

FILED

JAN 06 1997

STATE OF MINNESOTA

FOURTH JUDICIAL DISTRICT COURT

COUNTY OF HENNEPINBY ~~HENNEPIN COUNTY DISTRICT COURT~~
COURT DEPUTY

FIRST DIVISION, MINNEAPOLIS

Norm Rogers,
Bonnie Rogers,

Case No. UD-1961029511

Plaintiff/Landlord,

vs.

Edna Stewart,

Defendant/Tenant.

DECISION AND ORDER

Edna Stewart,

Case No. UD-1961101515

Plaintiff/Tenant,

vs.

Norm Rogers,
Bonnie Rogers,

Defendants/Landlords.

The above-entitled matters came on for hearing before the Honorable Linda J. Gallant, Housing Court Referee, on November 20 and November 26, 1996.

David Middlecamp, Attorney at Law, 1900 Rand Tower, 527 Marquette Avenue South, Minneapolis, Minnesota 55402, appeared for and on behalf of Norm and Bonnie Rogers. Norm Rogers was also present.

Kim L. Hanson, Attorney at Law, Legal Aid Society of Minneapolis, 2929 Fourth Avenue South, Minneapolis,

App. 290
Copies mailed by BW

Minnesota 55408, appeared for and on behalf of Edna Stewart, who was also present.

Based upon the evidence adduced, the arguments presented, and all the files, records, and proceedings, the Court makes the following:

FINDINGS OF FACT

1. Norm Rogers and Bonnie Rogers own the residential rental property located at 3202 First Avenue South, Minneapolis, Hennepin County, Minnesota. The property is the upper one-half of a duplex at 3200 - 3202 First Avenue South.

2. Edna Stewart rents the property based on a written lease for a month-to-month tenancy which started on July 8, 1995, at a monthly rent of \$625. Exhibit 2.

3. On October 29, 1996, the Rogers (hereafter Owners) initiated this Unlawful Detainer action, Hennepin County File UD-1961029511, claiming that Ms. Stewart (hereafter Tenant) should be evicted for violating the parties' lease based on: 1) damage to property; 2) refusal to pay the damage costs; and 3) discontinuing her vendored payment agreement.

4. On November 1, 1996, Tenant initiated this rent escrow action, Hennepin County File UD-1961101515, claiming that Owners failed to maintain the property in compliance with local housing codes.

5. The Court consolidated both matters for hearing. Further, the Court dismissed Owners' claim for eviction based on discontinuation of the vendored rent agreement.

6. Tenant receives economic assistance from Hennepin County and had agreed, in a Lease Addendum, that "the monthly rent payment must be vendored. (from AFDC)."

Exhibit 3. There is no evidence that Owners require that tenants other than AFDC recipients have their rent vendored, or provided directly, to Owners.

7. On October 1, 1996, The City of Minneapolis Inspections Division inspected the entire duplex, found multiple Housing Code violations, ordered them repaired by October 15, 1996, Exhibit 64, and threatened to condemn the duplex for lack of maintenance, plumbing hazards, and mice and cockroach infestation. Exhibit 6. The threat to condemn was "lifted" or removed upon reinspection on October 29, 1996, Exhibit 6, based on repairs either completed, in progress, or promised by Owners, and Owners' apparent good-faith efforts.

8. Ms. Jody Waulters, Housing Inspector II, first visited the property on October 1, 1996, in response to Tenant's complaint about rats. Neither Waulters nor the Health Department supervisor who accompanied her found any evidence of rats. They did find "quite a roach and mice

- infestation" along with the other repair needs itemized in Ms. Waulters' October 2, 1996 Order. Exhibit 64.

9. While the building is not currently in condemnable condition, multiple repairs are needed to ceilings, floors, walls, doors, et cetera. The Tenant attributes responsibility for the ongoing problems to the Owners; the Owners attribute responsibility to the Tenant's lack of reasonable housekeeping practices, inappropriate and disallowed use of the property, and damage intentionally or negligently caused by Tenant, her children, her guests, or her co-residents.

10. The Inspector visited the property again on November 19, 1996. She saw evidence of "a fresh patch that had been damaged" on the wall; she noted that the doors to both Tenant's unit and the downstairs unit were the same type of doors, but only Tenant's was damaged and off the hinges. The Owners point to the differing doors as evidence of their claim that Tenant is responsible for the door damage; they point to the newly damaged fresh patch as evidence of Tenant's intentional or highly negligent practices regularly causing damage to the property.

11. When Tenant took occupancy in July, 1995, Mr. Rogers had done multiple home repairs, including new face plates, smoke detector, new kitchen spray nozzle, new basement banister, new paint, undamaged bedroom ceilings,

- new screen doors, and new kitchen vinyl floor. By October 1, 1996, each of these conditions required repair. The owner of the adjacent property had seen Tenant's apartment in July, 1995, and it looked clean, in good shape, without holes or dirt on the walls.

12: Tenant gave no written or oral notice to Owners of claimed repair needs until September, 1996. Tenant described numerous repair needs which she said had been present since she took occupancy in July, 1995. She gave no indication of these repair needs in July, 1995, when explicitly given the opportunity to do so. Exhibit 4. Tenant testified, on direct examination, that she complained to Mr. Rogers on two occasions - once about a big rat and once about roaches everywhere. She then testified, on cross-examination, that she reported problems to Mr. Rogers on "numerous occasions about situations" needing repair.

