

STATE OF MINNESOTA
COUNTY OF WRIGHT

CASE TYPE: 12
IN DISTRICT COURT
TENTH JUDICIAL DISTRICT

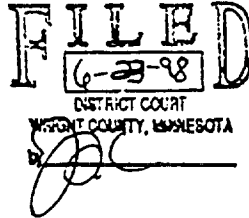
IN RE THE MATTER OF:

Court File No. C3-98-1211

Horning Properties,
Plaintiff,

vs.

Vicki Wang,
Defendant.



FINDINGS OF FACT,
CONCLUSION OF LAW,
ORDER FOR JUDGMENT,

This matter came before the Honorable Gary Meyer on May 22, 1998, at 1:30 p.m. in the Wright County Courthouse in Buffalo, Minnesota. Plaintiff filed a Complaint in Unlawful Detainer on or about May 11, 1998, alleging non-payment of rent and other breaches of the lease. At the hearing, Plaintiff dropped its claim regarding other breaches, and an evidentiary hearing was held on the allegations of non-payment of rent.

The Plaintiff was present in the person of Christine Schulz and represented by Donna Hanbery of Hanbery, Neumeyer, and Carney. The Defendant was present and represented by Doug Clark of St. Cloud Area Legal Services. Based upon the testimony, the exhibits, and pleadings filed in this matter, the Court makes the following:

FINDINGS OF FACT

GENERAL BACKGROUND

1. The premises in question is owned by the Mont-Ski Limited Partnership. The Plaintiff is the authorized managing agent for the premises.

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2. The premises is an apartment complex subsidized by Rural Development (a federal agency formerly known as the Farmers Home Administration, or FmHA). Most tenants pay a "basic rent" of \$340. In addition, 12 tenants receive an additional subsidy through Rental Assistance. The Rental Assistance tenants pay approximately 30 percent of their income for rent.

3. Due to the subsidy received by the complex, the Plaintiff must comply with certain federal regulations in the operation of the complex. These regulations are called the "Multi-Housing Management Handbook", found at 7 C.F.R. Part 1930, Subpart C, Exhibit B.

4. Defendant, Vicki Wang, began her tenancy at the premises on October 1, 1992. At some time prior to June 1, 1997, the Defendant became eligible for Rental Assistance.

5. The Defendant's lease was last renewed effective June 1, 1997 for a one-year period. Due to her receipt of Rental Assistance, the Defendant's rent was \$86 per month.

6. Paragraph 3 of Plaintiff's lease states in part as follows:

I understand that I must promptly notify the lessor of any extended absences and that if I do not personally reside in the unit for a period exceeding 60 days, for reasons other than health or emergency, my net monthly tenant contribution shall be raised to \$495.00/per month (market rent for Plan II projects or 125 percent of rent in Plan I projects) for the period of my absence exceeding 60 consecutive days. I also understand that should any rental assistance be suspended or reassigned to other eligible tenants, I am not assured that it will be available to me upon my return.

7. Paragraph 8 of the lease states in part:

Continued occupancy and use shall be subject to eligibility according to FmHA regulation 1930-C, Exhibit B, the terms of this lease, and the approved occupancy policy for this project.

8. Paragraph 28 states in part:

Any notice to terminate tenancy by management must be based on material violation of the lease terms or for other good cause as determined by the borrower or the project manager. The notice of intent to terminate the tenancy will be handled according to the terms of the lease. Tenants will be given prior notice of eviction according to state or local law. The notice must:

a. Refer to relevant provisions in the lease.

b. State the reasons for the termination with enough specificity to enable the tenant to prepare a response. In those 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 that 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 only by bringing a judicial action, at which time that tenant may present a defense.

Paragraph 28 also contains specific directions regarding the delivery of the written notice described above.

EVENTS LEADING TO EVICTION

9. In early December 1997, the Defendant was arrested for a DUI in Sherburne County, Minnesota.

10. She was subsequently transferred to Wright County and sentenced to be incarcerated for 156 days.

11. Defendant was allowed release from incarceration on five separate occasions to take care of her affairs. These releases occurred during February and March 1998. During these releases, the Defendant returned to her apartment to take care of personal business such as answering mail, paying bills, and cleaning the apartment.

12. Throughout the time she was incarcerated, the Defendant kept all of her personal belongings in the apartment. This included her clothing, furniture, and furnishings. Throughout the time of her incarceration, the Defendant continued to receive her mail at the premises.

13. In December 1997, Plaintiff noticed Defendant had not been seen on the premises. At some time prior to February 25, 1998, Plaintiff learned Defendant had been incarcerated for 156 days.

