

STATE OF MINNESOTA

COUNTY OF HENNEPIN

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DEPUTY

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: EVICTION

BY
Steven Meldahl and
SJM Properties, Inc.

HENN CO. DISTRICT
COURT ADMINISTRATOR

ORDER ON REFEREE REVIEW

Plaintiffs,

Case No. 1050923509

v.

[REDACTED]
[REDACTED]

Defendants.

The above-captioned matter came on for hearing on the 13th and 19th of October, 2005, before the Honorable Mark Labine, Housing Court Referee in the District Court of Hennepin County on Plaintiffs' Unlawful Detainer action against Defendants. The matter is before this Court on the Defendants' request pursuant to Hennepin Housing Court Rule 611 for review of the referee's Findings of Fact, Conclusions of Law and Order dated October 26, 2005 and filed on October 27, 2005.

Plaintiff, Steven Meldahl, is appearing *pro se*. Plaintiff's address is 1223 26th Avenue North, Minneapolis, Minnesota 55411.

Plaintiff, SJM Properties, Inc. is not and has not been represented in this matter.

Drew P. Schaffer and Lawrence R. McDonough, Attorneys at Law, Legal Aid Society of Minneapolis, 2929 4th Avenue South, Minneapolis, Minnesota 55408, represent the Defendants.

Defendants, by Notice of Request for Judge Review, assert that Referee Labine erred on the following issues:

1. By failing to dismiss due to Plaintiffs'/Landlord's failure to provide a copy of the unlawful detainer complaint to the Minneapolis Housing Authority as required by 24 C.F.R. § 982.310(e)(2);
2. By failing to dismiss because the corporate Landlord, the real party in interest, was not represented by an attorney in District Court;
3. By failing to dismiss because this action was brought in the agent's name in violation of Housing Court Rule 603;
4. By failing to dismiss because of improper service pursuant to Minn. R. Civ. P. 4.02;
5. By failing to dismiss the breach of lease claim because the lease did not contain a "right-of-reentry" clause pursuant to *Bauer v. Noble*, 53 N.W. 805 (1892);
6. By failing to dismiss because Plaintiffs/Landlord failed to provide a signed copy of the lease to the Tenants prior to bringing this action in violation of Minn. Stat. § 504B.115;
7. By failing to rule on all of Tenants' defenses raised in their answers;
8. By failing to grant Judgment As A Matter of Law at close of Plaintiffs'/Landlords' case;
9. By failing to award rent abatement to Tenants/Defendants pursuant to Minn. Stat. §504B.161;
10. Other errors of law in applying the law to the facts and consideration of facts not in evidence.

Plaintiffs/Landlords have not responded in writing to this Request for Review. Plaintiff Meldahl indicated at the hearing before this court on December 1, 2005 that he was relying on the record already created.

Based on the evidence, the arguments of the parties, and all the files, records, and proceedings, the Court makes the following:

FINDINGS OF FACT

1. Plaintiffs filed this eviction action on September 23, 2005, alleging nonpayment of rent and breach of lease. Plaintiffs alleged nonpayment of the balance of September rent in the amount of \$855.00. Plaintiffs alleged breach of lease on the basis of an unpaid water bill in the amount of \$271.01, unpaid late fees in the amount of \$100.00, unpaid "service calls" in the amount of \$150.00, and "parking cars in yard causing damages."
2. The rent owed by Defendants is determined by the Section 8 Department of the Minneapolis Public Housing Authority (MPHA), in association with the Section 8 Department's housing assistance payment (HAP) contract with the landlord.
3. Defendants paid December 2004 rent in the amount of \$260.00 on January 7, 2005, one day after receiving notice from Section 8 that their rent portion was \$258.00. Exhibits 11, O.
4. Defendants paid January 2005 and February 2005 rent in one payment of \$520.00 on February 4, 2005. Exhibit O.
5. Defendants received a notice from Section 8 in March that their rent portion was changing to \$349.00. Plaintiffs received the same notice in a facsimile sent to S.J.M. Properties on February

