

State of Minnesota

Hennepin County

District Court

Judicial District:	Fourth
Court File Number:	27-CV-HC-20-1586
Case Type:	Housing

██████████,
Plaintiff/Tenant,

vs.

Golden Mile Management LLC,
Defendant/Landlord.

**RENT ESCROW
DECISION AND ORDER**

This matter came on for trial before the Honorable Tiffany Sedillos, Referee of District Court, on October 5, 6, and 13, 2020.

Plaintiff was present. Plaintiff shall hereinafter be referred to as Tenant. Jeffer Ali, Attorney for Tenant, appeared.

Defendant was represented by Manager, Wei Daniel Tan. Defendant shall hereinafter be referred to as Landlord. Kirk Tisher, Attorney for Landlord, 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

1. Tenant leases residential premises from Landlord located at 4216 Lake Breeze Ave. N., Apt. #2, Brooklyn Center, Hennepin County, Minnesota, 55429 (hereinafter "Property").
2. Wei Daniel Tan is the owner of the Property and Manager of Golden Mile Management, LLC.
3. Rent for the Property is \$900.00 per month.
4. Tenant has deposited \$2,021.00 with the Clerk of Court which represents rent for the month of September and part of August.
5. Wei Daniel Tan, Landlord testified that he has been a Landlord for fifteen years and owns eight multi-family buildings. Landlord testified that he understood that a rental property needed to be fit and habitable. Landlord testified that he signed a lease agreement with Tenant which he identified as Plaintiff's Exhibit A.
6. Tenant credibly testified that after a period of homelessness, she moved into the Property in February 2019. Tenant credibly testified that she appreciated that Landlord gave her a chance and agreed to rent to her prior to her getting a job, and this made her hesitant to bother Landlord about issues with the Property.

7. Tenant credibly testified that about two weeks after she moved into the Property she saw water on the kitchen and living room floors.

8. Landlord testified that on March 21, 2019, he and Tenant exchanged text messages related to water intrusion that was making the carpet wet in the Property. Plaintiff's Exhibit I.

9. Landlord testified that he sent a water extraction/carpet cleaning company to the Property to dry and clean the carpet several times after Tenant complained about water coming into the Property. Landlord testified that in April 2019, he saw cracks in the sidewalk near the side of the building, he filled the cracks with sand and cement, checked the downspouts, and gutters for issues.

10. On May 29, 2019, Landlord sent a text message to Tenant asking for her availability for carpet cleaners, Landlord also texted that "[i]t's been a very wet Spring this yr the front needs some landscaping work I'm trying to line up." Ex. I.

11. Tenant credibly testified that the carpet was so saturated with water that at times their socks would be wet, her baby would slap the carpet and water would splash up and, that the baby would try to suck the water out of the carpet.

12. On July 1, 2019, Tenant texted Landlord again stating, "Hey its still floodinf (sic) in my house and the carpets are getting really bad." Ex. I. Landlord responded in part asking, "Is water coming in from the rain we've been having?" Tenant responds, "Yes in the corners of the house as well." Ex. I.

13. On August 19, 2019, Tenant texted Landlord stating, "Oooohhhhhweeeee Dan the rain has flooded the whole left side of the house from the kitchen to the side of the living room to the bed room big puddles of water from sun morning it's making the house smell really bad." Ex. I.

14. Tenant's aunt [REDACTED] testified that she babysat Tenant's children in the Property while Tenant was at work from May 2019 to December 2019. Ms. [REDACTED] credibly testified that the Property was flooding with water, the floors were wet including the kitchen the living room and the master bedroom and that it smelled "nasty". Ms. [REDACTED] testified that both her two-year-old son and Tenant's infant son had allergic reactions, including a runny nose and rashes after being in the Property. Ms. [REDACTED] testified that she did not want to bring her child back to the Property after he got sick.

15. Landlord testified that he continued receiving complaints from Tenant into 2020 related to water intrusion issues. Landlord testified that in July 2020 he had a drain tile system installed at the Property. Ex. 1. Landlord credibly testified that he did not inspect or test the Property for mold.

16. On June 22, 2020, Tenant texted Landlord: "Can yu please do something about this carpet is really frustrating I went out of town for 2 weeks and came back the living room carpet was wet and it smells like mildew and I have a lil baby dan please do something its just random parts of the carpet just soaked its leaking under the sink or from some where and the kitchen soaked. And mildwed all my towels and my tissues and napkins for the second time please dan im really tired of this" Ex. J.