14. On February 25, 1998, the Plaintiff sent Defendant a notice raising her rent to \$545 and terminating her lease effective March 31, 1998, alleging a failure to reside on the premises.

15. On March 20, 1998, the Defendant sent Plaintiff a letter to advise them that she had not abandoned the premises and did not intend to leave the premises before the end of her lease. Prior to that letter, Defendant had not contacted the Plaintiff about her incarceration.

16. On or about April 1, 1998, the Defendant caused a personal check to be sent from her mother, Carole Rivers, to the Plaintiff in the amount of \$86, representing her April rent. On April 10, 1998, the Plaintiff returned this check. The letter stated that possession of Defendant's apartment had been demanded by March 31, 1998, and that her rent for each month had been raised to \$545.

17. During the week between April 17 and April 22, 1998, Plaintiff's attorney sent the Defendant two letters. These letters indicated the Defendant's Rental Assistance would be reassigned effective May 1, 1998. The letter also stated the reassignment of Rental Assistance would result in a rent increase for the Defendant from \$86 to \$340.

18. On or about May 1, 1998, the Plaintiff reassigned the Defendant's Rental Assistance to another tenant.

19. On or about May 1, 1998, the Defendant caused two personal checks from Carole Rivers to be sent to the Plaintiff. Both checks were in the amount of \$86, and they represented Defendant's April and May rent.

20. On or about May 7, 1998, the Defendant was released from incarceration and she immediately returned to her apartment. She has resided in this apartment since that time.

21. On May 20, 1998, the Plaintiff delivered a letter to the Defendant stating the two checks for \$86 would be returned at the time of the hearing, and the eviction would continue unless the Defendant paid the full amount claimed by the Plaintiff.

22. The Unlawful Detainer hearing was held on May 22, 1998. At the hearing, the Plaintiff returned the two checks to the Defendant.

Based upon these Findings, the Court makes the following:

CONCLUSIONS OF LAW

EVICTION NOTICE

1. Due to the federal subsidy, the operation of this complex is determined by a combination of federal regulations, state law, and the terms of the lease. Pursuant to federal regulations and Paragraph 8 of the lease, any conflict between these sources must be resolved in favor the federal regulations.

2. In 1993, the federal regulations governing this complex were modified as contained in 7 C.F.R. Part 1930, Subpart C, Exhibit B. Although these modifications were not incorporated into the Defendant's lease, the modified regulations control in this matter, where applicable.

3. Under federal regulations [specifically 7 C.F.R. Part 1930, Subpart C, Exhibit B, Section XIV(B) and (C)] a landlord must serve two written notices upon a tenant before beginning an eviction proceeding. The first notice, called a "Notice of Lease or Occupancy Agreement Violation" specifically requires as follows:

The notice must:

a. Refer to relevant provisions in the lease or occupancy agreement.

b. State the violations with enough information describing the nature and frequency of the problem to enable the tenant or member to understand and correct the

problem. In those cases where the lease or occupancy agreement violation is due to the tenant's failure to pay rent or the member's failure to pay occupancy charge, a notice stating the dollar amount of the balance due on the rent or occupancy charge account and the date of such computation shall satisfy this requirement.

c. State that the tenant or member will be expected to correct the lease or occupancy agreement violation by a specified date.

d. State that the tenant or member may informally meet with the borrower or borrower representative to attempt to resolve the stated violation before the date of corrective action specified in the notice.

e. Advise the tenant or member that if he or she has not corrected the stated violation by the date specified, the borrower may seek to terminate the lease or occupancy agreement by bringing forth a judicial action, at which time the tenant or member may present a defense. 7 C.F.R. Part 1930, Subpart C, Exhibit B, Section XIV(B).

4. In the event the tenant does not correct the violation, a "Notice of Termination" must be sent in writing stating "that the occupancy is terminated and that eviction is being sought the appropriate judicial process according to state or local law". 7 C.F.R. Part 1930, Subpart C, Exhibit B, Section XIV(C).

5. Even if these federal regulations did not apply, Paragraph 28 of the lease specifically requires a written notice which is substantially the same as the "Notice of Lease or Occupancy Agreement Violation" contained in the current federal regulation. This notice must be in writing, mailed and hand delivered to the tenant.

6. Under previous Minnesota appellate decisions, federal regulations regarding the notice of termination must be complied

with by a landlord before an eviction can proceed, see Hoglund-Hall v. Kleinschmidt, 381 N.W.2nd 889 (Minn. App. 1986).