13. The Lease expressly prohibits use of the back porch except in emergencies. Paragraph 31, p. 5, Lease, Exhibit 6. Tenant used the back porch, as evidenced by her son's efforts, witnessed by Mr. Powers, to start the barbecue. At some point, use of the barbecue caused damage to the adjacent wood on the porch.

14. Tenant attributes all of the conditions of the apartment to pre-existing problems and/or to improper

original work done by Mr. Rogers and/or to the usual wear and tear that arises with six children.

15. Taking all the testimony and photographs together, the Court finds that the Tenant failed to keep the apartment reasonably clean and that she, her family or her guests caused damages including, but not limited to, multiple wall holes, ceiling damages, door failures, broken or missing screens, and the worsening of regular maintenance needs by Tenant's failure to notify Owners of repair needs.

16. Tenant agreed that Mr. Rogers was at the apartment in July, 1996, but she did not discuss the claimed multiple ongoing repair needs with him at that time.

17. Tenant contacted the Housing Inspection Department in late September, which resulted in the October 1 inspection. Owners learned of the inspection in October. There is no evidence that Owners learned that Tenant had originally contacted the Inspection Department. The inspection covered both units of the duplex, with no indication of who initiated the contact. Exhibits 6 and 64. Owners initially tried to work with Tenant for her to pay for the damages caused. Exhibits 8 and 9. Upon her refusal to make payment or secure Emergency Assistance to do so, and her apparent unwillingness to set up her own "house rules concerning: cleaning, recycling, rough-housing and respect for your home and my building" (Exhibit 9), Owners initiated

- this eviction. Owners did not accept November rent, as Tenant deposited it in to court in the rent escrow case.

18. The Lease expressly prohibits negligent damage to the property and requires Tenant to keep the unit "as clean as the conditions of the Premises permits." Paragraph 12, p. 2, Lease, Exhibit 6.

From the foregoing Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

1. Owners have proven by a preponderance of the evidence that Tenant, or her guests or children, intentionally and/or negligently caused damage to the apartment including, but not limited to, wall damage, ceiling damage, door damage, and screen damage. Owners have proven by a preponderance of the evidence that Tenant failed to keep the apartment reasonably clean, even considering the six children and the anticipatable "wear and tear" that may be caused by them.

2. Owners have proven by a preponderance of the evidence that Tenant's actions constitute lease violations justifying eviction.

3. Tenant has not proven by a preponderance of the evidence that Owners' October 19 statement of intent to evict or October 29 eviction action arose in retaliation for Tenant's known complaint to the City Inspections Department.

- Even had Owners known that Tenant initiated the complaint to the Inspections Department, Owners have proven by a preponderance of the evidence that this Unlawful Detainer action was not motivated by Tenant's complaint, but rather, was motivated by Tenant's violations of the lease.

4. Owners have proven by a preponderance of the evidence that the repair needs, constituting violations of the statutory covenants of habitability, M.S.A. §§504.18 and 566.18, were caused by the negligent and/or intentional acts of the Tenant or persons under her control.

5. Tenant has not proven by a preponderance of the evidence that Owners waived their right to evict by accepting rent after knowledge of the lease violations upon which the Unlawful Detainer action is based.

6. Requiring recipients of public assistance to have rent vendored, especially without substantially similar requirements for non-public assistance recipients, constitutes unlawful discrimination and is void.

7. Attorney's fees should not be awarded as costs and/or disbursements in an Unlawful Detainer action.

Now, therefore,

IT IS HEREBY ORDERED:

1. In the Unlawful Detainer action, Hennepin County File UD-1961029511, the Court Administrator shall enter judgment for Plaintiff for restitution of the premises. A

- Writ of Restitution shall be and is stayed until January 16, 1997, or such other date as the parties may agree, with costs and disbursements, but excluding attorney's fees.

2. The Rent Escrow action is dismissed, with prejudice.

3. In the Unlawful Detainer action, Plaintiff's request for attorney's fees is denied, without prejudice.

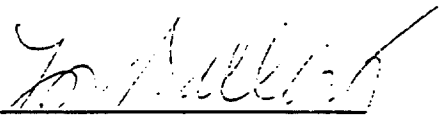
4. The \$1,250 on deposit in to court, as November and December rent, shall be disbursed to Owners, Norm Rogers and Bonnie Rogers; the Court Administrator shall mail such funds to counsel.

5. Copies of this Order shall be mailed to counsel for both parties.

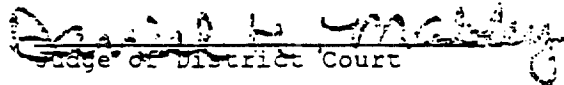
LET JUDGMENT BE ENTERED ACCORDINGLY.

RECOMMENDED BY:

Dated: January 6, 1996


Referee Linda J. Gallant
Housing Court Referee

Dated: January 6, 1996


Judge of District Court

*Copies mailed
to counsel
1/16/97*