

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

██████████,

Court File No. 27-CV-20-1622

Plaintiff,

**ORDER ON MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
MOTION TO COMPEL**

v.

Lennell Johnson,

Defendant.

On September 15, 2020, the Court conducted a hearing on Plaintiff's Motion for Partial Summary Judgment and Motion to Compel. Jeffer Ali represented Plaintiff ██████████. Adam Syzmanski was on the brief for Plaintiff. Lennell Johnson represented himself.

Based upon the record, the Court issues the following:

ORDER


1. Plaintiff's Motion for Partial Summary Judgment is GRANTED;
2. Plaintiff is entitled to summary judgment in her favor on her claims of violation of the covenants of habitability, Consumer Fraud Act violations, fraud (including fraud in the inducement), and unjust enrichment. Plaintiff is entitled to recover \$37,808 from Defendant;
3. Plaintiff's Motion to Compel is GRANTED;

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4. Defendant must complete his deposition, via Zoom if any party so requests, and must pay the court-reporting fee incurred by Plaintiff for that reconvened deposition; Defendant must also provide, within 14 days of the date of this Order, complete responses to Plaintiff's Interrogatories and Document Requests;
5. The parties must advise the Court of the results of the October 20 mediation; if necessary, the Court will convene a prompt conference call with the parties to discuss the scheduling of trial, currently set for November 30-December 4, 2020; and
6. The attached Memorandum is part of this Order.

BY THE COURT:

September 25, 2020



Thomas S. Fraser
Judge of District Court

MEMORANDUM

The parties were tenant and landlord. Plaintiff Bonita [REDACTED] rented a house from Defendant Lennell Johnson, who she later found out did not have a rental license. She now brings this lawsuit for recovery of rent and other damages under various legal theories. The case is before the Court on her motion for partial summary judgment and her motion to compel certain discovery.

FACTS

In March 2013, Mr. Johnson began renting his property at 3307 Upton Avenue North, Minneapolis, to Ms. [REDACTED] through a written lease. In the first and all later leases, Mr. Johnson explicitly promised to comply with applicable health and safety laws. He also expressly agreed that “the property is fit for use as a residence.”

Although he knew he needed a license to rent the property to Ms. [REDACTED], he did not have one for this property and he did not tell Ms. [REDACTED] that he lacked that license.

In late 2017, Ms. [REDACTED] began withholding her rent because the property was in disrepair. Mr. Johnson sought to evict her but lost when his failure to have a rental license came to light. He applied for a rental license on September 13, 2017 and received one on October 10, 2017. Mr. Johnson then filed a second eviction action but lost again when the housing court ruled that his failure to have a rental license for more than four years while collecting rent violated the statutory covenants of habitability under Minnesota Statutes section 504B.161. The housing court found that he was not entitled to rent before October 11, 2017 when he lacked a rental license. The housing court also found that the property was in disrepair. Mr. Johnson did not appeal this decision.

In October 2018, Mr. Johnson filed a third eviction action. In his eviction complaint, Mr. Johnson falsely claimed that he was entitled to rent payments that the housing court had already barred. At the first hearing in this case, Ms. [REDACTED] showed Mr. Johnson and his counsel the prior housing court ruling, but they did not withdraw or correct their complaint, instead pushing for settlement.

Ms. [REDACTED] began this lawsuit by service on Mr. Johnson on February 28, 2020. Her complaint sets forth claims for common-law fraud and violation of consumer-protection statutes by collecting rent for an unlicensed property. She seeks damages in the form of the rent illegally collected, plus other damages and fees and costs.

ANALYSIS

I. Plaintiff's Motion for Partial Summary Judgment

Ms. [REDACTED] now moves for partial summary judgment on five of her claims. Mr. Johnson submitted a response that admits the lack of a license and tries to explain the reasons for it. He does not respond to any legal analysis or otherwise create a genuine issue of material fact.

Ms. [REDACTED] first claim is that she has a private cause of action under Minnesota Statutes section 504B.161 for rent collected without a rental license. This section contains the lessor's covenants of habitability, which are made a part of every lease.

Under this section, a lessor 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 . . . ; [and]
- (4) to maintain the premises in compliance with the applicable health and safety laws of the state, and of the local units of government

Ellis v. Doe, 924 N.W.2d 258, 261 (Minn. 2019) (citing Minn. Stat. § 504B.161, subd. 1(a)(1)-(2), (4)).

Although no appellate court has expressly decided the issue, Judge Vasaly did conclude a private right of action existed under section 504B.161 for disgorgement of

illegally collected rent. *Flores v. Zorbalas*, No. 27-CV-16-14225 (May 17, 2018 Order). Her conclusion is amply supported by case law that voids contracts absent a valid required license and allows recovery of rent under section 504B.161. *Woischke v. Stursberg & Fine, Inc.*, 906 N.W.2d 586, 590, *rev'd on other grounds*, 920 N.W.2d 419 (Minn. 2018); *Granger v. Adson*, 250 N.W. 722, 724 (Minn. 1933); *Fritz v. Warthen*, 213 N.W.2d 339, 340-42 (Minn. 1973) (tenant may sue for damages for breach of covenants); *Beamia v. Eisenbraun*, 2007 WL 2472298, *2 (Minn. Ct. App. Sept. 4, 2007) (holding that tenant has no duty to pay rent for an unregistered rental unit); *Love v. Amsler*, 441 N.W.2d 555, 559 (Minn. Ct. App. 1989) *pet. for rev. denied* (Minn. Aug. 15, 1989) (awarding damages of previously paid rent as remedy for violation of section 504B.161).

