

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

Jose Reyes, Alibella Rodriguez, Gilberto
Barranca, Catalina Hernandez, Monica Salto,
Luis Guiracocha, Rosa Sanchez, Rene
Raymundo,

Court File No. _____

Plaintiffs,

COMPLAINT

vs.

LO2 LLC,

Defendant.

SUMMARY STATEMENT

1. Defendant threatens to evict Plaintiffs from their homes as a penalty for asserting their legal rights as tenants. Minnesota law prohibits landlords from retaliating against tenants who seek their legal rights to homes that meet basic health and safety regulations. Plaintiffs are low-income tenants, some of whom have lived in their homes for years. They ask this Court to declare the retaliatory lease termination notices given by Defendant void and to shield them from immediate eviction.

PARTIES

2. Alibella Rodriguez and her three children have lived in their home at 3720 Minnehaha Avenue, Apt. 12, in the City of Minneapolis, Hennepin County, Minnesota (“City of Minneapolis”) for fourteen years.

3. Jose Reyes lives with his daughter and granddaughter at 3720 Minnehaha Avenue, Apt. 11, in the City of Minneapolis. The family has lived in their home for one year.

4. Gilberto Barranca lives with his two daughters at 3720 Minnehaha Avenue, Apt. 15, in the City of Minneapolis. The family has lived in their home for four years.

5. Catalina Hernandez, her husband, and their two children have lived in their home at 3720 Minnehaha Avenue, Apt. 10, in the City of Minneapolis, for four years.

6. Rene Raymundo, his wife, and their two children have lived in their home at 3720 Minnehaha Avenue, Apt. 10, in the City of Minneapolis, for four years.

7. Monica Salto, her husband, and their two children have lived in their home at 3720 Minnehaha Avenue, Apt. 6, in the City of Minneapolis, for four years.

8. Luis Guiracocha, his wife, and their two children have lived in their home at 3720 Minnehaha Avenue, Apt. 6, in the City of Minneapolis for four years.

9. Rosa Sanchez and her son have lived in their home at 3720 Minnehaha Avenue, Apt. 5, in the City of Minneapolis for three years.

10. Defendant LO2 LLC is the record title owner of the property located at 3720 Minnehaha Avenue, in the City of Minneapolis, occupied by Plaintiffs. Defendant's address is 5220 – 32nd Avenue South in the City of Minneapolis.

JURISDICTION AND VENUE

11. The Court has jurisdiction over the subject matter of this action pursuant to Minnesota Statutes, section 555.01.

12. The Court has personal jurisdiction over LO2 LLC, pursuant to Minnesota Statutes, section 543.19, subd. 1(1). LO2 LLC owns the property at issue in this action, real estate located in Hennepin County, Minnesota.

13. Venue in Hennepin County is proper pursuant to Minnesota Statutes, sections 542.02 and 542.09. The real estate at issue in this action is situated in Hennepin County and the

causes of action set forth in this Complaint arose in Hennepin County.

LEGAL FRAMEWORK

Landlords Cannot Retaliate Against Tenants for Asserting their Legal Rights

14. In Minnesota, landlords may not retaliate against tenants who assert their legal rights. *See* Minn. Stat. § 504B.285, subd. 2, and § 504B.441. A residential tenant may not be evicted, nor may the tenant's obligation under the lease be increased, nor the services decreased if it is intended to be a penalty for the tenant's assertion of legal rights under the lease or law. *Id.*

15. Landlords have the burden to prove a notice to quit is not retaliatory if it is delivered within 90 days of a tenant's assertion of rights. *Id.* If a notice of lease termination is served within 90 days of the tenant's protected activity, it is presumed retaliatory. *Id.*

16. In such cases, a landlord must establish by a fair preponderance of the evidence a substantial non-retaliatory purpose, arising at or within a short time before service of the notice to quit, wholly unrelated to and unmotivated by the tenant's protected activity. *Parkin v. Fitzgerald*, 307 Minn. 423, 430, 240 N.W.2d 828, 832–33; Minn. Stat. § 504B.285, subd. 2.

17. Even if a landlord has a legitimate business purpose when it gives a tenant a notice of lease termination, that legitimate business purpose must be closely examined to confirm that it was not planned or influenced in any way by a tenant's protected activity. *Id.* And, again, the business purpose must have arisen contemporaneously with the giving of the notice.

FACTS

18. Plaintiffs rented their homes from Defendant for the past several years. They are low-income families occupying small apartments in a multi-unit building, all located at 3720 Minnehaha Avenue, Minneapolis, MN 55406 (the "building").

19. Plaintiffs all hold possession of their homes with Defendant's permission.

20. Plaintiffs' tenancies are indefinite. Their tenancies have no fixed ending date. Plaintiffs are month-to-month tenants.

21. Plaintiffs' homes have been persistently unhealthy and unsafe. Plaintiffs repeatedly asked Defendant to make basic repairs and to eliminate health and safety defects in their units since moving into the building. They all suffered pest infestations, mold, water leaks, and additional unhealthy living conditions for years.

