

STATE OF MINNESOTA

FOURTH JUDICIAL DISTRICT

COUNTY OF HENNEPIN

DISTRICT COURT

Court File No.: 27-CV-HC-21-118

[REDACTED],  
Plaintiffs/Tenants,  
vs.

**ORDER**

Distinguished Properties, LLC, Elite  
Property Management Group, LLC,  
Defendants/Building Owners.

This matter came on for hearing before the Honorable Melissa Houghtaling, Referee of District Court, on April 27, 2021.

Dion Farganis, Attorney for Plaintiffs, appeared.

Brian Hage, Attorney for Defendants, appeared.

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. On February 25, 2021, Plaintiffs filed a Verified Complaint under the Tenant Remedies Act pursuant to Minn. Stat. §504B.395.

2. The parties entered into a settlement agreement, which was approved by the Court and incorporated into the Court's April 6, 2021 Order.

3. On April 14, 2021, Plaintiffs filed a Motion to Enforce the Settlement Agreement.

4. Plaintiffs argue that Plaintiffs vacated the Premises on or before April 10, 2021 at 11:59 p.m. pursuant to the parties' settlement agreement.

5. The Premises is defined as "2356 Thomas Avenue North, Minneapolis, Minnesota 55412".

6. Plaintiffs' state that Defendants have refused to pay Plaintiffs \$3,000.00 as required by the settlement agreement.

7. Defendants were required to pay Plaintiffs \$1,000.00 within 48 hours of the execution of the settlement agreement, with the remaining \$3,000.00 due within seven days of the execution

of the Agreement, provided Plaintiffs comply with the terms 7 and 8 of the Agreement. *April 6, 2021 Order*, p. 3, ¶5.

8. Paragraph 7 of the Agreement requires Plaintiffs to “vacate and remove all persons and property from the Premises and provide Defendants with keys to the Premises no later than April 10, 2021 at 11:59 p.m.” *April 6, 2021 Order*, p. 4, ¶7.

9. The Agreement also provides that the security deposit made by Plaintiffs will be handled in accordance with Minnesota law. *April 6, 2021 Order*, p. 4, ¶11.

10. It is undisputed that Defendants made the first payment (\$1,000.00) to Plaintiffs in person and that Plaintiffs complied with Agreement paragraph 8.

11. Plaintiffs claim Defendants did not make the required second payment (\$3,000.00).

12. Defendants do not dispute not making the second payment but rather state they had no obligation to pay it because Plaintiffs did not comply with Paragraph 7 of the agreement by leaving personal property and failing to return keys by the deadline.

13. Plaintiffs move the Court for an order requiring Defendants to comply with all of their remaining obligations under the settlement agreement.

14. The question before the Court is: were Plaintiff’s actions a material breach of the agreement or a failure to comply with a condition precedent?

15. A settlement agreement is a contract. *See St. Paul Fire & Marine Ins. Co. v. National Chiropractic Mut. Ins. Co.*, 496 N.W.2d 411, 415 (Minn. Ct. App. 1993), review denied (Minn. Apr. 29, 1993).

16. Absent ambiguity, the construction and effect of a contract are questions of law. *Trondson v. Janikula*, 458 N.W.2d 679, 681 (Minn.1990).

17. “[T]he general rule applicable to contracts is that rescission of a contract is justified only by a material breach or substantial failure in performance.” *Cloverdale Foods of Minnesota, Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49 (Minn. Ct. App. 1998).

18. Substantial performance is the “performance of all the essentials necessary to the full accomplishment” of the purposes of a contract. *Material Movers, Inc. v. Hill*, 316 N.W.2d 13, 18 (Minn.1982) (permitting only nonmaterial deviations) (citation omitted).