17. On July 15, 2020, Landlord reached out to Angelo Thurmond asking him to do “carpet replacement, replace kitchen vinyl & drywall cut out, repair & bleach out any signs of initial mold formation etc.” Ex. 5. In August 2020, the carpet in the living room was replaced and the vinyl sheet flooring in the kitchen was replaced. Tenant credibly testified that to her knowledge no one hired by Landlord ever put bleach on any surface in the Property to attempt to deal with the mold issue.

18. Landlord testified at trial that there is still a problem with water intrusion in the Property and he believes that it may have something to do with a neighbor’s gutter system. Landlord testified that he was still not positive where the water entering the Property is coming from. Tenant credibly testified that after the drain tile was installed at the Property in the summer of 2020, the water problem actually got worse.

19. John Loyear testified as a rebuttal witness for Tenant. Mr. Loyear owns a disaster restoration company which includes mold remediation. Mr. Loyear inspected the Property on October 12, 2020 and credibly testified that it would take approximately four to six weeks to remediate the mold in the Property.

20. Tenant credibly testified that the water in the Property had ruined clothes, toilet paper, and a PlayStation 4. Tenant credibly testified that she had to throw out approximately a large black garbage bag of clothes after they became wet and smelly due to the water on the floor and that the replacement value is \$400. Tenant credibly testified that her PlayStation 4 got wet from the water intrusion and no longer worked, and has a replacement value of \$400. Tenant also credibly testified that she lost approximately 50 rolls of toilet paper when they got wet and moldy.

21. Vickie Swenson, testified as an expert witness for Tenant. Ms. Swenson testified that she has been completing mold inspections for 15 years and has been a Certified Residential Mold Inspector, through the American Council for Accredited Certification accredited by the Council for Engineering and Scientific Specialty Boards since 2005. Ex. G. The Court finds that Ms. Swenson is an expert in mold inspection.

22. Ms. Swenson credibly testified that she performed an inspection of the Property on September 2, 2020 and produced a report of findings. Plaintiff’s Exhibit D.

23. Ms. Swenson credibly testified that the moisture meter she used at the Property indicated that the kitchen cabinet and the hallway wall was 100% wet. Ms. Swenson testified that there was a white patch of mold on the hallway carpet at the Property and that there was a strong, very bad smell in the hallway that almost made her vomit. Ms. Swenson testified that the moisture issues at the Property have likely been a long term problem based on the dark color of the wood on the tack strips.

24. Ms. Swenson credibly testified that she tested four areas of the apartment for mold and that mold was present in all four areas, the kitchen cabinet, tack strips under the carpet in the living room and master bedroom, and on the hallway carpet. Ms. Swenson credibly testified that specifically, stachybotrys (“toxic black mold”) was found in the master bedroom and chaetomium (“toxic mold”) was present in the living room and kitchen. Ex. F. Ms. Swenson credibly testified that these types of mold require water to grow not just humidity. Ms. Swenson described the Property as very wet, and testified that there are multiple health concerns besides mold in such a wet environment, specifically related to the off-gassing of the carpet and wood, and the growth of

bacteria. Ms. Swenson testified that lab report indicated that hyphal fragments were present in the Property which indicates that mold was actively growing. Ex. F.

25. Landlord's defenses to the Rent Escrow action were that he was responsive to Tenant's complaints and that he now believes that the Property is untenantable and uninhabitable and therefore the Lease agreement should be terminated.

26. Landlord cited to the below provision of the Lease for his position that the Lease should be terminated.

DAMAGE TO PREMISES. In the event the Premises are destroyed or rendered wholly untenantable by fire, storm, earthquake, or other casualty not caused by the negligence of the Tenant, this Agreement shall terminate from such time except for the purpose of enforcing rights that may have then accrued hereunder. The rental provided for herein shall then be accounted for by and between the Landlord and the Tenant up to the time of such injury or destruction of the Premises. Tenant paying rentals up to such date and the Landlord refunding rentals collected beyond such date. Should a portion of the Premises thereby be rendered untenantable, the Landlord shall have the option of either repairing such injured or damaged portion or terminating this Lease. In the event that the Landlord exercises its rights to repair such untenantable portion, the rental shall abate in the proportion that the injured parts bears to the whole Premises, and such part so injured shall be restored by the Landlord as speedily as practicable, after which the full rent shall recommence and this Agreement continue according to its terms.

Ex. A.

27. Landlord testified that the "storms" in spring of 2019 were the original cause of the untenantability of the property.

