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STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Michael David Osberg,
Plaintiff,
vs.
Marquette Management Inc.,
Defendant.

Judge: Sara R. Grewing
Court File No. 62-HG-CV-23-3931

ORDER ON MOTION FOR SUMMARY JUDGMENT

This above-titled matter came before the undersigned on January 26, 2024, for determination of whether this Court should adopt the analysis and ruling of the Hennepin County District Court concerning identical lease language. See *Kindt v. Investment Property Group IT, Inc., Hopkins Apartments, LLC*, Minnesota Case File No. 27-CV-HC-23-3340. Attorney Joseph Vaccaro appeared on behalf of Plaintiff Michael Osberg and attorney Kathleen Tiaden appeared on behalf of Marquette Management, Inc. All appearances were made remotely via Zoom.

Based on all the files, pleadings, records, and proceedings, as well as on the arguments and submissions of the parties, it is hereby ordered:

ORDER

1. This Court adopts the analysis and ruling of the Hennepin County District Court.
2. Formula 8 of the Lease at issue in this case does not contain "an equitable method of apportionment" as required by Minn. Stat. § 504B.215, Subd. 2a(a)(2).
3. The attached memorandum is incorporated herein, by reference.

It is so ordered.

BY THE COURT

Sara Grewing

Grewing, Sara (Judge)
Feb 23 2024 2:20 PM

Dated: February 23, 2024

The Honorable Sara R. Grewing
District Court Judge

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MEMORANDUM

Factual Background

This rent case was initiated by Plaintiff on various grounds including an alleged violation of Minn. Stat. § 504B.215, Subd. 2a. The material facts of this case, so far as they relate to the current motion, are not in dispute.

Plaintiff Michael Osberg is a tenant in a building managed by Defendant Marquette Management, Inc., subject to an Apartment Lease Contract (the "Lease") apparently based upon a National Apartment Association template. Here, utilities were to be billed to the landlord by service providers, and then allocated to tenant based on the lease's "Formula 8." (Amended Petition of Rent Escrow, p. 13.) In the lease, Formula 8 is identified as a method including an "[a]llocation based on a combination of square footage of your apartment and the number of persons residing in your apartment." (*Id.*, p. 14.) The Lease then provides that the parties agreed upon the reasonableness of the allocation method, and that "more detailed descriptions of billing methods, calculations and allocation formulas" are available upon request. (*Id.*) This language is identical to that language previously interpreted by a Hennepin County District Court as being insufficient under the statute. See *Kindt v. Investment Property Group IT, Inc., Hopkins Apartments, LLC*, Minnesota Case File No. 27-CV-HC-23-3340.

Plaintiff seeks partial summary judgment on the question of whether the Lease's language is sufficient to satisfy the requirements of Minn. Stat. § 504B.215, Subd. 2a, and damages under Minn. Stat. § 504B.221. Defendant argues that the language of the lease is sufficient, and that Plaintiff's claimed damages are not properly supported. The only issue before the Court is whether the analysis and ruling of the Hennepin County District Court should be adopted in this case.

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Legal Analysis

1. **Whether the Utility Apportionment is Statutorily Sufficient.**

The primary question for the Court on this motion is whether the Court should adopt the Hennepin County District Court's analysis and ruling on the language found in the Lease's Formula 8.

Minnesota law requires that "[a] landlord of a single-metered residential building who bills for utility charges separate from the rent … must predetermine and put in writing for all leases an equitable method of apportionment and the frequency of billing by the landlord." Minn. Stat. 504B.215, Subd. 2a(a)(2). The statute further provides that "[a] failure by the landlord to comply with this subdivision is a violation of sections 504B.161, subdivision 1, clause (1), and 504B.221." Minn. Stat. § 504B.215, Subd. 2a(c).

Where the Court is tasked with interpreting a statute, it must first look to "whether the statute's language, on its face, is ambiguous." *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010) (quoting *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001)). If a statute is unambiguous, the Court "must apply the statute's plain meaning." *Id.* (citing T*uma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn.1986)). "A statute is ambiguous only when the statutory language is subject to more than one reasonable interpretation. *State v. Fleck*, 810 N.W.2d 303, 307 (Minn. 2012) (citing *State v. Leathers*, 799 N.W.2d 606, 608 (Minn. 2011)). "[A]n equitable method of apportionment" is not defined in the statute, nor are its terms defined individually.

