

State of Minnesota**District Court**

Hennepin County

Judicial District:	Fourth
Court File Number:	27-CV-HC-20-1514
Case Type:	Housing

██████████,
Petitioner/Tenant,

vs.

Assertive MPLS Properties, LLC, and
Dewanna M. Crawford,
Respondent/Landlord.

**RENT ESCROW
DECISION AND ORDER**

This matter came on for trial via Zoom before the Honorable Melissa Houghtaling, Referee of District Court, on September 9, 2020.

Petitioner was present. Petitioner shall hereinafter be referred to as Tenant. Luke Grundman, Attorney for Tenant, appeared.

Respondent was present. Respondent shall hereinafter be referred to as Landlord. Anna Koch, Attorney for Landlord, appeared.

Na Vang (Minneapolis Housing Inspector), Daniel LaCroix (Minneapolis Housing Inspector), and Kaylene Brown (Petitioner's niece) appeared as witnesses for Petitioner.

Timothy Aleson (Contractor) and Rachel Allard (former tenant) appeared as witnesses for Respondent.

Based upon the verified petition, testimony, evidence, and arguments presented, and all of the files, records, and proceedings, the Court makes the following:

Findings of Fact and Conclusions of Law

1. Tenant leases residential premises from Landlord located at 2410 James Ave. N. Apt. 2, Minneapolis, Hennepin County, Minnesota, 55411.

2. Rent for the property is \$1,850.00 per month with Tenant's portion set at \$500.00 per month effective September 2020.

3. Tenant has deposited \$500.00 for rent with the Clerk of Court reflecting Tenant's portion of rent for the month of September 2020.

4. Tenant asserted most repairs had been made as of September 9, 2020, however, repairs were not completed until after she initiated this action on August 3, 2020. Additionally, Tenant continues to have a mouse problem.

5. Tenant moved into the premises on April 16, 2020.

6. Tenant now seeks rent abatement alleging she has suffered loss of use and enjoyment to the Leased Property due to Landlord not making timely repairs.

7. Under Minn. Stat. § 504B.425(a) if the court finds that a violation of clause (1) or (2) of Minn. Stat. § 504B.161, subd. 1, has been proved, in its discretion, the court may find the extent to which any uncorrected violations impair the residential tenants' use and enjoyment of the property contracted for and order the rent abated accordingly.¹ If the court enters judgment under this paragraph, the parties shall be informed and the court shall determine the amount by which the rent is to be abated. (Emphasis added.) See also Minn. Stat. §§ 504B.395, subd. 1(1) (procedure for bringing tenants' action), .001, subd. 14(2) (2017) (defining violation).

8. Under this statute, the court has discretion to order rent abatement; it is not required to order abatement. Compare Minn. Stat. § 645.44, subd. 15 (2017) (stating " 'may' is permissive") with Minn. Stat. § 645.44, subd. 16 (2017) (stating " 'shall' is mandatory").

9. If the Court were to award Plaintiff rent abatement, it must find that the uncorrected violations impairs the Tenant's use and enjoyment of the property.

10. Mr. Daniel LaCroix, Housing Inspector II for the City of Minneapolis, issued three Order to Correct Notices to Landlord in 2019. *See* exhibits 1-3.

11. Mr. LaCroix credibly testified that the repairs identified in exhibits 1 and 2 pertain to exterior clean-up and were completed prior to Tenant taking possession of the premises.

12. Exhibit 3 pertains to the lower unit and common areas.

13. Mr. LaCroix credibly testified that the violations have been completed and repaired.

14. Mr. Na Vang, Housing Inspector for the City of Minneapolis, credibly testified that he issued four Order to Correct Notices between February 2020 and June 2020. *See* exhibits 4-7.

15. Mr. Vang credibly testified that the repairs noticed in Exhibit 4 were completed in March 2020, prior to Tenant's tenancy.

¹ 504B.161 Covenants of landlord or licensor. Subdivision 1. Requirements. In every lease or license of residential premises, the landlord or licensor covenants:

(1) that the premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee; and

(3) to maintain the premises in compliance with the applicable health and safety laws of the state, including the weatherstripping, caulking, storm window, and storm door energy efficiency standards for renter-occupied residences prescribed by section 216C.27, subdivisions 1 and 3, and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

16. Mr. Vang credibly testified that when he issued the Order to Correct Notice on February 13, 2020 (Exhibit 4), the upper unit was vacant and in the process of being repaired and restored and “everything was working” as of March 2020. He further explained that some of the items on the Notices to Correct were exterior issues that could not be completed until the weather improved. *See exhibit 5.*

17. On June 2, 2020, Mr. Vang issued an Order to Correct Notice following a complaint by the Tenant. He had conducted a virtual inspection and noted the following violations:

- a. insufficient trash carts
- b. exterior doors with gaps and openings
- c. a previously repaired handrail was detached
- d. light fixtures in hall to upper unit were not functioning
- e. outside hose not operational
- f. mice droppings in the unit
- g. two burners on gas stove inoperable
- h. refrigerator freezer not functioning

Exhibit 6.