- 3, 2005. Exhibit L. The facsimile number to which Section 8 sent the notice is the same as the facsimile number listed for S.J.M. Properties on Plaintiff and Richard Harper's S.J.M. business cards. Exhibits 8, L.
6. Defendants paid \$349.00 in rent for each month from March through July of 2005.
 7. Defendants received a notice from Section 8 in July that their rent portion was changing to \$313.00. Exhibit M. Defendants proceeded to make subsequent rent payments to S.J.M. Properties in the amount of \$313.00 per month.
 8. Defendants paid September 2005 rent in the amount of \$313.00, along with a \$100.00 late fee, for a total of \$413.00, on October 1, 2005. Under the rental agreement, the \$100.00 late fee constituted an overpayment of \$50.00 by Defendants. Exhibit 1, ¶ 1. The \$100.00 late fee paid by Defendants corresponds to the late fee claimed by Plaintiff as part of his breach of lease claim in this eviction action.
 9. Defendants paid October 2005 rent in the amount of \$313.00 on October 5, 2005.
 10. The evidence is undisputed that the Section 8 Department of the MPHA was not provided a copy of the Unlawful Detainer Complaint served by Plaintiffs on Defendants in this eviction action. Exhibit 7. Plaintiffs presented no testimony,

documentation, or other evidence that the MPHA was provided with a copy of the eviction action complaint.

11. Plaintiff, Steven Meldahl, is the sole shareholder and president of S.J.M. Properties, Inc., a Minnesota corporation. Plaintiff Meldahl executed a rental agreement on behalf of S.J.M. Properties, Inc., with Defendants Cleophus and Villa McIntosh for the residential property located at 819 Newton Avenue North in the City of Minneapolis, County of Hennepin, State of Minnesota 55411 (hereinafter "the property"). Defendants signed the rental agreement, which named S.J.M. Properties as landlord of the Newton Avenue residence. Exhibit 1.
12. Plaintiff Meldahl testified that S.J.M. Properties, Inc., does not exist, that he doesn't know whether S.J.M. Properties, Inc., is currently active, and that he, as an individual, is the landlord.
13. The rental agreement between S.J.M. Properties and Defendants does not contain a "right of re-entry" clause. Exhibit 1.
14. Plaintiffs did not provide Defendants with a copy of the lease for the property, besides the unsigned copy Plaintiff Meldahl gave Defendants to sign and to take to the MPHA's Section 8 Department.
15. Defendants provided a signed copy of their lease agreement with S.J.M. Properties to the Section 8 Department of the MPHA. At

the request of the MPHA, Plaintiff Meldahl added the name Steven Meldahl to line 2 of Exhibit 1 after Defendants had submitted the lease with their signatures to the MPHA, outside of the presence of Defendants. Exhibit A. Section 8 provided Defendants with their copy of the lease. Exhibit 1.

16. Plaintiff Meldahl provided a personal S.J.M. Properties business card to Cleophus and Villa McIntosh. Exhibit 8. The business card states that Plaintiff Meldahl is President of S.J.M. Properties, Inc. *Id.*
17. Richard Harper does maintenance and repair work for Plaintiffs Meldahl and S.J.M. Properties, Inc., at the property.
18. Plaintiff pays compensation to Richard Harper for services performed at the property.
19. Richard Harper provided a personal S.J.M. Properties business card to Defendants. Exhibit 8. The business card states that Richard Harper is Maintenance Technician for S.J.M. Properties, Inc. *Id.*
20. Defendants have contacted Richard Harper on several occasions about problems at the property. At the request of Defendants and Plaintiff Meldahl, Richard Harper has attended the property to do repair and maintenance work for Plaintiffs Meldahl and S.J.M. Properties, Inc., on several occasions and as recently as October 18, 2005.

21. Richard Harper served the complaint in this eviction action on Defendants.
22. Defendants directed rent payments for the property to S.J.M. Properties, Inc. Exhibits H, I.
23. The MPHA's Section 8 Department communicated with Plaintiff Meldahl by faxing documents to S.J.M. Properties. Exhibits K, L.
24. The fax number used by the MPHA is the same fax number listed on Plaintiff Meldahl's and Richard Harper's S.J.M. Properties business cards. Exhibits 8, K, and L.
25. Defendants testified about the habitability issues they have experienced at the property, including the following: insufficient heating in parts of the residence; a bat infestation; a mice and rat infestation; water leakage in the kitchen through the roof and ceiling; water leakage in the basement; a stove and oven in poor condition and having a frequently failing pilot light; and bullet holes in the residence from firearms discharged in the neighborhood.
26. On August 24, 2005, Section 8 Inspector Joe Hoban inspected the property for compliance with the Department of Housing and Urban Development (HUD)'s housing quality standards. Exhibit 6.