In the parallel *Kindt* case, the Hennepin County District Court found that the language at issue here did not comply with the statute, noting that "method" in the context of the statute "must mean something more than generalities about square footage and occupancy." Housing Court Judicial Review Decision & Order at ¶ 11, *Kindt v Investment Property Group UT, Inc.et al.*, No. 27-CV-HC-23-3340 (Minn. Dist. Ct. 4th Dist. April 27, 2023).

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The Court first looks to the plain language of the statute, giving each word its "plain and ordinary meaning." *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018) (quoting *State v. Hayes*, 826 N.W.2d 799, 803–04 (Minn. 2013)). For sake of judicial economy, the Court accepts the definitions used by Defendant, which come from Merriam-Webster's dictionary. Per Merriam-Webster, "equitable" is defined as "dealing fairly and equally with all concerned"; "method" is defined as "a way, technique, or process of or for doing something"; and "apportionment" is the act or result of "divid[ing] and shar[ing] out according to a plan." The Court agrees with Defendant that the plain meaning of this language could be understood as requiring a "fair technique of how single-metered utilities will be divided and billed back to tenants." Defense Brief, p. 7.

Here, even if the Court were to disagree with the Hennepin County District Court and find that the language of Formula 8 qualified as a "method," nothing in Formula 8 identifies how the "method" is fair or equitable. Formula 8 only provides for an "[a]llocation based on a combination of square footage of [Plaintiff's] apartment and the number of persons residing in your apartment." (Am. Pet., p. 14.) Defendant argues this is clearly intended to be a "fair" apportionment, where "tenants with larger apartments and a larger number of tenants living in them will be apportioned a larger amount of the monthly utilities," but nothing in Formula 8 indicates as much. (Def. Br., p. 8; Am. Pet., p. 14.) Notably, Formula 8's plain language could just as easily be fulfilled by an inversion of Defendant's "fair" assumption, or any similarly arbitrary "combination of square footage … and the number of persons residing" in a given unit. (Am. Pet., p. 14.)

This language is not ambiguous, and the Court does not need to look beyond the ordinary meaning of the words used by the legislature here. Accordingly, the Court agrees with the Hennepin County District Court, and finds that the language of the lease at issue in this case does not contain "an equitable method of apportionment."

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2. What Damages Plaintiff is Entitled to Under the Utility Apportionment Statute.

The remaining question for the Court is whether Plaintiff may be entitled to damages under the utility apportionment statute.

Minnesota allows tenants to pursue a rent escrow action for a violation of any of the covenants in Minn. Stat. § 504B.161, Subd. 1, clause (1) or (2), and the utility apportionment statute provides that "[a] failure by the landlord to comply with this subdivision is a violation of sections 504B.161, subdivision 1, clause (1), and 504B.221." Minn. Stat. § 504B.385, Subd. 1(b); Minn. Stat. § 504B.215, Subd. 2a(c). Of these two statutes, the former is the general covenant of a landlord "that the premises and all common areas are fit for the use intended by the parties," and the latter concerns the unlawful termination of utilities. *See* Minn. Stat. §§ 504B.161. Subd. 1(a)(1), 504B.221. Under Minn. Stat. 504B.221, "if a landlord … interrupts or causes the interruption of [utility services], the tenant may recover from the landlord treble damages or $500, whichever is greater, and reasonable attorney's fees." The statute clarifies that "[t]he tenant may recover only actual damages" under the section where the tenant has provided the landlord notice of the interruption, and the landlord has failed to act "within a reasonable period of time after the interruption." Minn. Stat. § 504B.221.

Here, the Court finds that Plaintiff's rent escrow action is proper where Plaintiff's pleaded violation of Minn. Stat. § 504B.215, Subd. 2a is a violation of the general covenant of habitability, and Rent Escrow is a proper action in such cases. Compare Minn. Stat. §§ 504B.385, Subd. 1(b), 504B.215, Subd. 2a(c), and 504B.001, Subd. 14(2). On the issue of damages, the Court is left with the language of the apportionment statute, which directs that a violation of Minn. Stat. § 504B.215, Subd. 2a should be treated as a violation of Minn. Stat. § 504B.215. Determination of what "actual damages" and what damages Plaintiff "may recover" under the interruption statute is left for further briefing on Plaintiff's motion for partial summary judgment.