

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
DISTRICT COURT

Dirbwerk Yimer,
Plaintiff,
vs.

**ORDER ON DEFENDANT'S MOTION
TO DISMISS**

[REDACTED]
[REDACTED]
Defendant.

Court File: 27-CV-HC-20-1408

The written motion of Defendants came on for administrative review before the undersigned. No parties were present except by written motion of Defendants.

Plaintiff shall hereinafter be referred to as Landlord. Defendants shall hereinafter be referred to as Tenants.

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 19, 2020, Landlord filed an eviction action against Tenants alleging nonpayment of rent and failure to vacate after receiving written notice.

2. On July 17, 2020, Landlord amended the eviction action to add additional Tenants, including Tenant [REDACTED]. In the amended complaint, Landlord further alleged that Tenants had threatened Landlord's life.

3. On August 11, 2020, Landlord filed a second Amended Complaint alleging hold over after a notice to quit and an exception to EO 20-79.

4. On August 26, 2020, Landlord filed a third amended complaint. The third amended complaint alleged that Landlord was proceeding under two exceptions to the Governor's Emergency Executive Order 20-79 ("EO 20-79"), (1) Tenants seriously endangered the safety of others and (2) Landlord needs to move into the property.

5. Tenant [REDACTED] brought a motion to dismiss, alleging Landlord failed to join an indispensable party¹ and failed to state a claim.

6. Landlord opposes the motion to dismiss, alleging she provided the necessary notice required at the time Landlord commenced the eviction action. Specifically, Landlord argues that

¹ The Court does not reach this argument because the decision on the other claim is dispositive.

she provided written notice to the Tenant on December 7, 2019 and June 1, 2020 which was more than the seven days in advance as required by EO 20-79. The June 1, 2020, notice stated:

This is my final notice before filing an eviction appeal in Court. As you already know, I no longer rent bedrooms in this property for I and my family have no place to live and I've already gave you a notice in December.7, 2019. As I mentioned to you that you have to leave out by March 1st. However, you have not done so. Now, again I ask you to move out as soon as you get this second and my final notice.

7. Landlord argues that nothing in EO 20-79 requires that notice be given after the effective date of the order and that requiring an additional notice is contrary to the purpose of EO 20-79.

8. In considering a motion to dismiss pursuant to Rule 12.02(e), a district court must “consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party.” *Finn v. Alliance Bank*, 860 N.W.2d 638, 653 (Minn. 2015) (quotation omitted). Generally, documents outside the pleadings not referenced therein cannot be considered on a motion to dismiss without converting the motion to one for summary judgment. Minn. R. Civ. P. 12.02. However, the Court may consider any documents that are attached to the complaint. *Hardin Cnty. Sav. Bank v. Housing & Redevelopment Auth, of City of Brainerd*, 821 N.W.2d 184, 192 (Minn. 2012) (citing Minn. R. Civ. P. 10.03 and commenting that documents could be considered because they were specifically incorporated by reference into the complaint and rule 10 allows consideration of exhibits to a pleading). It may also consider documents that are referred to in a complaint but not attached to it. *Northern States Power Co. v. Metropolitan Council*, 684 N.W.2d 485, 490-91 (Minn. 2004).

Providing Seven Day Notice

9. The language of Executive Order 20-79 as it relates to the seven day written notice is as follows, “[a]ll property owners, mortgage holders, or other persons seeking possession on grounds permitted by this Executive Order must provide a written notice of intent to file an eviction action to the tenant at least 7 days prior to filing the action, or the specified notice period included in the lease, whichever is longer.” EO 20-79, ¶ 6.

10. The Executive Order requires Landlords seeking possession on grounds allowed by EO 20-79 to provide a written notice of intent to file an eviction. A landlord could not seek possession on grounds allowed by EO 20-79 prior to 12 a.m. on August 4, 2020.

11. In this case, Landlord filed an amended complaint on August 26, 2020 seeking possession based on EO 20-79. However, Landlord relies on written notices provided to Tenants in December of 2019 and June of 2020, before the effective date of EO 20-79 of August 4, 2020.

12. Nothing in the plain language of EO 20-79 indicates that a seven-day notice provided prior to August 4, 2020 would meet the requirement of EO 20-79, nor could it because a landlord could not proceed with an eviction under EO 20-79 prior to August 4, 2020.

13. This Court is unaware of any precedent that would support an interpretation that the seven-day written notice required by EO 20-79, could be effective if given prior to the effective date of the Executive Order.

Public Policy of Seven Day Notice

14. Landlord argues that because she has already started the eviction action, the courts are already involved and requiring additional notice is contrary to the public policy purpose of the Executive Order.

15. The Governor explicitly stated the purpose of the seven-day notice requirement is as follows: “[i]n addition, I am requiring landlords to give residential tenants a 7-day notice of intent to file an eviction to help mitigate the impact upon residential tenants and encourage resolutions without court involvement.” EO 20-79, p.1.

16. While it is accurate that the court is already involved in this case, Landlord does not address the EO’s purpose to mitigate the impact upon tenants and in particular give them notice of intent to proceed with an eviction under EO 20-79. A public policy argument cannot overcome the plain requirement of the EO that landlords give tenants a seven-day written notice of intent to file an eviction pursuant to EO 20-79.

17. Again the Court is unaware of any precedent that would support an interpretation that a public policy concern would overcome the plain language of EO 20-79’s seven-day written notice requirement.

18. The Court finds that Landlord did not provide Tenant the seven-day written notice of intent to file an eviction as required by EO 20-79 and therefore have failed to state a claim upon which relief can be granted.

ORDER


1. Tenant [REDACTED] motion to dismiss is **GRANTED**.

2. **EXPUNGEMENT**: Landlord’s case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case. Expungement is clearly in the interests of justice and those interests are not out-weighed by the public’s interest in knowing about the record. Minn. Stat. §484.014. Minn. Stat. §504B.345, subd. 1(c)(2) authorizes the Court to expunge the file at the time judgment is entered. The Court Administrator shall expunge the court file by removing evidence of the Court File’s existence from the publicly accessible records.

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

Let Judgment Be Entered Accordingly

Recommended By:

 2020.09.09
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Tiffany Sedillos
District Court Referee

By the Court:

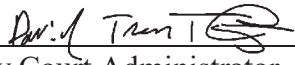


District Court Judge
Dated: Sep 10, 2020

Judgment

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

Dated: Sep 10, 2020

By: 
Deputy Court Administrator