27. The property failed Inspector Hoban's inspection on August 24, 2005. Exhibits 4, 6. Plaintiff was notified of the failure of the property to meet HUD's housing quality standards, and a re-inspection of the property was scheduled. Exhibit 4. Inspector Hoban noted evidence of mice and bat infestations and the lack of a light on the rear exterior of the house as reasons for the failed inspection. Exhibit 6.
28. Plaintiff Meldahl filed this eviction action against the Defendants on September 23, 2005.
29. Defendants observed mice and bats in the residence throughout their tenancy at the property, dating back to January of 2005.
30. The mice and bats in the residence have affected the habitability of the property. Defendants have had to kill mice on the property at their own expense. Defendants have had to leave lights on inside the residence to keep bats from areas of human habitation. Defendants have scheduled doctor's appointments for their children due to the possibility of bat bites.
31. On September 20, 2005, Section 8 Inspector Susan Wolff inspected the property for compliance with HUD's housing quality standards. Exhibit 5.
32. The property failed Inspector Wolff's inspection on September 20, 2005. Exhibits 3, 5, and 9. Plaintiff Meldahl was notified of

the failure of the property to meet HUD's housing quality standards, and a re-inspection of the property was scheduled. Exhibit 9. The MPHA notified Plaintiff Meldahl that housing assistance payments would be abated effective September 22, 2005. Exhibit 3. Susan Wolff noted ceiling and roof leakage, a faulty stove, mice, bullet holes, heating problems, and a running toilet as reasons for the failed inspection. Exhibit 5. Plaintiff Meldahl testified that his housing assistance payments from the MPHA were not abated and that he received payment from Section 8 for October rent. However, although Plaintiff introduced as evidence multiple documents from Section 8, including letters and Section 8 HAP payment receipts, Plaintiff provided no letters or Section 8 HAP payment receipts to show that the property isn't under abatement or that HAP payments have been made since Section 8 issued its Notice of Abatement for the property, effective September 22, 2005.

33. The ceiling and roof problems in the kitchen have caused water leakage and damage, inconveniencing Defendants and affecting their ability to use the kitchen at the property.
34. The heating and radiator problems in the residence have caused parts of the residence to be unreasonably cold during periods of cold weather.

35. Plaintiff Meldahl was notified of the habitability problems at the property by the Section 8 Department of the MPHA in both August and September of 2005. Exhibits 3, 4, 5, 6, and 9.
36. Defendants have telephoned Plaintiff Meldahl personally and S.J.M.'s maintenance technician Richard Harper to notify Plaintiffs Meldahl and S.J.M. Properties of problems at the residence on several occasions throughout 2005. Defendants had not notified Plaintiff Meldahl of habitability problems in writing, as required by the Rental Agreement, prior to their answer in this matter. Exhibit A, ¶ 7.
37. Defendants paid the September water bill for the property prior to its due date on October 4, 2005. In the complaint for this eviction action, Plaintiff alleged that this water bill was unpaid. However, Plaintiff filed this eviction action complaint on September 23, 2005, eleven days before the water bill was due.
38. Defendants have not paid \$150.00 claimed by Plaintiff for "service calls" based on two repairs ordered by Section 8 and Plaintiff's "bleeding the radiators" on March 23, 2005, after Defendants reported heating problems in the residence at the property.
39. There is no term in Defendant's lease with S.J.M. Properties governing where vehicles may be parked on the property. Exhibit 1.

40. Plaintiff has accepted rent payments for the property on a monthly basis, as recently as October 5, 2005, knowing that Defendants have parked vehicles in the backyard at the property. Exhibit I.

CONCLUSIONS OF LAW

I. ACTION BROUGHT IN NAME OF AGENT OF CORPORATION

1. "No agent shall sue in the agent's own name." Minn. Gen. R. Prac. 603. By the agreement and conduct of the parties, the landlord for the property is S.J.M. Properties, Inc., Plaintiff Meldahl's corporation. Because Plaintiff Meldahl brought this action in his own name, Plaintiff Meldahl is not a proper party. Plaintiff's alteration of the rental agreement by adding his individual name without the consent of Defendants was an attempt to modify the contract unilaterally and was ineffective. Plaintiff testified that S.J.M. Properties, Inc. does not exist. This testimony was not credible in light of the following considerations: (a) Plaintiff has a business card stating that he is the President of the corporation; (b) Plaintiff's agent uses a similar business card stating that he is corporation's Maintenance Technician; (c) Plaintiff receives rental payments for the property in the name of S.J.M. Properties, Inc.; and (d) Plaintiff uses the facsimile number listed for S.J.M. Properties,

Inc., to conduct business related to the property. *See also Rogers v. Meldahl*, 2002 WL 31057010 (Minn. App. Sept. 17, 2002) (determining that district court did not err in adding S.J.M. Properties, Inc., as a party and judgment debtor to an action, and referring to Steven Meldahl's "pattern of deceit" with regard to available assets and the ownership of certain rental properties), attached as Appendix VI. On the basis that Plaintiff Meldahl is not a proper party under Housing Court Rule 603, this action must be dismissed.

