STATE OF MINNESOTA
COUNTY OF ANOKA

DISTRICT COURT
TENTH JUDICIAL DISTRICT

SOLO PROPERTY, LLC,
Plaintiff,

v.

File No. 02-CV-10-759.

[also available at 2011 WL 7272276]

ORDER GRANTING PLAINTIFF'S MOTION FOR JUDGMENT AS A MATTER OF LAW

[conformed copy]

ROGER KJELLBERG AND
ELIZABETH KJELLBERG,
Defendants.

The above-entitled matter came before the Honorable Bethany A. Fountain Lindberg, Judge of District Court, Tenth Judicial District, at the Anoka County Courthouse for a contested hearing on Plaintiff's Motion for Entry of Judgment as a Matter of Law and Other Relief, on November 22, 2011.

John Waldron, Esq. appeared on behalf of Plaintiff SOLO Property, Inc. (hereinafter "SOLO"). Loren Gross, Esq. appeared on behalf of Defendants Roger and Elizabeth Kjellberg (hereinafter "Kjellbergs").

SOLO moves for Judgment as a Matter of Law following a jury's Special Verdict rendered on September 15, 2011. Plaintiff challenges the jury's finding that SOLO did not furnish the Kjellbergs with a written statement showing the specific reasons for the withholding of the damage deposit within three weeks after termination of the tenancy. Additionally, SOLO asks the Court to grant a hearing for the determination of the attorney fees due SOLO under the parties' lease agreement. Both parties submitted their positions to the Court and made arguments. The case was taken under advisement at the close of the hearing.

Now, therefore, based on the record, arguments of counsel and all the proceedings herein, the Court makes the following:

ORDER

1. The jury's determination in QUESTION SIX of the Special Verdict Form is not supported by the facts and the law. As such, Plaintiff SOLO's Motion for Judgment as a Matter of Law is GRANTED.

a) The Court hereby finds and concludes that contrary to the jury's answer to question six of the Special Verdict Form, Plaintiff SOLO furnished Defendants Kjellberg's with a written statement showing the specific reason for the withholding of the damage deposit within three weeks after termination of the tenancy and receipt of the Kjellberg's mailing address and/or delivery instructions.

b) The above finding is consistent with the remainder of the jury's findings in the Special Verdict Form.

2. Plaintiff's request for the scheduling of a hearing to determine the award of attorneys' fees is GRANTED.

3. A hearing on attorneys' fees will be held on *February 22, 2012 at 1:30 p.m.* If this date and time does not work for either party, the party shall contact opposing counsel and the Court to reschedule.

4. SOLO shall serve its written submissions and file same with the Court no later than *February 8, 2012* or in any event, no later than fourteen (14) days before the hearing on attorneys' fees. The Kjellbergs shall serve any response and file same with the Court no later than *February 15, 2012* or in any event, no later than seven (7) days before the hearing on attorneys' fees.

5. The attached memorandum of law is incorporated herein by reference.

6. A copy of this Order shall be served upon the parties by U.S. Mail and shall constitute due and proper service of this Order.

BY THE COURT:

Dated: Dec 13, 2011

/s/

The Honorable Bethany A. Fountain Lindberg
Judge of District Court
Tenth Judicial District

MEMORANDUM

History of the Case

This matter is before the Court on Plaintiff's post-trial Motion for Entry of Judgment as a Matter of Law. The case was heard before the Court sitting with a jury on September 11, 2011 through September 15, 2011. The jury was asked to decide, by Special Verdict Form, the following:

1. Whether there was a written lease agreement between the parties;

2. If there was not a written lease, whether the Kjellbergs provided SOLO with the proper notice to terminate the lease;

3. If there was a written lease or if proper notice was not given, what amount of money SOLO was entitled to for rent, utilities and maintenance;

4. Whether the Kjellbergs left the property in the same condition it was in at the beginning of the tenancy, except for ordinary wear and tear;

5. If the property was not in the same condition, what amount of money would compensate SOLO to restore the property; and

6. Whether SOLO furnished the Kjellbergs with a written statement showing the specific reason for the withholding of the security deposit within three weeks after the termination of the tenancy.

