

State of Minnesota

Hennepin

District Court

Judicial District: Fourth
Court File Number: 27CVHC 10-8274
Case Type: Housing

Loring Towers Preservation Limited Partnership

Plaintiff

**Eviction Action – Findings of
Fact, Conclusions of Law,
Order and Judgment**
(Minn. Stat. § 504B.285, 504B.345)

vs.

Ebssa Yadessa

Defendant

This matter came on for trial/hearing before the Honorable Mark Labine, Referee of Housing Court on 01/12/2011 and 01/21/2011 and 01/27/2011. The record in this matter remained open until February 8, 2011 for parties to submit proposed findings to the court.

The Plaintiff was present. Plaintiff shall hereinafter be referred to as Landlord. The Defendant was present. Defendant shall hereinafter be referred to as Tenant.

Douglass Turner, Attorney for Plaintiff appeared. Corinne Ivanca, Attorney for Defendant appeared.

Based upon the verified petition, testimony, evidence, and arguments presented, and all of the files, records, and proceedings, the Court makes the following:

Based upon the verified petition, testimony, evidence, and arguments presented, and all of the files, records, and proceedings, the Court makes the following:

Findings Of Fact And Conclusions Of Law

1. This matter involves leased property owned and operated by Landlord located at 15 East Grant Street, #409, Minneapolis, Minnesota 55403. Landlord leased the premises to Tenant on a one year HUD Subsidized Model Lease. Exhibit 1.

2. The premise is HUD-subsidized property and is a project-based facility governed by HUD Regulations, Handbook No. 4350.3.

3. The amount of rent owed for units rented by income-qualifying tenants is based upon their income. This amount of rent owed is calculated by the landlord through processes called certifications and recertifications. After the original certification, a tenant must undergo annual recertifications. In addition to the annual recertifications, HUD rules and Defendant's lease require that a tenant report to the landlord when they obtain employment if they were previously

unemployed, and when the tenant's income increases by more than \$200 per month, which triggers an interim recertification.

4. Prior to June of 2010, Defendant was paying \$45 per month in rent. His rent was set at this relatively low amount because it was based upon his being unemployed at the time.

5. On June 18, 2010, Defendant started his first day of employment with Award Staffing. The placement was a temporary placement, and Defendant did not know how long the employment would continue. Defendant's income did not increase by more than \$200 per month until June 30, 2010, when he received a paycheck for a net of \$454.04 (his first paycheck had been for only \$150.97 net).

6. Plaintiff claims that Defendant was required to report his new income within ten days of obtaining employment. There is no evidence, however, that Tenant was ever informed of a ten-day deadline for reporting new employment. There is no ten-day requirement in his lease or any of the amendments and supplements to the lease put into evidence.

7. On July 16, 2010, Defendant was still employed. On that day, Defendant reported his employment to Plaintiff by discussing the fact that he had obtained employment with Ms. Philimena Armstrong, a representative of Plaintiff. Ms. Armstrong asked Tenant to have his employer complete an Employment Verification form.

8. On or about July 26, 2010, the Employment Verification form was returned to Plaintiff. There was disputed testimony about whether Defendant returned the form to Plaintiff or whether it was returned directly by Defendant's employer.

9. Tenant was in the process of undergoing his annual recertification from May 2010 (when he received his "120 day notice"), until September 1, 2010.

10. With regard to September 2010, it is undisputed that Defendant paid, and Plaintiff accepted, \$45 in rent.

11. With regard to October 2010, it is undisputed that Defendant paid, and Plaintiff accepted, \$51 (\$45 was rent and the extra \$6 was for a late fee).

12. 1. On October 27, 2010, Defendant received a letter entitled "30-DAY NOTICE OF RENT CHANGE RESULTING FROM RECERTIFICATION PROCESSING." This letter stated in part:

This is to notify you that on the basis of our recent review of your income and family composition your rent has been adjusted to \$428.00. This new rent is effective beginning 12/1/2010.

