

William M. Matthews,
Plaintiff,

vs.

Brick Buildings, LLC, and
Pursuit Hometel, Inc.,
Defendants.

**DECISION AND ORDER ON
PETITION FOR POSSESSION OF
RESIDENTIAL PROPERTY
FOLLOWING UNLAWFUL
REMOVAL OR EXCLUSION
(LOCK OUT) PETITION UNDER
MINNESOTA STATUTE 504B.375**

Court Case No.: 27-CV-HC-17-2638

This matter came on for court trial, pursuant to Minnesota Statute 504B.375, before the Honorable JaPaul J. Harris, Referee of District Court, on July 19, 2017. Plaintiff was present and represented by attorney Riann Meyer. Defendants were present and represented by agents Heather Kerchner and John Worman.

Findings of Fact and Conclusions of Law

1. This action was commenced by Verified Petition for Possession of Residential Rental Property Following Unlawful Removal or Exclusion under Minnesota Statute 504B.375.
2. The subject property in dispute is located at 1918 Park Avenue South, Unit 9-3, Minneapolis, Minnesota, 55404, in Hennepin County.
3. The names and addresses of Defendants are Brick Buildings, LLC, 1918 Park Avenue South, Minneapolis, Minnesota, 55404, and Pursuit Hometel Inc., 1918 Park Avenue South, Minneapolis, Minnesota, 55404.
4. Defendants are the owners and/or managers of the subject property.
5. Landlord is defined in Minnesota Statute 504B.001 subdivision 7 as, “an owner of real property, a contract for deed vendee, receiver, executor, trustee, lessee, agent, **or other**

person directly or indirectly in control of rental property.” *See Minn. Stat. § 504B.001, subd. 7 (2016).*

6. Defendants Brick Buildings LLC and Pursuit Hometel Inc. are landlords, as defined by Minnesota Statute 504B.001, subdivision 7.
7. Minnesota Statute 504B.375 subdivision 1 states:
 - (a) “This section applies to **actual or constructive removal or exclusion of a residential tenant** which may include the termination of utilities or the removal of doors, windows, or locks. A **residential tenant** to whom this section applies may recover possession of the premises as described in paragraphs (b) to (e).
 - (b) The **residential tenant** shall present a verified petition to the district court of the judicial district of the county in which the premises are located that:
 - (1) describes the premises and the landlord;
 - (2) specifically states the facts and grounds that demonstrate that the exclusion or removal was unlawful, including a statement that no writ of recovery of the premises and order to vacate has been issued under section 504B.345 in favor of the landlord and against the residential tenant and executed in accordance with section 504B.365; and
 - (3) asks for possession.
 - (c) If it clearly appears from the specific grounds and facts stated in the verified petition or by separate affidavit of the **residential tenant** or the **residential tenant's attorney** or agent that the exclusion or removal was unlawful, the court shall immediately order that the **residential tenant** have possession of the premises.
 - (d) The **residential tenant** shall furnish security, if any, that the court finds is appropriate under the circumstances for payment of all costs and damages the landlord may sustain if the order is subsequently found to have been obtained wrongfully. In determining the appropriateness of security, the court shall consider the residential tenant's ability to afford monetary security.

(e) The court shall direct the order to the sheriff of the county in which the premises are located and the sheriff shall execute the order immediately by making a demand for possession on the landlord, if found, or the landlord's agent or other person in charge of the premises. If the landlord fails to comply with the demand, the officer shall take whatever assistance may be necessary and immediately place the residential tenant in possession of the premises. If the landlord, the landlord's agent, or other person in control of the premises cannot be found and if there is no person in charge, the officer shall immediately enter into and place the residential tenant in possession of the premises. The officer shall also serve the order and verified petition or affidavit immediately upon the landlord or agent, in the same manner as a summons is required to be served in a civil action in district court.”
Minn. Stat. § 504B.375, subd. 1 (2016) (Emphasis Added).

