

STATE OF MINNESOTA
COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT COURT
FIRST DIVISION, MINNEAPOLIS

Boyd D. Amsler, Sr.,

Case No. UD-1960502510

Plaintiff/Landlord,

vs.

DECISION AND ORDER

**Latonya Wright,
Louis Frieson,**

Defendants/Tenants.

The above-entitled matter came on for hearing before the Honorable Linda J. Gallant, Housing Court Referee, on May 14, 1996.

Plaintiff appeared pro se. Plaintiff's address is 4541 Colorado Avenue North, Crystal, Minnesota 55422.

Defendants appeared pro se. Defendants' address is Apartment 1, 3403 Aldrich Avenue North, Minneapolis, Minnesota 55412.

Based upon the evidence adduced, the arguments presented, and all the files, records, and proceedings, the Court makes the following:

FINDINGS OF FACT

App. 186

1. The Plaintiff owns and operates the rental property located at 3403 Aldrich Avenue North, Apartment 1, Minneapolis, Hennepin County, Minnesota.

2. Defendants rent the property based on a written term lease at a rate of \$625 each month due on the 1st of the month from September 1, 1995, through August 31, 1996. Exhibit 1.

3. Plaintiff filed this Unlawful Detainer on May 2, 1996, alleging failure to pay the rent due on May 1, 1996.

4. At the first hearing on May 9, 1996, Defendants admitted not paying the May rent and alleged the affirmative defense of violation by Plaintiff of the statutory covenants of habitability. The Court ordered Defendants to deposit the May rent (\$625) in to court by noon on May 14, 1996, as proper security for the Plaintiff, and scheduled an evidentiary hearing on May 14, 1996, at 1:30.

5. On May 9, Plaintiff filed a "Request for different Referee," which the Court denied on May 14, 1996.

6. On May 14, 1996, Plaintiff filed an "objection to the Defendants not abiding by the order..." that the rent be deposited by noon on May 14. Based upon the Affidavit of the District Court Deputy clerk, the Court finds that Defendants arrived at the counter to deposit their May rent

at 12:03 p.m., which in all respects was satisfactory and substantial compliance with the Court Order, and which deposit does provide proper security for the Plaintiff. Had the Defendants arrived at 12:12 p.m., as Plaintiff alleges, that, too, would in all respects equal satisfactory and substantial compliance with the Order.

The Plaintiff's May 14, 1996 objection further objected to the deposit of a \$325 check from Hennepin County as not in compliance with the Court Order for "cash or certified funds." Based on this Court's presumption that a Hennepin County check is a good check, and based on Court policy to accept Hennepin County checks, the Court ordered the acceptance of the Hennepin County check and denied Plaintiff's stated objection.

7. The parties signed a one-year lease on August 31, 1995. The lease requires the tenants to "be on vendorship for the rent and that if tenant stop payment of vendorship at any time, this is breach of lease and agrees that he or she will be evicted immediately." Exhibit 1, p. 4, handwritten addendum. While Plaintiff claims that it was Ms. Wright who first requested that rent be paid through a Hennepin County Welfare Department vendor-pay plan,

Ms. Wright testified that the Plaintiff told her that she had to be on a vendorship; that without a vendor agreement, Plaintiff would not accept an AFDC recipient; that "he didn't give me a choice." The lease makes no reference to a choice; it omits any reference to what rights either party would have were Defendants to either terminate the vendorship or terminate their AFDC-recipient status. On March 13, 1996, Plaintiff wrote a letter to Defendants repeating the requirement of a vendorship and promising to evict the Defendants if they terminate the Welfare Department vendorship. Exhibit 4. The Court finds that the vendorship requirement was imposed by the Plaintiff as a condition precedent to the lease agreement, and the vendorship was not originally requested by either Defendant.

8. On or about September 1, 1995, when Defendants took occupancy of the apartment, Plaintiff provided to them an inspection sheet. Exhibit 2. The document states that "Tenant(s) will write in their own words as to the condition of premises. Please check all rooms and state the condition." Exhibit 2. Defendants signed the document. Plaintiff witnessed it. Plaintiff actually completed the handwritten section of Exhibit 2, in his own writing and his own words. Plaintiff consistently refers to the inspection

sheet (Exhibit 2) as part of the lease itself, which was signed on August 31, 1995. The inspection sheet was signed by Defendants before moving in and after Plaintiff had filled it out.

9. The Defendants took occupancy on or about September 1, 1995. The Defendants live on the first floor. When the second floor tenant moved out in December, 1995, water was leaking from the second floor down to the Defendants' kitchen sink area, apparently because the upstairs tenant had let the tub overflow. The upstairs apartment continues to be vacant. On April 9, the Housing Inspector found evidence of water damage on the kitchen floor (Exhibit 3, p. 2), floor defects in the kitchen (Exhibit 3, p. 2), deteriorated kitchen ceiling (Exhibit 3, p. 2), and deteriorated kitchen windows (Exhibit 3, p. 3). These orders are consistent with Defendants' complaints about water damage and leakage in the kitchen.

