STATE OF MINNESOTA FILED DISTRICT COURT

HENNEPIN COUNTY 01 NOV 16 PM 2:52 FOURTH JUDICIAL DISTRICT
FIRST DIVISION-MINNEAPOLIS

BY HENN CO. DISTRICT COURT ADMINISTRATOR

CROSSROADS OF EDINA,
Plaintiff,

Vs.

DECISION & ORDER
H.C. # 0111028513

[redacted]
Defendant.

The above-entitled matter came on for hearing before the undersigned, Referee of Housing Court, on the 6th day of November, 2001 for trial.

The Plaintiff was present and was represented by counsel, Michael Kallas, Esq; the Defendant was present and was represented by counsel, Sherri Bruckner, Esq.

The Defendant moved *in limine* to dismiss the action on the basis that the Plaintiff did not comply with the filing requirements of Minn. Stat. Sec. 333.02. The court denied the motion on the basis that the Plaintiff has filed articles of incorporation with the Secretary of State and otherwise complied with the filing requirements with the Register of Deeds pursuant to Minn. Stat. Sec. 332A.86.

Now, therefore, the Court makes the following:

FINDINGS OF FACT

1. That the Plaintiff is the owner of the premises situated at 5556 Oak Glen Road, Edina, Minnesota. That it is a Housing and Urban Development (HUD) Government Housing project.
2. That the Defendant moved into the premises in 1997 and rents it, a townhome, from the Plaintiff according to a written lease (See: Ex. # 4).
3. That Defendant's share of rent is $174.00 per month.
4. That rent for November 2001 was tendered to the Plaintiff. However, the Plaintiff refused it and sent it back to the Defendant.
5. That the written lease reads, in part, that:

> 10. Maintenance: (b) The Tenant agrees to:
> * * *
> (4) not destroy, deface, damage or remove any part of the unit common areas, or project grounds;
> * * *

COPIES OF ORDERS GIVEN TO PLTF _____
DEFT _____ THIS _____ DATE BY _____ Attorney

App. 491

11. Damages: Whenever damage is cause by carelessness, misuse, or neglect on the part of the Tenant, his/her family or visitors, the Tenant agrees to pay:

(a) the cost of all repairs and do so within 30 days after receipt of the Owner's demand for the repair charges; and

* * *

14. Rules: The Tenant agrees to obey the House Rules which are Attachment No. 3 to this Agreement.

* * *

23. Termination of Tenancy

* * *

(b) Any termination of this Agreement by the Owner must be carried out in accordance with HUD regulations, State and Local law, and the terms of this Agreement. The Owner may Terminate this Agreement only for:

(1) the Tenant's material non-compliance with the terms of this Agreement;

* * *

(3) other good cause, which includes, but is not limited to the Tenant's refusal to accept the Owner's proposed change to this Agreement. Termination for other "good cause" may only be effective as of the end of any initial or successive term.

Material non-compliance includes, but is not limited to, … failure to reimburse the Owner within 30 days for repairs made under Paragraph 11 of this Agreement; ….serious or repeated damage to the unit or common areas; …

(c) If the Owner proposes to terminate this Agreement, the Owner agrees to give the tenant written notice of the proposed termination. If the Owner is terminating this Agreement for "other good cause", the termination notice must be mailed to the Tenant or hand delivered to the dwelling unit in the manner required by HUD at least 30 days before the date the Tenant will be required to move from the unit. Notices of proposed termination for other reasons must be given in accordance with any time frames set forth in State and local law. Any HUD-required notice period may run Concurrently with any notice period required by State or local law. All termination notices must:

(1) specify the date this Agreement will be terminated;

(2) state the grounds for termination with enough detail for the Tenant to prepare a defense;

(3) advise the Tenant that he/she has 10 days within which to discuss the proposed termination of tenancy with the Owner. The 10-day period will begin on the earlier of the date the notice was hand-delivered to the unit or the other

day after the date the notice was mailed. If the Tenant requests the meeting, the Owner agrees to discuss the proposed Termination with the Tenant; and

(4) advise the Tenant of his/her right to defend the action in court.

(d) If an eviction is initiated, the Owner agrees to rely only upon those grounds cited in the termination notice required by paragraph (c).

6. That there exists an Attachment to Apartment Lease. This Attachment is labeled Rules and Regulations (See: Ex. # 16). It was executed by the parties on March 3, 1997. It reads, in part, that: "Material Non-compliance. Material non-compliance includes, but is not limited to, ...serious or repeated damage to the unit or common areas, ..."

7. That the Plaintiff's maintenance person inspected the premises on or about October 5, 2001. He observed damages to the premises. He was at the premises earlier in the year and did not observe these same damages. He observed towel bars ripped off the wall, a bedroom door ruined, a carpet burn in a bedroom, damage to the kitchen fixture, leak in the kitchen faucet, damages to door frames (jamb), knife carving in door molding, missing and damaged window screen, food bars in refrigerator damaged, door handle missing on refrigerator. That the Defendant admits to existence of the damages. However, she alleges that the damages to the screens were committed by outsiders not under her control. There was no convincing evidence to support this theory. Otherwise, the inside damages were caused by the Defendant's children. To that extent, the Defendant concedes that one of her daughters committed most of the damages. Defendant asserts that this daughter suffers from attention deficit disorder (ADD). However, there was no other convincing evidence to support this allegation.

