

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,

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION FOR
TEMPORARY RESTRAINING
ORDER**

vs.

LO2 LLC,

Defendant.

INTRODUCTION

Plaintiffs ask the Court to prevent Defendant from evicting them. Defendant threatens to force Plaintiffs and their families from their homes as a penalty for asserting their legal rights. Under Minnesota law, landlords cannot retaliate against tenants who assert their legal rights. Defendant—a landlord who has ignored its obligation to provide healthy, safe, and legally habitable homes to its tenants—gave Plaintiffs a retaliatory notice of lease termination within 90 days of Plaintiffs asserting their legal rights. Under longstanding law, Plaintiffs will likely prevail in this action. If Defendant files eviction cases against them in the meantime, they will suffer immediate harm. They face homelessness within days and the longer-standing effects of eviction court records that will prevent them from finding new housing in a historically tight rental market.

FACTS

Plaintiffs have rented their homes from Defendant over the past several years. (*See* Compl. ¶¶ 2-9.) One Plaintiff has lived in her home for over a decade. (*See* Rodriguez Aff. ¶ 2.)

Plaintiffs live at 3720 Minnehaha Avenue, Minneapolis, MN 55406 in an apartment building owned by Defendant. (Compl. ¶¶ 2-10.) Over the years they faced problems with pest infestations, mold, water leaks, and other health and safety problems. (Rodriguez Aff. ¶ 3; *see also* Hernandez Aff. ¶ 3; Guiracocha Aff. ¶ 3.) Defendant has received numerous repair requests from Plaintiffs. (Rodriguez Aff. ¶ 6.) When they asked Defendant for repairs, they were ignored or received unprofessional, inadequate responses to their concerns. (*See* Rodriguez Aff. ¶¶ 6-8, 15-16); *see also* Hernandez Aff. ¶ 6, 14; Salto Aff. ¶¶ 6-7, 14-15.)

On June 20, 2018, Plaintiffs sent repair request letters to Defendant. (*See* Rodriguez Aff. ¶ 8; *see also* Hernandez Aff. ¶ 7; Guiracocha Aff. ¶ 7.) One day later, on June 21, 2018, Defendant gave Plaintiffs a notice of lease termination directing Plaintiffs to vacate their homes by August 31, 2018. (Rodriguez Aff. ¶ 9; *see also* Salto Aff. ¶ 8; Raymundo Aff. ¶ 8.) In its notice of lease termination, Defendant informed Plaintiffs that management intended to renovate the property. *Id.* Rather than repairing Plaintiffs' homes with the tenants in place, Defendant told Plaintiffs that they must vacate in order to complete the renovations. *Id.* After receiving notices of lease termination, Plaintiffs retained counsel at Mid-Minnesota Legal Aid. (*See* Rodriguez Aff. ¶ 10; *see also* Hernandez Aff. ¶ 9.) Mid-Minnesota Legal Aid sent a letter to Defendant's lawyer that summarized Plaintiffs' concerns, including Defendant's retaliatory notices in response to Plaintiffs' repair requests, ongoing health and safety issues at the building, and Defendant's continued operation of the building without a rental license in violation of municipal law. *Id.*

Plaintiffs' fear of eviction was relieved, but their living conditions did not improve. (*See* Rodriguez Aff. ¶ 11; *see also* Salto Aff. ¶ 10.) To avoid future displacement and to address the uncertainty of their tenancies, Plaintiffs requested a meeting with Defendant's agents (owner and

property manager of the building) and City Council representative Andrew Johnson. *Id.* On October 22, 2018, Plaintiffs met with Defendant and Councilmember Johnson. (Rodriguez Aff. ¶ 12; *see also* Guiracocha Aff. ¶ 11.) Defendant’s agents said they would only repair the property after Plaintiffs left. (*See* Rodriguez Aff. ¶ 13; *see also* Raymundo Aff. ¶ 12.) Nine days later, Defendant ordered Plaintiffs to leave their homes by December 31, 2018. (*See* Rodriguez Aff. ¶ 14; *see also* Hernandez Aff. ¶ 13; Salto Aff. ¶ 13.)