8. Defendants argue:

- They operate a boarding house;
- They are governed by Minnesota Statute 327;
- Plaintiff is a transient occupant as defined by Minnesota Statute 327; and
- Minnesota Statute 504B and landlord/tenant law do not apply in this case.

Landlord/Tenant or Innkeeper/Guest

9. Heather Kerchner is the controlling stakeholder of both Brick Buildings, LLC, and Pursuit Homotel, Inc.

10. Ms. Kerchner has been at Pursuit Homotel full-time since 2008. Pursuit Homotel is a residential facility for 205 adult males coming out of jail, prison, or rehabilitation. Pursuit Homotel holds the residents’ mail, sets up health care appointments, facilitates meeting space for residents to meet with parole officers, has two TV lounges, does housekeeping in common areas, and provides meals.

11. Ms. Kerchner believes, based on all of these accommodations provided by Pursuit Homotel, the residential facility is a boarding house not subject to the provisions of Minnesota Statute 504B.
12. To determine whether the parties had a landlord-tenant or an innkeeper-guest relationship, the court looks at the specific circumstances of their particular relationship. *Asseltyne v. Fay Hotel*, 23 N.W.2d 357, 362 (Minn. 1946) (considering whether plaintiff and defendant's relationship was of innkeeper-guest or proprietor- residential lodger to determine the duty defendant owed to plaintiff).
13. “The length of the stay, the existence of a special contract, the rate or method of payment, and the possession or nonexistence of a home or permanent residence elsewhere are all material, but not necessarily controlling, factors to be considered in determining the question.” *Asseltyne*, 23 N.W.2d at 362.
14. In the present case, the relationship between the parties is that of landlord and tenant. This was Plaintiff’s only residence, he was there for six (6) months, and Defendant was receiving monthly payments on Plaintiff’s behalf.
15. Pursuant to Minnesota Statute 327.70 subdivision 5, “[t]ransient occupancy means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, if the unit occupied is the sole residence of the guest, the occupancy is not transient. There is a rebuttable presumption that, if the unit occupied is not the sole residence of the guest, the occupancy is transient.” *Minn. Stat. § 327.70, subd. 5 (2016)*.
16. In the present case, the unit at issue was the sole residence of Plaintiff and as such there is a rebuttable presumption that the occupancy is not transient.
17. Defendant did not provide any credible evidence to rebut the presumption that Plaintiff’s occupancy is not transient.

18. This action was brought under Minnesota Statute 504B.375, which clearly states that only a “residential tenant” can bring an action for unlawful exclusion under Minnesota Statute 504B.375. Subdivision 1(a), sentence one (1) states, “[t]his section applies to actual or constructive removal or exclusion of **a residential tenant . . .**” Subdivision 1(a), sentence two (2) states, “**A residential tenant** to whom this section applies may recover possession of the premises as described in paragraphs (b) to (e).” Subdivision 1(b), states, “**[t]he residential tenant** shall present a verified petition to the district court of the judicial district of the county in which the premises are located . . .” Throughout the statute, the consistent and plain language indicates that a residential tenant can bring an action for unlawful exclusion under Minnesota Statute 504B.375. *Minn. Stat. § 504B.375, subd. 1 (2016) (Emphasis Added)*.

19. Residential tenant is defined in Minnesota Statute 504B.001 subdivision 12 as, “a person who **is occupying a dwelling in a residential building** under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, **all other regular occupants of that dwelling unit**, or a resident of a manufactured home park.” *See Minn. Stat. §504B.001, subd. 12 (2016). (Emphasis added)*.

20. The Court finds Plaintiff is a residential tenant at the subject property as he was occupying a dwelling in a residential building under an oral lease that required payment of money in addition to being a regular occupant of the dwelling unit.

