STATE OF MINNESOTA | FOURTH JUDICIAL DISTRICT COURT

COUNTY OF HENNEPIN | FIRST DIVISION MINNEAPOLIS

Case Type: Eviction Action

Tyrone Green & Jana Green-Laska,

Plaintiffs/Tenants,

v.

Raymond Formanek,

Defendant.

File No. HC-1991123900

MEMORANDUM REGARDING SUBJECT MATTER JURISDICTION

[slightly updated in 2019]

I. FACTS AND PROCEDURAL BACKGROUND

In July 1999, the Greens and Mr. Formanek entered into a month-to-month lease for 8125 - 12th Avenue South (#2), Bloomington, MN. See Green v. Formanek, Henn. Cty. Dist. Ct. File No. UD-1991001905 and Formanek v. Green, Henn. Cty. Dist. Ct. File No. UD-4991004400 (Decision of Honorable Bruce Peterson October 27, 1999, rent-escrow and unlawful-detainer cases consolidated for trial) (copy attached as Ex. A to the Summons and Affidavit). On July 12th, the Greens sent Mr. Formanek a letter requesting certain repairs. Id. The Greens asked for a city rental inspection because the repairs were not made. The inspection was done August 3rd, and the inspector ordered repairs completion of repairs by August 10th. Id. That same day, August 10th, Mr. Formanek gave the Greens a notice to vacate effective September 30th.

Most of the repairs were completed, but repairs to the blinds and to the screens were not done, so, on October 1st, the Greens filed the rent-escrow case (UD-1991001905) asking for rent abatement and an order to repair these two items and for other

relief. On October 4th, Mr. Formanek filed the unlawful detainer case (UD-4991004400), alleging that the Greens had held over past a valid notice to vacate. Id.

At the conclusion of the trial, on October 22nd, Judge Peterson made oral Findings, Conclusions of Law, and Order. He found that the notice to quit was retaliatory, rendering it unenforceable, and dismissed the unlawful-detainer case. Judge Peterson then found that the rent-escrow case was meritorious, ordered $150 of rent abatement, and ordered Mr. Formanek to repair the blinds and screens (which subsequently were repaired). Judge Peterson entered a written order on October 27th in conformity with his oral order of the 22nd.

On October 27th, Mr. Formanek issued another notice to vacate to the Greens, effective November 30th. See Ex. B to Summons and Affidavit.

The next day, October 28th, the Greens wrote Mr. Formanek, pointed out that this second notice was presumptively retaliatory, especially in light of Judge Peterson's Decision, and asked him to withdraw the notice in 14 days. See Ex. C to Summons and Affidavit.

Mr. Formanek refused to withdraw the notice. A little more than 14 days after October 28th, the Greens submitted this case for filing. The court held onto the file for about a week and then issued the Summons in this matter along with an order allowing the Greens to proceed in forma pauperis.

In this matter, the Greens seek an order from the court declaring the October 27th notice to quit retaliatory and void and enjoining Mr. Formanek from acting on it.

II. THE COURT HAS JURISDICTION TO HEAR THIS CASE.

A. Introduction.

Tenants living in substandard conditions typically desire two things. They want the landlord do the needed repairs and they don't want to be evicted if they complain about the lack of repairs. Here, rather than waiting for Mr. Formanek to file an eviction action (what used to be called an "unlawful detainer"), the Greens pro-actively enforced their right to request repairs. The Greens submit this memorandum simply to point out that the court has jurisdiction to hear this rent escrow action and to consider their request that the second notice to quit be declared retaliatory and void. This jurisdiction has two bases, either of which is sufficient by itself. They are discussed in turn below.

B. Minn. Stat. § 504B.411 grants this court jurisdiction.

1. Since 1971-1973, a tenant can raise both habitability and retaliation defenses in an unlawful-detainer case.

This issue is best understood in light of some legal history. At common-law, the landlord had no duty to make repairs. In 1971, following a national trend, Minnesota enacted Minn. Stat. § 504B.161[1], the covenants of habitability. 1971 Minn. Laws ch. 219. Section 504B.161 requires a residential landlord to keep an apartment in reasonable repair and up to code. Following the same

[1]The entire landlord-tenant code was recodified in the last legislative session. 1999 Minn. Laws ch. 199. The purpose of ch. 199 was to modernize language without making substantive changes. Those statutes that had been in Minn. Chap. 504 and 566 are to be codified in Minn. Chap. 504B per ch. 199. At this point, the best source for the recodified statutes are the session laws, but I cite throughout this memo to the statute numbers as they will be recodified according to ch. 199.

national trend, in Fritz v. Warthen, 298 Minn. 54, 213 N.W.2d 339 (1973), the Minnesota Supreme Court held that a tenant could withhold rent if the landlord was not doing the required repairs and then raise this issue as a defense in an unlawful detainer action.

