

STATE OF MINNESOTA

DISTRICT COURT

HENNEPIN COUNTY

02 APR 06 11:03 AM
FOURTH JUDICIAL DISTRICT
FIRST DIVISION-MINNEAPOLIS

GLENN FORD, SR.,

Plaintiff,

Vs.

DECISION & ORDER

H.C. # 1020325505


Defendant.

The above entitled matter came on for hearing before the undersigned, Referee of Housing Court, on that Eviction Complaint filed by the Plaintiff and the Answer interposed by the Defendant.

The Plaintiff was present and was represented by counsel, John Betz, Esq. The Defendant was present and was represented by counsel, Amber Hawkins.

The matter was previously consolidated with H.C. # 1020325506. However, that action was resolved by a Settlement Agreement entered into between the parties on April 17, 2002.

Now, therefore, the Court makes the following:

FINDINGS OF FACT

1. That the Plaintiff is the owner of the premises situated at 2131 Knox Avenue South, Minneapolis, Minnesota. The premises is a duplex, -upper and lower.
2. That the Defendant rents the premises from the Plaintiff in the lower unit as a personal residence pursuant to a written lease (Sec. Ex. # 1).
3. That the lease is subject to a Section 8 contract with the local public housing authority. To that extent, the Defendant's share of rent is \$25.00 per month and the local public housing authority's share is \$555.00 per month.
4. That the Defendant moved into the premises in December 2001. At that time, the premises was inspected by Section 8 and passed inspection.
5. That in January 2002 the premises were inspected by the Department of Inspections, City of Minneapolis, Minnesota. At that time, the Department of Inspections determined that building code violations existed at the premises and opined that the Plaintiff was responsible for the repairs. On the other hand, the

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Plaintiff alleges that the repairs were caused by either the deliberate act or negligence of the Defendant, her family and/or her guests.

6. That on February 20, 2002 the Plaintiff sent to the Defendant by certified mail a letter titled **NOTICE TO VACATE** (See: Ex. # 13). It alleges the following breaches of lease, to-wit: over-occupancy, playing loud music and disturbing the right of peaceful enjoyment of the premises, fights and disturbances on the premises, police call to the premises on February 7, 2002, shooting of firearms or allowing firearms to be fired, violation of building rules.
7. That a neighbor of the premises testified that he was disturbed by cars that arrived at curbside that played loud music. However, he could not identify whether these cars were invited guests of the lower unit or the upper unit. At no time relevant to these proceedings did the neighbor call the police in response to these annoyances. Moreover, there was no testimony that the neighbor immediately notified the Plaintiff concerning these annoyances.
8. That there was no convincing evidence that fighting occurred in the Defendant's unit or that the Defendant otherwise attracted guests to the common areas of the premises to engage in fighting.
9. That there was no convincing evidence that the Defendant knew, should have known or allowed any firearms on the premises or invited guests that she knew, should have known would possess or use firearms on the premises.
10. *Building Rules.* That attached to the residential lease (See: Ex. # 12) is a set of building rules. It included, *inter alia*, a prohibition against hanging out. The premises are located across the street from North High School. There was testimony that students would frequently linger on or near the premises after school hours. However, there was no convincing evidence that the Defendant invited the students to the common areas of the premises, in general, or into her unit, in particular. There was no convincing evidence that students were engaging in unlawful activity. There was no convincing evidence that the mere presence of the students posed an immediate threat to anyone.
11. The Plaintiff testified that when he visited the premises he observed the yard littered with trash and debris. However, he did not specifically cite whether the

Defendant and/or her guests were responsible for this debris. Moreover, Rod Thomas, Housing Inspector, Department of Inspections, City of Minneapolis, visited the premises to determine whether building, health and safety code violations existed at the premises. Although he issued a repair order for several violations that were the responsibility of the Plaintiff, he did not cite any violations concerning the condition of the yard or the adjoining area that were the responsibility of the Defendant.

