

IN THE COUNTY COURT OF DOUGLAS COUNTY, NEBRASKA

WILLIAM C. STANEK,)	DOC. CI20-9102
)	
Plaintiff,)	
)	
vs.)	
)	
JESSIE REED,)	
)	
Defendants.)	

UNDER ADVISEMENT RULING RE: ORDERS DISMISSING THE CASE WITHOUT PREJUDICE DUE TO LACK OF SUBJECT MATTER JURISDICTION

The action having been set for hearing before the Court on the 3rd day of June, 2020 and the parties having appeared by his or her attorneys of record on the Plaintiff's Petition for Forcible Entry and Detainer. For the sake of brevity and with no discourtesy intended, the Court will refer to the party by either their first or last names or as Plaintiff or Defendant.

Upon the conclusion of the evidentiary phase of the hearing with each of the parties having formally rested and the Court heard initial closing arguments. Thereafter, a briefing schedule was announced and pursuant to the briefing schedule, the Court ordered that the case would stand submitted after the filing of all of the closing briefs. The briefing schedule set June 10, 2020 by close of business as the deadline the filing of each party's written Closing Argument and Brief.

The matter was taken under advisement to allow the Court time to consider the positions of the Plaintiff and the Defendant and his, her or their legal arguments. The parties were advised that the Court would issue a written Order by mail after consideration on or before June 22, 2020 by close of business.

Further, the Court has now read, studied and analyzed the law and in making its decision, this Court has considered the body of case law regarding all relevant issues, the facts of this case, the Court's assessment of the evidence and argument offered by both parties. With deference to the arguments of each party and after being thus fully advised in all the premises, the Court issues and pronounces its decision.

After being thus fully advised in all the premises, the Court issues its decision and any pending Motions not addressed herein or re-presented in this matter are denied.

FILED

CIVIL SMALL CLAIMS DIVISION

JUN 12 2020

DATE OF HEARING June 3, 2020

DATE OF RENDITION: June 12, 2020

DATE OF ENTRY: See court clerk's file-stamp date per Neb.Rev.St. § 25-1301(3)

**Clerk of Court
DOUGLAS COUNTY COURT
OMAHA, NEBRASKA**



APPEARANCES:

For the Plaintiff: William C. Stanek appeared personally on his own behalf, *pro se*

For the Defendant: Caitlin C. Cedfeldt appeared personally as counsel of record for and on behalf of
Jessie Reed

SUBJECT OF ORDER: Is the current eviction proceeding stayed by Congressional enactment of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, Public Law No. 116-136)?

This issue is examined below.

RECORD BEFORE THE COURT:

The record before the Court consists of the following:

- A. Judicial Notice of the Pleadings** - the Court *sua sponte* takes judicial notice of the pleadings in the file, which includes the following specific documents, to-wit: **1.** Plaintiff's Praecipe and Complaint of Forcible Entry and Detainer dated May 21, 2020 (file-stamped on May 21, 2020); **2.** Sheriff's Return – Constructive Service on Jessie Reed dated May 22, 2020 (file-stamped on May 22, 2020); **3.** Proof of Mailing to Jessie Reed at 2557 Jones Street, #301, Omaha, Nebraska dated May 2, 2020 (file-stamped on June 2, 2020); and **4.** Journal Entry and Order dated June 3, 2020 (file-stamped on June 3, 2020).

Judicial notice takes the place of evidence. Proof is not required of facts of which the court takes judicial notice. **Board of Educational Lands & Funds v. Gillett**, 158 Neb. 558, 565, 64 N.W.2d 105, 110 (Neb., 1954); however, the Court does not take judicial notice of the truth of any matter stated in those pleadings. *See also* Neb.Rev.St. § 27-201 and **J.B. Contracting Servs. v. Universal Surety Co.**, 261 Neb. 586, 624 N.W.2d 13 (Neb., 2001).

B. The following Exhibits were Offered, Received or Not Received to-wit:

- 1.** At the hearing before the Court on June 3, 2020, William C. Stanek (hereinafter referred to as the "Plaintiff") offered **Exhibit #1** (Affidavit of William C. Stanek dated May 21, 2020) which was marked for identification, offered and received into evidence without objection.
- 2.** At the hearing before the Court on June 3, 2020, Jessie Reed (hereinafter referred to as "Defendant") offered **Exhibits #2** (Thrifty Nickel On-line Ad from May 28, 2020) and **#3** (Real Estate Deed of Trust dated April 11, 2007) were each marked for identification, offered and received into evidence without objection.