Plaintiffs now face impending evictions. (*See* Rodriguez Aff. ¶ 15; *see also* Hernandez Aff. ¶ 14; Salto Aff. ¶ 15.) Plaintiffs continue to live in unsafe, unsuitable housing that fails to comply with city code. *Id.* Some of the Plaintiffs continue to send Defendant repair request letters. (*See* Salto Aff. ¶ 14.) Since the notices of lease termination were delivered, Defendant’s agents have become angry and aggressive towards Plaintiffs when Plaintiffs request receipts to prove that rent was paid. (*See* Alibella Aff. ¶ 16; *see also* Reyes Aff. ¶ 16.)

LEGAL ARGUMENT

A. Standard for Issuing a Temporary Restraining Order

The Court should consider the following factors before deciding whether to issue the temporary restraining order requested by Plaintiffs: 1) the nature of the relationship between the parties; 2) balancing of relative harms; 3) Plaintiffs’ likelihood of success on the merits; 4) public policy; and 5) administrative burdens. *See Hendel Construction, LLC v. Security State Bank of Howard Lake*, 2009 WL 818852, at *4 (Minn. Ct. App.) (citing *Dahlberg Bros. v. Ford Motor Co.*, 272 N.W.2d 264, 274-75 (Minn. 1965)). Plaintiffs address each element in turn.

B. If the Court denies this motion, Plaintiffs face far greater harm than Defendant will face if the Court issues a temporary restraining order.

“The party seeking an injunction must establish that legal remedies are inadequate and that an injunction must issue to prevent great and irreparable injury.” *Metropolitan Sports*

Facilities Commission v. Minnesota Twins Partnership, 638 N.W.2d 214, 222 (Minn. Ct. App. 2002). When an injunction seeks to avoid eviction, most judges assume the party seeking the injunction meets the irreparable harm element. *See, e.g., Saygnarath v. BNC Mortgage, Inc.*, 2007 WL 1141495, at *2 (D. Minn. 2007) (“If denying an injunction results in eviction, then the irreparable harm element is likely met.”); *Hruby v. Larsen*, 2005 WL 1540130, at *4 (D. Minn.) (concluding the same; citing *Higbee v. Starr*, 698 F.2d 945, 947 (8th Cir.1983)); *Park Village Apartment Tenants Ass’n v. Mortimer Howard Trust*, 636 F.3d 1150, 1159 (9th Cir. 2011) (upholding district court’s finding of irreparable harm in the absence of an injunction against eviction; concluding “The hardship of eviction on elderly low-income tenants is self-evident.”).

Plaintiffs live with the daily uncertainty of whether they will be forced to move on short notice. They received vacate notices telling them to move by December 31, 2018. As soon as Defendant files eviction actions, Plaintiffs will have marks on their rental history, making it harder for them to find other housing in the future. (Thompson Aff. ¶ 4.) These marks serve as scarlet letters for potential new landlords. (Thompson Aff. ¶¶ 4-6.) In a historically tight rental market, they disqualify an applicant from nearly any housing opportunity. (Thompson Aff. ¶ 6.) Beyond this problem, Plaintiffs will simultaneously face a summary eviction process. They may also be forced to do so without lawyers—as a group they may receive the services of legal services attorneys; as eight individuals they may overwhelm the number of lawyers available to help them. In summary, Plaintiffs and their families face eviction and homelessness, compounded by a razor-thin housing market with records of eviction filings that will make it very difficult to rent new homes.

In contrast, Defendant faces almost no harm if the Court grants this motion. As other courts have pointed out, the only harm Defendant could face—the loss of using the property for a

short period of time—sharply pales in comparison to the loss of Plaintiffs’ home. *See, e.g., Hruby*, 2005 WL 1540130, at *4 (acknowledging that although party enjoined from eviction “may be unable to receive rental or other income” during the period of injunction, the tenants “risk losing their homes and having their lives substantially disrupted.”).

C. Plaintiffs will likely prevail on the merits by showing Defendant gave retaliatory notices to vacate to penalize Plaintiffs for asserting their legal rights as tenants.

The *Dahlberg Bros.* standard for issuing an injunction also asks the court to weigh the relative likelihood that each party will succeed on the merits of the case. *Dahlberg Bros.*, 272 N.W.2d at 321. Plaintiffs will win this case, since the notices at issue were given to penalize Plaintiffs for asserting their rights as tenants.