13. In November 2010, in reliance on the fact that a letter from Plaintiff just a few days earlier verified that his rent was not to increase until December, Defendant attempted to pay \$45, but his money order was rejected by Plaintiff. The money order was returned attached to a November 4, 2010 letter addressed to a Jeffrey Taylor, but received by Defendant. Defendant does not know who Jeffrey Taylor is. The letter states that the rental payment is being returned

because it does not cover the total amount due, which is \$1,188 "past due balance and November rent." The letter further states that Mr. Taylor's rent is "\$428 per month as of 9/1/2010."

14. Also on November 4, 2010, Defendant received a letter from Plaintiff, this one addressed to Defendant, stating that he owed \$1,188, and that the balance was due "now." "Now" was written in bold and capitals. The letter further stated:

Our most recent review of your income shows that you started a new job on 6/17/2010 and you have failed to report income change to management within 10 business days from the date of your employment. This is a violation of your lease agreement. Therefore, you lose your right to a 30 days rent increase notice.

15. The letter also threatens commencement of an eviction action if the \$1,188 balance is not paid by November 8, 2010.

16. In December, Defendant attempted to pay rent in the amount of \$428, but the money order was returned to him by Plaintiff with a December 9, 2010 letter addressed only to "15 E Grant St. #409." That letter states, "We're no longer accepting partial-payment. Your rent is \$428 per month." The letter states that \$1,647 is now due. Again "now" is in bold and capitals. The letter also states, "Please pay the full amount before 12/10/2010 to avoid late fee and eviction."

17. On or about December 9, 2010, Defendant testified he spoke with Ms. Lee, who was his Community Manager. Ms. Lee testified that she offered a HUD-compliant repayment plan to Defendant. Defendant, however, testified that Ms. Lee offered no payment plan in writing, but that Ms. Lee wanted him to pay about \$570 immediately and about the same amount the following week. Defendant did not agree on a payment plan, and did not make any payments.

18. On December 15, 2011, Landlord hand-delivered and mailed a Notice of Lease Termination to Tenant outlining the lease violation for material non-compliance as governed by the model HUD lease for subsidized properties. Exhibit 4.

19. The Notice of Lease Termination letter notified rights that Tenant has under HUD guidelines including notifying Tenant the date his lease will terminate, the amount of money due and owing, that the grounds in the termination notice were stated in the termination notice and they will be relied upon at any eviction hearing, allowing Tenant 10 days to discuss the termination notice with Landlord, and notified Tenant of his the right to present a defense in district court. Exhibits 4 with references to Exhibit 1, 2, and 3.

20. The Notice of Lease Termination also advised Tenant that the eviction action would proceed in district court, but that the Landlord would meet with the Tenant at anytime after the December 15, 2011 termination notice. The eviction proceeded in compliance with Minnesota Statutes 504B et seq. and does not require any other notice except a Notice of Lease Termination which was provided.

21. Tenant did not schedule a meeting with the Landlord in accordance with the Notice.

22. On December 22, 2010, Landlord filed an Eviction Action against Tenant based upon Tenant's material non-compliance with the terms and conditions of the Lease alleging nonpayment of rent. In HUD Subsidized property nonpayment of rent is material noncompliance with terms and conditions of the lease. Tenant answered with a general denial of the allegations alleging that Tenant did not owe the amount in the Complaint.

23. Tenant does not dispute that rent for the month of December, January and February is \$428 per month, but does dispute that \$428 is owed for prior months. Tenant alleges that his rent for September, October and November should be \$45.00 per month. Landlord alleges rent for September, October and November should be \$428/month.

24. Tenant has deposited into court \$1,329.00 which is the amount Tenant asserts he owes for rent thru February 2011. This is calculated as follows:

- a. \$45 for September rent, less tenant's \$45 payment
- b. \$45 for October rent, less tenant's \$45 rent payment (plus \$5 late fee payment);
- c. \$45 for November rent;
- d. \$428 for December rent;
- e. \$428 for January rent;
- f. \$428 for February rent;

g. Landlord asserts that Tenant owes \$2,478.00 in rent due for period from September thru November 2010. This is calculated as follows:

- a. \$428 for September rent, less tenant's \$45 payment
- b. \$428 for October rent, less tenant's \$45 rent payment (plus \$5 late fee payment);
- c. \$428 for November rent;
- d. \$428 for December rent;
- e. \$428 for January rent;
- f. \$428 for February rent;

25. The issue for this court to decide then is what amount Tenant must pay to Landlord to redeem his tenancy thru February 2011.

