STATE OF MINNESOTA
COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT COURT
FIRST DIVISION, MINNEAPOLIS

Teamster Retiree Housing
of Minneapolis, Inc.,

Plaintiff/Landlord,

vs.

Mark B. Goldstein,

Defendant/Tenant.

Case No. UD-1960919514

DECISION AND ORDER

The above-entitled matter came on for hearing before the Honorable Linda J. Gallant, Housing Court Referee, on October 10, 1996.

Kenneth Corey-Edstrom, Attorney at Law, Suite 640, 6160 Summit Drive, Brooklyn Center, Minnesota 55430, appeared for and on behalf of the Plaintiff, along with James Wynne, Property Manager.

Cherie Shoquist, Attorney at Law, Legal Aid Society of Minneapolis, 2507 Fremont Avenue North, Minneapolis, Minnesota 55411, and Richard A. Wayman, Attorney at Law, Legal Aid Society of Minneapolis, Suite 300, 400 First Avenue North, Minneapolis, Minnesota 55401-1780, appeared for and on behalf of the Defendant, 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. The Plaintiff owns and operates the residential rental property located at 822 Third Avenue NE, Minneapolis, Hennepin County, Minnesota. The Defendant rents the property based on the regular renewal of his Section 8 Assisted Lease, dated January 1, 1996. Exhibit 8. The Defendant has lived there since April, 1992.

2. The property is part of the complex known as Teamster Manor. The tenants, including Defendant, receive rental subsidies, based on income, through the Section 8 New Construction program in connection with federal Section 202 Loans for Housing for the Elderly or Handicapped. The Defendant is disabled and uses a wheelchair.

3. On August 20, 1996, Plaintiff's property manager gave notice to Defendant that his Lease was being terminated for noncompliance with the Lease. The specific alleged violations are: failure to complete repairs caused by prior damages; wall damage; living-room carpet stains; allowing an unsightly and inoperable vehicle to be stored on the property and gas leakage from the vehicle; a hazardously over-filled garage.

4. On August 26, 1996, Plaintiff gave a further notice, ordering Defendant to vacate by September 9, 1996, asserting the same claims as the August 20 notice, and further advising Defendant of certain rights and

obligations. Defendant did not vacate by September 9 and Plaintiff brought this Unlawful Detainer action on September 19.

5. The failure to complete repairs caused by prior damage relates to the March 11, 1996, annual apartment inspection, at which time there were holes in the bathroom door, a damaged bedroom door frame, and wall gouges. Defendant agreed to repair these items. Exhibit 4. On July 2, a further inspection was done, and a second notice was given to Defendant to repair the doors. In August, the door repairs were still not completed. Plaintiff estimates the cost of the door repairs at $150 plus labor. Defendant patched one door before he received the Lease Termination Notice, and later completed most of the door repairs.

6. The wall damage was caused by a recliner chair regularly bumping up against the wall. Between March and August, Defendant had done repair work which Plaintiff found inadequate.

7. The living-room carpet stains ("cig burns") were identified in the March inspection, Exhibit 4, and in the August 20, 1996, warning letter ("heavily stained"). Exhibit 1. Both Defendant and the prior Teamster Manor property manager described the condition of the carpet as the accumulation of Defendant's "wear and tear" plus damage and "wear and tear" caused by the prior tenant.

8. The Defendant's overfilled garage is alleged to be unclean and hazardous. Piles of stuff, apparently mostly in boxes, are in the garage, along with some garbage bags and some recycling. Defendant allowed a friend (Roth) to store personal property in Defendant's garage. As of August 28, the things in the garage blocked a path from the garage to the apartment. Now there is an aisle for exit and entry through the garage. Roth's belongings are still in the garage. Roth apparently hopes to move in to Teamster Manor; his is not a current resident.

9. Defendant did allow an inoperable vehicle, a van registered to and owned by Defendant's personal care attendant, to sit on the property. Defendant moved the van; it returned about a week later. Eventually, the van was towed, by Plaintiff and pursuant to Plaintiff's policies. While it was parked on the property, a fluid leaked from the bottom of the van and stained the driveway. Plaintiff's property manager identified the fluid as hazardous gasoline; Defendant identified the fluid as antifreeze; neither party explained how they made their contrary identifications.

10. Pursuant to the Lease, the Defendant must keep the property clean, Lease ¶14(b); repair damages caused by the Defendant, Lease ¶14(d); Defendant must not cause any hazardous condition, Tenant Policies, #23; Defendant must

not allow a non-operable vehicle to remain on the property, Tenant Policies, #23.

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

CONCLUSIONS OF LAW

1. Generally, in a Section 8 property, a landlord may evict a tenant solely for material noncompliance with the lease terms, material failure to carry out obligations under state law, or other "good cause." In a federally subsidized project financed under Section 202, a landlord may evict a tenant only for material noncompliance, failure to carry out obligations, or other good cause. 24 CFR 247.3 (a). Material noncompliance means: 1)one or more substantial lease violations; or 2)repeated minor violations that: a)disrupt the livability of the project; b)adversely affect other tenants' health, safety, or quiet enjoyment; c)interfere with management; or d)have an adverse financial effect. 24 CFR 247.3 (c).

2. The Plaintiff has failed to prove by a preponderance of the evidence that Defendant has materially failed to comply with the Lease. Plaintiff has not proven by a preponderance of the evidence either a substantial violation or minor violations adversely affecting livability, health, safety, or quiet enjoyment.

Now, therefore,

IT IS HEREBY ORDERED:

1. The Court Administrator shall enter judgment for Defendant to remain in possession of the property.

2. Neither party shall be responsible for the other party's costs and disbursements.

3. The attached Memorandum is incorporated here and made a part of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

RECOMMENDED BY:

Dated: October 21, 1996

Referee Linda J. Gallant
Housing Court Referee

Dated: October 21, 1996

Judge of District Court

MEMORANDUM

Taken either individually or as a whole, the Defendant's actions do not demonstrate substantial lease violations or material minor violations. The damages caused by the Defendant were minor; Defendant agreed to fix them; by the terms of the Lease, Plaintiff could have completed the repairs and assessed the costs to Defendant. The carpet problems were not caused by the Defendant. The presence of the van, and the over-filled garage, are not, per se, hazardous and no evidence of hazard was offered. No other tenants testified to any adverse effect.

Taken as a whole, it appears to this Court that these kinds of disputes could, and should, be resolved by greater cooperation, better communication, and/or mediation. The Defendant should not be evicted for these kinds of disputes.

LJG