19. “A condition precedent calls for the performance of some act or the happening of some event after the contract is entered into, and upon the performance or happening of which its obligation is made to depend.” *National Union Fire Ins. v. Schwing Am., Inc.*, 446 N.W.2d 410, 412 (Minn. Ct. App. 1989) (stating that party may not enforce contract containing condition precedent unless condition is satisfied) (citation omitted); *see also National City Bank v. St. Paul*

*Fire & Marine Ins. Co.*, 447 N.W.2d 171, 176 (Minn.1989) (requiring satisfaction of condition precedent before duty to perform under contract arises).

20. Whether contract language is a condition or a promise generally depends on the intent of the parties. 5 Samuel Williston & Walter H.E. Jaeger, *A Treatise on the Law of Contracts* § 663 (3d ed. 1961) (stating that condition is distinguished from promise in that condition creates no right or duty in and of itself but is merely limiting or modifying factor).

21. Under the terms of the Agreement, Defendants promised to pay the Plaintiffs \$3,000 in return for the Plaintiffs returning possession of the Premises to the Defendants.

22. On April 11, 2021, Defendants visited the property at 9 a.m. and were able to access the unit through the backdoor. *See Mortarjemi Aff.* (April 20, 2021). Defendants were unable to access the unit through the front door because the Plaintiffs had replaced the deadbolt. However, Plaintiffs had left the keys to the deadbolt in the unit. *Defendant's Response Memorandum*.

23. Attorney Hage communicated to Attorney Farganis that on April 11, 2021, his clients had “inspected the unit... and based on personal property left in the unit, it [was] clear your clients did not comply with the agreement.” *See Farganis Aff. Exhibit 4*.

24. Attorney Farganis then requested evidence of the personal property left behind. Attorney Hage provided Attorney Farganis with photographs and further stated that Plaintiff “never provided the landlord keys as required by midnight on the 10<sup>th</sup>, [n]or did they otherwise indicate that they vacated.” *See Farganis Aff. Exhibit 6*.

25. The photographs include pictures of the following items left behind: a bottle of hydrogen peroxide in a medicine cabinet, a jug of cleaning product, a broom and dust pan, a box fan, frozen food in freezer, cans of food in a kitchen cabinet, cleaning products under a sink, a microwave, a pair of sneakers, 3 shoe boxes, two toys, and miscellaneous and unidentifiable items in the driveway next to the garage left as garbage. *Id.*

26. Attorney Hage informed Attorney Farganis that payment would not be made to Plaintiffs because they failed to remove all personal property and Defendants would be harmed by having to store the items and/or have additional garbage removal services.

27. Additional photographs of property left behind in a storage shed and the items identified in paragraph 21 herein were attached to Defendants' responsive memorandum.

28. While there is no dispute that items were left behind, the Court finds the items inside the unit were minimal and could be easily stored or disposed of. Further, the intent of the Agreement was for Plaintiffs to return possession of the Premises to Defendants by April 10, 2021 at 11:59 p.m. and Plaintiffs did such. While the items left in the driveway and storage shed were more significant, the cost of disposing of those items could easily be deducted from the security deposit in accordance with paragraph 11 of the Agreement and none of those items prevented Landlord from re-letting the unit.

29. The greater weight of the evidence supports a finding that Plaintiffs substantially complied with the terms of the agreement by vacating the unit as agreed upon and leaving the keys in the Premises for landlord to access. Leaving a few personal property items behind was not a material breach of the agreement.

30. Further, even if the court considered the payment of \$3,000 a condition precedent, the Plaintiffs completed the condition precedent when they vacated the premises.

### **ORDER**

1. Plaintiffs' request for relief is GRANTED. Landlord shall pay Tenant \$3,000.00 within 10 days of this Order. Landlord's failure to make the payment shall result in Tenant obtaining a money judgment.

2. Service of Order: The Clerk of Court shall either deliver in person or mail a copy of this Order by first class mail to the parties.

Recommended by: \_\_\_\_\_  
Date: \_\_\_\_\_

*Michael J. Houghtaling*  
2021.06.09  
12:48:27  
Housing Court Referee

Approved by the Court: \_\_\_\_\_

*Frederick L. Baumgartner*

District Court Judge

Jun 09, 2021