In 1971, the legislature also enacted an anti-retaliation statute, Minn. Stat. § 504B.285, subd. 2-4, which provides in relevant part:

> **Subd. 2. RETALIATION DEFENSE.** It is a defense to an action for recovery of premises following the alleged termination of a tenancy by notice to quit for the defendant [tenant] to prove by a fair preponderance of the evidence that:
>
> (1) the alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or ... under the laws of the state or any of its governmental subdivisions.... ; or
>
> (2) the alleged termination was intended in whole or part as a penalty for the defendant's good faith report to a governmental authority of the plaintiff's violation of a health, safety, housing, or building code or ordinance.
>
> If the notice to quit was served within 90 days of the date of an act of the tenant coming within the terms of clause (1) or (2) the burden of proving that the notice to quit was not served in whole or part for a retaliatory purpose shall rest with the plaintiff [landlord].

1971 Minn. Laws ch. 240. This statute allows a tenant to defend an eviction action for holding over on the basis that the notice to quit was given in retaliation for the tenant's asserting her rights to repairs.

2. Subsequently, the legislature created the Tenant Remedies Action and the Rent Escrow Action allowing tenants to raise both habitability and retaliation issues in a tenant-initiated case heard on an expedited basis.

In theory, these two laws and the Fritz decision provided residential tenants all the protection they needed. In practice, they did not. The tenant does not want to wait for the landlord to file an unlawful-detainer case to assert her rights. This puts her at the mercy of the landlord's timetable for repairs and for adjudication of a retaliatory notice. The tenant also worries that the landlord might file the unlawful detainer case while the tenant is out of town and gain a win by default. See e.g. Scroggins v. Solchaga, 552 N.W.2d 248,251 (Minn. Ct. App. 1996). Finally, the tenant is concerned that the very filing of an unlawful detainer action harms her credit record.

Of course, the tenant can file a case in the non-housing part of district court to enjoin enforcement of a notice to quit. For example, in Franklin v. Western Nat'l Mut. Ins. Co., 574 N.W.2d 405 (Minn. 1998), Rice Park Properties v. Robins, Kaplan, Miller & Ciresi, 532 N.W.2d 556 (Minn. 1995), Gilliland v. Port Auth. of St. Paul, 270 N.W.2d 743 (Minn. 1978), and Collins Truck Lines v. Metro Waste Control Comm., 274 N.W.2d 123 (Minn. 1979), the court allowed a tenant to file such a case before the termination date of the notice to quit.

However, this is not completely satisfactory for two reasons. First, such a case is not expedited enough. By the time a temporary-injunction hearing is held, the landlord might have filed and had a trial in an unlawful detainer case. See Minn. Stat.

§ 504B.321-.335 (7-20 days from summons to trial of unlawful detainer). Second, filing such a case is quite complicated and beyond the reach of all but the most sophisticated residential tenants.

The legislature responded to this problem by adding to the state housing-law code, creating a Tenant Remedies Action ("TRA"), Minn. Stat. § 504B.395-.471. See 1973 Minn. Laws ch. 611, modified by 1978 Minn. Laws ch. 598. A TRA is a tenant initiated action, heard on the housing calendar on essentially the same expedited basis as an unlawful detainer case. Minn. Stat. § 504B.401-.411 (case heard 5-10 days after filing). The landlord must be given prior notice of the problem to be rectified; when the tenant gives the notice, the tenant must give the landlord 14 days to cure the problem before filing the case. Minn. Stat. § 504B.395, subd. 4. The case must be based on a "violation", meaning a violation of a state or local housing code, a violation of the covenants of habitability, or a violation of the lease. Id. at subd. 6, citing Minn. Stat. § 504B.001, subd. 14.

Part of Minn. Stat. § 504B.395-.471, the addition to the state housing-law code, was Minn. Stat. § 504B.441 which provides in relevant part:

> A residential tenant may not be evicted ... if the eviction ... is intended as a penalty for the residential tenant's ... complaint of a violation. The burden of proving otherwise is on the landlord if the eviction ... occurs within 90 days after filing the complaint, unless the court finds the complaint was not made in good faith.

