

State of Minnesota

Hennepin County

District Court

Judicial District:	Fourth
Court File Number:	27-CV-HC-20-1456
Case Type:	Housing



Plaintiff/Tenant,

vs.

Rick Bergman Properties LLC,
Defendant/Landlord.**RENT ESCROW
DECISION AND ORDER**

This matter came on for trial before the Honorable Tiffany Sedillos, Referee of District Court, on August 20, 2020.

Plaintiff was present. Plaintiff shall hereinafter be referred to as Tenant. Defendant was not present and is in default. Defendant shall hereinafter be referred to as Landlord.

Jeffer Ali, Attorney for Tenant, 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. Tenant leases residential premises from Landlord located at 1108 8th Street SE, Apt. #102, Minneapolis, Hennepin County, Minnesota, 55414 ("Property").

2. Rick Bergman Properties, LLC, at 2316 4th Avenue South, Minneapolis, MN 55404 is the owner of the rental Property. On July 31, 2020, Brett Foss attended the initial appearance hearing in this case indicating that he was the property manager for the Property. However, Mr. Foss did not appear for the trial and neither did any other representative for Defendant.

3. Rent for the property is \$830.00 per month. Tenant signed a written lease agreement and moved into the Property in August 2017. Tenant does not have a copy of the lease, but recently asked Defendant for a copy. Instead of sending the lease, Defendant sent a "Lease Extension" the landlord recently asked Plaintiff to sign. According to the "Lease Extension," the current lease term expires on August 22, 2020. Ex. 2.

4. Tenant has deposited \$2,490.00 with the Clerk of Court which represents rent for the months of July, August, and September, 2020.

5. According to the City of Minneapolis property information website, Defendant does not have an active license to rent the property and has not had an active rental license for the property since March 1, 2020. Ex. 1.

6. Tenant credibly testified that he called, texted, and personally spoke to Brett Foss, the property manager about his concerns about mold in May 2020. Tenant credibly testified that he gave written notice of violations to George, a maintenance person hired by Brett Foss, by text message on May 19, 2020. Ex. 3.

7. Tenant credibly testified that he had asthma as a child and that the mold in his apartment has caused him to have breathing problems.

8. The Court finds that fourteen days elapsed without completion of repairs required in Tenant's notice.

9. 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. The Court finds that Ms. Swenson is an expert in mold inspection.

10. Ms. Swenson credibly testified that she performed an inspection of Tenant's unit and produced a report of findings. Ex. 6. Ms. Swenson credibly testified that her inspection of the Property found that mold conditions are present in the following areas: bathtub grout, bathtub caulk, and hallway tack strips under carpet. There may be mold in the carpet as well. Exs. 6, 7, and 8.

11. On August 27, 2020, Tenant filed a declaration in support of motion for attorney's fees in averring that an amount exceeding \$500.00 in attorney's fees had been incurred.

12. Tenant seeks rent abatement at 100% alleging he has suffered loss of use and enjoyment to the Leased Property due to Landlord not making timely repairs.

13. Tenant also seeks rent abatement at 100% based on Landlord's lack of a valid rental license since March 2020 citing to Minnesota Statutes section 504B.161 and a common law claim for unjust enrichment.

14. The elements of an unjust enrichment claim are: a benefit conferred; the defendant's appreciation and knowing acceptance of the benefit; and the defendant's acceptance and retention of the benefit under such circumstances that it would be inequitable for him to retain it without paying for it. *Dahl v. R.J. Reynolds Tobacco Co.*, 742 N.W.2d 186, 195 (Minn. Ct. App. 2007).

15. The Court finds that a benefit was conferred, i.e. the payment of March, April, and May¹ rent, the Landlord accepted the payment of rent, and Landlord's retention of the rent without a

¹ The Court notes that it does not address the rental license issue for June 2020 forward because the Court is ordering rent abatement at 100% due to violations of Minnesota Statutes section 504B.385.

valid rental license was inequitable. *See*, Minneapolis Code of Ordinances §§ 244.20 and 244.1810; *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298, *2 (Minn. Ct. App. Sept. 4, 2007). Tenant has proved by a preponderance of the evidence their claim for unjust enrichment against Landlord.

16. 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). The Court finds that violations exist at the Property as follows: mold on bathroom tub wall, mold on bathroom floor, and mold in hallway tack strips. *See*, Exs. 6, 7, and 8. The weight of the evidence demonstrates that Landlord received notice of the repair issues and failed to address them.

17. Pursuant to Minnesota Statute 504B.385 subdivision 9 (a)(1), upon a finding that a violation exists, the Court may, in its discretion, order relief as provided in Minnesota Statute 504B.425, including retroactive rent abatement. Minn. Stat. § 504B.385 subd. 9(a)(1).

18. 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.² 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).

19. The Court finds that the uncorrected violations have impaired the Tenant's use and enjoyment of the Property from June to September 2020. Tenant credibly testified that the mold in the unit has caused him breathing problems, being unable to breathe unencumbered within one's own apartment reduces the value of the property by one-hundred percent.

20. 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.

² 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.

21. The Court finds that Tenant has proved by a preponderance of the evidence that a judgment against the Landlord for reasonable attorney's fees and costs is appropriate and that the Tenants attorney's fees are in excess of \$500.

22. A party who has prevailed on the merits is entitled to \$200 of costs. The prevailing party is further entitled to \$5.50 for the cost of filing a satisfaction of the judgment. Minn. Stat. § 549.02. Because Tenant has prevailed in the action, he is entitled to costs.

23. Tenant's award is as follows:

Description	Amount
Tenant's Rent Abatement from March 2020 through September 2020	\$5,810
Costs pursuant to Minnesota Statutes section 549.02	\$205.50
Rent currently in Escrow	-\$2,490.00
Total Award to Tenant	\$3,525.50

Now therefore, it is Ordered:

1. **RENT ABATEMENT:** Tenant has had diminished use and enjoyment of the premises and Landlord has not had a valid rental license since March 1, 2020. Tenant's request for abatement is **GRANTED**. Rent is reduced by 100% or \$830 for the months of March through September by a total of \$5,810. Tenant's prospective rent is reduced by 100% or \$830 per month 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 **\$3,525.50**. If Landlord fails to pay Tenant the total sum of \$3,525.50, then Tenant shall have judgment against Landlord in the amount of \$3,525.50.

3. **REPAIRS:** Landlord is ordered to remedy the violations in the Property on or before **October 12, 2020**, following the instructions in Exhibit 6, page 3 or by hiring a professional mold remediation company. Landlord shall pay for post cleaning air testing for mold and provide the results to Tenant and the Court.

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

5. **RENT DISBURSEMENT:** The rent now on deposit with the Court shall be released as follows: \$2,490.00 to Tenant and \$0 to Landlord.

6. **COSTS:** As Tenant has prevailed on his claim, Tenant is entitled to statutory costs under Minnesota Statutes section 549.02.

7. **ATTORNEY FEES:** Landlord shall also pay **\$500** in attorney's fees to Mid-Minnesota Legal Aid by mailing a check to Mid-Minnesota Legal Aid, Attn: Jeffer Ali, 111 North 5th St. #100, Minneapolis, MN 55403 by **October 12, 2020**.


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.

9. **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:

By the Court:

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Tiffany Sedillos
District Court Referee

District Court Judge
Dated: Sep 14, 2020

Judgment

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

Dated: Sep 14, 2020
Deputy

By: 