C. These Witnesses were called, sworn and gave testimony, to-wit:

- 1.** At the hearing on June 3, 2020, the Plaintiff produced no independent witnesses; however, he was sworn and upon oath testified on his own behalf.
- 2.** At the hearing on June 3, 2020, Defendant produced one – (1) additional witness, William C. Stanek, who was sworn and testified upon oath. Additionally, the Defendant was also sworn upon oath and testified for and on her own behalf.

D. Judicial Notice of Statutes and Ordinances:

The Court also takes judicial notice of the applicable Nebraska statutes and/or Court Rules, to-wit: 15 U.S.C.A. § 9058. Pursuant to Neb.Rev.St. § 27-201, the request is granted as the Court may judicially notice indisputable facts immediately ascertainable by reference to sources of "reasonably indisputable" accuracy.

- E.** The decision is now pronounced.

After reviewing the pleadings contained in the court file, considering the parties' evidence, reviewing the applicable law and the parties' written arguments, the Court enters the following ruling.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Trial Court makes the following Findings of Fact and Conclusions of Law. Any Finding of Fact may be considered a Conclusion of Law, and any Conclusion of Law may be considered a Finding of Fact; consequently, the Court finds, concludes and rules as follows:

A. PROCEDURAL HISTORY AND FACTUAL BACKGROUND:

1. Briefly, the relevant facts are as follows: The Plaintiff initially filed his Complaint in this Court seeking forcible entry and detainer of certain real property located at 2557 Jones Street, Apartment #301, Omaha, Douglas County, Nebraska (hereinafter referred to as the "Property"). (*See*, Complaint, p. 1, ¶ 1).
2. The evidence reveals that the Defendant entered into a written Lease Agreement. (*See*, Complaint, p. 1, ¶ 1).
3. Pursuant to statute, the Plaintiff asserts that the Defendant continued to occupy the premises and upon non-payment of rent, he caused a Seven Day Notice to Quit dated April 13, 2020 to be issued and served by mailing and by hand-delivery to the premises located at 2557 Jones Street, Apartment #301. (*See*, Attachments "A" to Complaint).
4. The Plaintiff avows that the Defendant continued to reside in the premises after the service of the Seven Day Notice and the Plaintiff prepared for filing a Complaint containing two – (2) causes of action.
5. In the interim, the Governor of Nebraska ordered a moratorium on all eviction proceedings until after May 31, 2020.
6. The record reflects that the after the lapse of the seven – (7) day period and the Statewide moratorium, the Court scheduled the eviction proceeding for hearing.
7. Good and proper service of the Complaint and Summons pursuant to the statutes was made upon the Defendant and all other occupants of the premises and the matter was scheduled for trial on June 3, 2020.
8. At trial, the Plaintiff appeared personally *pro se* and the Defendant appeared by counsel of record.
9. The Defendant asserts that per the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, Public Law No. 116-136) the Plaintiff is stayed from prosecuting the eviction proceeding until after July 25, 2020.

B. DISCUSSION OF CONGRESSIONAL INTENT:

1. A brief recitation of some of the more comprehensive facts will be useful.
2. In response to the novel coronavirus ("COVID-19") pandemic and its devastating effects on many residential tenants and property owners, the federal government enacted emergency legislation.
3. On March 27, 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). H.R. 748 P.L. 116-136.
4. This legislation was enacted after signature by President Trump and established an eviction moratorium applicable to "covered dwellings", and was designed generally to provide emergency assistance to individuals, families and businesses affected by the coronavirus pandemic and placed a hold on residential evictions. *See*, 15 U.S.C.A. § 9058.