At first glance, this 1973 law just repeats the 1971 anti-retaliation statute, Minn. Stat. § 504B.285, subd. 2-4. Both laws

provide the residential tenant with a 90-day window following a complaint of a violation (which includes any violation of the covenants of habitability) during which any notice to quit is presumed retaliatory and void.

However, it is a "basic maxim of statutory construction that a statute is to be construed, if possible, so that no word, phrase, or sentence is superfluous, void, or insignificant" (emphasis added). Duluth Firemem's Relief Ass'n v. Duluth, 361 N.W.2d 381,385 (Minn. 1985). Thus, the 1973 law, Minn. Stat. § 504B.411, must do more than simply repeat the 1971 law, Minn. Stat. § 504B.285.

What section 504B.441 accomplishes is that it gives a new remedy to a tenant who receives a retaliatory notice to quit. See Minn. Stat. § 504B.471 ("purpose of this act is to provide additional remedies"). Section 504B.441 is part of the new state housing-law code. If it is violated, the tenant can give 14-day notice and then file a TRA to seek relief, typically an order declaring the notice void.

Even though the TRA was created to help tenants, it turned out to be a bit cumbersome, especially for pro se litigants. Therefore, in 1989 the legislature enacted Minn. Stat. § 504B.385, the Rent Escrow statute. 1989 Minn. Laws ch. 328, art. 2, s. 15. The Rent Escrow procedure is very similar to a TRA except that the tenant must escrow with the court any outstanding rent at the time the case is filed. The Rent Escrow is otherwise easier to prosecute because the court itself serves the summons and the court provides a simplified fill-in-the-blanks complaint (the "Affidavit for

Escrow of Rent"), enabling even an unsophisticated tenant to start the case without an attorney. Id. The Rent Escrow also has a lower filing fee. Id.

The Rent Escrow statute makes clear that it can be used by the tenant to contest a retaliatory notice to quit. Subdivision 11 of the statute states, "Section 67 [Minn. Stat. § 504B.441] applies to proceedings under this section." Minn. Stat. § 504B.385, subd. 11.

Therefore, after giving 14-day notice, a tenant can file and prosecute a TRA or a Rent Escrow case to contest a retaliatory notice to quit. The Greens gave the required 14-day notice and chose to file a Rent Escrow case. The case must proceed.

C. The Covenants of Habitability include an implied right to be free of retaliatory notices to quit. Thus, a tenant can file a rent-escrow case to contest a retaliatory notice just as the tenant can file a rent escrow case to contest lack of repairs.

Even if Minn. Stat. § 504B.441 had not been enacted, the Greens still could have prosecuted this case. As already discussed, and as this court is no doubt aware, a tenant can file a rent escrow case to remedy a violation of the covenants of habitability. Minn. Stat. § 504B.385, Subd. 1(c). If these covenants include an implied right to be free from retaliatory notices to quit, a rent escrow can be filed to contest a retaliatory notice to quit. And, as discussed below, the covenants of habitability do include freedom from retaliatory notices.

At the time the original anti-retaliation statute, Minn. Stat. § 504B.285, subd. 2-4, was passed in 1971, the developing common law was that the covenants of habitability included an implied

right to be free from retaliatory notices to quit. By the time the Rent Escrow statute was enacted in 1989, this doctrine had been adopted in many states.

The leading case was Edwards v. Habib, 130 U.S. App. DC 369, 428 F.2d 1071 (1970). As Justice Skelly Wright wrote,

> The notion that the effectiveness of remedial legislation [mandatory repair codes] will be inhibited if those reporting violation of it can legally be intimidated is so fundamental that a presumption against the legality of such intimidation can be inferred as inherent in the legislation if it is not expressed in the statute itself.... The proper balance can only be struck by interpreting [the statute allowing eviction based on a notice to quit without cause] ... as inapplicable where the court's aid is invoked to effect an eviction in retaliation for reporting housing code violations.