II. IMPROPER SERVICE

2. Service by the plaintiffs was improper pursuant to Minn. R. Civ. P. 4.02. In *Lewis v. Contracting Northwest, Inc.*, 413 N.W.2d 154 (Minn. App. 1987), the court explained the reason for precluding parties from service of process: "The law has wisely entrusted the decision of disputes between citizens to persons wholly disinterested and free from bias and the acrimony of feeling so frequently, if not uniformly, engendered by litigation; and the same is equally true of the persons selected to execute the process necessary to the adjustment of such disputes." *Id.*, at 155. The courts have interpreted this rule to prohibit service by employees and agents of a plaintiff. *See Answer Appendix I; Alex Properties, Inc. v. _____*, Court File No. HC-031105500 (Minn. Dist. Ct. 4th Dist. Nov. 13, 2003) (dismissal

for service by plaintiff's managing partner), attached as Appendix VII; *Sidal Realty Company, L.L.P. v. _____*, Court File No. HC-030114401 (Minn. Dist. Ct. 4th Dist. Jan. 28, 2003), attached as Appendix VIII; *Riebe v. Graves*, Court File No. UD-1940321515 (Minn. Dist. Ct. 4th Dist. Apr. 11, 1994), attached as Appendix IX.

3. Here, Richard Harper served the summons and complaint on Defendants. Plaintiff Meldahl testified that Mr. Harper is not Plaintiff's agent. However, Mr. Harper represented himself to Defendants as an agent of S.J.M. Properties, Inc., by providing Defendants a business card listing his title and telephone number at the corporation. Mr. Harper visited the property to perform maintenance and repair work when requested by Defendants or when Section 8 ordered Plaintiff Meldahl to complete certain repairs. Mr. Harper had access to the property at the direction of Plaintiff Meldahl as recently as October 18, 2005. Although Plaintiff testified that Mr. Harper does not have keys to the property, Cleophus McIntosh testified that he was disturbed from repose by noise in his locked home on October 18, 2005, only to find Mr. Harper inside for the purpose of making Section 8-ordered repairs. This Court finds that Richard Harper is an agent of Plaintiff Meldahl and S.J.M. Properties for the purposes of maintaining the property.

Plaintiff Meldahl and S.J.M. Properties delivered the court papers through Plaintiff Meldahl's and S.J.M.'s agent Richard Harper. Plaintiff's action must therefore be dismissed for lack of jurisdiction because Defendants were served with the summons and complaint by a party's agent. Minn. R. Civ. P. 4.02.

III. LACK OF NOTICE TO MPHA

4. The owner must give the PHA ("public housing authority") a copy of any owner eviction notice to the tenant. 24 C.F.R. § 982.310(e)(2)(ii). "Owner eviction notice" means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action. 24 C.F.R. § 982.310(e)(2)(i). The only evidence submitted on this issue was a certified letter from Rita R. Ytzen, Section 8's Program Supervisor, to the effect that Section 8 had not received a copy of the complaint for this eviction action from Plaintiffs. Plaintiffs provided no testimony or other evidence that a copy of the complaint was ever given to the MPHA's Section 8 Department by Plaintiffs. Plaintiffs' action must be dismissed due to Plaintiff's failure to comply with 24 C.F.R. §982.310(e)(2)(ii). See also Appendices II-III; *Joel Nelson v. _____*, HC 031007508 (Minn. Dist. Ct. 4th Dist. Oct.16, 2003), attached as Appendix X; and *Ben Igherighe v.*