5. Under the CARES Act, a property owner that did not receive a monthly rental payment cannot initiate legal action to evict residential tenants from a covered dwelling until the temporary moratorium period ends on July 25, 2020.
6. 15 U.S.C.A. § 9058 provides that the term “covered dwelling” means a dwelling that, “(A) is occupied by a tenant--(i) pursuant to a residential lease; or (ii) without a lease or with a lease terminable under State law; and (B) is on or in a covered property. (2) Covered property means any property that-- (A) participates in-- (i) a covered housing program . . . or (B) has a-- (i) Federally backed mortgage loan; or (ii) Federally backed multifamily mortgage loan.” (Emphasis *added*).
7. Based on the foregoing language, a covered dwelling is rental property occupied by a residential tenant with or without a lease, located on a covered property.
8. A covered property is one that participates in federal covered housing programs, which would include a property owner who accepts Section 8 housing vouchers or has a federally backed mortgage loan or multifamily mortgage loan.
9. 15 U.S.C.A. § 9058 of the CARES Act places a one hundred twenty – (120) day temporary moratorium on eviction filings for covered dwelling.
10. During this period, the landlord may not (1) make, or cause to be made, any filing with the court of jurisdiction to initiate a legal action to recover possession of the covered dwelling from the tenant for nonpayment of rent or other fees or charges; or (2) charge fees, penalties, or other charges to the tenant related to such nonpayment of rent. *See*, 15 U.S.C.A. § 9058.

C. INTERPRETATION OF THE STATUTE:

1. The Court has thoroughly reviewed the memoranda of law, considered the oral arguments of the parties and conducted its own research.
2. Curiously, but not surprisingly given the legislation’s recent enactment, this case hinges on the interpretation of 15 U.S.C.A. § 9058 of the CARES Act and it appears to be a case of first impression not only in Nebraska but nationwide.
3. Moreover, there is no relevant case law discussing the interpretation of the CARES Act and in the absence of case law, this Court is required by Nebraska law to apply rules of statutory construction to interpret the statute.
4. In any event, it is fundamental, bedrock law known to the Court that the first place to look for the meaning of a statute is the language of the statute itself.
5. The rules of statutory construction this Court is required to apply are as follows, “No rule of law is more firmly established than the one that where the words of a statute are plain, direct, and unambiguous, no interpretation is needed to ascertain the meaning . . . The court may not search for a meaning beyond the statute itself. Rules of interpretation are resorted to for purpose of resolving an ambiguity in the statute, and not of creating it.”
Rudder v. Am. Standard Ins. Co. of Wis., 187 Neb. 778, 780–81, 194 N.W.2d 175, 176 (Neb., 1972).
6. Specifically, the Court must look at the language of the statute and then must look to the plain language of the statute since these are the best indicators of legislative intent. *See, In re Estate of Peterson*, 254 Neb. 334, 576 N.W.2d 767 (Neb., 1998).
7. The Court gives effect to each word in the statute and an ambiguity is determined to exist only if the reader could have different interpretations of the statute when applying the above standards; thus, if the statutory language is not plain and

unambiguous then the Court need not resort to statutory construction or consult legislative history.

8. Perhaps an argument could be made that according HUD's website devoted to "frequently asked questions" (FAQ) dealing specifically with residential evictions, that the moratorium applies only to specific units that receive Section 8 vouchers. *See*, April 21, 2020 FAQ – EM12.
9. This argument clearly begs the question because, to permit any agency to interpret a statute this Court must consider that the, "critical distinction between legislative and interpretative rules is that, whereas interpretative rules '**simply state what the administrative agency thinks the statute means, and only 'remind' affected parties of existing duties,**' a legislative rule '**imposes new rights or duties**' (citations omitted).
Iowa League of Cities v. E.P.A., 711 F.3d 844, 873 (8th Cir. 2013) (Emphasis added).
10. The Supreme Court of the United States has cautioned against deferring to an agency's interpretation because, "the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.' ... The traditional deference courts pay to agency interpretation is not to be applied to alter the clearly expressed intent of Congress."
K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291 (U.S., 1988)
11. Any argument based on HUD's response lacks merit and is not well taken because the Court finds the clear language of the statute is unambiguous.
12. The language of the FAQ – EM12 responses are clearly and substantially different and conflict with the clear and explicit language of the Cares Act.

D. FINAL ANALYSIS AND RULING ON DEFENDANT'S ARGUMENT:

1. The Court is required to make findings based upon the evidence and testimony presented and to make judgments as to credibility.
2. The Findings of Fact are supported by the evidence, to-wit.
 - a) This legislation known as the CARES Act was enacted on March 27, 2020;
 - b) The Defendant leased the real property from the Plaintiff's property located at 2557 Jones Street, Apartment #301, Omaha, Douglas County, Nebraska per a written lease agreement;
 - c) The monthly rental for said real property was \$800.00 per month;
 - d) The Defendant failed to pay rent and as of April 13, 2020, the Defendant was delinquent in the sum of \$457.00;
 - e) The Plaintiff issue a Seven – (7) Day notice that was properly served upon the Defendant on April 13, 2020; and
 - f) The Defendant advertised that 2557 Jones Street as "1 & 3 bedrooms available. **Section 8 & GA accepted.**" (*See*, Ex. #2, p. 1, ¶ 1).
3. For each of the reasons set forth above, the Court concludes that the statute enacted by Congress is clear and unambiguous.
4. The Court concludes as a matter of law that 2557 Jones Street, Apartment #301, Omaha, Douglas County, Nebraska is a "covered property" as defined by statute

because the Plaintiff participates in a federal covered housing program and receives or accepts Section 8 housing vouchers.

