

STATE OF MINNESOTA }
COUNTY OF SHERBURNE } SS.

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STATE OF MINNESOTA

COUNTY OF SHERBURNE

AUG 6 1991

DISTRICT COURT

TENTH JUDICIAL DISTRICT

Buckeye Realty Co.,

Plaintiff,

vs.

Dominick and Christine Elias,

Defendants.

LORAYNE N. NORGIEN
COURT ADMINISTRATOR

Mary Lou Benedict
Deputy

Court File No. CX-91-0697

FINDINGS OF FACT,
CONCLUSIONS OF
LAW, ORDER AND
ORDER FOR JUDGMENT

The above-entitled matter came on for hearing before the undersigned Judge of District Court on June 18, 1991 at the Sherburne County Courthouse, Elk River, Minnesota.

James G. Metcalf, Esq., appeared for and on behalf of Plaintiff, Buckeye Realty Co. Adam G. Todd, Esq., appeared for and on behalf of Defendants, Dominick and Christine Elias.

The Court, based on the files, records, and proceedings herein and being duly advised in the premises, makes the following:

FINDINGS OF FACT

1. Plaintiff is the manager of a residential rental unit located at 829 Freeport Avenue, Elk River, Minnesota.

2. On or about October 3, 1990, Plaintiff and Defendants entered into a one year written lease for the townhouse located at 829 Freeport Avenue, Elk River, Minnesota.

3. Defendant's rent is subsidized by the Federal Government through Farmers Home Administration (FmHA). The tenancy, therefore, is subject to federal regulations governing subsidized housing.

4. Defendant's lease and FmHA regulations require Defendant to give a termination notice before commencing an unlawful detainer

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action. The notice must:

a. Refer the tenant to relevant provisions in the lease which have been violated.

b. State the reasons for the termination with enough specificity to enable the tenant to prepare a response. In cases where the proposed termination of the tenancy is due to the tenant's failure to pay rent, a notice stating the dollar amount of the balance due on the rent account and the date of such computation shall satisfy the requirement of specificity.

c. State the tenancy is terminated on a date specified.

d. Advise the tenant if he or she remains in the leased unit on the date specified for termination, the borrower may seek to enforce the termination by bringing a judicial action, at which time that tenant may present a defense.

5. Section 28 of the lease provides that termination of the lease may be grounded upon material non-compliance with the lease or for other good cause. Material non-compliance with the lease includes:

(a) one or more substantial violations of the Lease, or

(b) repeated minor violations of the Lease which disrupt the liveability of the project by adversely affecting the health or safety of any person, or the right of any tenant to the quiet enjoyment of the leased premises and related project or have an adverse financial effect on the project.

Conduct cannot be considered "other good cause" unless the borrower has given the tenant prior notice that the conduct will constitute a basis for termination of the tenancy.

6. On or about February 12, 1991, Plaintiff sent Defendants a letter requesting the removal of dirty diapers and garbage from the doorstep of the townhouse.

7. On or about April 3, 1991, Plaintiff sent Defendants a letter requesting the removal of garbage and tires from the front porch and front of the townhouse.

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8. On or about April 17, 1991, Plaintiff sent Defendants a letter requesting the removal of clothing and other garbage from the front step of the townhouse.

9. On or about April 22, 1991, Plaintiff sent Defendants a letter requesting removal of clothing, five kids toys, and a lawn chair from the front area of the townhouse.

10. On or about April 24, 1991, Plaintiff served Defendants with notice of intent to terminate the lease. The notice alleged that Defendants violated the following terms of the lease:

"1. Section 8 "Occupancy and Use." You still have unauthorized persons living in this unit.

2. Section 9 "Tenant Contributions." Your rent is continually late and April rent not received to date.

3. Section 13 "Tenant Promises" #1 and #3, which includes the area around your townhouse."

The notice requested Defendants to vacate the townhouse by May 31, 1991.

