

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT
DIVISION: _____
CASE TYPE: UNLAWFUL DETAINER
(EVICTION)

Plaintiff (Landlord),

v.

Defendant (Tenant).

ANSWER AND MOTION
FOR DISMISSAL OR
SUMMARY JUDGMENT

No. A-4 (Jan. 2011)
HUD/IRS Subsidized Projects

Case No. _____

For my answer to Plaintiff's complaint, I state the following defenses and the reasons why I should not be evicted, and ask that the case be dismissed.

A. GENERAL ANSWER

1. I admit the facts in these paragraphs of the complaint: _____
2. I deny the facts in these paragraphs of the complaint: _____
3. I cannot admit or deny these paragraphs of the complaint: _____
4. I receive housing subsidy from the Dept. of Housing and Urban Development (HUD), to my landlord for my unit or to me through a Section 8 Voucher I use to rent my unit. I or an immediate family member living with me at this address is a victim of domestic violence, dating violence or stalking incident(s) that is directly related to the allegations in this case so the protections of the federal Violence Against Women Act apply to me. 42 U.S.C. § 14043e-2.

B. TYPE OF TENANCY OR OCCUPANCY

1. HUD government subsidized housing project. It is not public housing, moderate rehabilitation or project-based certificate housing, and I don't have a Section 8 certificate or voucher. HUD HANDBOOK No. 4350.3.
2. Section 8 New Construction Program.
3. Section 8 Substantial Rehabilitation Program.
4. Section 8 Disposition of Former HUD Projects.
5. Section 8 Set Aside Program.
6. Section 236 Program.
7. Section 221(d)(3) Program.
8. Rent Supplement or Rent Assistance Program.
9. Section 202 Elderly and Handicapped Housing Program.
10. Low Income Housing Tax Credit Program. *See Cimarron Village Townhomes, Ltd. v. Washington*, No. C3-99-118, (Minn. Ct. App. July 27, 1999) (unpublished);

Bowling Green Manor L.P. v. Kirk, 1995 WL 386,476, 1995 Ohio App. LEXIS 2707 (June 30, 1995).

C. SERVICE

1. The summons and complaint (court papers) were not delivered or mailed at least seven days before the court hearing. MINN. STAT. § 504B.331 (formerly § 566.06).
2. The court papers were delivered on a legal holiday. MINN. STAT. § 645.44.
3. The named-Plaintiff delivered the court papers. MINN. R. CIV. P. 4.02.
4. Plaintiff improperly used substituted service to give the court papers to another person and not me. MINN. STAT. § 504B.331 (formerly § 566.06).
 - a. Plaintiff could have found me in the county.
 - b. The person does not reside with me.
 - c. The person is not of suitable age and discretion.
 - d. The person was not at my residence when the court papers were delivered.
5. Plaintiff improperly used service by mail and posting. MINN. STAT. § 504B.331 (formerly § 566.06).
 - a. Plaintiff could have found me in the county.
 - b. Plaintiff did not try personal service twice on different days, once between 6:00 p.m. and 10:00 p.m.
 - c. The court papers were mailed but not posted, or posted but not mailed.
 - d. Plaintiff posted the court papers before mailing the court papers or filing the affidavit of mailing.
 - e. The named-Plaintiff did not sign the affidavit of mailing.
6. Plaintiff filed an expedited case. The court papers were not served within 24 hours after the summons was issued. MINN. STAT. § 504B.321 (formerly § 566.05).
7. Other. _____

_____.

D. PRECONDITIONS FOR RECOVERY OF THE PREMISES

1. Plaintiff is not the person entitled to possession of the building or an authorized management agent. MINN. STAT. § 481.02, subd. 3(13); MINN. GEN. R. PRAC. 603.
2. The person suing on behalf of Plaintiff did not file a power of authority. MINN. GEN. R. PRAC. 603.
3. Plaintiff or Plaintiff's management company is a corporation or a similar entity and must be represented by an attorney to file a case or to appear otherwise in any Minnesota court. *Nicollet Restorations, Inc. v. Turnham*, 486 N.W.2d 753 (Minn. 1992); *301 Clifton Place, L.L.C. v. 301 Clifton Place Condominium Ass'n*, 783 N.W. 2d 551, 560-61 (Minn. Ct. App. 2010).

