

STATE OF MINNESOTA

FILED

DISTRICT COURT

HENNEPIN COUNTY

SEP 15 1998

FOURTH JUDICIAL DISTRICT

FIRST DIVISION-MINNEAPOLIS

HENNEPIN COUNTY DISTRICT COURT

DARRELL BARRY,
Plaintiff/Landlord,

BY _____
COURT DEPUTY

Vs.
TRACY LANE,
Defendant/Tenant.

DECISION & ORDER
U.D. #1980629502

TRACY LANE,
Plaintiff/Tenant,

Vs.
DARRELL BARRY,
Defenant/Landlord.

DECISION & ORDER
U.D. #1980629502

The above-entitled matter came on for hearing before the undersigned, Referee of Housing Court, on the 25th day of August, 1998, on that NOTICE OF MOTION & MOTION of Tracy Lane, tenant herein.

Tracy Lane was present and represented by counsel, Richard Wayman. Darrell Barry was present and appeared *pro se*. Also, present was Kenneth Parsons as counsel for the Minneapolis Public Housing Authority, hereinafter MPHA.

Now, therefore, based on the pleadings, prior orders, moving papers and oral arguments of the parties, the court hereby makes the following:

FINDINGS OF FACT

1. That Tracy Lane, a Section 8 tenant, previously commenced an action for rent abatement pursuant to Minn. Stat. 504.28.
2. That Ms. Lane's rent was \$760.00 per month. Her share of rent was \$257.00; Section 8 paid the balance of \$503.00 per month.
3. The by prior Decision & Order, the court found in favor of Ms. Lane and against Darrell Barry and ordered an abatement of rent at the rate of \$500.00 per month commencing July 1998, until the first month following completion of all repairs.
4. That the MPHA is not named as a party to this lawsuit. That the MPHA not been served with a summons and complaint. That the MPHA has not sought relief pursuant to Rule 17, Minn. R. of Civ. P. to intervene in the action. That the MPHA

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has not served motion papers in this matter. Otherwise, the MPHA was given adequate opportunity intervene in this action (See: letter dated August 12, 1998 to Richard Wayman, counsel for Ms. Lane, cc to Ken Parsons).

CONCLUSIONS OF LAW

1. Upon timely application anyone shall be permitted to intervene in an action when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. See: Mn. Rules of Civ. P., Rule 24.01. A person desiring to intervene shall serve on all parties to the action and file a notice of intervention which shall state in the absence of objections by an existing party to the action within 30 days after service thereof upon the party, such intervention shall be deemed to have been accomplished. The notice of intervention shall be accompanied by a pleading setting forth the nature and extent of every claim or defense as to which intervention is sought and the reasons for the claim of entitlement to intervention. Within 30 days after service upon the party seeking to intervene of a notice of objection to intervention, the party shall serve a motion to intervene upon all parties as provided in Rule 5. See: Mn. Rules of Civ. Pro., Rule 24.03, Procedure.
2. That the MPHA has not complied with the procedural requirements of Rule 24.03, Minn. Rules of Civ. P., and, therefore, is not a party to this action and this court has no jurisdiction to grant relief or judgment in its behalf.

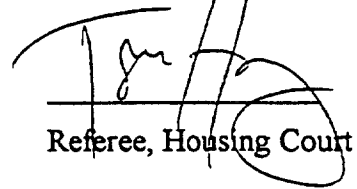
ORDER

1. That the Clerk of Court shall disburse the funds now in escrow, \$257.00, to the defendant, Tracy Lane.
2. That prior orders of the court shall remain in full force and effect.
3. That each party is responsible for their own costs and disbursements incurred herein.

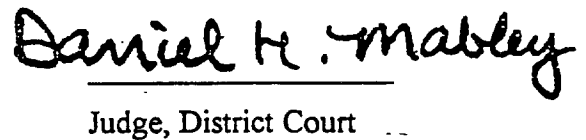
LET THE ATTACHED MEMORANDUM BE MADE A PART HEREOF.

Dated: September 15, 1998

Recommended by


Referee, Housing Court

By the Court:


Judge, District Court

MEMORANDUM

The MPHA asserts a very logical and cogent argument for the proposition that this Section 8 tenant, Ms. Tracy Lane, may be unjustly enriched if the funds now in escrow are disbursed to her. MPHA contends that this will result in a windfall to Ms. Lane.

On the other hand, the MPHA has had the opportunity to properly intervene in this matter according to the procedure set forth in the rules of civil procedure. And, for whatever reason, has apparently chosen not follow them. Therefore, this court has no present authority to award the MPHA, -a non-party to this action, any relief.

Since this decision involving the MPHA does not go to the merits of their claim, the decision is without prejudice to the MPHA to pursue their rights and claims in another court of law for damages, breach of fiduciary responsibility or other equitable relief.

See, also: *Wurm v. John Deere Leasing Co.*, 405 N.W.2d 484, 486 (Minn.App.1987); *614 Co. v. Minneapolis Community Development Agency*, 547 N.W.2d 400, 410 (Minn.App.1996) (third-party beneficiary status).

TFH