CONCLUSIONS OF LAW

28. Pursuant to Minnesota Statutes section 504B.385, subdivision 1, a residential tenant may deposit rent due to the Landlord with the court if a violation exists in a residential building, for a violation as defined in section 504B.001, subdivision 14, clause (2) or (3), the residential tenant must give written notice to the landlord specifying the violation. The notice must be delivered personally or sent to the person or place where rent is normally paid. If the violation is not corrected within 14 days, the residential tenant may deposit the amount of rent due to the landlord with the court administrator along with an affidavit specifying the violation. Upon finding that a violation exists, the court may, in its discretion, do any or all of the following: (1) order relief as provided in section 504B.425, including retroactive rent abatement; (2) order that all or a portion of the rent in escrow be released for the purpose of remedying the violation; (3) order that rent be deposited with the court as it becomes due to the landlord or abate future rent until the landlord remedies the violation; or (4) impose fines as required in section 504B.391.

29. The Court finds that Tenant has proved by a preponderance of the evidence that Landlord has violated Minnesota Statutes section 504B.385, subdivision 1(c), specifically Minnesota Statutes section 504B.001, subdivision 14(2), by failing to keep the premises in reasonable repair during the term of the lease as required by 504B.161, subdivision 1(a)(2).

30. The Court finds that violations exist at the Property as follows: extensive, repeated, water intrusion and resulting mold. The weight of the evidence demonstrates that Landlord received written notice of the repair issues and failed to adequately address them within 14 days.

31. Minnesota Statutes section 504B.385, subdivision 3 and 504B.415, identifies the defenses to a Rent Escrow action as: (1) the violation or violations alleged in the complaint do not exist or that the violation or violations have been removed or remedied; (2) the violations have been caused by the willful, malicious, negligent, or irresponsible conduct of a complaining residential tenant or anyone under the tenant's direction or control; or (3) a residential tenant of the residential building has unreasonably refused entry to the landlord or the landlord's agent to a portion of the property for the purpose of correcting the violation, and that the effort to correct was made in good faith.

32. Landlord did not prove any of the defenses enumerated in Minnesota Statutes section 504B.415. Landlord and Tenant both testified that Landlord took some steps to attempt to remediate the water issues, but those steps were clearly not effective in remedying the issues, as Landlord testified at trial he is still not sure where the water is coming from and there continues to be a water and mold problem in the Property a year and half after Landlord was originally notified of the issue.

33. The Court is not persuaded by Landlord's argument that the Lease should be terminated based on the "untenantability" of the Property, it is not a proper defense to a Rent Escrow action and it is contradicted by Landlord's conduct in continuing to collect rent and allowing Tenant to continue living in the Property.

34. Interpreting a contract requires the court to determine and enforce the intent of the parties. *Motorsports Racing Plus, Inc., v. Arctic Cat Sales, Inc.*, 666 N.W.2d 320, 323 (Minn. 2003). When interpreting a written contract, the court determines the intent of the parties from the plain language of the instrument itself. *Metro. Sports Facilities Comm'n v. General Mills Inc.*, 470 N.W.2d 118, 123 (Minn. 1991). When a contractual provision is clear and unambiguous, courts should not rewrite, modify, or limit its effect by a strained construction. *Telex Corp. v. Data Prods. Corp.*, 271 Minn. 288, 135 N.W.2d 681, 686–87 (1965).

35. The contract at issue is not ambiguous, it clearly states that if the Premises "are destroyed or rendered wholly untenantable by fire, storm, earthquake, or other casualty not caused by the negligence of the Tenant, this Agreement shall terminate from such time...The rental provided for herein shall then be accounted for...Tenant paying rentals up to such date [of injury or destruction of the Premises] and Landlord refunding rentals collected beyond such date."

36. The Court finds that the Property is clearly not "destroyed or wholly untenantable" and that this "defense" is retaliatory in nature. Landlord was fine with allowing Tenant and her two young children to live in substandard, hazardous conditions for the past year and half until she filed a Rent Escrow action. Additional evidence supporting this finding include, that Landlord continued to collect rent from the Tenant up until this Rent Escrow matter was filed, and despite knowing about the water issues since at least March 2019, Landlord only advised Tenant that the Property was "untenantable" during the Rent Escrow trial.

37. Under Minnesota Statutes section 504B.425(a) if the court finds that a violation of clause (1) or (2) of Minnesota Statutes section 504B.161, subdivision 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. *See also* Minn. Stat. §§ 504B.395, subd. 1(1) (procedure for bringing tenants' action), .001, subd. 14(2) (defining violation).