4. Plaintiff or Plaintiff's agent is engaging in unauthorized practice of law by charging a separate fee for representing the owner in this case. MINN. STAT. § 481.02, subd. 3(12-13).
5. I did not know the names of the owner and manager of the building and addresses at which they could be served 30 days before filing this case. MINN. STAT. § 504B.181 (formerly 504.22).
6. Plaintiff is a business which did not register its trade name with the Secretary of State, entitling me to \$250.00 in costs or by set off. MINN. STAT. §§ 333.001-333.06.
7. Plaintiff failed to state the facts which authorize recovery of the premises, by failing to state: _____

_____. MINN. STAT. § 504B.321 (formerly 566.05); MINN. GEN. R. PRAC. 604(a).
8. Plaintiff failed to state facts that authorize recovery by failing to state any allegations that are not related to or the result of an incident(s) of domestic violence, dating violence or stalking that federal Violence Against Women Act (VAWA) prohibits as a basis for eviction. 42 U.S.C. § 1437f (c)(9)(B) and (C).
9. Plaintiff is a landlord of a residential building with 12 or more residential units, but failed to provide a written lease. MINN. STAT. § 504B.111.
10. I am a military service member or active National Guard member covered by the Servicemembers Civil Relief Act. 50 App. U.S.C.A §§ 501-594.
11. Other. _____

_____.

E. HOLDING OVER CASES

1. Proper notice was required before filing this action. HUD HANDBOOK No. 4350.3, ¶¶ 8.11 - 8.16.
2. Plaintiff alleges holding over after notice. Plaintiff did not attach a copy of the termination notice to the complaint. Plaintiff must provide a copy of the notice to me at the hearing. MINN. GEN. R. PRAC. 604(c).
3. Plaintiff did not give me proper notice to end my lease. HUD HANDBOOK No. 4350.3, ¶¶ 8.11 - 8.16.
 - a. Plaintiff did not give written notice. ¶ 8.13(B)(2).
 - b. Plaintiff alleges nonpayment of rent or material noncompliance with the lease. Plaintiff did not give me notice 10 days before filing this action. *Id.*
 - c. The notice did not state all of the following: (1) the date of termination, (2) the grounds for termination with sufficient detail, (3) that I could defend the eviction in court, and (4) that I had 10 days to discuss it with Plaintiff. *Id.*

- d. Plaintiff did not serve the notice personally and by mail. ¶ 8.13(B)(3) (only for § 8 Set Aside and Property Disposition, § 202/8, § 236, § 221(d)(3), Rent Supplement, and Rent Assistance Programs).
- e. Plaintiff alleges other good cause. HUD HANDBOOK No. 4350.3, ¶ 8.16.
 - i. Plaintiff did not give me notice 30 days before filing this action.
 - ii. The termination notice was not effective at the end of the lease term.
 - iii. Plaintiff did not give me prior written notice that the alleged conduct would be good cause for eviction.
- f. Plaintiff did not give 12 month notice to me. MINN. STAT. § 504.32.
 - i. Plaintiff is allowing a Section 8 contract to expire.
 - ii. Plaintiff is terminating or failing to renew a Section 8 contract and mortgage.
 - iii. Plaintiff is prepaying on a mortgage, which will result in termination of federal use restrictions on the housing.
 - iv. Plaintiff is terminating a housing subsidy program.
- 4. Plaintiff did not give not give me a meaningful opportunity to discuss the eviction with Plaintiff. HUD HANDBOOK No. 4350.3, ¶ 8.13(B)(2); *Gorsuch Homes, Inc. v. Wooten*, 597 N.E.2d 554 (Ohio Ct. App. 1992).
- 5. Plaintiff improperly alleged in the complaint grounds for eviction not stated in a notice. HUD HANDBOOK No. 4350.3, ¶ 8.13(B)(5).
- 6. Plaintiff may not evict me without cause. HUD HANDBOOK No. 4380.3, ¶ 8.12.
- 7. Plaintiff's notice for me to move was retaliatory under MINN. STAT. § 504B.285 (formerly § 566.03), § 504B.441 (formerly § 566.28), and was intended in whole or part as a penalty:
 - a. for my good faith attempt on _____ to secure or enforce rights under a lease or contract, oral or written, under the laws of the state or any of its governmental subdivisions, or of the United States; or
 - b. for my good faith report on _____ to a governmental authority of the plaintiff's violation of a health, safety, housing, or building code or ordinance.
- 8. Plaintiff waived the notice to end my lease or is estopped from enforcing it by:
 - a. Accepting rent after the move out date. *Pappas v. Stark*, 123 Minn. 81, 83, 142 N.W. 1042, 1047 (1913).
 - b. Demanding rent in this case. See MINN. STAT. § 504B.291 (formerly § 504.02); *Pappas v. Stark*, 123 Minn. 81, 83, 142 N.W. 1042, 1047 (1913).