_____, HC-1011001519 (Minn. Dist Ct. 4th Dist. Feb. 19, 2002), attached as Appendix XI.

IV. CORPORATION NOT REPRESENTED BY ATTORNEY

5. Generally, a corporation must be represented by a licensed attorney when appearing in court, regardless of whether the person seeking to represent the corporation is a director, officer, or shareholder. *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 754 (Minn. 1992). Minnesota follows the common law rule that a corporation may appear only by an attorney on the basis that a non-attorney agent of a corporation is not subject to the ethical standards of the bar and is not subject to court supervision or discipline. *Id.*, at 754-55. In *Nicollet Restoration*, the Minnesota Supreme Court also clarified that Minn. Stat. § 481.02, governing the unauthorized practice of law in this state, did not apply to create an exception to the general rule that a corporation must appear in court represented by a licensed attorney. In *Nicollet Restoration*, the Minnesota Supreme Court held that the prohibition against an unrepresented corporation appearing without a licensed attorney in Minnesota courts applied to a case originating in conciliation court. Following *Nicollet Restoration*, in *World Championship Fighting, Inc. v. Janos*, 609 N.W.2d 263 (Minn. App. 2000), the Court of Appeals affirmed a district court's

dismissal of an unrepresented corporation's removal of a case to district court from conciliation court. Citing *Nicollet Restoration*, the Court of Appeals stated, "We perceive no reason why a corporation unrepresented by counsel should be able to commence a district court action by removing a case from conciliation court when it is not allowed to do so by filing a complaint." *World Championship Fighting*, 609 N.W.2d at 265. In response to the appellant's claim that state statute provided otherwise, the Court of Appeals quoted *Nicollet Restoration*: "[L]egislative enactments which purport to authorize certain classes to practice law in the courts of this state are not controlling upon the judiciary. As such, we reaffirm our conviction that a corporation must be represented by a licensed attorney when appearing in *district court*." [emphasis added] *World Championship Fighting*, 609 N.W.2d at 265 (quoting *Nicollet Restoration*, 486 N.W.2d at 756). In *World Championship Fighting*, the court concluded that the filing of a notice of removal from conciliation court was an appearance under Minn. R. Civ. P. 5.01 and could not be done by a corporation without a licensed attorney. Many eviction case decisions have recognized the application of *Nicollet Restorations*. See *F.T.K. Properties, Inc. v. U.S. Benefit Association, L.L.C.*, Court File No. HC-010518508 (Minn. Dist

Ct. 4th Dist. June 1, 2001) (action dismissed without prejudice where three-shareholder corporate landlord of commercial property appeared represented by a person who was not an attorney and who did not have a power of attorney), attached as Appendix XII; *Welsh v. Clark*, Court File No. UD-1921120502 (Minn. Dist. Ct. 4th Dist. Dec. 3, 1993) (action dismissed), attached as Appendix XIII; *Hedlund v. Otten*, Court File No. CX-93-08 (Minn. Dist. Ct. 10th Dist. Mar. 2, 1993) (action dismissed where trust was similar to corporation), attached as Appendix XIV; and *Jafer Enterprises, Inc. v. Peters, Peters*, Court File No. UD-1920701512 (Minn. Dist. Ct. 4th Dist. July 21, 1992), attached as Appendix XV. Some courts in Hennepin County and Ramsey County have issued standing orders on corporations acting without attorneys. *Memorandum of Chief Judge Lawrence Cohen* (Minn. Dist Ct. 2nd Dist. Mar. 30, 2001) (citing *Nicollet Restoration* and concluding that "a licensed attorney must represent any corporation appearing in the Housing Court of the Second Judicial District"), attached as Appendix XVI; *In re Morning Sun Investments, Inc.*, Standing Order (Minn. Dist. Ct. 4th Dist. Mar. 21, 2001) (corporation "must be represented by a licensed attorney when appearing in District Court," citing *Nicollet Restoration*), attached as Appendix XVII. S.J.M. Properties, Inc., a domestic corporation

was the proper plaintiff in this eviction action as the listed landlord on the lease.

6. Whether or not a non-attorney may represent a corporation in an unlawful detainer action pursuant to Housing Court Rule, because this matter has now been removed to District Court, this action must be dismissed because Plaintiff S.J.M Properties, Inc., is purportedly represented in this Review of the Referee's Order in the District Court of Hennepin County, a district court in the State of Minnesota, by its corporate officer Steven Meldahl, a non-attorney. *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753 (Minn. 1992); see also Appendices IV-V; and *Westfall Housing Limited Partnership v. Scheer*, Court File No. C8-93-227 (Minn. Dist. Ct. 5th Dist. Nov. 30, 1993), attached as Appendix XVIII. And if S.J.M. is not being represented by Plaintiff Meldahl, S.J.M. is not represented at all in this Review and the matter must also be accordingly dismissed on that basis.