Id. at 701-702. Before the Minnesota legislature enacted the anti-retaliation statute, Minn. Stat. § 504B.285, subd. 2-4, the highest court in at least four other jurisdictions -- California, New Jersey, New York, Wisconsin -- had followed Edwards, holding that the covenants of habitability include an implied right to freedom from retaliatory notices to quit. Robert Schoshinski, American Law of Landlord and Tenant §12.1, fn. 7 (1980 and Supp. 1999). Since then, this common-law doctrine has been declared the law in at least another eight jurisdictions. Id.; Annotation, Retaliatory Eviction of Tenant for Reporting Landlord's Violation of Law, 23 A.L.R. 5th 140,156 (1994). Many other jurisdictions have enacted statutes codifying the common-law doctrine. Id.

Thus, in enacting Minn. Stat. § 504B.285, subd. 2-4, the Minnesota legislature was simply codifying and outlining the parameters of the freedom-from-retaliation doctrine, a doctrine

that is part and parcel with the covenants of habitability. Therefore, because a rent escrow action can be used to enforce the covenants of habitability, it can be used to enforce the anti-retaliation doctrine and section 504B.285, subd. 2-4.

D. Case law supports the Greens' position on jurisdiction.

The precise jurisdictional issue discussed here has not been confronted by a Minnesota appellate court. This court does have broad discretion to fashion relief in a rent escrow action. Scroggins, 552 N.W.2d at 251. As a court of record[2], it can issue declarative relief. Minn. Stat. § 555.01. The Housing Court has taken jurisdiction over a tenant's anti-retaliation claim in a rent-escrow case on the basis of judicial economy. Dargay v. Cashman, Henn. Cty. Dist. Ct. File No. UD-1990925900 (Decision of Honorable Susan Ledray, September 17, 1999) (copy attached as Endnote 1), slip. op. at 5, Conclusion of Law #4; [Liedtke v. Timberland Partners, Dakota Cty. Dist. Ct. File No. 19-AV-CV-14-468 (June 20, 2014)(same)]*. The court used Minn. Stat. § 504B.285, subd. 2 as its standard in evaluating retaliation. Id., Conclusion of Law #5.

In other jurisdictions, there is no close equivalent to the rent escrow action or TRA. However, those jurisdictions that have

---

[2]A court of record is one "that is required to keep to keep a record of its proceedings, and that may fine or imprison." Black's Law Dictionary 353 (6th ed.). Like other divisions of District Court, the Housing part of the court routinely keeps both written and stenographic records in all cases, and the court has the power to fine (and imprison). Minn. Stat. § 504B.391. Thus, this is a court of record.

*The Liedtke case is in brackets because it was decided after this memo was originally written. I added it to the memo for this CLE.

reached the issue have allowed the tenant to bring an anti-retaliation claim in an affirmative action for injunctive or monetary relief. Aweeka v. Bonds, 145 Cal. App. 3d 309, 193 Cal Rptr. 350 (1983); Morford v. Lensey Corp., 110 Ill. App. 3d 792, 442 N.E.2d 933 (1982); Sims v. Century Kiest Apts., 567 S.W.2d 526 (Tex. Ct. Civ. App. 1978); Murphy v. Smallridge, 468 S.E.2d 167 (W. Va. 1996)~~; Laster v. Bowman (Ohio) cited in 23 A.L.R. 5th at 160.~~**

E. Public policy supports the Greens' position on jurisdiction.

I close by noting that public policy supports the Greens' proceeding as they have. First, since the right to repairs and the anti-retaliation doctrine are so closely linked, if tenants can proactively file a rent escrow case to force a landlord to make repairs, they can proactively file a rent escrow case to fight an unfair and retaliatory notice to quit. Second, when the tenant fights a notice by holding over and waiting for an eviction action, both sides are unable to plan their lives. If the tenant loses the eviction action, the tenant will have to move on short notice and the landlord will have to scramble for a new tenant. Where, as here, the tenant is proactive, the parties can plan their lives on the basis of the court's ruling. (Here, the Greens' case would have been filed even earlier; for reasons out of their control, the court took about a week to issue the summons, instead of issuing

---

**The ruling in Laster v. Bowman, 52 Ohio App. 2d 379 (1977) was based on an Ohio statute specifically allowing such an affirmative claim. It probably should not have been included in the memo. For this CLE, I've used strikeout font to so indicate.

the summons within the hour as usual.)

HOME Line, Attys for Defendant

Dated:_/conformed copy/

/conformed copy/

_____

By: Sherry Bruckner
Attorney No. 290695
612/908-0889, FAX/908-0998
Paul R. Birnberg
Attorney No. 227572
612/908-0997,FAX/908-0998
7462 Oxford Street
St. Louis Park, MN 55426