38. The Court finds that the uncorrected violations have impaired the Tenant's use and enjoyment of the Property from April 2019 to October 2020. Tenant and Ms. Swenson credibly testified that the water in the unit has significantly impacted the master bedroom, the living room, the kitchen and the hallway leading into the Property. While there were periods of time when the carpets were not soaking wet, during the winter months, Tenant did not have full enjoyment of the premises due to the presence of mildew and mold. The Court finds that Tenant's use and enjoyment of the Property was diminished by 75%, as she was unable to fully use and enjoy three of the four living spaces in the Property.

39. Under Minnesota Statutes section 504B.425 (a) if the court finds that a violation of clause (1) or (2) of Minnesota Statutes section 504B.161, subdivision 1, has been proved, the court may grant any other relief it deems just and proper, including a judgment against the landlord for reasonable attorney fees, not to exceed \$500, in the case of a prevailing residential tenant.

40. Tenant's award is as follows:

Description	Amount
Tenant's 75% Rent Abatement from April 2019 through October 2020	\$12,150
Rent previously refunded to Tenant	-\$300
Personal property damages	\$840.00 ²
Subtotal	\$12,690
Rent currently in Escrow	-\$2,021
Total Award to Tenant	\$10,669

Now therefore, it is Ordered:

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.

² Tenant's counsel requested \$75 as replacement damages for the 50 rolls of toilet paper that Tenant testified she lost. Landlord's counsel argued that the amount requested was excessive. The Court agrees that \$75 is excessive and not in line with the current replacement value. Therefore the Court awards Tenant \$40 as the replacement value for 50 rolls of toilet paper.

1. **RENT ABATEMENT:** Tenant has had diminished use and enjoyment of the premises. Tenant's request for rent abatement is **GRANTED**. The rent is reduced by 75% for the months of April 2019 to October 2020, by a total of \$12,150. Tenant's prospective rent is reduced by 75%, meaning Tenant shall pay \$225 per month. At the point Tenant is forced to move out of the Property so that repairs can be completed, rent is reduced by 100% until the first month following completion of court ordered repairs.

2. Landlord shall pay Tenant no later than 30 days from the date of this order, the amount of \$10,669. If Landlord fails to pay Tenant the total sum of \$10,669, then Tenant shall have judgment against Landlord in the amount of \$10,669.

3. **REPAIRS:** Landlord is ordered to remedy all violations, specifically the water intrusion and mold remediation, on or before November 25, 2020. While Tenant is unable to stay in the Property because major repairs are being made, the Tenant shall pay up to \$900/month (because rent is abated at 100%) for a hotel or other temporary dwelling, and Landlord shall pay the reasonable cost difference between the rent of \$900 and the cost of Tenant's hotel room/short-term rental directly to the place of temporary residence.

4. **RENT ABATEMENT UNTIL REPAIRS COMPLETED:** Rent abatement shall terminate for the first rental period following Landlord's completion of repairs.

5. **RENT DISBURSEMENT:** The rent now on deposit with the Court shall be released as follows: \$2,021.00 to Tenant and \$0 to Landlord.

6. **COMPLIANCE HEARING:** This is scheduled for a compliance hearing on **November 25, 2020, at 1:30p.m.** via Zoom. For remote access the parties and their witnesses can access the hearing either by navigating to website link below or using the Zoom App, and connecting to the hearing via computer or smartphone, or by calling the number below and connecting to the hearing through telephone:

Website:

www.zoomgov.com

Meeting ID: 160 314 8918

Password: 185874

Telephone Call-in:

1-833-568-8864

Meeting ID: 160 314 8918

Password: 185874

Parties may get more information on accessing Zoom hearings on the Court's website: <http://www.mncourts.gov/Remote-Hearings.aspx>. The Clerk of Court may be contacted by telephone 612-348-5882 for difficulties with accessing the hearing via Zoom on the day of the hearing.

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

8. EXHIBITS: Parties are informed that, pursuant to Rule 128 of the Minnesota General Rules of Practice for Civil Actions, it is the duty of the party offering exhibits during a trial to remove the exhibits from the custody of the court. Parties may request the return of their exhibits 15 days after the time allowed for appeal of the final decision has passed. Failure to request removal of the exhibits could result in the exhibits being part of the public record or could result in the exhibits being destroyed by the Court.

Let Judgment Be Entered Accordingly

Recommended By:



Sedillos, Tiffany
Oct 28 2020 5:16 PM

By the Court:



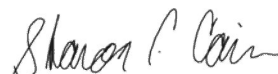
Tiffany Sedillos
District Court Referee

District Court Judge
Dated: Oct 29, 2020

Judgment

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

Dated: Oct 29, 2020

By: 
Deputy Court Administrator