

STATE OF MINNESOTA  
COUNTY OF HENNEPIN

DISTRICT COURT

RECEIVED  
FOURTH JUDICIAL DISTRICT  
FIRST DIVISION

----- MAY 02 '91 -----

Robert Zeman,

Legal Aid Society. UD 1910402521

Plaintiff,

-vs-

DECISION AND ORDER

Debra West,

Defendant.

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The above-entitled matter came on for trial before the undersigned Referee on April 15, 1991. Plaintiff appeared pro se; and Defendant appeared with her attorney, Eric T. Cooperstein, Esq., Legal Aid Society of Minneapolis.

Based upon all proceedings, records and files herein, the Court makes the following:

FINDINGS OF FACT

1. Defendant, a recipient of Aid to Families with Dependent Children (AFDC), rents from Plaintiff certain residential property described as 1805 Emerson Avenue North, Apartment #2, Minneapolis, Minnesota, pursuant to a written lease dated January 21, 1991. (Def. Exh. 1)
2. The "starting date" of the "month-to-month" lease is stated as February 1, 1991; rent is \$395.00 per month; the required security deposit is noted as \$395.00; and the lease also provides "AFDC rent will be vendored".

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3. Defendant moved into the apartment on February 1, 1991 and promptly paid \$395.00 for rent plus \$100.00 as a partial payment of the security deposit. She had previously paid \$100.00 toward the deposit on or about January 24, 1991. (Def. Exhs. 3, 4 and 5)

4. Concerning the security deposit, the parties had orally agreed that Defendant would pay one-half when she moved in and one-half the following month.

5. During the first week in February, Plaintiff told both Defendant and her AFDC financial worker, Gloria German, that if Defendant did not go on the Vendor Payment Program, she would be evicted.

6. The Vendor Payment option is a voluntary arrangement initiated by a request from the AFDC recipient directed to Hennepin County Economic Assistance. A recipient's decision to go on or off the Vendor Payment Program must be given in writing to the agency by the 15th of the month to ensure that the recipient's request can be complied with.

7. Defendant did not want to have her rent vendored because she was concerned about some repairs.

8. Vending was not commenced during the first week of February 1991, due, in part, to the financial worker's uncertainty whether a new computer system in the office would handle the change, and her superior's directive that workers did not have to start new vendors.

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9. Hennepin County has instituted a policy of not vendoring rent if the recipient's dwelling is condemned or has repair orders outstanding over 30 days. There was no evidence about the policy's applicability to the subject premises.

10. On or about February 8, 1991, Plaintiff gave Defendant written notice to vacate by March 31 1991.

(Def. Exh. 2)

11. Plaintiff testified that he gave Defendant a notice to quit both because she had not enrolled in the Vendor Payment Program and because the entire security deposit had not been paid.

12. Plaintiff stated that all of his current tenants are receiving AFDC, and he requires all to have their rent vendor paid. He acknowledged that if a person who was not on AFDC came to him to rent, he would not require vendor payment from their income source and would collect the rent from them directly on the first of the month.

13. At the time notice to vacate was given, rent had been paid on time, and Defendant had paid one-half of the security deposit, \$200.00 of \$395.00, as the parties had agreed.

#### CONCLUSIONS OF LAW

1. Imposing the condition of vendor payment of rent upon tenants and prospective tenants receiving AFDC benefits without regard to their individual circumstances, while not

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requiring the same or similar condition for others, is per se a violation of Minn. Stats. 363.03, Subd. 2 (1)(b) for which Plaintiff has articulated no legitimate or compelling business necessity.

2. Using the "prima facie case" analysis favored by this jurisdiction, Defendant has established a prima facie case of discrimination and rebutted the non-discriminatory rationale Plaintiff claimed for his proposed termination of this tenancy.

3. The Plaintiff's requirement that Defendant have her rent vendored and his notice to vacate the premises for her failure to do so are violative of Minn. Stats. 363.03, Subd. 2 (1)(a) and (b).

4. The attached Memorandum is incorporated herein by reference.

5. Judgment should be entered for Defendant with costs and disbursements.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 30, 1991.

RECOMMENDED BY:

  
WESLEY C. IIJINA

BY THE COURT:

  
PETER ALBRECHT  
JUDGE OF DISTRICT COURT

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MEMORANDUM

The issue before the Court is whether Plaintiff has violated the Minnesota Human Rights Act, Minn. Stats. Chapter 363 (hereinafter referred to as the Act), by imposing an allegedly discriminatory lease condition upon her and by terminating her tenancy for her failure to abide by said condition. The condition complained of is a requirement that Defendant and all recipients of Aid to Families with Dependent Children (AFDC) may not pay their rent directly to the landlord, but must have it vendor-paid by Hennepin County Economic Assistance (hereinafter, the County). No same or similar guarantee of payment would be imposed upon non-AFDC recipients who may pay their rent directly to the Plaintiff.

