

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SHERBURNE

TENTH JUDICIAL DISTRICT

St. Cloud Housing and
Redevelopment Authority
of St. Cloud,

Plaintiff,

Findings of Fact,
Conclusions of Law,
Order for Judgment

vs.

Vanita and Nathaniel
Slayton,

Court File No. C9-98-1671

Defendant.

The above-entitled matter came on for trial on October 28, 1998, before the Honorable Robert B. Danforth, Judge of District Court, in the Sherburne County Courthouse in Elk River, Minnesota. The Plaintiff was present and represented by John J. Meuers, Esq. The Defendant Nathaniel Slayton was present and represented by Doug Clark, Esq.

STATE OF MINNESOTA } SS.
COUNTY OF SHERBURNE }
FILED

NOV 03 1998

LORATHE N. NORGRÉN
COURT ADMINISTRATOR

By *Kimmy Muelle* Deputy

App 365

Wherefore, having considered the argument of counsel, the testimony, the record and relevant law, the Court hereby makes the following:

Findings of Fact

1. On September 1, 1991, the Defendants began renting a house located at 1213 SE 15th Street in St. Cloud, Minnesota (Hereinafter the "premises") from the Plaintiff for a monthly rent of \$49.00.¹
2. The parties executed a new lease agreement for the premises effective September 1, 1993 for a monthly rent of \$47.00.²
3. The Defendants' rent has been subsidized during the entire term of their tenancy and under this subsidy the Defendants pay approximately thirty percent (30%) of their income for rent.

¹ Exhibit 1, copy of lease agreement.

² Exhibit 2, copy of second lease agreement.

4. Defendants are also responsible for excess usage of water, which is billed to the Defendant approximately once every other month.³

5. The parties have lived at the premises for seven (7) years.

6. If the Tenant is unable to pay rent on or before the fifth day of each month, it is the Tenant's responsibility to contact the Landlord and request an extension.⁴ If the Tenant fails to pay rent by the fifteenth day of the month and the Landlord did not agree to an extension, then a "Notice of Proposed Termination" will be issued to the Tenant.⁵

7. The Plaintiff is required to complete an annual recertification to re-examine a household's eligibility and income.⁶

³ See Exhibit 1, under 11(C)(2) stating "any excess usage shall be charged to the Tenant and will be due and payable in full on the first day of the second month following the month in which the charge is made. See also same provision in Exhibit 2, under paragraph 6(c). Testimony was also given at the trial by both parties as to this finding.

⁴ Exhibit 2, paragraph 2.

⁵ Exhibit 2, paragraph 2.

⁶ Exhibit 2, paragraph 7(a).

8. Since July 1996, the Defendants have repeatedly made late payments of rent and/or water bills and have even missed some of these payments.⁷

9. Plaintiff has continued to re-certify the Defendants and allowed them to continue their tenancy each year despite the repeated late payments and occasional missed payment.

10. In March 1998, the Defendants entered into a repayment agreement with the Plaintiff.⁸ This agreement states that the Defendants agreed to pay \$100.00 per month, on the first of the month, beginning April 1, 1998, until the full amount in arrears was satisfied.⁹ The repayment agreement provided that the entire balance will become due and payable in the event payment is not received on or before the fifth day of the month.¹⁰ In addition, all costs incurred by the Plaintiff to enforce this agreement or for collection of non-payment shall be added to

⁷ See Exhibit 7, ledger of Defendant's account.

⁸ Exhibit 5.

⁹ Id.

the sum due, which may include attorney fees, court costs, subpoena costs, and deposition costs.¹¹

11. Defendants were late making the April and May 1998 payments, however no action was taken by the Defendants at that time.¹²

12. Defendants failed to make payments in June and July.¹³

13. Plaintiff mailed an eviction notice to the Defendants to vacate by August 31, 1998, dated July 31, 1998, but did not take action to accelerate the debt owed by the Defendants.¹⁴

This notice to vacate cited non-payment of rent, non-compliance with annual recertification, non-payment of backrent per the repayment agreement, repeated late payments, and conducting a day care business on the premises.¹⁵

¹⁰ Id.

¹¹ Id.

¹² See Exhibit 7, shows payments for April and May were each paid on the sixth of those months.

¹³ Exhibit 7.

¹⁴ Exhibit 6.

¹⁵ Exhibit 6.

14. On August 31, 1998, Plaintiff recertified the Defendants and changed the amount of rent owed to \$452.00 per month.¹⁶ Therefore, the Defendants recertified in a timely manner.