11. Defendants failed to vacate the premises in accordance with the notice of termination.

12. On or about June 11, 1991, Defendants were served with Summons and Complaint in Unlawful Detainer. The complaint alleged that Defendants had broken the following terms of the lease:

1. Violation of Section 8, unauthorized persons living in the unit.

2. Violation of Section 13, Subdivision 1 and 3.

3. Violation of Section 13, Subdivision 4, violating other tenants' right to peace and quiet.

4. Continuous late payment of rent, with \$110.00 of rent due for the month of June.

13. In early April, 1991, Defendants had a grease fire in the

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kitchen. The fire resulted in smoke damage to the unit.

14. On or about April 27, 1991, Linda Fricke, owner of Buckeye Realty, inspected the damage to Defendants' unit.

15. On or about May 23, 1991, Defendants sent a letter to Plaintiff requesting that the damage to the unit resulting from the fire be repaired, and requesting additional minor repairs.

16. On or about June 7, 1991, Defendants sent a second letter to Plaintiff requesting that the damage to the unit resulting from the fire be repaired.

17. Defendants have their rent "vendored" through Sherburne County Social Services.

18. On or about May 1, 1991, Plaintiff received and accepted \$300.00 from Sherburne County Social Services for Defendants' rent for the month of May, 1991.

19. On or about June 1, 1991, Plaintiff received and accepted \$300.00 from Sherburne County Social Services for Defendants' rent for the month of June, 1991.

20. On or about June 17, 1991, Plaintiff sent Defendants a letter demanding \$110.00 for the balance of June's rent, and stating that legal action would be taken if rent was not paid.

21. On or about June 18, 1991, Defendants deposited \$110.00 in to an escrow account with the Sherburne County Court Administrator.

CONCLUSIONS OF LAW

1. In this action, Plaintiff may rely only upon grounds alleged in its notice of termination.

2. Defendants were not given proper notice of termination as required by the lease as to the alleged violation of Section 13,

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Subd. 4.

3. Defendants were not given proper notice of termination as required by the lease as to the alleged violation of Section 9, involving non-payment of rent.

4. Acceptance of rent following the notice of termination waived Plaintiff's right to maintain an unlawful detainer action based on breaches of the lease alleged in the notice of termination.

5. Plaintiff must make reasonable repairs to cure defects caused by fire and smoke damage to Defendants' townhouse.

ORDER

1. The rent increase paid by Defendants shall continue to be deposited in the escrow account with the Court Administrator as it becomes due to Plaintiff until such time as Plaintiff remedies the defects in Defendants' townhouse, or until further Order of this Court.

2. Plaintiff may not evict Defendants from the townhouse based on the facts presented to this Court, and Plaintiff's claim is hereby dismissed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: Aug 6, 1991

Dale E. Mossey
Dale E. Mossey
Judge of District Court

The following memorandum is attached hereto and incorporated by

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MEMORANDUM

A landlord's acceptance of rent with knowledge of the tenant's breach of a rental agreement constitutes a waiver of the landlord's right to maintain an unlawful detainer action. Priordale Mall Investors v. Farrington, 411 N.W.2d 582 (Minn. App. 1987), Kenny v. Seu Si Lun, 101 Minn. 253, 112 N.W.2d 220 (1907). Acceptance of rent operates as an election by the lessor to continue the lease. Id.

In the instant case, Plaintiff sent Defendants a notice of termination April 24, 1991. After sending the notice, Plaintiff accepted rent from Defendants, vendored through Sherburne County Social Services, for the months of May and June. After accepting rent, Plaintiff served Defendants with a Summons and Complaint in Unlawful Detainer. The acceptance of rent following service of the notice to terminate waived Plaintiff's right to rely on the alleged breaches of the lease specified in the notice of termination.

Additionally, although a non-waiver clause in a lease may allow the landlord to accept rent without waiver of a prior or existing breach, the lease in the instant case does not contain an express non-waiver clause. In the instant case, the lease provides;

"Management may exercise any or all of its legal rights and remedies in any combination at its option. The use of one or more of these rights or remedies shall not exclude or waiver the use of any other. Management agrees to accept a tenant contribution without regard to any other charges owned by tenant to management and to seek separate legal remedy for the collection of any other charges which may accrue to management from tenant(s)."

