

STATE OF MINNESOTA

FOURTH JUDICIAL DISTRICT

COUNTY OF HENNEPIN

DISTRICT COURT

[REDACTED],

Plaintiff/Tenant,

vs.

LMC NE Minneapolis Holdings LLC, LMC  
Living LLC,

Defendants/Landlords.

**DECISION AND ORDER ON PETITION  
FOR POSSESSION OF RESIDENTIAL  
RENTAL PROPERTY FOLLOWING  
UNLAWFUL REMOVAL OR  
EXCLUSION (LOCKOUT) PETITION  
UNDER MINNESOTA STATUTE §  
504B.375****Court File: 27-CV-HC-21-227**

This matter came on for a court trial before Melissa Houghtaling, Referee of District Court, on May 5, 2021.

Plaintiff did appear and was represented by legal counsel, namely: Mary Kaczorek.

Defendants did appear and was represented by legal counsel, namely: Chris Kalla.

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. The property is located at 315 1<sup>st</sup> Ave NE, Apt. 556, Minneapolis, Minnesota 55413 hereinafter "Nordhaus".
2. Plaintiff has resided at Nordhaus since 2018.
3. It is undisputed that the Defendants are the landlords.
4. It is undisputed that Plaintiff never had a written lease with Nordhaus. Plaintiff always resided in the same unit with her former partner and roommate Jamie Smith.
5. Jamie Smith had a written lease with Nordhaus. The lease expired on April 7, 2021.
6. The questions this court must answer are:
  - a. Is plaintiff a residential tenant as defined in Minn. Stat. § 504B.001, subd. 12.
  - b. If so, did Defendants unlawfully exclude Plaintiff from the premises?
7. Nordhaus is a building containing 280 units.

8. Defendants argue that Plaintiff was not a residential tenant because Defendant is required to have written leases pursuant to Minn. Stat. § 504B.111. The Court finds this argument unpersuasive as Defendant *did* have a written lease with Jamie Smith. The statutory provision does not require a lease for every tenant, rather the statute requires a written lease for each unit. Here, Defendants had a written lease for unit 556 with Jamie Smith.

9. Plaintiff argues that she is a residential tenant within the meaning of Minn. Stat. § 504B.001, subd. 12 as she is a ‘regular occupant of that dwelling unit’ or in the alternative she occupies the dwelling unit under an oral agreement with Ms. Smith that required the payment of money.

10. Plaintiff does not deny that Jaime Smith was the only individual listed on the lease but credibly testified that she was in an abusive relationship with Ms. Smith that involved significant coercive controlling behaviors over many years—including Ms. Smith’s control of Plaintiff’s housing security.

11. Plaintiff’s testimony about the controlling nature of her relationship with Ms. Smith was corroborated by the credible testimony of Jennifer McCoy.

12. Plaintiff credibly testified that she paid Ms. Smith \$400 per month to reside in the unit with Ms. Smith and had made her most recent payment in March 2021.

13. Elaine Cassidy, community manager for Nordhaus, testified that each tenant of Nordhaus is required to complete an application process that includes background checks for rental history, criminal history, credit worthiness, and income.

14. Ms. Cassidy testified that on or about February 6, 2021 she received an email from Jamie Smith that she would not be renewing her lease and that the email served as her 60 day notice for Unit 556. *Exhibit 5*.

15. The court finds Ms. Cassidy lacks credibility as explained further below.

16. While Ms. Cassidy testified that she did not know of Plaintiff or her status as an occupant of Unit 556 until Plaintiff’s April 2021 email message to the concierge after the key fob for Unit 556 was disabled by management, her testimony was contradicted by an email dated December 11, 2020 wherein she emailed Ms. Smith directly and stated she was “notified of another person living at the home”.

17. Furthermore, upon cross examination, Ms. Cassidy testified that “she sent her<sup>1</sup> an application.”

18. Additionally, contrary to the Defendants’ eviction complaint which states “[t]he previously occupying tenant, Jamie Smith, vacated months ago and advised [landlord] to deactivate the fob on or about April 7, 2021”, Ms. Cassidy testified that she spoke with Ms.

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<sup>1</sup> The testimony was unclear as to whether the application was sent to Plaintiff or Ms. Smith.

Smith in December 2020, that Ms. Smith indicated she had not moved out, and that Nordhaus received Ms. Smith's lease non-renewal notice in February 2021. *See Court File No. 27-CV-HC-21-240.*

19. Ms. Cassidy did nothing further to investigate or exclude Plaintiff from the property nor was there any indication that Ms. Smith could not have Ms. [REDACTED] residing with her aside from a request that Ms. [REDACTED] complete an application.

20. Plaintiff continued to use the unit, nearly exclusively, in January, February, and March 2021. Plaintiff credibly testified that Ms. Smith stayed in the unit approximately 8 times during that timeframe.