Since Judge Vasaly's decision in 2018, the Supreme Court's decision in *Ellis v. Doe* reaffirms that the covenants of habitability and covenant to pay rent are mutually dependent, which means rent may not be due when a violation of the habitability covenants has occurred. 924 N.W.2d at 261. Because Minnesota case law has already clarified that a tenant has an action for damages for breach of the covenants in section 504.161, Ms. [REDACTED] is entitled to summary judgment on her claim under that section.

Mr. Johnson collected rent of \$58,100 from April 2013 through June 2017, the rental period for which he had no license. Ms. [REDACTED] is not entitled to all of that back because her lawsuit was commenced on February 28, 2020. The statute of limitations bars any action for violation of a statute beyond six years. Minn. Stat. § 541.05, subd. 1(2) (establishing a six-year statute of limitations "upon a liability created by statute"). Thus, she is entitled to return of the rent she paid from March 2014 through June 2017.

She paid \$1,150 per month, but in June 2017 she paid partial rent of \$600. From March 2014 to June 2017, she paid \$44,300.

The housing court found, however, that she paid no rent from October 11, 2017, when the unit became properly licensed, through March 2018, even though rent was due. By virtue of the housing court decision, she received credit for that period because of the prior illegally collected rent. The amount of the rent she should have paid for that 2017-2018 period is five full months plus $20/31 \times \$1,150$ for the remaining days in October, or a total of \$6,492. Subtracting that from the \$44,300 she paid yields a remainder of \$37,808, which is the net amount of damages Ms. [REDACTED] is entitled to recover from Mr. Johnson for breach of the covenants of habitability.

Ms. [REDACTED] also seeks summary judgment on her Consumer Fraud Act Claim. That Act prohibits:

[t]he act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not in fact any person has been misled, deceived, or damaged thereby.

Minn. Stat. § 325F.69, subd. 1. Minnesota Statutes section 8.31, subd. 3a permits private plaintiffs to seek damages or equitable relief if they are injured by violations of this Act. Disgorgement is an equitable remedy. *Norris v. Cohen*, 27 N.W.2d 277, 282 (Minn. 1947).

“[T]he Act applies to deceptive landlord practices.” *Perez v. Wilson*, No. C4-94-2182, 1995 WL 265018, at *2 (Minn. Ct. App. May 9, 1995) (citing *Love v. Amsler*, 441 N.W.2d 555, 558-59 (Minn. Ct. App. 1989), *pet. for rev. denied* (Minn. Aug. 15, 1989)).

Mr. Johnson's statements in the lease that the premises were fit to rent were false promises and misrepresentations intended to induce reliance.

The relief under this claim is the same as above – the net rental paid within the prior six years less equitable offsets.

Ms. [REDACTED] also moves for summary judgment on her fraud and fraud in the inducement claims. For the reasons described above, the representation in the lease that the premises were fit for use as a residence was false, and Mr. Johnson knew that, because he knew that he needed a license and didn't have one. *See Hoyt Properties, Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007). Ms. [REDACTED] declaration establishes the requisite reliance, and the damage is obvious. She is entitled to summary judgment on these claims, which are duplicative of each other. Fraud in the inducement is merely a type of fraud, not a different cause of action.

Ms. [REDACTED] also moves for summary judgment on her unjust enrichment claim. Such a claim exists when a party knowingly receives something of value from another to which the former was not entitled, and where it would be unjust for the receiving party to keep the ill-gotten gains. *Schumacher v. Schumacher*, 6527 N.W.2d 725, 729 (Minn. Ct. App. 2001). This case is the prototypical example of unjust enrichment. The law is clear that Mr. Johnson was not entitled to rent without a rental license. Accordingly, he must disgorge his ill-gotten gains.

II. Plaintiff's Motion to Compel

Ms. [REDACTED] also moves to compel discovery from Mr. Johnson. Because the summary judgment is partial, the case remains active. Mr. Johnson did not respond to this motion to compel. Accordingly, it is unopposed.

Ms. [REDACTED] first complains that Mr. Johnson unilaterally cancelled the deposition 15 minutes before it was scheduled because his father had recently contracted COVID-19. The Court accepts this explanation and rules that all parties have to show some flexibility when sudden virus concerns become apparent. No relief will be granted for this cancellation.

The deposition was rescheduled but Mr. Johnson refused to answer numerous questions, such as whether he was convicted in the past for any crime involving dishonesty and the circumstances surrounding his firing from his most recent job. These are relevant enough that he has to answer them. Whether Ms. [REDACTED] wants to bother with the expense of reconvening the deposition, in light of the partial summary judgment, is up to it. If it does reconvene the deposition, which can be done by Zoom if either party requests, Mr. Johnson must pay for Ms. [REDACTED] court-reporting costs (including transcript fee) but not its legal fees.

Mr. Johnson did not respond fully to the interrogatories and document requests served on him. He must do so, unless Legal Aid decides it is not necessary, within 10 calendar days of the date of this Order.

CONCLUSION

Ms. [REDACTED] is entitled to partial summary judgment on five of her claims, including damages of \$37,808. She is also entitled to further discovery from Mr. Johnson if she decides that it is necessary in light of the relief already awarded.

This matter is set for a jury trial on the November 30 – December 4 trial block, but Plaintiff's counsel suggested at the hearing that if Plaintiff's motion for partial summary judgment were granted, Plaintiff may waive a jury. The Court's records also indicate that a mediation is scheduled for October 20, 2020. The parties are directed to advise the Court of the results of the mediation. If necessary, the Court will then convene a status telephone conference with the parties to discuss scheduling.

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