22. Plaintiffs regularly met with one another to share stories about the health, safety and disrepair problems they experienced.

23. On April 30, 2018, Plaintiffs Alibella Rodriguez, Jose Reyes, and Gilberto Barranca gave Defendant letters asking for repairs to be made. The letters were ignored.

24. On June 20, 2018, all the Plaintiffs gave Defendant repair request letters. Again, none of the repairs were made.

25. One day later, on June 21, 2018, Defendant gave Plaintiffs notices demanding they vacate their homes. The notices ordered Plaintiffs to vacate by August 31, 2018 so that Defendant could renovate the building.

26. In late July and August 2018, Plaintiffs retained Mid-Minnesota Legal Aid as counsel and demanded the terminations of lease be rescinded. Defendant rescinded the notices but still failed to properly repair the homes.

27. In October 2018, Plaintiffs requested a meeting with Defendant and their City Council representative, Andrew Johnson, to discuss Plaintiffs' concerns. On October 22, 2018, Councilmember Johnson attempted to intercede on Plaintiffs' behalf. Defendant's agents appeared at the meeting, at which Plaintiffs and their representatives described in detail the unhealthy and unsafe conditions of their homes.

28. Nine days later, on October 31, 2018, Defendant again gave Plaintiffs notices demanding they vacate their homes. The notices ordered Plaintiffs to vacate by December 31, 2018.

COUNT I
Breach of Contract

29. Plaintiffs re-allege all prior paragraphs of this Complaint.

30. Defendant violated their non-waivable covenants to provide housing in compliance with the health and safety laws of local jurisdictions, to provide homes to Plaintiffs that are in reasonable repair, and to provide homes to Plaintiffs that are fit for their intended use as safely habitable rental housing. *See* MINN. STAT. § 504B.161 (2018).

31. Defendant breached their lease contracts with Plaintiff by failing to provide them legally, and safely, habitable homes.

32. Defendant further breached their contracts by purporting to terminate Plaintiffs' leases with defective, retaliatory notices to vacate in violation of Minnesota law.

33. Defendant's breaches of contract caused harm to Plaintiffs and is causing ongoing harm. Plaintiffs must live with the daily uncertainty of whether they will be forced to move on short notice.

COUNT II
Minnesota Prevention of Consumer Fraud Act
MINN. STAT. §§ 8.31; 325F.69

34. Plaintiffs re-allege all prior paragraphs of this Complaint.

35. Defendant used deceptive practices with the intent that others, including Plaintiffs, rely upon them.

36. In particular, Defendant's agents delivered multiple notices to vacate that it claimed terminated Plaintiffs' tenancies. In fact, the notices were issued in a retaliatory manner

and are ineffective to terminate Plaintiffs' tenancies. Defendant's agents knew the notices to vacate were retaliatory but issued them anyway with the intent that Plaintiffs rely on them and leave their homes.

37. Plaintiffs relied on the notices to vacate. They were harmed, and continue to be harmed, by the daily uncertainty of whether they will be forced to move on short notice in the middle of the winter.

38. This action is in the public interest. It seeks to enjoin the displacement of numerous families from their homes in the middle of winter. The public further has an interest in ensuring that a clear statutory right—the right not to be punished for protected conduct—may be asserted without facing eviction.

COUNT III
Declaratory Judgment – MINN. STAT. Ch. 555

39. Plaintiffs re-allege all prior paragraphs of this Complaint.

40. Minnesota Statutes, section 555.01, provides the Court authority to:

[D]eclare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

41. Minnesota Statutes, sections 555.02 and 555.03 further grant the Court the power to construe the rights and duties under contracts, before or after a breach of any such contract.

42. The notices to vacate given to Plaintiffs are void. They were issued in retaliation and as a penalty for Plaintiffs' assertion of legal rights in violation of Minnesota Statutes, sections 504B.285 and 504B.441.

43. Accordingly, Plaintiffs request that the Court make the declarations and construe the rights of the parties in accordance with their prayer for relief.

PRAYER FOR RELIEF

Plaintiffs request a jury trial and respectfully ask that the Court:

- A. Declare that the notices to vacate provided to them by Defendant are void and of no legal effect;
- B. Temporarily enjoin Defendant from taking any action to evict Plaintiffs from their homes during the pendency of this litigation;
- C. Permanently enjoin Defendant from taking any action to evict Plaintiffs from their homes on the bases of the defective, retaliatory notices to vacate; and
- D. Award such other and further relief as the Court deems appropriate.

MID-MINNESOTA LEGAL AID

Dated: December 21, 2018

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ACKNOWLEDGMENT

Plaintiffs by their undersigned attorney acknowledge that sanctions may be imposed for failing to comply with the requirements of Minnesota Statutes, section 559.211 (2018).

/s/ Evan Gelles
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