Lock Out

21. Plaintiff moved into Pursuit Hometel on February 21, 2017.

22. Prior to living at Pursuit Hometel, Plaintiff was incarcerated for four years.

23. Plaintiff utilized Group Residential Housing (GRH) funding from the State of Minnesota to pay his rent.

24. Plaintiff's rent portion for June 2017 was \$115.00 due on June 1, 2017.
25. GRH paid \$776.00 to Defendants, on behalf of Plaintiff, for June 2017 rent.
26. On June 1, 2017, Plaintiff was at the subject property until approximately 2:30 p.m., at which time he left for the day. At 11:30 p.m. Plaintiff returned to the subject property with a money order in the amount of \$115.00 to pay his monthly rent. When Plaintiff attempted to enter the building, his key fob for the front door did not work. Plaintiff approached the on-duty security guard to inform him his key fob was not working and Plaintiff was informed he was discharged from the subject property in the morning. Plaintiff did not receive any documents nor had any discussions with any of the staff at Pursuit Homotel regarding being removed or discharged from the subject property. As it was 11:30 p.m., Plaintiff left but returned to the subject property the next day.
27. On June 2, 2017, Plaintiff had a discussion with subject property manager John Worman. Mr. Worman did not let Plaintiff back into the subject property and informed him he had been discharged.
28. The Court notes, after Plaintiff was excluded from the subject property, he received a discharge letter from Pursuit Homotel indicating he was discharged as of June 1, 2017. However, the Court notes this letter was not delivered to Plaintiff on June 1, 2017. *See Exhibit #1.*
29. After being discharged Plaintiff slept in his car for approximately 2 days, stayed with his mother for approximately 14 days, and stayed with a friend for approximately 7 days. On June 20, 2017, Plaintiff went to the Salvation Army Harbor Lights Homeless Shelter and remained there until July 7, 2017.
30. Plaintiff was excluded from the subject property for approximately 30 days.

31. No Judgment or Writ of Recovery has been entered or issued against Plaintiff for recovery of possession of the subject property. There is no court record of any eviction action filed by Defendant against Plaintiff.¹
32. The Court finds the testimony of Plaintiff to be extremely credible. Plaintiff provided the Court with clear, concise, and credible testimony which was largely supported by exhibits. Plaintiff had a very precise and vivid knowledge of the discussions between the parties.²
33. Defendants actually or constructively and unlawfully removed or excluded Plaintiff from the subject property by changing the locks so that his key fob no longer worked, in violation of Minnesota Statute 504B.375.

Abandonment

34. Abandonment requires conduct and intent, *i.e.*, both the voluntary relinquishment of possession and an intent to relinquish possession. *State v. McCoy*, 38 N.W.2d 386, 388 (Minn. 1949). Intention is essential to a determination of whether abandonment has occurred. *Rowe v. City of Minneapolis*, 51 N.W. 907, 908 (Minn. 1892).
35. The intent to abandon “need not appear by express declaration, but may be shown by acts and conduct clearly inconsistent with an intention to continue the use of the property for the purposes for which it was acquired.” *Richards Asphalt Co. v. Bunge*

¹ Plaintiff testified he was not aware of any eviction action filed against him by Defendants or of any eviction judgment entered against him. Additionally, the Court takes judicial notice of its own files and records, which are absent any record of such a filing or judgment.

² The District Court is in the best position to assess the credibility of testimony because it is able to evaluate directly the content of the testimony, the manner in which it is delivered, and the demeanor and sincerity of the witnesses through whom it is given. *See In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995) (noting that the District Court stands in a superior position to Appellate Courts in assessing credibility of witnesses). The Court of Appeals is required to give deference and due regard to the District Court’s credibility determinations. *Novack v. Nw. Airlines, Inc.*, 525 N.W.2d 592, 598 (Minn. Ct. App. 1995). When testimony is in conflict . . . the District Court must resolve the conflict and determine the weight and credit to give to the testimony. *Burman v. Burman*, 40 N.W.2d 902, 905 (Minn. 1950).