9. Plaintiff is discriminating against me as a member of a protected class. *Barnes v. Weis Management Co.*, 347 N.W.2d 519, 522 (Minn. Ct. App. 1984); 42 U.S.C. § 3604; MINN. STAT. § 363.03.
10. Plaintiff's Notice to Vacate is based on incident(s) of domestic violence, dating violence or stalking against me or my immediate family members living at this address which is prohibited by basis for termination. 42 U.S.C. § 1437f(c)(9)(B) and (C); 42 U.S.C. § 1437f (o)(20).
11. Other. _____

F. NONPAYMENT OF RENT CASES

1. Proper notice was required before filing this action. HUD HANDBOOK No. 4350.3, ¶¶ 8.11 - 8.16. See Holding Over Cases Defenses, Section E, *supra*.
2. Plaintiff alleges nonpayment of rent and material lease violations. I do not have to pay rent into court. The court must consider the lease violations claim before considering the nonpayment of rent claim. MINN. STAT. § 504B.285, subd. 5 (formerly § 566.03, subd. 5).
3. I don't owe all of the rent alleged.
4. Plaintiff has violated the covenants of habitability by not making repairs, including but not limited to: _____

_____. I request that the court reduce my past rent, beginning in _____, and reduce future rent until repairs are completed. MINN. STAT. § 504B.161 (formerly § 504.18); *Fritz v. Warthen*, 298 Minn. 54, 58-59, 213 N.W.2d 339, 341-42 (1973). See generally 24 C.F.R. §§ 221.530(b) (§221); 236.1 (§236); 880.601(b) (New Construction); 881.601(b) (Substantial Rehabilitation); 883.702(b) (State HRA); 885.940(b) (§202); 886.123 (Set-Aside); 886.323 (formerly HUD owned); HUD HANDBOOK No. 4350.3, Ch. 6, Exhibit 6.6, and Appendix 4.

5. My city code requires landlords to have a rental license. My landlord does/did not have a license and cannot collect rent for the period where the landlord did not have a license. *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. Ct. App. Sep. 4, 2007) (unpublished).
6. I notified Plaintiff and paid \$ _____ for utility or essential services after the utility company terminated the service or threatened to terminate the service, due to Plaintiff's failure to pay. This payment must be deducted from rent. MINN. STAT. § 504B.215 (formerly § 504.185).
7. My lease states that I am supposed to pay for _____ utility service, but I have a shared meter which does not accurately reflect my utility use. MINN. STAT. § 504B.215 (formerly § 504.185). I request that the court:
 - a. reduce my past rent, beginning in _____, 19____, and reduce future rent until Plaintiff follows the law. MINN. STAT. § 504B.215