The jury found that there was a written lease between the parties and that SOLO was entitled to $12,400.00 in unpaid rent and late fees, $664.61 in utility costs and $2,980.58 in maintenance costs. The jury also found that the Kjellberg's left the property in the same condition it was in at the start of the lease, except for ordinary wear and tear. Thus, the total amount the jury awarded SOLO was $16,045.19.

SOLO did not return the Kjellberg's $3,000.00 security deposit. This fact was undisputed and was not submitted to the jury. Therefore, taking the Special Verdict Form on its face, SOLO would be entitled to collect $13,045.19 from the Kjellbergs ($16,045.19 jury award - $3,000.00 retention of security deposit). However, the point of contention addressed in this Order surrounds the jury's answer to question six of the Special Verdict Form. The jury found that SOLO did *not* furnish the Kjellbergs with a written statement showing the specific reason for the withholding of the damage deposit within three weeks after the termination of the tenancy. If this were the case, the Kjellbergs would be entitled to the return of their security deposit plus damages (this will be discussed in detail below). This amount would be subtracted from the jury's award of $16,045.19 to reach the Kjellberg's total liability to SOLO. Judgment as a Matter of Law.

Rule 50.02 of the Minnesota Rules of Civil Procedure provides:

> If, for any reason, the court does not grant a motion for judgment as a matter of law made during trial, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. Whether or not the party has moved for judgment as a matter of law before submission of the case to the jury, a party may make or renew a request for judgment as a matter of law by serving a motion within the time specified in Rule 59 for the service of a motion for a new trial--and may alternatively request a new trial or join a motion for new trial under Rule 59.

Granting a post-trial motion for judgment as a matter of law is appropriate where a jury's verdict has no reasonable support in fact or is contrary to law. *Diesen v. Hessberg,* 455 N.W.2d 446, 452 (Minn. 1990); *Kidwell v. Sybaritic, Inc.,* 749 N.W.2d 855, 861 (Minn. App. 2008). "A trial court must view the evidence in the light most favorable to the jury verdict ... and should not grant [judgment as a matter of law] unless 'the evidence is practically conclusive against the verdict and reasonable minds can reach only one conclusion.' " *Diesen,* 455 N.W.2d at 452, *citing, Lamb v. Jordan,* 333 N.W.2d 852, 855 (Minn. 1983), and *quoting, Nadeau v. County of Ramsey,* 277 N.W.2d 520, 522 (Minn. 1979). Atrial court can set aside a special verdict where it appears the evidence cannot sustain the verdict. *Diesen,* 455 N.W.2d at 452. It has also been held that a verdict must be sustained unless "the verdict is manifestly against the entire evidence or ... the moving party is entitled to judgment as a matter of law." *Navarre v. South Washington County Schools,* 652 N.W.2d 9, 21. (Minn. 2002). A verdict will not be set aside "if it can be sustained on any reasonable theory of the evidence." *Longbehn v. Schoenrock,* 727 N.W.2d 153, 159 (Minn. App. 2007), *quoting, Pouliot v. Fitzsimmons,* 582 N.W.2d 221, 224 (Minn. 1998).