V. FAILURE TO COMPLY WITH HOUSING COURT RULE 603

7. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing. Minn. Gen. R. Prac. 603. No person other than a principal or a duly licensed lawyer shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at the time of

filing, and no person other than a duly licensed lawyer shall be allowed to appear unless the Power of Authority is so attached to the complaint. Minn. Gen. R. Prac. 603. Because Plaintiff Meldahl appeared as an agent for S.J.M. Properties, Inc., without filing or attaching a Power of Authority, Plaintiff Meldahl was not legally authorized to pursue this eviction action in Housing Court. Therefore, this action must be dismissed. Minn. Gen. R. Prac. 603.

VI. FAILURE TO PROVIDE COPY OF LEASE TO TENANT

8. "Where there is a written lease, a landlord must give a copy to a tenant occupying a dwelling unit whose signature appears on the lease agreement." Minn. Stat. § 504B.115, subd. 1 (2004). In any legal action to enforce a written lease, except for nonpayment of rent, disturbing the peace, malicious destruction of property, or allowing unlawful activity on the property, it is a defense for the tenant to prove that the landlord failed to comply with Minn. Stat. § 504B.115, subd. 1. Minn. Stat. § 504B.115, subd. 2.
9. Here, the testimony of all parties reflected that Plaintiff Meldahl provided Defendants with an unsigned copy of the rental agreement to sign and to submit to Section 8. Furthermore, Plaintiff Meldahl testified that he went to Section 8 and made changes to the rental agreement submitted by Defendants by

adding his name as another landlord, along with SJM Properties. Defendants testified that the copy of the lease they received came from Section 8, not Plaintiffs, and did not contain the changes made by Plaintiff Meldahl. Accordingly, Plaintiff's breach of lease claim must be dismissed because Plaintiff did not provide Defendants with a copy of the lease with Defendants' signatures on it. Minn. Stat. § 504B.115 (2004).

VII. WAIVER BY ACCEPTANCE OF RENT

10. A tenant's breach of a rental agreement is waived by the landlord's subsequent acceptance of rent with knowledge of the breach. *Parkin v. Fitzgerald*, 307 Minn. 423, 431, 240 N.W.2d 828, 833 (1976); *Peebles & Co. v. Sherman*, 148 Minn. 282, 283, 181 N.W. 715, 716 (1921); *Zotalis v. Canneles*, 138 Minn. 179, 181, 164 N.W. 802, 807-08 (1917); *Westminster Corp. v. Anderson*, 536 N.W.2d 340 (Minn. App. 1995); *Priordale Mall Investors v. Farrington*, 411 N.W.2d 582, 584, (Minn. App. 1987); *Burgi v. Eckes*, 354 N.W. 2d 514, 517 (Minn. App. 1984). The landlord's intent is irrelevant. *Kenny v. Seu Si Lun*, 101 Minn. 253, 256-58, 112 N.W. 220, 221-22 (1907).
11. In this eviction action, Plaintiff accepted rental payments to S.J.M. Properties, Inc., for each month of the tenancy, from December of 2004 through October of 2005. The most recent payments accepted on behalf of S.J.M. Properties, Inc.,

occurred on October 1 and 5, 2005, after the filing of this action. Plaintiff has pursued a breach claim in this action, but Plaintiff accepted rent payments with knowledge of all of the breaches claimed in this action. Accordingly, his breach claims must be dismissed.

VIII. LANDLORD'S COVENANTS OF HABITABILITY

12. In every residential tenancy in Minnesota, the owner of residential rental premises covenants to maintain the premises in reasonable repair, fit for the purposes intended, and in compliance with local health and safety codes. Minn. Stat. § 504B.161 (formerly Minn. Stat. § 504.18). A landlord may not contract away the statutory duties to comply with covenants of habitability implied in every residential lease. Minn. Stat. § 504B.161 (formerly 504.18) (prohibiting waiver or modification of the covenants); *State, City of Minneapolis v. Ellis*, 441 N.W.2d 134, 138 (Minn. App. 1989). In this eviction action, Plaintiff claims that Defendants owe him for service calls to make repairs at the property. Plaintiff also claims the he had no obligation to make repairs because he was not notified about problems in writing. The lease purports to require Defendants to notify S.J.M. Properties, Inc., about repair problems in writing and to shift the burden of paying \$50.00 for each service call to the property to Defendants. Exhibit 1, ¶¶ 8, 10.