8. That the Defendant concedes that the Plaintiff gave the Defendant a **NOTICE OF TERMINATION OF TENANCY** (See: Defendant's Post Trial Brief). It states the grounds for termination: "Serious and repeated damage to your unit, including destroying and damaging screens, light and switch, refrigerator parts, a towel bar and a door and molding, ..."

9. That there is a history of damage by the Defendant and her family to the unit. As of April 6, 2001, the Plaintiff submitted a bill to the Defendant for damages in her

apartment in the amount of $653.87 (See: Ex. # 14). Defendant paid most of this bill but took issue with one item and refused payment on the same.

10. That there was no convincing evidence that the Defendant kept a cat on the premises (See: paragraph 4[c], Complaint).
11. That the Plaintiff offered no testimony as to the dollar value of the alleged damages.
12. That the Plaintiff did not submit to the Defendant a bill or demand for the reimbursement of the damages that were observed on October 2, 2001.

CONCLUSIONS OF LAW

1. A landlord may bring an eviction action alleging material violation of the lease. See: Minn. Stat. Sec. 504B.285, Subd. 5(a). Moreover, the right to bring an eviction action is in addition to and shall not limit any other rights or remedies available to a landlord. See: Minn. Stat. Sec. 504B.165(b). It is the public policy of the State of Minnesota that an action alleging destruction of leased residential property and a recovery of actual damages, costs, and reasonable attorney fees, does not preclude the landlord from seeking an eviction relief against a residential tenant. And, the Plaintiff is permitted to use prior evidence of prior destruction to the premises notwithstanding an accord and satisfaction between the parties to establish habit or repeated conduct. See: Rule 406, Minn.R. of Evidence.
2. That the Plaintiff's allegation for breach of lease contained at paragraph 4[c] of the Complaint must include conduct contained in the prior **NOTICE OF TERMINATION OF TENANCY** (See: Findings, *supra*, at paragraph 7). That even though the prior notice was not admitted, the Defendant concedes that she did in fact receive a copy of the same (See: Post Trial Brief, Paul Birnberg, November 4, 2001). The Notice reads, in part, "destroying and damaging screens, light and switch, refrigerator parts, a towel bar and a door and molding." It does not allege carpet damage. It does not allege multiple doors. Therefore, the only conduct the court may consider to terminate the lease is the conduct alleged in both the **NOTICE** and paragraph 4[c] of the Complaint.
3. Under statutory law (*supra*), the written lease (See: Ex. # 4) and Federal law and HUD Handbook rules and regulations, the conduct and behavior of the tenant must be material to terminate the lease. A 'material' fact is one which constitutes

substantially the consideration of the contract, or without which it would not have been made. See: *Black's Law Dictionary*, 4th Ed., West Publishing Co. Here, there was no testimony attesting to the actual dollar value of the damages. Secondly, the lease already provided for a damage deposit in the event of damages or excess wear and tear to premises. There was no sworn testimony that the security deposit was depleted. There was no showing that the Plaintiff requested that the Defendant replenish the security deposit. Finally, there was no testimony that the damages as alleged in the termination notice materially compromised the Plaintiff's reversionary interest in the premises at risk.

4. That an allegation of 'material non-compliance' for repairs requires that the Defendant exhaust its remedies, to-wit: "...failure to reimburse owner within 30 days..." Plaintiff failed to prove by a preponderance of the evidence that the Defendant unreasonably refused to reimburse for this damage. Moreover, the prior interaction between the parties reveals a practice of first submitting a bill or invoice to the Defendant to pay for the damages. Here, the Defendant even agrees to pay for the damages. The Court concludes that in the context of this action that the damages as alleged in the Complaint that were committed by the Defendant or members of her family but were not material to terminate the lease. Lastly, forfeiture is a serious remedy. It should not be ordered unless the conduct and behavior is worthy of such drastic result. On the other hand, Plaintiff did not allege 'material non-compliance', only 'serious and repeated' damage.
5. That the Plaintiff failed to prove that the Defendant's conduct as alleged in both the **NOTICE** and paragraph 4[c] of the Complaint amounted to 'other good cause' to terminate the lease. If the 'other good cause' is for damages, the same must be "serious and repeated". Damages, standing alone, is otherwise regarded as 'material non-compliance' and subject to the requirement for reimbursement (*supra*). Although there was evidence of some 'repeated' conduct, it did not constitute serious damage to warrant forfeiture of one's home especially when a demand for reimbursement is still available. On the other hand, the mere fact that the Plaintiff previously accepted reimbursement from the Defendant for prior damages does not cause this Court at this time to ignore that prior conduct in determining whether there

is 'repeated' conduct. Certainly, Plaintiff had a duty to make a demand for reimbursement and then could not unreasonably deny acceptance of it. However, in summary, the damages observed in October 2001, -although 'repeated', did not rise to the level of 'serious' to constitute a termination of the lease.

ORDER

1. That the Plaintiff's cause of action is denied.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 16, 2001

Recommended by:

Referee, Housing Court

By the Court:

Judge, District Court