Corp. 399 N.W.2d 188, 192 (Minn. Ct. App. 1987) and *Norton v. Duluth Transfer Ry. Co.*, 151 N.W. 907, 909 (Minn. 1915).

36. The Court finds the facts of this case do not support abandonment. At the time of the lockout, Plaintiff was out of the subject property for nine hours and had substantial personal property remaining on the premises.

37. The Court therefore finds there is no justification for Defendants to believe Plaintiff abandoned the subject property and Defendants were not justified in changing the locks.

Bad Faith

38. Pursuant to Minnesota Statute 504B.231(a), “If a landlord, an agent, or other person acting under the landlord’s direction or control unlawfully and **in bad faith removes, excludes, or forcibly keeps out a tenant from residential premises**, the tenant may recover from the landlord treble damages or \$500, whichever is greater, and reasonable attorney’s fees.” *See Minn. Stat. § 504B.231(a) (2016)*. **(Emphasis added)**.

39. Bad faith is defined as a party’s refusal to fulfill some duty or contractual obligation based on an ulterior motive, not an honest mistake regarding one’s rights or duties. *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831, 837 (Minn. Ct. App. 1994), *review denied* (Minn. June 29, 1994).

40. Good faith determinations turn upon questions of fact and credibility. *McDonald v. Stonebraker*, 255 N.W.2d 827, 831 (Minn. 1977).

41. It is clear Defendants removed and excluded Plaintiff from the subject property on January 25, 2017, by changing the locks so that his key fob no longer worked.

42. Moreover, Defendants’ exclusion of Plaintiff from the subject property was unlawful because they did not resort to the judicial process to terminate Plaintiff’s leasehold interest. *Berg v. Wiley*, 264 N.W.2d 145, 151 (Minn. 1978).

43. Rather than resort to the judicial process, Defendants acted on their own to remove Plaintiff from the subject property.
44. Even after receiving the Court's Order dated June 6, 2017, which directed Defendants to restore Plaintiff to the subject property, Defendants did not do so.
45. Defendants further demonstrated their bad faith in a June 8, 2017, letter indicating they would not follow the Court's June 6, 2017, Order. *See Exhibit #2.*
46. The Court finds:
- a. Defendants actually or constructively and unlawfully removed or excluded Plaintiff from the subject property by changing the locks so that his key fob no longer worked;
 - b. There was no justification for Defendants to believe Plaintiff had abandoned the subject property;
 - c. Defendants were not justified in changing the locks so that Plaintiff's key fob no longer worked;
 - d. Defendants acted in bad faith; and
 - e. Plaintiff suffered damages.

Damages

47. Minnesota law provides that a tenant actually or constructively removed or excluded from the possession of leased premises has an action under Minnesota Statute 504B.375. Petitioner has requested relief under Minnesota Statute 504B.375, in association with Minnesota Statutes 504B.225 and 504B.231, which are the statutory sections that protect residential tenants from constructive and actual unlawful exclusions and penalize landlords who unlawfully exclude tenants from residential premises.
48. In unlawful lockouts or unlawful exclusion of property, a tenant may be entitled to the following relief under Minnesota Law: (a) treble damages or \$500.00 whichever is greater, and reasonable attorney's fees under Minnesota Statute 504B.231; and (b) a

civil penalty, actual damages and attorney's fees under Minnesota Statute 504B.271.

49. Minnesota Statute 504B.231 states:

- a. "If a landlord, an agent, or other person acting under the landlord's direction or control unlawfully and in bad faith removes, excludes, or forcibly keeps out a tenant from residential premises, the tenant may recover from the landlord treble damages or \$500, whichever is greater, and reasonable attorney's fees.
- b. The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void. The provisions of this section also apply to occupants and owners of residential real property which is the subject of a mortgage foreclosure or contract for deed cancellation and as to which the period for redemption or reinstatement of the contract has expired."
Minn. Stat. § 504B.231 (2016).