Under Minnesota law, landlords may not retaliate against tenants who assert their legal rights in good faith. *See* Minn. Stat. §§ 504B.285, subd. 2, 504B.441. Specifically, 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.* The landlord has the burden to prove the notice was not retaliatory if it is delivered within 90 days of the tenant’s assertion of rights. *Id.* In other words, if the notice was served within 90 days of the tenant’s protected activity, it is presumed retaliatory. *Id.*

In *Parkin*, the Minnesota Supreme Court determined that 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. The court defined a non-retaliatory purpose as a purpose “wholly unrelated to and unmotivated by any good-faith activity on the part of the tenant protected by the statute (e.g., nonpayment of rent, other material breach of covenant, continuing

damage to premises by tenants, or removal of housing unit from market for a sound business reason).” *Id.* at 431. 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.* at 430. The court’s ruling aimed to provide “full protection” to tenants and encouraged a liberal construction of the covenants of habitability to ensure that landlords provide tenants with adequate, habitable housing. *Id.* at 431–32.

Here, Defendant’s notices to vacate were retaliatory because they were intended in whole or part as a penalty for Plaintiffs’ actions to defend and assert their rights as tenants. The October 31, 2018 notices are presumed retaliatory because they were delivered within 90 days of Plaintiffs’ many attempts to assert their rights. Defendant’s agents knew that Plaintiffs met regularly with one another to defend and assert their rights regarding habitability and their fear of displacement on short notice. Plaintiffs repeatedly requested repairs. (*See Rodriguez Aff.* ¶¶ 6-8, 15-16); *see also Hernandez Aff.* ¶ 6, 14; *Salto Aff.* ¶¶ 6-7, 14-15.) They collectively requested a meeting with Defendant’s agents and City Council representative Andrew Johnson, at which they repeated their concerns. (*Rodriguez Aff.* ¶ 12; *see also Guiracocha Aff.* ¶ 11.) Defendant and its agents knew of Plaintiffs’ protected, organizational activity when they met on October 22, 2018. (*Rodriguez Aff.* ¶ 12; *see also Guiracocha Aff.* ¶ 11.) At the meeting, Defendant’s agents said they would only make the repairs after Plaintiffs and their families moved. (*See Rodriguez Aff.* ¶ 13; *see also Raymundo Aff.* ¶ 12.) Nine days after the meeting, on October 31, 2018, Defendant gave Plaintiffs notices of lease termination. (*See Rodriguez Aff.* ¶ 14; *see also Hernandez Aff.* ¶ 13; *Salto Aff.* ¶ 13.) Within 90 days of Plaintiffs’ organizational efforts to defend and assert their rights, they received the notices. The notices are presumed retaliatory.

Furthermore, under the *Parkin* standard, Defendant lacks 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 Plaintiffs' protected activity. Defendant did not issue the notices to vacate for a non-retaliatory purpose such as a failure to pay rent, breach of lease, or continued damage to the premises. Rather, the October 31, 2018 notices were wholly related and motivated by Plaintiffs' good-faith activity to enforce their right to habitable housing and their refusal to accept Defendant's proposal to pay unlawfully charged rent. Plaintiffs organized, requested and held a meeting with Defendant, and remained united by collectively rejecting Defendant's unlawful proposal. When Defendant realized that Plaintiffs would not vacate on their terms or pay unlawfully charged rent, Defendant retaliated against Plaintiffs by issuing notices of lease termination.

Defendant's decision to issue the notices of lease termination occurred nine days after meeting with Plaintiffs. The decision was not reached independent of any consideration of the protected activities of Plaintiffs. Simply put, even if Defendant had some legitimate business purpose, the notices were contrived and influenced by Plaintiffs' protected activities.

In addition to the retaliation faced within the last 90 days, Defendant has engaged in a pattern of retaliation against Plaintiffs. Plaintiffs have a history of solidarity and collectively sending repair requests to Defendant. Plaintiffs gave repair requests to management on April 30 and June 20, 2018. (*See Rodriguez Aff.* ¶ 8; *see also Hernandez Aff.* ¶ 7; *Guiracocha Aff.* ¶ 7.) One day later, on June 21, 2018, Defendant gave Plaintiffs notices of lease termination. (*Rodriguez Aff.* ¶ 9; *see also Salto Aff.* ¶ 8; *Raymundo Aff.* ¶ 8.) Defendant was aware that Plaintiffs were meeting regularly with one another to defend their rights, and sought to penalize them for demanding repairs to ensure that their homes are safe and suitable for their families to

live in. The June 21, 2018 notices were only rescinded once Mid-Minnesota Legal Aid became involved. (*See Rodriguez Aff.* ¶ 10; *see also Hernandez Aff.* ¶ 9.)