- (formerly § 504.185), § 504B.161 (formerly § 504.18); *Fritz v. Warthen*, 298 Minn. 54, 58-59, 213 N.W.2d 339, 341-42 (1973);
- b. award me treble damages or \$500, whichever is greater, and reasonable attorney's fees. MINN. STAT. § 504B.215 (formerly § 504.185), § 504B.221 (formerly § 504.26).
8. Rent recertification.
- a. Plaintiff did not properly calculate my income and rent. HUD HANDBOOK No. 4350.3, Ch. 5, and 7.
- b. Plaintiff did not give me a sufficient utility allowance. 24 C.F.R. §§ 965.470-965.480, 813.102, 813.108; HUD HANDBOOK No. 4350.3, ¶¶ 5.25B, 5.61. *See also* 24 C.F.R. §§ 236.2, 236.735(e) (§236), 215.1, 215.45(e) (Rent Supplement), 860.610 (New Construction), 881.610 (Substantial Rehabilitation), 886.326 (HUD Owned).
- c. Plaintiff improperly terminated the government subsidy and raised my rent to market rent. HUD HANDBOOK No. 4350.3, ¶¶ 8.3 - 8.7.
- d. Plaintiff did not offer me a reasonable payment plan for corrected past rent. *Id.* ¶ 8.20.
- e. The tenant portion of the Section 8 rent the Plaintiff is trying to collect from me incorrectly includes the income of _____, who abused me or a member of my family and is excluded from my household by a court No-Contact Order, or an Order for Protection or a Harassment Order. The rent must be recalculated so it is based on only my income before the court can determine how much rent the Plaintiff has a right to collect from me according to federal regulations and my lease. 42 U.S.C. 1437f (c) (3) and (o)(2).
9. Plaintiff is charging improper late fees or other fees.
- a. Plaintiff may not evict me for not paying late fees. HUD HANDBOOK No. 4350.3, ¶ 6-23.
- b. For leases beginning or renewed before January 1, 2011 and under the common law:
- i. The lease does not provide for the fees. *Cook v. Finch*, 19 Minn. 407, ___, 19 Minn. (Gil.) 350, 358 (1873).
- ii. The fees are penalties which bear no relationship to Plaintiff's expenses. *See Gorco Const. Co. v. Stein*, 256 Minn. 476, 481-82, 99 N.W.2d 69, 74 (1959); or are usurious. Minn. Stat. §§ 334.01-334.03.
- c. For leases beginning or renewed on or after January 1, 2011, under Minn. Stat. § 504B.177:
- i. We did not agree to the late fee in writing.
- ii. The late fee is more than 8% of the overdue rent payment.
- c. For all late fees:
- i. Plaintiff waived the requirement of prompt rent payment by accepting late payments without objection. *See Cobb v.*

Midwest Recovery Bureau Co., 295 N.W. 2d 232, 237 (Minn 1980) (repossession).

- ii. No late fee is due because I had a proper reason to withhold my rent.
 - iii. Plaintiff is charging illegal side payments. HUD HANDBOOK No. 4350.3, ¶ 6.25.
10. Plaintiff waived the rent claim or is estopped from claiming it by:
- a. Accepting a partial payment of rent before or after filing this case. We did not agree in writing that the payment would not waive this case. MINN. STAT. § 504B.291 (formerly § 504.02).
 - b. Accepting rent for later months. *Id.*
11. Plaintiff did not give me receipts for rent paid in cash. Minn. Stat. § 504B.118. The court should abate my rent as a penalty for violating the statute and dismiss this action.
12. I paid my rent by money orders. I have a copy of one or more money orders, or original receipt stubs evidencing the purchase of a money order, which total the rent amount, are dated on or around the date rent was due, and are made payable to the landlord. There is a rebuttable presumption that I paid the rent. Minn. Stat. § 504B.291, subd. 1.
13. The rent has not been paid as a result of domestic violence, dating violence or stalking so cannot be the basis to evict me. 42 U.S.C. § 1437f(c)(9)(B) and (C); 42 U.S.C. § 1437f(o)(20).
14. Other. _____

_____.

G. BREACH OF LEASE CASES

- 1. Proper notice was required before filing this action. HUD HANDBOOK No. 4350.3, ¶¶ 8.11 - 8.16. See Holding Over Cases Defenses, Section E, *supra*.
- 2. Plaintiff alleges breaches of the lease. Plaintiff did not attach a copy of the lease to the complaint. Plaintiff must provide a copy of the lease to me at the hearing. MINN. GEN. R. PRAC. 604(d).
- 3. I have not committed (1) material noncompliance with the lease or (2) other good cause for eviction. HUD HANDBOOK No. 4350.3, ¶ 8.11 - 8.16.
- 4. I did not commit a material violation of the lease. *Cloverdale Foods of Minnesota, Inc.*, 580 N.W.2d 46, 49 (Minn. Ct. App. 1998).
- 5. Plaintiff filed an expedited case, and alleges that I am involved with illegal drugs, prostitution related activities, unlawful firearm possession, or nuisance or other illegal behavior that seriously endangers the safety of other residents, their property, or the landlord's property. I did not do this. MINN. STAT. § 504B.321 (formerly § 566.05).