26. The question as to what amount of rent Tenant owes goes to the question regarding whether or not Tenant was entitled to a 30 day notice for any rent increase.

27. Tenant alleges that he did in fact report the income in accordance with HUD regulations and is entitled to a 30-day notice on any rent increase. Tenant argues that there is no requirement to report new employment within 10 days, that any alleged delay in reporting his income did not cause the three-month delay in Plaintiff's processing of the income change, and that Plaintiff has waived any right to additional rent for September, October and November by its failure to comply with HUD regulations.

28. Landlord asserts that Tenant failed to notify the landlord of his employment and his increase in his income which is also called an interim re-certification, which does not entitle tenant to a 30-day notice of a rent increase.

29. The Regulations in the United States Department of Housing and Urban Development Handbook 4350.3 REV-1: Occupancy Requirements of Subsidized Multifamily Housing Programs ("HUD Handbook") govern the operation of Plaintiff.

30. The HUD Handbook describes the obligations of landlords and tenants with regard to income changes. The Handbook states, "Because a tenant's income and family composition can change over time, program requirements establish procedures for addressing these changes. Such changes are examined and implemented through the recertification process. Under program requirements, tenants have responsibilities for providing timely information about these changes. Similarly, owners have responsibilities for promptly reviewing and verifying this information and for making changes in assistance payments or tenant rent consistent with program requirements." HUD Handbook § 7-1.

31. The HUD Handbook and the lease signed by Plaintiff and Defendant (the "Lease") both require that Defendant report the fact that Defendant obtained employment when he was previously unemployed. HUD Handbook § 7-10.

32. Landlord claims that there is a 10-day deadline for reporting new employment, but there is no such deadline in the Lease and there is no evidence in the record that Tenant was ever informed of such a deadline. The Defendant notified Plaintiff of his new employment within one month of starting the job.

33. Landlords are required to process an interim recertification in order to recalculate a tenant's rent when a tenant reports an income increase of more than \$200 per month. See HUD Handbook § 5-25 ("owners must recalculate rent if a tenant reports a change in income..."); HUD Handbook § 7-11 ("Owners must process an interim recertification if a tenant reports an increase in a family's cumulative income of \$200 or more a month."). On July 16, 2010, Plaintiff knew of an increase in Defendant's income of more than \$200 per month. This was verified by Defendant's employer on July 26, 2010.

34. Interim recertifications should be processed "within a reasonable time, which is only the amount of time needed to verify the information provided by the tenant," which should generally "not exceed 4 weeks." HUD Handbook § 7-11 C. Plaintiff had all the information it needed to process an interim recertification on July 26, 2010. Plaintiff failed to process an interim recertification until November.

35. Landlords are required to investigate and research discrepancies and possible errors in information provided by tenants. HUD Handbook § 8-17. The investigation must include notifying the tenant in writing of the error, allowing an opportunity for the tenant to meet with landlord to discuss the allegation, and a written notice of the landlord's final decision and basis for determination. *Id.* While Plaintiff alleges that Defendant failed to timely report his new employment, there is no evidence in the record that Plaintiff conducted such an investigation.

36. **The Lease and the HUD Handbook provide that if a tenant complies with the requirement to report new employment, the tenant is entitled to a 30-day notice of an increase in rent.** Defendant notified Plaintiff of his new employment on July 16, 2010. On July 16, 2010, Plaintiff still had a full two weeks in which to give Plaintiff a 30-day notice for a

September 1, 2010 rent increase. Even after Defendant's employer had verified the employment, Plaintiff still have five days in which to process the interim recertification and give Defendant his 30-day notice. Plaintiff's claim that Defendant lost his right to a 30-day notice of a rent increase by his late reporting is belied by the fact that Plaintiff waited over three months to process an interim recertification.