5. Further, the statute does not require that the Defendant tenant must be the recipient of government benefits such as Section 8 vouchers but only that 2557 Jones Street be a "covered property" which is supported by the unrefuted evidence.
6. Lastly, the CARES Act places a one hundred twenty – (120) day temporary moratorium on eviction and that the Plaintiff is not entitled initiate a legal action to recover possession of 2557 Jones Street, Apartment #301 for nonpayment of rent until after July 25, 2020.
7. Consequently, on March 27, 2020, Congress established a moratorium on residential properties and by implementing these regulations, property owners owning covered properties could not evict tenants until after July 25, 2020.
8. As a practical matter, the moratorium had the effect of suspending the Plaintiff's preexisting right to proceed to eviction for non-payment of rent until such time as the moratorium period expired or was otherwise lifted by the legislature.
9. Although prior to the effective date of the moratorium the Plaintiff had a real and immediate right to proceed with the eviction process in accordance with relevant law, the imposition of the moratorium suspended that right.
10. This Court's determination of the merits of the Plaintiff's claims will result in no practical relief to him especially since the Court is not permitted to render a purely advisory opinion.
11. The Court further finds, therefore, that the Plaintiff's claims are not justiciable and it lacks subject matter jurisdiction and must dismiss the action.

Based upon the above Findings of Fact and Conclusions of Law, and in accordance with the foregoing, the Court hereby enters the following:

ORDER: IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. The findings hereinabove made should be, and they are hereby made a part of the Order of this Court as fully as if set out at length herein.
2. That there must be judgment for the Defendant, **JESSIE REED**, and **DISMISSAL** of the Complaint, **WITHOUT PREJUDICE** to the right of the Plaintiff to bring a new action after the expiration of the moratorium on July 25, 2020, or sooner termination of said moratorium by subsequent legislative action.
3. All matters not decided, any relief not expressly addressed, and the claims of all parties not otherwise expressly determined by this **ORDER** are **DENIED**.
4. The Clerk shall mail notice of the entry of this **ORDER** to all counsel of record and interested parties at his, her or its address referenced specifically on the record.
5. The mailing or electronic mailing of a copy of this **ORDER** to either the parties or the attorneys of record shall constitute notice of its entry to the parties for all purposes.
6. This constitutes the ruling, **DECISION AND ORDER** of the Court and the Clerk is directed to enter judgment accordingly.

Signed in at Omaha, Douglas County, Nebraska, on June 2, 2020 and DEEMED ENTERED upon file stamp date by court clerk.

FILED
CIVIL/SMALL CLAIMS DIVISION

JUN 12 2020

Clerk of Court
DOUGLAS COUNTY COURT
OMAHA, NEBRASKA

BY THE COURT:



HONORABLE THOMAS K. HARMON
DOUGLAS COUNTY COURT JUDGE

If checked, the court clerk/judicial clerk shall:

Mail a copy of this order to all counsel of record and any pro se parties; or

Hand-delivery of a copy of this order to all counsel of record and any pro se parties:

William Stanek, 2557 Jones Street, Omaha, Nebraska 68105

**Caitlin C. Cedfeldt, LEGAL AID OF NEBRASKA, 209 South 19th Street, Suite #200, Omaha,
Nebraska 68102**

Done on June 12, 2020 by SSimon

FILED
CIVIL/SMALL CLAIMS DIVISION

JUN 12 2020

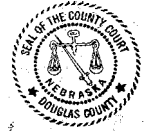
Clerk of Court
DOUGLAS COUNTY COURT
OMAHA, NEBRASKA

CERTIFICATE OF SERVICE

I, the undersigned, certify that on June 15, 2020 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Jessie Reed
2557 Jones Street #301
Omaha, NE 68105

William C Stanek
2557 Jones St
Omaha, NE 68105



Date: June 15, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to be "W. C. Stanek", written over a horizontal line.

CLERK