

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
FIRST DIVISION, MINNEAPOLIS

Paul Dendy,

Plaintiff,

DECISION & ORDER

-vs-

Case No. UD-1940707547

Solar Partnership,

Defendant.

The above-entitled matter came on for hearing before the undersigned, Referee of Housing Court, on the 11th day of August, 1994, on that Affidavit for Escrow of Rent filed July 7, 1994 and the denial entered to the same by the Defendant on July 20, 1994.

The Plaintiff, Paul Dendy, was present and appeared pro se; the Defendant, Solar Partnership, was present with its agent, Jim Soderberg and was represented by its attorney, Robert Speeter, Esq.

Now, therefore, based on the Affidavit for Escrow of Rent, denial, sworn testimony, exhibits, and oral arguments of the parties, the Court hereby makes its:

FINDINGS OF FACT

1. That the Plaintiff, tenant herein, Paul Dendy, leases residential premises from the Defendant situated at 2500 Blaisdell Avenue South, Unit #208, Minneapolis, Minnesota 55404.
2. That the rent for the property is \$400.00 per month due on the first day of the month.
3. That the Plaintiff has deposited \$400.00 with the Clerk of Court on July 7 and July 28, 1994, for a total of \$800.00.
4. That on or about June 3, 1994, the Defendant received from the Plaintiff a letter (See attachment to Affidavit for Escrow of Rent). The letter read, in pertinent part, that:

I have repeatedly discussed the matter with you about the noise from apt. #308. You do not seem to take me serious. There for if it does not stop I will be forced into legal action.

/s/ Paul Dendy

5. That since June 3, 1994, the Defendants have made reasonable attempts to reenter the Plaintiff's apartment in order to assess the noise as complained of by the Plaintiff. However, the Plaintiff has refused the same (See Ex. #1). In addition, the Defendants have made a reasonable

attempt to contact the tenants occupying the premises above the Plaintiff.

6. That the Plaintiff testified that although he did not necessarily hear any loud voices from the upstairs tenants, he does complain of foot-stomping. However, there was no other supporting testimony from anyone else nor from any other surrounding tenant complaining of the same. The Plaintiff testified that the stomping occurred at or around the late evening or early morning. However, there is no convincing evidence that there existed unduly loud noises that was disruptive to the tenant's habitability of the premises.

CONCLUSIONS OF LAW

1. That in every lease of residential premises, whether in writing or parol, the lessor covenants that the premises and all common areas are fit for the use intended by the parties and to keep the premises in reasonable repair during the term of the lease and to maintain the premises in compliance with the applicable health and safety laws of the state. See Minn. Stat. Sec. 504.18, Subd. 1. That the Court may consider abatement of rent if a lessor violates its covenant of habitability.

2. That the burden of proof is on the Plaintiff to prove by a preponderance of the evidence that the landlord has breached its covenant of habitability.

3. That actions or omissions on the part of a landlord which otherwise may constitute a constructive eviction may also constitute a breach of the covenant of habitability. See Milbridge Apartments vs. Lyndon, 151 N.J.Super. 168, at 171, 376 A.2d 611 (Cty. D.Ct. 1977). That a landlord may constructively evict a tenant by failing to prevent other tenants from making excessive amounts of noise.

4. Ordinarily, the rule is that the acts of one tenant do not constitute a "constructive eviction" of another tenant of the same landlord unless they materially disturb the latter tenant in the use, occupancy, and enjoyment of demised premises or where the natural consequence thereof is to injure the other tenant. See Colonial Court Apartments, Inc. vs. Kern, 282 Minn. 533, 163 N.W.2d 770 (Sup. Ct. 1968); and RESTATEMENT, PROPERTY 2D (Landlord and Tenant), Section 6.1, comment d. at 226 (1977). Residential tenants have a fair expectation to live within reasonable norms of quiet. A continual noise of a loud nature which infringes upon those expectations and makes ones premises materially unsuitable for the purpose for which they are leased, that is, ordinary residential living, is a breach of a landlord's covenant.

5. That a tenant must establish that the noise of a co-tenant made the premises materially unsuitable for ordinary residential living and that it was within the landlord's power to abate the nuisance. The test is objective; the noise or disruptive conduct must be such as to truly render the premises uninhabitable in the eyes of a reasonable person. The Defendant has failed to meet this burden by failing to prove by a preponderance of the evidence that the premises were materially uninhabitable.

6. That it is a sufficient defense to this action that a tenant has unreasonably refused entry to the landlord to the premises in order to inspect and/or correct the violation. See Minn. Stat. Sec. 566.23 (c).

ORDER

1. That the Plaintiff's claim on its Affidavit for Escrow of Rent is denied with prejudice.
2. That the rent now on deposit, \$800.00, shall be released to the Defendant, Solar Partnership.
3. That each party will be responsible for their own costs and disbursements incurred in this proceeding.

LET JUDGMENT BE ENTERED ACCORDINGLY.

RECOMMENDED BY:

Dated: August 26, 1994

_____/s/_____
Thomas F. Haeg
Referee of District Court

BY THE COURT:

_____/s/_____
Judge of District Court