50. Plaintiff credibly testified he paid his mother a total of \$450.00 to stay at her home for 14 days and he paid a friend \$315.00 to stay at her home for 7 days.

51. Plaintiff credibly demonstrated damages in the amount of \$765.00

52. Pursuant to Minnesota Statute 504B.231, Plaintiff is entitled to \$2,295.00, which represents treble damages of \$765.00.

53. Minnesota Statute 504B.271 subdivision 2 reads, in part:

"If a landlord, an agent, or other person acting under the landlord's direction or control, in possession of a tenant's personal property, fails to allow the tenant to retake possession of the property within 24 hours after written demand by the tenant or the tenant's duly authorized representative or within 48 hours, exclusive of weekends and holidays, after written demand by the tenant or a duly authorized representative when the landlord, the landlord's agent or person acting under the

landlord's direction or control has removed and stored the personal property in accordance with subdivision 1 in a location other than the premises, the tenant shall recover from the landlord punitive damages in an amount not to exceed twice the actual damages or \$1,000, whichever is greater, in addition to actual damages and reasonable attorney's fees." *Minn. Stat. § 504B.271, subd. 2 (2016)*.

54. In the present case, no written demand was made by Plaintiff or Plaintiff's duly authorized representative.

55. Plaintiff is not entitled to a civil penalty, pursuant to Minnesota Statute 504B.271.

Attorney's Fees

56. Plaintiff's counsel is entitled to attorney's fees under Minnesota Statutes 504B.221, 504B.231, and 504B.271. Plaintiff's counsel shall file a Motion and Affidavit for attorney's fees no later than 30 days from the date of this Order.

Order

1. Plaintiff's request for relief is hereby **GRANTED**.
2. Plaintiff is hereby awarded **\$2,295.00** in treble damages, pursuant to Minnesota Statute 504B.231.
3. **ATTORNEY'S FEES:** Plaintiff's attorney will have 30 days, from the date of this Order, to motion the Court for payment of attorney's fees pursuant to Rule 119 of the Minnesota General Rules of Practice for the District Courts.
4. **COSTS:** As Plaintiff is the prevailing party, Plaintiff shall have judgment against Defendants for **\$205.50** in statutory costs, under Minnesota Statute 549.02, as well as any additional costs and disbursements allowed under Minnesota Statutes 549.02 and 549.04.

5. Defendants Brick Building, LLC, and Pursuit Hometel, Inc., shall pay Plaintiff William M. Matthews, no later than 30 days from the date of this order, the amount of **\$2,500.50** (the total sum of treble damages plus costs).
6. If Defendants Brick Building, LLC, and Pursuit Hometel, Inc., fail to pay Plaintiff William M. Matthews the total sum of \$2,500.50, then Plaintiff shall have judgment against Defendants in the amount of \$2,500.50, plus any payments made by filing an affidavit of default and identification with the Court Administrator.
7. **SERVICE OF ORDER:** The Clerk of Court shall serve a copy of this Order on the parties or their attorneys in the appropriate manner.
8. **EXHIBITS:** Parties are informed, pursuant to Rule 128 of the Minnesota General Rules of Practice for the District Courts Governing Civil Actions, it is the duty of the party offering exhibits during a trial to remove the exhibits from the custody of the Court. Parties may request the return of their exhibits 15 days after the time allowed for appeal of the final decision has passed. Failure to request removal of the exhibits could result in the exhibits being part of the public record or could result in the exhibits being destroyed by the Court.

Let Judgment Be Entered Accordingly

Recommended By:

By the Court:

Levy S. Bernhardtson

August 23, 2017

JaPaul J. Harris
District Court Referee

Judge

Judgment

I hereby certify that the above Order constitutes the entry of Judgment of the Court.

Dated: August 23, 2017

By: _____
Deputy Court Administrator