This clause provides for an election of remedies; the clause does not protect the landlord from waiver of past breaches by acceptance of rent. See, Minneapolis Community Development Agency v. Powell,

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352 N.W.2d 532 (Minn.App. 1984) (Finding of express non-waiver where lease stated "Acceptance of rent with knowledge of good cause for termination of this lease shall not be considered a waiver of the Authority's right to terminate this lease.")

Further, Plaintiff failed give Defendants proper notice of termination as required by the lease. The procedures for eviction are set forth in the lease and comply with FmHA regulations. The landlord is required to provide a notice of termination stating "the reasons for the termination with enough specificity to enable the tenant to prepare a response." In the instant case, the notice of termination specifically set forth three violations of the lease. The Summons and Complaint in Unlawful Detainer set forth an additional reason for termination based on an alleged violation of Section 13, Subd. 4, "violation of other' tenants' right to peace and quiet." Because this alleged violation was not included in the termination notice, as required by the lease and by FmHA regulations, Plaintiff could not rely on this alleged violation as a ground for termination of the tenancy.

Further, the lease and the regulations require Plaintiff to state, in the notice of termination, "the dollar amount of the balance due on the rent account and the date of such computation." Because the notice of termination did not contain a dollar amount due on the rent account, Defendants were not given proper notice for an eviction based on non-payment of rent.

Lastly, the landlord asserts that Defendant violated Section 13, subdivision 1 and 3 of the lease. These sections provide that the tenant promises, 1) Not to damage or misuse the premises or

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waste the utilities provided by Management or allow his guest to do so; and 2) to keep the Apartment clean and tidy. While it is well established that a tenant receiving public housing assistance has no absolute right to public housing, Defendant as a recipient of aid has a statutory entitlement to continued occupancy of the premises. Generally, Minnesota courts have allowed the eviction of a tenant receiving public housing assistance only where supported by findings of substantial lease violations. See Minneapolis Community Development v. Smallwood, 379 N.W.2d 554 (Minn.App. 1985) (Court found uncontroverted evidence of good cause to evict where tenant was served with third eviction notice, and termination was based on ten separate lease violations including serious property damage keeping of dogs, improper disposal of rubbish, and creation of physical and health hazards.) Hoglund-Hall v. Kleinshmidt, 381 N.W.2d 889 (Min. App. 1986) (Court found the tenant's continued occupation of the premises constituted a threat to the health and safety of the other tenants and management where defendant sped in to parking lot, smashed the window and body of another tenant's parked car with a tire iron, raised the iron as if to strike a third tenant, and allegedly beat his pregnant wife.)

In the instant case, it does not appear that the remaining alleged violations would constitute either material noncompliance with the lease, or other good cause to terminate the lease. The infraction notices received by Tenants were basically for minor housekeeping violations, and Defendants' guests left the premises shortly after Defendants were verbally informed that they were in violation of the lease. However, because this Court finds that

Plaintiff waived its unlawful detainer action by acceptance of rent, it is unnecessary to reach the issue of whether Defendants' alleged actions constituted either a material violation of the lease or good cause to terminate the lease.

Lastly, pursuant to Minn. Stat. § 504.18 subd. 1(b) (1986) Plaintiff owes Defendant a duty "To keep the premises in reasonable repair during the terms of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the lessee or licensee or a person under the direction or control of the lessee or licensee." Plaintiff made no showing that the damage caused by the grease fire in Defendants' townhome were due to willful, malicious or irresponsible conduct of Defendants. Linda Fricke, manager of the property for Plaintiff, testified that repairs were needed in the unit. Therefore, Plaintiff is ordered to make the requested repairs, and Defendants may continue to deposit the rent increase with the Court Administrator in the current escrow account until the repairs are completed, or until further Order of this Court.

Dated: Aug 1, 1991

Dale E. Mossey
Dale E. Mossey
Judge of District Court

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