10. Defendants complain of broken or deteriorating windows, such that when Ms. Wright tried to raise a window, it just fell down; the windows get stuck; the handles are loose; there are missing windows. The Defendants agreed that one broken window is their responsibility. The Plaintiff introduced no evidence that Defendants or their

children broke any other windows.

11. The lease requires Plaintiff to provide "heat, water, sewer, hauling" and for tenant to pay for electric service and cooking gas. It also gives the landlord the option to "pay the water bill from the damage deposit if tenant(s) bill is unpaid," Exhibit 1, p. 3, and requires tenant to pay the water bill. Exhibit 1, p. 4. The general provisions regarding the water bill are wholly inconsistent with the specific statement that the water is the landlord's responsibility.

12. Defendants did not have sufficient hot water. The Inspector ordered some water heater repairs. Neither party introduced evidence to corroborate or rebut the Defendants' claim of insufficient hot water.

13. Defendants made reports and complaints to Plaintiff about the multiple repair needs as early as December, 1995. When the Defendants contact the Plaintiff, he argues about the repairs, appears to attribute all repair needs to the Defendants, and gets angry and hostile to the Defendants, such that Ms. Wright is afraid to call the Plaintiff about repair needs. When Ms. Wright complained, for example, about a minor window repair, the Plaintiff said he was going to terminate the lease.

14. Defendants believe they are paying for gas service for heat to other units in the building. Neither party introduced sufficient evidence to clarify for the Court exactly which utilities are on the Defendants' bills. Based on the lease, Defendants are responsible for cooking gas and electric only. There is one hot water tank for both units in the building. The Plaintiff is responsible for any utility service not separately and solely attributable to the Defendants' use of gas for their stove and electric service.

15. On April 9, 1996, at Defendants' request, the Housing Inspector inspected the unit and identified twenty code violations, with variable due dates for repairs of May 1, May 10, and July 4, 1996. Based on a May 14, 1996, written statement from the Housing Inspector, ten of the required repairs had been completed, one deleted, and nine yet to be completed. See Exhibits 3 and 6. The repair orders were consistent with Defendants' descriptions of repair needs.

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The owner of residential rental premises covenants to maintain the premises in good repair, fit for the purposes intended, and in compliance with local health and safety codes. M.S.A. §504.18. Fritz v. Warthen, 298 Minn. 54, 213 NW2d 339 (1973). If the landlord breaches the covenant, the Court may consider an abatement of rent commensurate with the tenant's diminished use and enjoyment of the premises.

2. The Defendants have proven by a preponderance of the evidence that Plaintiff violated the covenants of good repair and habitability.

3. It is a discriminatory practice for a landlord to require that any tenant who is a recipient of public assistance have her rent vendored directly to the landlord, and not to similarly require that a non-public assistance tenant have her rent vendored from her income source. The Plaintiff's requirement of Welfare Department vendorship is a discriminatory practice.

4. A landlord is responsible for all utility services which do not separately and accurately measure the tenant's sole use of such utilities. The Court is not reaching the issue of Plaintiff's alleged inappropriate charges for utilities, based on insufficient evidence.

5. The water service shall be and is Plaintiff's responsibility, based on the specific provisions of the lease, and any general lease terms which permit Plaintiff to collect, assess, or claim water bills from Defendants are invalid.

6. The Court's denial of Plaintiff's request for a different referee and objections are restated.

7. Defendants are entitled to a rent abatement for April and May, 1996, in the amount of \$125 each month.

Now, therefore,

IT IS HEREBY ORDERED:

1. Possession of the premises is awarded to the Defendants.

2. Neither party shall be responsible for the other party's costs and disbursements.

3. Plaintiff shall not claim from Defendant, in any fashion, as additional rent or as a deduction from any damage/security deposit, the costs incurred in this case or any rents which have been abated by this Order.

4. Plaintiff shall not require as a condition of Defendants' continued tenancy that they have their rent vendored from the Hennepin County Welfare Department.

5. Plaintiff shall not in any fashion seek to implement or enforce those general provisions of the lease authorizing collection of water bills from the Defendants.

6. The rent on deposit shall be disbursed as follows:

A. \$50 to Plaintiff (Plaintiff has already received a Hennepin County check for \$325);

B. \$250 to Defendants.

7. Rent abatement in the amount of \$50 per month shall continue until the 1st day of the month following verification, submitted to the Court, that all open violations orders have been completed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

RECOMMENDED BY:

Dated: May 30, 1996

Referee Linda J. Gallant
Housing Court Referee

Dated: May 30, 1996

Judge of District Court