The question is an important one for, in addition to the loss of direct control of his/her own money and the possible stigmatization of differential treatment, a tenant who has rent paid directly to a landlord from the source of income substantially loses the ability/right to withhold rent payments if the landlord breaches the implied covenants of habitability found at Minn. Stats. 504.18. Fritz v. Warthen, 298 Minn. 54, 215 N.W.2d 339 (1973). The payment of rent and the provision of a habitable dwelling are mutually dependent covenants. Id. at 341. Hennepin County recognizes the link between vendor payments and the loss of recipient-tenant bargaining power in its policy prohibiting

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vendor payments if a dwelling is condemned or if ordered repairs have not been completed within 30 days.

The intent of the Minnesota Human Rights Act, Minn. Stats. Chapter 363, is "to secure for persons in this state, freedom from discrimination ... in housing and real property because of race, color, creed, religion, national origin, sex, marital status disability status, status with regard to public assistance and familial status ....". Declaration of Policy, Minn. Stats. 363.12, Subd. 1(2) (emphasis added). The provisions of the Act are to be liberally construed for the accomplishment of its purposes. Minn. Stats. 363.11.

Substantively, Minn. Stats. 363.03, Subd. 2 provides in pertinent part:

It is an unfair discriminatory practice:  
(1) For an owner ... (a) to refuse to ... rent, or lease ... to ... any person or group of persons any real property because of ... status with regard to public assistance; or (b) to discriminate against any person or group of persons because of... status with regard to public assistance ... in the terms, conditions or privileges of the ... rental or lease of any real property ... .

It is clear that Plaintiff's condition that AFDC recipients may not pay their rent directly to him (as would all other tenants) but rather must have it vendor-paid by the County is a direct violation of Minn. Stats. 363.03, Subd. 2 (1)(b). This discriminatory term is violative of Defendant's rights under the Act and would exist as an illegal condition even in the absence of an effort by the

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Plaintiff to seek her eviction. The imposition of an illegal, discriminatory lease provision is sanctioned by the Act even in cases in which the owner does not "refuse to rent or lease ... because of status with regard to public assistance...".

As a general rule, when a practice of a lessor of real property is challenged as discriminatory under the Act, the challenger "must make a prima facie showing of discrimination". State by McClure v. Sport & Health Club, 370 N.W.2d 844, 849 (Minn. 1985). The lessor "then has the burden to establish legitimate nondiscriminatory reasons for the actions taken." Id. If the lessor does, indeed, establish legitimate nondiscriminatory reasons for the actions, the burden shifts once again to the challenger to establish "that the reasons stated are a mere pretext for discrimination." Id.

Within the context of the instant case, a prima facie case of discrimination is established upon a showing of the following elements:

1. The challenging tenant is a member of a protected class;
2. The challenging tenant applied for and was otherwise qualified to rent the rental property;
3. The challenging tenant was subject to an additional term or condition of rental and/or was subject to eviction; and,
4. The rental property was or would become available after the tenant's rejection or eviction.

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Department of Human Rights v. Spiten, 424 N.W.2d 815, 818 (Minn. Ct. App. 1988); see also Hubbard v. United Press International, 330 N.W.2d 428, 442 (Minn. 1983) (the specific elements of a prima facie case of discrimination "must be modified for varying factual patterns ...").

In the case at bar, Defendant receives AFDC benefits, and is thus a member of the statutorily-protected class of those people who receive public assistance. This class may be distinguished from the class of people who do not receive public assistance. Secondly, Defendant applied for and was qualified to rent property from Plaintiff, who signed the lease with full knowledge of Defendant's income level and status with regard to public assistance. Third, in this action Plaintiff admits attempting to evict Defendant, at least in part because she was on AFDC and failed to arrange the required vendor payment of rent through Hennepin County. By his own testimony, Plaintiff acknowledged that no such requirement (hence, no such attempt at eviction) would be demanded of a tenant not receiving public assistance. Finally, it is clear that, were Plaintiff to succeed in evicting Defendant from Plaintiff's rental property, the property would be available for rental to some other party, including a prospective tenant not receiving public assistance.

The Defendant having established a prima facie case of discrimination, the burden shifts to the Plaintiff to establish legitimate nondiscriminatory reasons for his

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attempt to evict Defendant from his rental property. .  
Plaintiff alleged that he wished to evict Defendant because, in addition to her refusal to vendor-pay rent, Defendant had failed to pay her security deposit as agreed. Evidence offered at trial, however, supports the opposite conclusion. Plaintiff himself testified that he made an oral agreement with Defendant by which Defendant agreed to pay one-half of the security deposit in February and one-half at a later date. Plaintiff admitted that he did, in fact, receive half of the security deposit as agreed prior to serving his termination notice. Since Defendant had complied with the terms of her agreement with Plaintiff regarding payment of the security deposit, it is clear that the only substantial reason for Plaintiff's attempt to evict Defendant via his notice was her refusal to comply with the lease condition requiring tenants who receive AFDC benefits to have their rent vendor-paid. Plaintiff's alleged nondiscriminatory reason for his attempt to evict Defendant is disingenuous, and is "a mere pretext for discrimination". Sports & Health Club, 370 N.W.2d at 849; Department of Human Rights v. Spiten, 424 N.w.2d at 819.

In summary, Plaintiff's lease requirement mandating all AFDC recipient tenants to vendor-pay their rent regardless of individual circumstances is discriminatory on its face and as applied in this case. The Court should not enforce an illegal contract provision.

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