6. Plaintiff did not give me a copy of the lease before filing this case. This case does not involve disturbing the peace, malicious destruction of property, or illegal drugs. MINN. STAT. § 504B.115 (formerly § 504.015).
7. Plaintiff waived lease provisions by failing to enforce them or is estopped from enforcing them. *Mitchell v. Rende*, 225 Minn. 145, 30 N.W.2d 27 (1947).
8. Plaintiff waived the alleged breaches or is estopped from enforcing them by accepting rent with knowledge of the breach. *Kenny v. Seu Si Lun*, 101 Minn. 253, 256-58, 112 N.W. 220, 221-22 (1907).
9. Plaintiff is discriminating against me as a member of a protected class. 42 U.S.C. § 3605; MINN. STAT. § 363.03.
10. I have a disability. Plaintiff did not reasonably accommodate my disability. 42 U.S.C. § 3604(f)(3); 29 U.S.C. §§ 706, 794; 24 C.F.R. Parts 8, 100; *Dominium Management Services, Inc. v. C.L.*, No. A03-85, 2003 WL 22890386 (Minn. Ct. App. Dec. 9, 2003) (unpublished).
11. The lease term is:
 - a. illegal, unconscionable, an adhesion contract, or discriminatory; or
 - b. violated HUD rules. HUD HANDBOOK No. 4350.3, Ch. 6, and Appendix 4; 24 C.F.R. Part 247.
12. Plaintiff alleges that I unlawfully allowed unlawful activity (illegal drugs, prostitution related activity, or unlawful use or possession of certain firearms) on the property.
 - a. State Defenses. MINN. STAT. § 504B.171 (formerly § 504.181).
 - i. There was no unlawful activity on the property.
 - ii. I did not know or have reason to know that there was unlawful activity on the property.
 - iii. I could not prevent the illegal drugs from being brought on the property. MINN. STAT. § 609.5317, subd. 3.
 - b. Federal Defenses. 24 C.F.R. § 247.3; HUD HANDBOOK No. 4350.3, ¶ 8.14.
 - i. The activity was not a crime. *See* MINN. STAT. Ch. 609.
 - ii. The person who committed the activity was not under my control.
 - iii. Plaintiff alleges non-drug-related activity. The activity did not threaten the health, safety, or peaceful enjoyment by other residents, persons residing in the immediate vicinity of the property, or on-site staff.
 - iv. Plaintiff alleges drug-related criminal activity. The activity did not occur on or near the property.
 - v. The criminal activity (1) was directly related to domestic violence, dating violence, or stalking, (2) was done by a member of my household, guest, other person under my control, or other person, and (3) I or an immediate member of

the my family was the victim or threatened victim. 42 U.S.C. § 1437f (o)(20)(D)(v).

- 13. Plaintiff alleges fraud. I did not commit fraud. HUD HANDBOOK No. 4350.3, ¶¶ 8.17 - 8.20.
- 14. Plaintiff is penalizing me for calling for police or emergency assistance in response to domestic abuse or any other conduct. MINN. STAT. § 504B.205 (formerly § 504.215).
- 15. Forfeiting my home would be a great injustice, since Plaintiff's rights are adequately protected. *Naftalin v. John Wood Co.*, 263 Minn. 135, 147, 116 N.W.2d 91, 100 (1962); *Warren v. Driscoll*, 186 Minn. 1, 5, 242 N.W. 346, 347 (1932).
- 16. Plaintiff's alleged breach(es) are the result of domestic violence, dating violence or stalking of me or my immediate family members so they are not (1) serious or repeated violation(s) of the lease, (2) material violation(s) of the lease, or (3) other good cause. 42 U.S.C. § 1437f (o)(20).
- 17. Other. _____