The notices of lease termination delivered are retaliatory, in violation of Minnesota law. This action seeks only to declare the notices void and enjoin eviction on the basis of them. (*See Compl.* ¶¶ A-D.) Since Plaintiffs will likely prevail in this action, the Court should find the *Dahlberg Bros.* factor falls in their favor.

D. The public policy expressed in Minnesota statutory law favors Plaintiffs.

The Court should also consider the “public policy expressed in the statutes, State and Federal” when considering whether to grant a temporary restraining order. *See Dahlberg Bros.*, 137 N.W.2d at 321-22. To the extent Minnesota law favors any party, it favors Plaintiffs. The public has a strong interest in requiring healthy and safe rental housing, as well as in preventing illegal, retaliatory evictions.

It is well settled that a state’s public interest is embodied in its statutes. *See Great Duluth COACT v. City of Duluth*, 701 F. Supp. 1452, 1460 (D. Minn. 1988) (analyzing the *Dataphase* public interest prong based on the policy expressed in Minnesota statutes); *Onstad v. State Mut. Life Assur. Co.*, 32 N.W.2d 185, 187 (Minn. 1948) (statutes represent the announced public policy of the state of Minnesota); *Cardinal v. Merrill Lynch Realty/Burnet, Inc.*, 433 N.W.2d 864, 867 (Minn. 1988) (“public policy embodied in” codified statute); *In the Matter of Welfare of N.C.K. and N.J.K.*, 411 N.W.2d 577, 582 (Minn. App. 1987) (“public policy embodied in Minnesota statutes”).

Here, the express language of Minn. Stat. § 504B.285 and § 504B.441 forbids the termination of a tenancy if the termination was intended in whole or part as a penalty for a tenant’s assertion of legal rights under a lease or law. In section 504B.285, the Minnesota

Legislature established a retaliation defense to allow tenants to defend against eviction actions by demonstrating that an eviction was in retaliation for good-faith efforts to enforce their rights. Sections 504B.285 and 504B.441 further protect tenants from retaliation by specifying that a notice to quit is presumed retaliatory if delivered within 90 days of a tenant's assertion of rights. Recognizing that it is difficult to prove motive and purpose, the Legislature enacted this standard to give full protection and aid to tenants by establishing a presumption of retaliation which a landlord must overcome. Thus, the express policy embodied in sections 504B.285 and 504B.441 favors issuance of an injunction to prevent evictions that penalize tenants for asserting their legal rights, especially in cases where the tenant is penalized within 90 days of enforcing their rights. The public has no interest in evicting Plaintiffs from their homes. Rather the public has a strong interest in preventing unlawful, retaliatory evictions and allowing low-income tenants to remain in their homes.

Public policy as expressed in statute also confirms tenants' rights to safe and healthy homes. *See* Minn. Stat. § 504B.161 (2018). The Legislature created minimum standards all rental housing must meet. *See id.* § 504B.161, subd. 1. Landlords cannot ask tenants to waive or modify the requirements. *Id.* § 504B.161, subd. 1(b). This case is, at its core, about a landlord trying to do just that. Defendant wants to avoid its obligations to maintain basically safe and healthy homes by punishing and evicting the tenants who complain about the problems.

E. The Court faces no administrative burden from enforcing the restraining order.

The *Dahlberg Bros.* court noted that the Court may consider the nature of the injunction or restraining order sought by the applicant and whether granting it will create administrative burdens. *See Dahlberg Bros.*, 137 N.W.2d at 322. Plaintiffs seek a temporary restraining order that will allow them to remain in their homes until the Court rules on their motion for a

temporary injunction. The restraining order will simply prevent Defendant from taking further action to evict Plaintiffs. The order requires no supervision from the Court or other administrative burden.

CONCLUSION

For the reasons above stated, Plaintiffs respectfully ask the Court to issue a temporary restraining order enjoining Defendant from taking further action to evict them from their homes.

MID-MINNESOTA LEGAL AID

Dated: December 21, 2018

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