37. Paragraph 18 of the Lease provides that Defendant is not required to reimburse Plaintiff for undercharges in rent caused by Plaintiff's failure to follow HUD's procedures in computing rent. This is confirmed by the HUD Handbook as well as HUD Notice H 2010-10. HUD Handbook § 8-20(A)(4); HUD Notice H 2010-10, p. 40, available at <http://portal.hud.gov/hudportal/documents/huddoc?id=10-10hsgn.pdf>. In the section dealing with annual recertifications, the HUD Handbook makes clear that the landlord is responsible for undercharges in rent due to delays caused by a landlord in processing a recertification. HUD Handbook § 7-8. **The failure to prospectively adjust Defendant's rent for the months of September, October and November was a result of Plaintiff's delay, and was not the result of Defendant's actions.**

38. The court concludes that Landlord has waived its right to charge more than \$45 for rent to Tenant for the months of September, October and November, for the following reasons.

a. First, Plaintiff failed to timely process an interim recertification and timely notify Defendant of a rent increase by waiting until November to process an interim recertification when it knew of Defendant's new employment in July. Paragraph 18 of the Lease provides that Defendant is not required to reimburse Plaintiff for undercharges in rent caused by Plaintiff's failure to follow HUD's procedures in computing rent.

b. Second, Landlord confirmed that the rent increase was effective starting December 2010 by sending the October 27, 2010 letter stating that Defendant's rent would increase effective December 1, 2010. The Lease and the HUD Handbook provide that if a tenant complies with the requirement to report new employment, the tenant is entitled to a 30-day notice of an increase in rent. The October 27 notice allowed Landlord to increase Tenant's rent effective December 1, 2010.

Conclusions of Law

1. Evictions are summary proceedings intended to efficiently adjudicate only a single issue, namely the immediate right to remove a tenant and regain possession real property. Minn. Stat. § 504B.001, sub. 4 (2010). See Lilyerd v. Carlson, 499 N.W.2d 803, 812 (Minn. 1993); Amresco Residential Mortgage Corp. v. Stange, 631 N.W.2d 444, 445 (Minn. App. 2001). The Court's decision in this matter is limited to a determination regarding the right to possession of the premises.

2. Landlord leased premises to Tenant on a one year lease at 15 East Grant Street, #409, Minneapolis, Minnesota 55403.

3. The leased premises are governed by HUD regulations, and 24 CFR 247.4 (Termination of tenancy notice procedures applied to termination of assistance notice) applies to

this tenancy. HUD handbook 4350.3 is the occupancy handbook that governs the tenancy and the rules and regulations that Landlord and Tenant must follow.

4. Landlord can terminate a tenancy for material noncompliance which includes nonpayment of rent and is governed in Paragraph 23 of the Lease.

5. Landlord has to comply with the HUD handbook 4350.3 regarding the proper procedure of terminating a tenant's lease for material noncompliance with the lease.

Order

1. REDEMPTION: Defendant may redeem the leased property by paying to the Plaintiff \$1,329.00. This amount has been placed into escrow.

2. COSTS: Defendant is awarded all allowable costs since Defendant is the prevailing party.

3. RENT DISBURSEMENT: The rent now on deposit with the Court shall be released as follows: \$1,329.00 to Landlord and \$0.00 to Defendant.

4. SERVICE OF ORDER: The Clerk of Court shall either give to the parties or mail to the parties by first class mail a copy of this Order.

5. EXHIBITS: Parties are informed that pursuant to Rule 128 of the Rules of Practice for Civil Actions that it is the duty of the party offering exhibits during a trial to remove the exhibits from the custody of the court. Parties may request the return of their exhibits after 15 days from the time allowed for appeal of the final decision has passed. Failure to request removal of the exhibits could result in the exhibits being part of the public record or could result in the exhibits being destroyed by the Court.

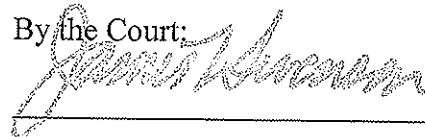
Let Judgment Be Entered Accordingly

Recommended By:


Mark Labine

Housing Court Referee February 10, 2011

By the Court:



Judge

2/10/11

Date

Judgment

I hereby certify that the above Order constitutes the entry of Judgment of the Court.

Dated: 2/10/11

Court Administrator

By: R. Byrd
Deputy

JUDGMENT
THE FOREGOING SHALL CONSTITUTE THE
JUDGMENT AND JUDGMENT ROLL OF THE COURT.
MARK S. THOMPSON, COURT ADMINISTRATOR
ENTERED _____
BY .. _____ DEPUTY