21. Plaintiff had possession and control of the key fob at all times and Nordhaus knew she was occupying the unit.

22. Plaintiff received mail at Nordhaus from at least January 2019 through the present date. *See Exhibits C, E, F G, I, and J.*

23. Plaintiff used Nordhaus as her address on her driver's license. *See Exhibits D & H.*

24. Defendants argue that Plaintiff's use of Nordhaus as her mailing address is only an indication to the outside world/third-parties that she resides there, the Court finds this argument unpersuasive. Defendants would have sorted mail, received packages, and seen Plaintiff using facilities for over two years and effectively turned a blind eye until she did not leave at the end of the lease term. Further, Defendants accepted rent from Ms. Smith in January, February, and March 2021 knowing that Plaintiff was living in the unit with Ms. Smith.

25. Plaintiff credibly testified that while Ms. Smith removed some of her personal property from the unit during the months of December 2020 and March 2021, Ms. Smith still maintains personal property in the unit including a couch, kitchen wares, and clothing.

26. There was no testimony that Defendants took any steps to confirm that Ms. Smith or any other regular occupant was out of the property before disabling the key fob on April 7, 2021.

27. Further, there is no indication that Ms. Smith, or anyone else, returned keys to the Defendants thereby voluntarily surrendering the premises.

28. While Plaintiff is still in possession of the premises she cannot leave because she will be unable to return due to the key fob required access points.

29. Disabling the key fob has the same effect as changing the locks on the door.

30. In disabling the key fob, Defendants prevented Plaintiff from obtaining food, medication, pet supplies, and personal care products since April 7, 2021.

31. Plaintiff is a residential tenant as she has been a regular occupant<sup>2</sup> of Nordhaus and she had an oral agreement with Ms. Smith to pay \$400 per month to occupy the unit.

32. “It has long been the policy of our law to discourage landlords from taking the law into their own hands, and our decisions and statutory law have looked with disfavor upon any use of self-help to dispossess a tenant in circumstances which are likely to result in breaches of the peace.” *Berg v. Wiley*, 264 N.W.2d 145, 149–50 (Minn. 1978)

33. Landlords actually or constructively and unlawfully removed or excluded tenant from the property by changing the key fob.

34. The Court has not issued an eviction judgment and writ of recovery in favor of Landlords and against Tenant.

35. If a tenant holds over contrary to the lease and agreement of the parties the proper procedure is for the landlord to initiate an eviction action.

36. In unlawful lockouts or unlawful exclusion of property, Tenant may be entitled to the following relief under Minnesota Law:<sup>3</sup>

- a. Treble damages or \$500.00 whichever is greater, and reasonable attorney’s fees under Minn. Stat. § 504B.231.
- b. A civil penalty, actual damages and attorney fees under Minn. Stat. § 504B.271.

### **ORDER**

1. JUDGMENT shall be entered in favor of Plaintiff. Tenant’s request for relief is granted as set forth below.

2. Landlords shall immediately enable the key fob and allow Tenant to move freely in and out of the premises.

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<sup>2</sup> Defendants’ assert that *Broszko v. Principal Mutual Life Insurance Company*, 533 N.W.2d 656 (Minn. Ct. App. 1995) is precedential and prevents this court from finding Plaintiff is a “regular occupant.” The *Broszko* case analyzes a prior version of Minn. Stat. §504B.001. subd. 12. The *Broszko* court determined Broszko was not a tenant because she held possession of the property following the foreclosure of the prior owner and possessed during the redemption period. Of particular note, the *Broszko* court, when analyzing “other regular occupant” language, determined that “[t]his language attaches tenant status to persons who live in dwelling unit subject to a valid . . . lease . . . in addition to the lessee or renter.” When applied here, Plaintiff lived in the dwelling unit subject to Ms. Smith’s valid lease.

<sup>3</sup> “The forcible entry and unlawful detainer statutes were intended to prevent parties from taking the law into their own hands when going into possession of lands and tenements. To further discourage self-help, our legislature has provided treble damages for forcible evictions . . . and has provided additional criminal penalties for intentional and unlawful exclusion of a tenant.” *Berg v. Wiley*, 264 N.W.2d 145, 150 (Minn. 1978).

3. Landlords shall immediately stop the unlawful actions that are keeping Tenant out of the property.

4. PENALTY: On or before May 15, 2021 Landlords shall pay to Tenant the amount of \$500.00 as a penalty for the unlawful lockout. In the event Landlords do not make this payment, then upon filing of an affidavit of default by Tenant, a judgment shall be entered in favor of Tenant against Landlords, together with all costs and disbursements incurred by Tenant, including the \$200.00 allowed by Minn. Stat. § 549.02.

5. ATTORNEY FEES: Tenant is awarded reasonable attorney fees pursuant to Minn. Stat. § 504B.271.


6. EXHIBITS: Parties are informed, pursuant to Rule 128 of the Minnesota General Rules of Practice for the District Courts, 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 after 15 days from 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.

7. 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:

Date:

 2021.05.06  
11:39:24

Melissa J. Houghtaling  
District Court Referee

Approved by the Court:



District Court Judge

Dated:

May 06, 2021

### Judgment

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

May 06, 2021

Dated: \_\_\_\_\_

By:   
Deputy Court Administrator