their Complaint to put Tenant on notice of the claims." (Exhibit 6 to Defendant's Answer to the Complaint). The July 28, 2020 order allowed Plaintiffs to re-file within 14 days without having to pay a filing fee. (*Id.*)

Subsequently, Plaintiffs filed this action, less than a week after dismissal of the earlier action. They added a factual statement, Exhibit A to the Amended Eviction Complaint, seeking to supply the specificity found to be lacking in the original complaint.

Plaintiffs sought to evict Defendant based upon an alleged violation of Minn. Stat. § 504B.171, subd. 1(a)(1)(i), which provides that in every residential lease, the landlord and tenant must covenant not to "unlawfully allow controlled substances in those premises or in the common area and curtilage of the premises." Evictions premised upon section 504B.171, subd. 1, are specifically exempt from the general pandemic-related moratorium on evictions, under Executive Order 20-79, as issued by Governor Walz on July 14, 2020.

Plaintiff Douglas Williams testified that, on July 11, 2020, he received a call from one of the tenants at the subject property between 10:00 a.m. and 1:00 p.m. complaining of

marijuana smoke in the building. He then drove to the building to have a conversation with the complaining tenants. Mr. Williams later spoke with Defendant via telephone on July 13, 2020, stating to her that he had received “serious evidence” that she had committed an infringement of the lease—namely, the odor of marijuana smoke—and that he would like her to move out. Mr. Williams testified that the phone call lasted approximately 2 minutes. He said that Defendant denied his accusations and had a “cavalier attitude.” Following the July 13, 2020 call, Mr. Williams testified that he attempted and failed to communicate further with Defendant, and was denied access to her apartment. On cross-examination, Mr. Williams testified that he did not personally see or smell any marijuana and does not know what it looks like, nor did he smell any other odor that he believed to be illegal.

Yegor Kovalev, an acquaintance of the tenants who contacted Mr. Williams to complain of the marijuana odor, testified that he was at the Williams’ apartment building on July 11, 2020 between 10:00 a.m. and noon assisting one of the tenants, Aslan Gagiev, who was moving out. Mr. Kovalev testified that there were between 10 and 12 adults assisting Mr. Gagiev with the move, and 4 or 5 minor children were present as well. Mr. Kovalev testified that Mr. Gagiev’s apartment was one of two apartments located on the ground floor. The front door to the apartment building was held open to assist with moving. While the back door to the building was used occasionally, for the most part it remained closed. Mr. Kovalev testified that, from his position standing at the open front entryway, he first noticed the smell of marijuana coming from a man that he noticed walking from the upper floor towards the back door of the building, a “sportsy guy” in red shorts and a baseball cap. Mr. Kovalev did not see the man’s face or his hands, but saw what he referred to as “fumes” like a cloud around the man’s head. Mr. Kovalev further testified that he did not recognize

this man and that, despite there being a number of individuals helping with Mr. Gagiev's move, the man was not familiar to him and he did not believe the man was a friend of Mr. Gagiev.

On cross-examination Mr. Kovalev noted that while he does not have any formal training in ascertaining where an odor comes from, he was certain that the odor of marijuana was not coming from the man's clothing and was instead due to the smoke. Mr. Kovalev further testified on cross-examination that while he saw the "fumes" he did not see any marijuana that day, and that he did not have a clear view of the man. Mr. Kovalev did not see if the man came out of Defendant's apartment. Mr. Kovalev did not testify that he saw Defendant at any time on July 11, 2020.

The Court found the testimony of both Mr. Williams and Mr. Kovalev to be credible

II. Legal Standard

Minnesota Statute § 504B.171, subd. 1(a)(1)(i) provides that "[i]n every lease or license of residential premises, whether in writing or parol, the landlord or licensor and the tenant or licensee covenant that neither will unlawfully allow controlled substances in those premises or in the common area and curtilage of the premises." Minn. Stat. § 504B.171, subd. 1(a)(1)(i). Under Minn. Stat. § 504B.171, subd. 1(a)(2):

the common area and curtilage of the premises will not be used by either the landlord or licensor or the tenant or licensee or others acting under the control of either to manufacture, sell, give away, barter, deliver, exchange, distribute, purchase, or possess a controlled substance in violation of any criminal provision of chapter 152. The covenant is not violated when a person other than the landlord or licensor or the tenant or licensee possesses or allows controlled substances in the premises, common area, or curtilage, unless the landlord or licensor or the tenant or licensee knew or had reason to know of that activity.

Minn. Stat. § 504B.171, subd. 1(a)(2). Evictions premised upon section 504B.171, subd. 1, are specifically exempt from the general pandemic-related moratorium on evictions, under Executive Order 20-79, as issued by Governor Walz on July 14, 2020. Governor Tim Walz, Executive Order 20-79 (July 14, 2020).

In an eviction action, the plaintiff must plead in the complaint “the facts which authorize the recovery of possession.” Minn. Stat. § 504B.321.

III. Conclusions of Law

Plaintiff Failed to Sufficiently Connect the Odor of Marijuana to Defendant.

The Court finds that Plaintiffs failed to offer evidence of sufficient facts to link the odor of marijuana smelled by Mr. Kovalev and the complaining tenants to Defendant under Minn. Stat. § 504B.171, subds. 1(a)(1)(i) and 1(a)(2). It is Plaintiffs’ burden to prove, by a preponderance of the evidence, that Defendant violated § 504B.171 by allowing controlled substances onto the premises of the subject property. While the Court found both witnesses to be credible, the Court’s dismissal ruling is not based upon credibility—instead, the Court finds insufficient evidence to link Defendant to the marijuana odor smelled by Mr. Kovalev on July 11, 2020.

While Mr. Kovalev testified that he saw an unidentified individual come downstairs from the upper level, while he believed everyone from the other upstairs apartment was with him, and while he credibly testified that he saw smoke around the individual’s head, Mr. Kovalev was unable to see when the individual began smoking, and offered no information on where or when the individual may have lit up whatever he was smoking. The Court finds that, even if the individual may have come from Defendant’s apartment, Plaintiffs did not prove that Defendant permitted the individual to use a controlled substance on the premises.

The individual could have begun smoking just as he left Defendant's apartment and after her door closed, or he could have been kicked out of Defendant's apartment just as he began to light up. In the absence of evidence tying the unnamed individual's activity directly to Defendant, the Court has no basis to find that Defendant knew or had reason to know that this individual was smoking marijuana in the building, or that Defendant permitted or assented to marijuana use in the building.

The Record of this Action Shall Be Expunged Under Minn. Stat. § 484.014

Minnesota Statute § 484.014, subd. 2 allows a court to "order expungement of an eviction case court file only upon motion of a defendant and decision by the court, if the court finds that the plaintiff's case is sufficiently without basis in fact or in law . . . that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record." Minn. Stat. § 484.014, subd. 2.

Defendant moved to have the action expunged. Although Plaintiffs objected on the grounds of fairness to other residents and cited the difficulty that landlords face during the COVID-19 pandemic, Plaintiffs were unable to provide evidence specifically linking Defendant to the marijuana odor.

In these trying times, the Court finds that an eviction action founded almost entirely on an odor, with no direct evidence of wrongdoing on the part of the tenant, should not be an albatross around a tenant's neck. While landlords can seek redress any time they suspect tenants of violating § 504B.171, tenants accused of illicit activity may find themselves homeless if they are denied housing based on unproven accusations. The Court finds that expungement of this eviction case is proper and clearly in the interests of justice.

L.J.M.