However, Minn. Stat. § 504B.161, subd. 1, provides that the covenants therein may not be waived or modified. The lease term requiring written notice of repair problems is not enforceable because it attempts to waive or modify the obligations imposed on Plaintiff by the statutory covenants found in Minn. Stat. § 504B.161, subd. 1. The lease term requiring a \$50.00 payment for each service call for repairs or maintenance at the property is illegal and unenforceable under Minn. Stat. § 504B.161 (formerly Minn. Stat. 504.18) because it, too, attempts to waive or modify the non-waivable, non-modifiable covenants of repair, maintenance, and habitability imposed by statute on a lessor of residential property. *See also State, City of Minneapolis v. Ellis*, 441 N.W.2d 134, 138 (Minn. App. 1989) (determining that a landlord could not contractually shift responsibility for local code compliance on a tenant, pursuant to the statutory covenants in Minn. Stat. § 504.18 (1988)).

13. Plaintiff has not proven by a preponderance of the evidence that Defendants have materially violated any term in the lease.
14. In a Section 8 tenancy, the owner is responsible for performing all of the owner's obligations under the HAP contract and the lease. 24 C.F.R. § 982.452(a). In a Section 8 tenancy, the owner is responsible for maintaining the leased unit in

accordance with the housing quality standards found in 24 C.F.R. §§ 982.401-982.406, including performance of ordinary and extraordinary maintenance. 24 C.F.R. § 982.452(b)(2).

15. The evidence in this case has shown that Plaintiff and S.J.M. Properties, Inc., breached obligations to Defendants and to the MPHA. Plaintiff and S.J.M. Properties, Inc., assumed the obligation to maintain the property in compliance with HUD's housing quality standards, and the evidence has shown that the property failed at least two inspections, resulting in two repair orders and a rent abatement order directed at Plaintiff by the MPHA. The evidence showed that the HAP portion of the rent was abated by the MPHA. Defendants' portion of the rent, currently \$313.00 per month, should be similarly abated for Plaintiff's failure to comply with the housing quality standards in 24 C.F.R. §§ 982.401-406.

16. In a residential tenancy in Minnesota, the owner of residential rental premises covenants to maintain the premises in reasonable repair, fit for the purposes intended, and in compliance with local health and safety codes. Minn. Stat. § 504B.161 (formerly Minn. Stat. § 504.18). *Fritz v. Warthen*, 298 Minn. 54, 213 N.W.2d 339 (1973). The covenant to pay rent by the tenant is mutually dependent on the covenants imposed by statute on the landlord in a residential lease. *Id.*

VIX. RENT ABATEMENT

17. In this eviction action, Plaintiff alleged nonpayment of the balance of September rent. However, the evidence showed that Plaintiff breached the statutory covenants in Minn. Stat. § 504B.161, subd. 1, by failing to maintain the premises in reasonable repair, fit for the purposes intended, and in compliance with health and safety codes. The habitability problems were present throughout the tenancy and especially in the period from August of 2005 through the present, as evidenced by failed Section 8 inspections. Defendants' obligation to pay rent was dependent on Plaintiff's fulfilling the covenants in Minn. Stat. § 504B.161, subd. 1, which Plaintiff failed to do. *Fritz*, 213 N.W.2d at 341. Because Defendants have demonstrated by a preponderance of the evidence that Plaintiff and S.J.M. Properties violated the statutory covenants to maintain the premises in good repair, fit for the purposes intended, and in compliance with local health and safety codes, as set forth in Minn. Stat. § 504B.161, Plaintiff's action for eviction on the basis of alleged nonpayment of the September rent must be denied.

18. If the landlord breaches any of the statutory covenants in Minn. Stat. 504B.161 (formerly Minn. Stat. § 504.18), the court may

award rent abatement commensurate with the tenant's diminished use and enjoyment of the premises. See, e.g., *Wardin v. Maski*, 1998 WL 481917 (Minn. App. Aug. 18, 1998), *2-*3 (affirming one-seventh rent abatement in case in which a house had six inhabitable bedrooms rather than seven, as provided in the lease), attached as Appendix XIX. The provisions of Minn. Stat. 504B.161 shall be liberally construed. Minn. Stat. 504B.161, subd. 3 (2004). A tenant may recover previously paid rent as damages for a breach of any of the covenants of habitability. *Love v. Amsler*, 441 N.W.2d 555, 559-60 (Minn. App. 1989); *Wardin v. Maski*, 1998 WL 481917 (Minn. App. Aug. 18, 1998), *2-*3.