Notice of Reason for Withholding Damage Deposit

The major point of contention in this matter is the interpretation of Minnesota Statute Section 504B.178 as applied to the jury's findings on the Special Verdict Form. Minn. Stat. § 504B.178 provides, in pertinent part:

> Subd. 3. Return of security deposit.
>
> (a) Every landlord shall:
>
> (1) within three weeks after termination of the tenancy... return the deposit to the tenant, with interest thereon... *or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof.*
>
> (b) It shall be sufficient compliance with the time requirement of this subdivision if the deposit or written statement required by this subdivision is placed in the United States mail as first class mail, postage prepaid, in an envelope with a proper return address, correctly addressed according to the mailing address or delivery instructions furnished by the tenant, within the time required by this subdivision. The landlord may withhold from the deposit only amounts reasonably necessary:

> (1) to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement...
>
> Subd. 4. Damages.
>
> Any landlord who fails to:
>
> (1) provide a written statement within three weeks of termination of the tenancy... after receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, *is liable to the tenant for damages in an amount equal to the portion of the deposit withheld by the landlord and interest thereon as provided in subdivision 2, as a penalty, in addition to the portion of the deposit wrongfully withheld by the landlord and interest thereon.*

(emphasis added). In the present case, if it was found that SOLO was in violation of § 504B.178, they would be liable for the amount of the damage deposit ($3,000), plus a penalty ($3,000.00), plus interest ($190.00 as calculated by the Kjellbergs) for a total of $6,190.00. The Kjellbergs argue that this amount should offset the jury award of $16,045.19, leaving the Kjellbergs liable to SOLO in the amount of $9,885.19.

By answering "no" to question six of the Special Verdict Form, the jury found that SOLO did *not* furnish the Kjellbergs with the statement required by Minn. Stat. § 504B.178. Because of this, the Kjellbergs ask that judgment be entered against them in the amount of $9,885.19. SOLO argues that a jury's answer to question six has no reasonable support in fact or is contrary to law. *See Diesen* 455 N.W.2d at 452. In its memorandum supporting its motion, SOLO contends that,

> (given) the jury's answers to the balance of the Special Verdict Form, and the other undisputed evidence, reasonable minds could not differ as to what should be the proper answer to question six of the Special Verdict Form, namely that Plaintiff did, in fact, furnish Defendants with a written statement showing the specific reason for the withholding of the damage deposit, and that it did so in a timely manner as required...

Therefore, SOLO argues that the jury's answer to question six is incompatible with the other answers and, therefore, is erroneous. The Kjellbergs argue, on the other hand, that there was sufficient evidence presented at trial to support the jury's answer of "no" to question six.

The resolution of this issue comes down to the interpretation of the word "tenancy" in Minn. Stat. § 504B.178, subd. 3(a) (1). SOLO argues that because the jury found that a written lease agreement existed between the parties (trial Exhibit 1), the Kjellberg's tenancy did not end until March 30, 2010; therefore, the written statement from SOLO required by § 504B.178 would not be due to the Kjellbergs until three weeks *after* March 30, 2011. SOLO argues that a letter was sent to the Kjellbergs on December 2, 2009 explaining that their $3,000.00 security deposit was not being returned because while their "occupancy" had terminated, their "tenancy" had not, and they were delinquent in their November 2009 and December 2009 rents (trial Exhibit 6). SOLO argues that even if said letter did not meet the requirements of the written statement mandated by

§ 504B.178, the Complaint initiating this law suit was personally served upon the Kjellbergs on December 28, 2009 and clearly set forth the reasons why the Kjellberg's security deposit was not being returned. Therefore, SOLO argues, both the December 2, 2009 letter and the Complaint served on December 28, 2009 meet the requirements of the written statement provided § 504B.178 and were received by the Kjellbergs within the time frame prescribed by the statute.

The Kjellbergs argue that they properly gave notice to SOLO of their intention to leave the property and vacated the property by October 31, 2009, therefore, terminating their tenancy. By this reasoning, the written statement required by § 504B.178 would be due within three weeks of October 31, 2009. The Kjellbergs argue that enough evidence was presented on this point at trial to support the jury's finding that SOLO did *not* comply with the three week requirement. Further, they argue that SOLO's position of the tenancy running through March 30, 2010 is weakened by the fact that SOLO secured a new tenant to live at the property by March 1, 2010.