18. The date set by the Department in Exhibit 6 of July 3, 2020 passed without completion of corrections.

19. Tenant did not present any evidence that the date set by the City inspector was excessive.

20. On June 2, 2020, Mr. Vang issued a second Order to Correct Notice requiring Landlord to provide a proper parking surface to an area along the rear alley where a car was parked on a non-concrete pad. *Exhibit 7.* Landlord was given until July 3, 2020 to complete the repair.

21. The parking surface violation was resolved on July 29, 2020.

22. Ms. Kaylene Brown, Tenant’s niece, credibly testified that she has been at the property a couple of times to help Tenant with various things. She explained that there is no handrail at the backdoor and the hallway smells like cat urine. She further explained that the toilet does not function properly, the carpet in the unit is stained and smells, and that there is mouse feces throughout the unit in the kitchen, bathroom, and bedroom. Mr. Brown has observed a mouse in the unit as recently as July 2020.

23. Tenant credibly testified that the person she communicated with about her concerns with the property was Dewanna Crawford. The first issue she encountered upon taking possession of the unit was an issue with the sink in the bathroom which was repaired relatively quickly. Soon thereafter she began noticing other repair issues including mice, windows that would not open or were missing screens, dirty and smelly front and back hallway, and garbage in the yard.

24. Tenant presented no credible evidence that she provided Landlord with any written notice for repairs aside from those issued by the City of Minneapolis.

25. Ms. Dewanna Crawford is in charge of leasing premises owned by the Defendant Landlord. Ms. Crawford corroborated the testimony of the City of Minneapolis Inspectors that the Order to Correct Notices issued in 2019 and early 2020 were closed prior to Tenant taking possession. *See exhibits 1-3.*

26. Ms. Crawford had no first-hand personal knowledge that violations identified on Order to Correct Notices were completed as she hands off the Notices to maintenance workers and trusts that the work gets completed.

27. Ms. Rachel Allard was a previous tenant and roommate of Ms. [REDACTED]. She credibly testified that the refrigerator had been leaking and it took the Landlord a month to repair. She also testified that there was a mouse problem. Ms. Allard vacated the property on August 17, 2020 because she had safety concerns for herself or her children.

28. The parties presented arguments related to Tenant's car being towed. The evidence supports a conclusion that Tenant was given notice that parking was not permitted in the unpaved area due to work being completed by the Landlord as required by the City of Minneapolis's Order to Correct. *See exhibit 23*. Landlord provided notice that vehicles impermissibly parked would be towed. While Tenant seeks reimbursement for towing expenses, the evidence was not clear that Landlord had Tenant's vehicle towed prior to the date indicated in the notice nor is the evidence clear as to what expense was incurred by Tenant.

29. The violations identified in Exhibit 6 Order to Correct Notice existed at the property from June 3, 2020 through September 9, 2020. The exterior door thresholds, mouse infestation, refrigerator and stove issues, and lack of responsiveness from the Landlord has impaired the Tenant's use and enjoyment of the property.

Now therefore, it is Ordered:


1. JUDGMENT: Judgment shall be entered in favor of Petitioner Tenant.
2. COSTS AND DISBURSEMENTS: Petitioner Tenant is awarded costs and disbursements as the prevailing party.
3. REPAIRS: Landlord is ordered to hire a licensed pest control company to seal the exterior of the premises and set traps for the mouse infestation and continue a monthly service with the pest company until at least May 1, 2021. Landlord shall hire the pest control company no later than October 20, 2020.
4. RENT ABATEMENT: Tenant has had diminished use and enjoyment of the premises. Rent is reduced for the months of June through August 2020 by a total of \$1,800.00, is reduced by a total of \$400.00 for September and October 2020, and \$200 per month until the first month following completion of court ordered repairs. Rent abatement shall terminate for the first rental period following Landlord's completion of sealing the exterior of the property and the Landlord provides Tenant's attorney a contract indicating continued and on-going pest control through May 1, 2021.
5. RENT DISBURSEMENT: The rent now on deposit with the Court shall be released as follows: \$500.00 to Tenant.
6. Landlord shall pay Tenant \$1,700.00 within 10 days of the date of this Order. Failure to make the payment shall result in entry of a money judgment in favor of Tenant.

7. ATTORNEY FEES: Tenant is awarded \$500 in attorney fees pursuant to Minn. Stat. § 504B.425(g). Landlord shall pay the attorney for Tenant directly within 10 days of this order.


8. SERVICE OF ORDER: 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:

 2020.10.13
14:16:38 -05'00'
Hon. Melissa Houghtaling
District Court Referee


By the Court:


District Court Judge
Dated: Oct 13, 2020

Judgment

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

Dated: Oct 13, 2020

By: 
Deputy Court Administrator