19. The evidence has shown that Plaintiff breached the covenants set forth in Minn. Stat. § 504B.161, subd. 1. Additionally, the evidence has shown that the HAP portion of the rent for the property has already been abated. Accordingly, under *Fritz*, 213 N.W.2d 339; *Love*, 441 N.W.2d 555; and Minn. Stat. § 504B.161; rent abatement is appropriate in an amount commensurate with Defendants' diminished use and enjoyment of the property. Defendants may recover as damages rent they have previously paid as damages for Plaintiff's violation of the covenants of habitability, as evidenced by credible testimony given by Defendants and Section 8's reports about violations of

HUD's housing quality standards, which Plaintiff testified deferred to local codes. Rent abatement is warranted for the months of September, 2005 and October of 2005 based on violations of the statutory covenants found in Minn. Stat. § 504B.161 (formerly Minn. Stat. § 504.18). *Love v. Amsler*, 441 N.W.2d 555, 559-60 (Minn. App. 1989).

20. A landlord may not contract away the statutory duties to comply with covenants of habitability implied in every residential lease. Minn. Stat. § 504B.161 (formerly 504.18); *State, City of Minneapolis v. Ellis*, 441 N.W.2d 134, 138 (Minn. App. 1989). In the trial of this eviction action, Plaintiff offered evidence in the form of a section of Minneapolis's Code of Ordinances, purporting to make Defendants, as occupants, responsible for the extermination of rodents and pests at the property. See Exhibit S and § 244.730, Minneapolis Code of Ordinances. The code section cited by Plaintiff states, "[W]henever infestation of rodents is caused by failure of the owner to maintain any dwelling in a rodentproof condition, extermination of such rodents shall be the responsibility of the owner." *Id.* The code section provided by Plaintiff contradicts Plaintiff's assertion that Defendants are responsible for the infestation at the residence. Furthermore, the non-modifiable, non-waivable provisions of Minn. Stat. § 504B.161, subd. 1,

firmly place the obligation to maintain the premises in compliance with local codes on Plaintiff, and prevail to the extent that there is any conflict with Minneapolis's municipal code.

21. A landlord may agree with a tenant that a tenant is to perform specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in a conspicuous writing. Minn. Stat. § 504B.161, subd. 2 (2004). No such agreement waives the provisions of Minn. Stat. § 504B.161, subd. 1 (2004), imposing statutory covenants in every residential lease in Minnesota. Minn. Stat. Subd. 2 (2004).
22. Plaintiffs here intimated that certain specified repair-and-maintenance costs and tasks, some found in boilerplate provisos in the lease, were the obligations of Defendant. There is neither a conspicuous writing nor any evidence of adequate consideration to support the shifting of any such obligations to Defendants, and – in any event – such an agreement does not waive the statutory covenants imposed on Plaintiff by statute. See Minn. Stat. § 504B.161, subd. 2; *State, City of Minneapolis v. Ellis*, 441 N.W.2d 134, 137-38 (Minn. App. 1989); and *Wardin v. Maski*, 1998 WL 481917 (Minn. App. Aug. 18, 1998), *2-*3.

ORDER

1. Plaintiffs' action against Defendants is dismissed with prejudice for the above reasons.
2. Rent abatement in the amount of \$626.00 is awarded for September and October of 2005.
3. Defendants' are also entitled to a refund of the overpayment of late fees of \$50.00.
4. The total amount of rent abatement ordered herein along with the late fee refund totaling \$676.00, is to be paid by Plaintiffs to Defendants by March 31, 2006. If the ordered amount is not paid by Plaintiffs to Defendants by March 31, 2006, Defendants may withhold future rent with notice to Plaintiff.
5. Plaintiffs shall complete repairs to the satisfaction of the MPHA's Section 8 Department. Future rent is abated by 50 percent, \$156.50, until Plaintiff completes repairs to the satisfaction of the MPHA's Section 8 Department.
6. A hearing on Plaintiffs' compliance with the order to complete repairs to the satisfaction of Section 8 is hereby scheduled for 9:00 a.m on the 30th day of March, 2006. This hearing may be stricken upon receipt by this Court from MPHA that Plaintiffs have completed all necessary repairs to the satisfaction of MPHA.

7. The Hennepin County District Court Administrator shall enter Judgment for Defendants.
8. An amount of \$200.00 in costs and disbursements are awarded to Defendants under Minn. Stat. § 549.02. If costs and disbursements are not paid to Defendants by March 31, 2006, then Defendants may withhold \$200.00 of future rent with notice to Plaintiff.

LET JUDGMENT BE ENTERED ACCORDINGLY

Feb. 23, 2006

Date

Patricia Kucan

Judge of the District Court

ORDER

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