Tenancy

If a tenant surrenders a leased property before the lease expires and the landlord does not accept the surrender, neither the lease nor the tenant's obligations thereunder are terminated. *See Gruman v. Investors Diversified Servs.,* 78 N.W.2d 377, 380 (Minn. 1956) (holding that lessee's unilateral abandonment of premises does not terminate the lease, unless abandonment accepted by lessor). The intent necessary to rescind or terminate a lease is the same intent required to enter into one. *Donaldson v. Mona Motor Oil Co.,* 251 N.W. 272, 273 (Minn, 1933). Before a lease will be terminated, there must be an agreement between lessor and lessee that the lessee surrenders the leased premises and the lessor accepts such surrender. *Hildebrandt v. Newell,* 272 N.W. 257, 258 (1937). By voluntarily assuming a position "incompatible" with the landlord-tenant relationship, such as accepting a third party in place of a prior lessee, a landlord implicitly accepts a tenant's surrender of leased property. *Benasutti v. Coast-to-Coast,* 392 N.W.2d 695, 697 (Minn. App. 1986) (citing *Bowman v. Plumb,* 20 N.W.2d 493-94 (Minn. 1945)).

In the present case, the jury found that a written lease agreement existed between the parties. The only lease that the jury could reasonably have been referring to was the lease received at trial as Exhibit 1. This lease had a term that ended on March 30, 2010. Additionally, the evidence presented at trial showed that the Kjellbergs vacated the property by October 31, 2009, therefore surrendering it, before March 30, 2010. The evidence also showed that SOLO did not accept the Kjellbergs surrender of the property. Therefore, neither the lease nor the Kjellbergs obligations thereunder were terminated on October 31, 2011. *See Gruman,* 78 N.W.2d at 380. SOLO did not accept the Kjellberg's surrender until SOLO accepted a third party in place of the Kjellberg's lessee, thereby implicitly accepting the Kjellberg's surrender of property. *See Benasutti,* 392 N.W.2d at 697. Based on the above, the lease and the Kjellberg's obligations thereunder were not terminated until on or around March 1, 2010, when SOLO accepted a third party in place of the Kjellberg's lease. *See Gruman,* 78 N.W.2d at 380; *Benasutti,* 392 N.W.2d at 697.

Therefore, SOLO was required to provide the Kjellbergs with a written statement showing the specific reason for the withholding of the security deposit within three weeks from March 1, 2010. Minn. Stat. § 504B.178. Because SOLO provided this statement in December 2009, SOLO

was in compliance with the time frame demanded by statute.[1] *Id.* The jury's finding in question six of the Special Verdict Form holding otherwise has no reasonable support in fact and is contrary to the law. *See Diesen,* 455 N.W.2d at 452; *Kidwell,* 749 N.W.2d at 861. Therefore, SOLO's Motion for Judgment as a Matter of Law is granted.

Hearing on Attorney Fees

Fees for attorneys are generally not allowed unless: (1) a statute provides for attorney fees, (2) a contract authorizes the fees, or (3) a party has acted in bad faith. *Barr/Nelson, Inc. v. Tonto's, Inc.,* 336 N.W.2d 46 (Minn. 1983); *Midway Nat. Bank v. Gustafson,* 165 N.W.2d 218 (Minn. 1968); *Van Vickle v. C. W. Scheurer and Sons, Inc.,* 556 N.W.2d 238 (Minn. App. 1996). In the present case, the written contract between the parties, found valid by the jury, contained the following provision:

> 8. ATTORNEY'S FEES. The court may award reasonable attorney's fees and costs to the party who prevail in a lawsuit about the tenancy.

Clearly, the contract between the parties authorizes the award of reasonable attorney's fees to the prevailing party in any action involving the tenancy. Therefore, a hearing will be held on the issue of reasonable attorneys' fees.

B.A.F.L.

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[1] This Court holds that both the December 2, 2009 letter and the Complaint served upon the Kjellbergs on December 29, 2009 satisfy the written statement required by Minn. Stat. § 504B