7. There is no factual dispute that the Defendant's rent for April 1998 was \$86. Likewise, there is no factual dispute the Defendant tendered this amount in full in a timely fashion, and the Plaintiff refused to accept it. Since the Defendant tendered the full amount of rent owed for April 1998 in a timely fashion, there was no lease violation based upon non-payment of rent in April 1998.

8. Under federal regulations and the terms of the lease, the required notice of lease violation cannot be issued before a lease violation has occurred. Since there was no lease violation based upon non-payment of rent in April 1998, the Plaintiff's April 1998 letters cannot constitute proper notice under federal regulations or the terms of the lease.

9. The Plaintiff served no written notice upon the Defendant in May 1998 prior to the commencement of this action on or about May 11, 1998.

10. The Plaintiff's May 20, 1998, letter does not satisfy the notice requirements for several reasons. First, it does not meet the specific requirements of the federal regulations or the lease. Second, it was not delivered until May 20, 1998. This was approximately nine days after the Unlawful Detainer was filed, and only two days before the hearing. As a result, it cannot satisfy the notice requirements under the federal regulations or the terms of the lease.

11. Since the Plaintiff has not introduced evidence of compliance with the notice requirements of federal regulations or the terms of its lease, this Court cannot grant their request to restore possession of the premises.

RESIDENCY IN THE APARTMENT

12. Paragraph 3 of the lease requires a tenant to "reside" in the unit except for reasons dealing with "health or emergency".


13. The term "reside", in this context, does not simply mean the tenant's physical location or where each night is spent. This term refers to a tenant's legal residence.

14. It is undisputed the Defendant kept all of her furniture, furnishings and other belongings in the apartment throughout the period she was incarcerated. She also continued to receive mail at the premises during this period. Finally, the Defendant returned to the premises on at least five occasions from February 1998 through March 1998 in order to answer her mail, clean her apartment, and take care of other personal business.

15. Under these circumstances, the Defendant continued to "reside" on the premises throughout the time of her incarceration.

~~16. Even if the Defendant did not "reside" on the premises, Paragraph 3 of the lease provides an exception for "health or emergency" reasons. An "emergency" usually describes a situation which is beyond the control of a tenant. While the Defendant certainly has some responsibility for her behavior in committing a criminal offense, she certainly did not have any control over her ability to remain on the premises while incarcerated.~~

17. Although the Defendant failed to contact the Plaintiff about her incarceration, the Plaintiff discovered from other sources that the Defendant would be away from the premises for a fixed period of time. In addition, the Defendant notified the Plaintiff on March 20, 1998, that she desired to continue to reside on the premises with her subsidy.

 ~~18. Since the Defendant could not control the terms of her incarceration, and she was away from the unit for a fixed period of time known to the Plaintiff, the Defendant's incarceration constitutes an "emergency" under the terms of Paragraph 3 of the lease.~~

19. Since there was no lease violation, the Plaintiff should not have reassigned the Defendant's Rental Assistance to another tenant. This incorrect reassignment resulted in an increase in the Defendant's rent from \$86 to \$340. This rental increase was incorrect and the Defendant's rent for May should have been \$86.

20. The Defendant's rent for April 1998, May 1998, and into the future shall be \$86, and shall remain in effect as long as the Defendant continues to comply with the terms of federal regulations and the lease.

21. The Defendant, having tendered the full amount owed for April and May prior to the filing of this matter, has not violated the terms of her lease.

Based upon the Findings of Fact and Conclusions of Law, this Court Orders as follows:

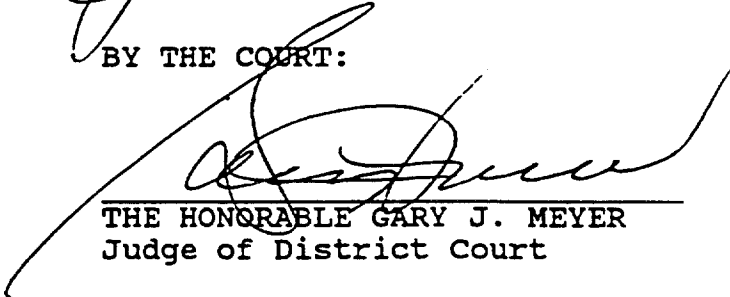
1. The Plaintiff's Complaint in Unlawful Detainer is dismissed with prejudice.

2. Each party shall bear their own costs and fees in this matter.

LET JUDGMENT BE ENTERED ACCORDINGLY.

So ordered this 23 day of June, 1998.

BY THE COURT:


THE HONORABLE GARY J. MEYER
Judge of District Court