12. *Police visits.* There were two police visits to the premises. One visit was for a domestic assault. The police arrived, polled those present as to the nature of the complaint, and then left without filing any charges. The police were dispatched on another occasion by a complaint that there was a fire in the basement. There was smoke due to a faulty electrical connection. There is no showing that the Defendant's conduct or behavior was cause of the smoke.
13. *Destruction of premises.* That when the Defendant moved into the premises on December 1, 2001, she signed a written lease reciting that she inspected the premises and that the condition was acceptable. Moreover, the premises were inspected by Section 8 officials and passed (*supra*). However, the Defendant testified that she still had reservations about the condition of the premises at the time of the move-in and that she related the same to the Plaintiff. She further testified that she was desperate to move-in since she and her family were homeless for the preceding six months and did not want anything to delay the move-in. Notwithstanding the Section 8 approval in November, 2001, the Minneapolis Department of Inspections issued a Letter of Intent to Condemn (See: Ex. #25). Plaintiff claims that the Defendant damaged or sabotaged the premises in violation of the lease. Firstly, the Plaintiff did not actually observe any destruction. Secondly, the repairs contained in the Inspector's repair order were structural and not associated with deliberate acts of violence or damage. Thirdly, the Plaintiff cites damage in the basement by an unlawful occupant, Diletta Adams, and alleges that the Defendant allowed Ms. Adams to unlawfully occupy the basement. Ms. Adams occupation of the premises was with the permission and consent of the Plaintiff. Although Ms. Adams may have been an

acquaintance of the Defendant, the Plaintiff signed the necessary papers so that Ms. Adams could secure public assistance to lease the premises.

14. *Use of marijuana.* The Plaintiff testified that early on in the lease he observed people in the Defendant's unit smoking marijuana. Defendant denies this. There was no other sworn testimony to support this allegation even though the Plaintiff claims that his workers also observed this behavior. However, Plaintiff failed to call his workers to testify. Nevertheless, Plaintiff still accepted Defendant as a tenant, signed a written lease, signed a Section 8 contract for a one year term, and proceeded to accept rent from the Defendant in the months of December 2001 and thereafter. Lastly, a roofing contractor hired by the Plaintiff testified that he observed the odor of marijuana while at the premises. He testified that he was at least 25 feet away when he suspected that it was being used. And, his testimony was not clear as to whether this smoke came from the upper unit or the lower unit of the premises. Defendant occupies the lower unit. The resident of the upper unit has already vacated the premises.

CONCLUSIONS OF LAW

1. That the Plaintiff failed to prove by a preponderance of the evidence that the Defendant breached the terms and conditions of the lease. Moreover, in respect to the allegation of use of marijuana, the Plaintiff failed to state with any particularity this allegation. The Notice to Vacate (See: Ex. # 13) and paragraph 4(b)(4) of the Complaint merely incorporate by reference the building rules that is attached to the lease. It fails to put the Defendant on notice in order to properly defend against the allegation.

ORDER

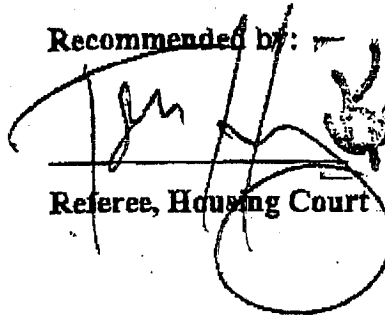
1. That the Plaintiff's claim for relief is denied with prejudice.
2. That Defendant is the prevailing party for the awarding costs and disbursements.

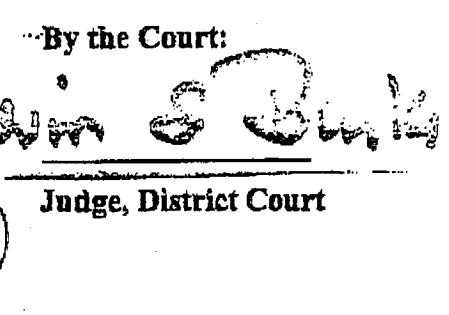
LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 26, 2002

Recommended by:

By the Court:


Referee, Housing Court


Judge, District Court