15. Plaintiff recertified the Defendants and decided to place them on a short-term lease agreement for 90 days effective September 1, 1998.¹⁷

16. Plaintiff accepted a \$92.00 payment for Defendants' rent from the Private Industry Council (PIC) in early September. The Plaintiff did not dispute this.

17. The evidence does not support the Plaintiff's claim that the Defendants were operating a day care business out of the premises. The testimony clearly demonstrated that the daughter, Jessica Slayton, did have a babysitting job but that this job was not located on the premises. None of the

¹⁶ Exhibit 8. The date at the top of the notice shows it was signed August 31, 1998, and the notation at the bottom shows that it was mailed August 31, 1998.

¹⁷ Exhibit 9.

testimony or exhibits offered supported the contention that a day care was being operated on the premises.

18. Due to the amount of years the Defendants have lived on the premises, the repeated late payments by the Defendants and non-action by the Plaintiff, as well as acceptance of those late payments and yearly recertification by the Plaintiff, including agreeing to a new short-term lease, the Court finds that the Plaintiff has clearly waived its right to evict the Defendants for late payments.

Conclusions of Law

1. Defendant did complete their annual recertification in a timely fashion. Exhibit 3 clearly demonstrates that the recertification was done prior to September 1, 1998 and that the Plaintiff did accept the recertification even after sending the Defendants eviction notices.

2. There was no evidence to support Plaintiff's claim that a day care business was being operated on the premises.

3. The Repayment Agreement does not state that eviction will be a consequence of non-payment or late payment.

4. The general rule is that a landlord's subsequent acceptance of rent acts to waive his or her right to rely on any prior alleged breaches of the lease known at that time as a basis for the unlawful detainer action.¹⁸ Acceptance of rent operates as an election by the lessor to continue the lease.¹⁹ Acceptance of rent alone may not constitute waiver absent a showing of some intent on the part of the landlord.²⁰ This intent need not be express and may be implied from the landlord's actions.²¹

5. In addition to accepting the Defendant's payment of rent from PIC and the past history of accepting late rent payments, the Court also finds that the Plaintiff's actions of recertification and in renewing a short-term lease for the Defendants for 90 days, evidences the landlord's intent to

¹⁸ *Priordale Mall Investors v. Farrington*, 411 N.W.2d 582, 584 (Minn.App. 1987).

¹⁹ *Id.*

²⁰ *Id.* at 585.

waive the lease violations. These actions imply intent on the part of the Plaintiff to waive its right to restitution of the premises. The evidence plainly shows that the Plaintiff intended to enter into a 90-day short-term lease with the Defendants, commencing September 1, 1998, after the Plaintiff sent the Defendants an eviction notice. The Plaintiff clearly waived their right to retain restitution of the premises.

6. Plaintiff argues that under *Westminster Corporation v. Anderson*,²² the Court should not find waiver because the payment by PIC was a payment from a third party and analogous to that case. The Court in *Westminster* specifically held that the doctrine of waiver does not apply to a landlord's acceptance of housing assistance payments from a public housing agency.²³ The focus was on the relationship between a landlord and public housing agency and not one between a landlord and a private agency as

²¹ *Id.*

²² *Westminster Corp. v. Anderson*, 536 N.W.2d 340 (Minn.App. 1995) *rev. denied* Oct. 27, 1995.

²³ *Westminster Corp.*, 536 N.W.2d at 341.

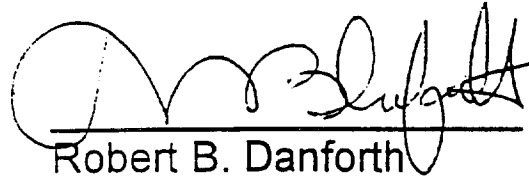
there is in the present case. PIC is a private entity making the payment on behalf of the Defendants. Thus, the *Westminster* holding is not just about a payment by a third party but specifically applies to payments by public housing agencies.

Order

1. Plaintiff's request for restitution of the premises is DENIED, and any counts relating to non-monetary breaches of the lease are DISMISSED.
2. The Defendants shall pay the Plaintiff the arrearage in the amount of \$1,215.58, as alleged in the Complaint, plus the Plaintiff's filing fees and services fees within seven (7) days of the date of this Order.
3. In the event the Defendants pay this amount; this matter shall be dismissed with prejudice.
4. In the event the Defendants do not pay this amount, the Plaintiff may apply for a Writ of Restitution.

LET JUDGMENT BE ENTERED ACCORDINGLY.

This the 3 day of
November, 1998.

A handwritten signature in black ink, appearing to read "Robert B. Danforth", written over a horizontal line. The signature is stylized and cursive.

Robert B. Danforth
Judge of District Court