_____.

H. REQUEST FOR RELIEF

- 1. Dismiss Plaintiff's Complaint for the reasons set forth in this Answer and award me judgment for possession.
- 2. Plaintiff improperly filed an expedited case. Dismiss this case and fine Plaintiff \$500. MINN. STAT. § 504B.321 (formerly § 566.05).
- 3. Abate (reduce) the rent claimed by Plaintiff, and abate (reduce) the future rent until Plaintiff completes repairs. *Fritz v. Warthen*, 298 Minn. 54, 58-59, 213 N.W.2d 339, 341-42 (1973); MINN. STAT. § 504B.161 (formerly § 504.18).
- 4. Abate (reduce) the rent claimed by Plaintiff, and abate (reduce) the future rent until Plaintiff stops unlawful activity on the property. See MINN. STAT. § 504B.171 (formerly § 504.181).
- 5. Order Plaintiff to provide for the following discovery: allow me to review Plaintiff's file on me, give me a list of Plaintiff's witnesses and the subject of their testimony, and give me a copy of Plaintiff's exhibits. Minn. Gen. R. Prac. 612.
- 6. Plaintiff is a business which did not register its trade name with the Secretary of State. Continue the hearing to allow Plaintiff to register its trade name, and award me \$250.00 in costs or by setoff. MINN. STAT. § 333.001-333.06.
- 7. Continue the hearing for the following reasons:_____.
- 8. If I owe rent:

- a. Plaintiff alleged nonpayment of rent and holding over after notice. Allow me to pay the rent and keep my home. MINN. STAT. § 504B.291 (formerly § 504.02).
 - b. Plaintiff alleged nonpayment of rent and material lease violations. If I did not commit a material lease violation but I owe rent, give me 7 days to pay. MINN. STAT. § 504B.285 (formerly § 566.03).
 - c. Give me _____ days to pay it. *614 Co. v. D.H. Overmayer*, 297 Minn. 395, 398, 211 N.W.2d 891, 893 (1973). (affirmed 30 day extension to pay rent).
 - d. I have paid or can pay the rent due at the hearing. If I owe additional costs, give me _____ days to pay them. MINN. STAT. § 504B.291 (formerly § 504.02).
9. Under the Servicemembers Civil Relief Act, stay of the action for 90 days, unless equity requires a shorter or longer stay, or adjust the obligations under the lease to preserve the interests of all parties. 50 App. U.S.C.A §§ 501-594.
10. Violence Against Women Act
- a. Evict _____, who abused me or a member of my family, but do not evict me or the rest of my family. 42 U.S.C. § 1437f (c)(3)(C)(ii).
 - b. Order Plaintiff to execute a new lease with me that does not include _____, the abuser, in the household. 42 U.S.C. § 1437f (c)(3)(C)(ii).
 - c. Order Plaintiff to (1) accept my certification of domestic violence, dating violence or stalking, and (2) withdraw its termination notice and (3) dismiss this action with prejudice.
11. If I lose, give me seven days to move. MINN. STAT. § 504B.345 (formerly § 566.09). I did not cause a nuisance, or seriously endanger other tenants, their property, or the landlord's property. If I have to move in less than 7 days, it would be a substantial hardship to my family and me.
12. Do not award costs to Plaintiff.
13. Award mandatory costs to me of \$200 if I prevail. MINN. STAT. § 549.02.
14. Expunge or seal this court file. Plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case. Expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record. MINN. STAT. § 484.014; *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981).
15. Other. _____

Defendant(s) acknowledges the following. Defendant(s) believes that the information contained in this document is well grounded in fact and is warranted by law. Defendant(s) is not a frivolous litigant. Defendant(s) is not serving or filing this document for an improper purpose. Defendant(s) understand that if Defendant(s) mislead the court or if Defendant(s) serve or file this document for an improper purpose, the court can order Defendant(s) to pay money to the other party, including the

reasonable expenses incurred by the other party because of the serving or filing of this document, court costs, and reasonable attorney fees.

Date

Tenant/Tenant's Attorney or Agent

OPTIONAL VERIFICATION:

Subscribed and sworn to before me
on _____

Notary Public