

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Case Type:
8 - Harassment
11 – Personal Injury (Intrusion Upon Seclusion)
14 – Discrimination

Kimberly Malchow,

Court File No.: _____

Judge: _____

Plaintiff,

vs.

**AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

Harvey Tam,

Defendant.

Plaintiff Kimberly Malchow, through her counsel, Gender Justice, 550 Rice Street, Saint Paul, Minnesota, 55013, and HOME Line, 3455 Bloomington Avenue, Minneapolis, Minnesota, 55407, for her Complaint against Defendant Harvey Tam states and alleges as follows:

INTRODUCTION

This case presents an all-too-common scenario of a landlord who abuses his power, sexually harassing his female tenant and then retaliating against her when she asserts her right to be free from harassment, first by refusing to make needed repairs and then by evicting her from her home.

Like sexual harassment in the workplace, sexual harassment in housing causes great harm to its victims. Victims of harassment in housing suffer along with their families, with no place to retreat from the abuse. Low income tenants are most exposed to harassment and most vulnerable when it occurs, because they find it hard to find replacement housing, especially if the landlord carries out a threat of eviction, which goes on a tenant's record.

As nonprofit organizations focused, respectively, on gender equity and tenant rights, Gender Justice and HOME Line are deeply concerned about sexual harassment in housing. They serve as co-counsel in this action on behalf of Plaintiff Kimberly Malchow to protect her right to live safely in her home, free from any form of unlawful harassment or discrimination.

PARTIES

1. Plaintiff Kimberly Malchow is a female resident of the State of Minnesota and a former tenant of Defendant Harvey Tam.

2. Defendant Harvey Tam is a male resident of the State of Minnesota and at all relevant times was the property owner with the right to rent the property located at 6845 14th Avenue South, City of Richfield, County of Hennepin, State of Minnesota.

JURISDICTION AND VENUE

3. The District Court in the County of Hennepin, State of Minnesota, has jurisdiction over the parties and all of the claims set forth in this Complaint, pursuant to Minn. Stat. § 484.01 and Minn. Stat. § 363A.33.

4. Venue in this Court is proper pursuant to Minn. Stat. § 542.09, because the cause of action arose at Defendant's rental property located at 6845 14th Avenue South, City of Richfield, County of Hennepin, State of Minnesota.

STATUTORY BACKGROUND

5. Subdivision 1 of Minn. Stat. § 363A.09 (“The Unfair Discriminatory Practices Relating to Real Property Act”), states that it is an “unfair, discriminatory practice for an owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease any real property, or any agent...to discriminate against any person...because of...sex...in the terms, conditions or privileges of the sale, rental or lease of any real property or in the furnishing of facilities or services in connection therewith.”

6. Subdivision 13 of Minn. Stat. § 363A.03 defines discrimination because of sex to include sexual harassment.

7. Subdivision 43 of Minn. Stat. § 363A.03 defines sexual harassment to include “conduct...of a sexual nature when...submission to that conduct...is made a term or condition, either explicitly or implicitly, of obtaining...housing; or [when] that conduct...has the purpose or effect of substantially interfering with an individual’s...housing, or creating an intimidating, hostile, or offensive...housing environment.”

8. Minn. Stat. § 363A.15 (“Reprisals”) states that it is “an unfair discriminatory practice for any individual who participated in the alleged discrimination as a perpetrator...or owner, lessor, lessee, sublessee, assignee or managing agent of any real property...to intentionally engage in any reprisal against any person because that person...opposed a practice forbidden under this chapter.”

FACTS

9. In 2008, Plaintiff began renting an apartment located at 6845 14th Avenue South in Richfield, Minnesota (“the Premises”).

10. Defendant was Plaintiff’s landlord and owned the Premises.

11. Soon after Plaintiff moved in, Defendant began subjecting Plaintiff to sexually harassing comments and conduct.

12. Among other things, Defendant made constant, unwelcome comments about Plaintiff’s breasts and her “sexy body,” both directly to Plaintiff and to visitors to the Premises.

13. Defendant told Plaintiff she “needed a man from the city” and placed his hand on her upper thigh.

14. Defendant called Plaintiff repeatedly and entered the Premises multiple times per week, without any notice or basis.

15. Defendant parked his vehicle near the Premises and observed her and her visitors, often showing up on the Premises when visitors – particularly male visitors – were present.

16. On one particular occasion, Defendant came by while Plaintiff was nursing her newborn daughter. Plaintiff's father was in the apartment when Defendant used his key to enter. Plaintiff's father told Defendant three times that Plaintiff was unavailable because she was nursing. Defendant proceeded to open the bedroom door where Plaintiff was nursing her daughter. Plaintiff jumped up and stopped feeding her child immediately. Defendant stated that he just wanted to say "Hi."

17. Defendant also failed to maintain the Premises, leading to problems with ants, water in the basement, and mold.

18. Plaintiff attempted to cope with both the maintenance issues and the harassment, since her limited resources made it difficult for her to find affordable housing.

19. On or around August 1, 2010, however, Plaintiff confronted Defendant regarding the maintenance issues and the harassment.

20. Plaintiff documented this confrontation in a letter to Defendant dated August 2, 2010, noting in particular her objection to Defendant's habit of coming to the Premises without notice multiple times per week, calling her up to five times per day, and "mak[ing] sexual comments to [her]."

21. Defendant responded by evicting Plaintiff.

22. With her limited resources and with this eviction on her record, Plaintiff had great difficulty finding replacement housing. She was homeless for a number of months and was unable to live together with her children, instead having to beg friends and family for short-term accommodations for each of them. She had to consider staying in a homeless shelter. Plaintiff's parents attempted to help her, but were not in a position to do so after her father was laid off.

23. In one attempt to help, Plaintiff's parents asked Defendant about a contract for deed on the Premises, which was unoccupied. Defendant refused, but offered to rent to Plaintiff again.

24. Desperate to avoid homelessness for herself and her children, Plaintiff agreed. She planned to enroll in college and only stay in the Premises until she was able to afford other options. She hoped, further, that things would be different during a second tenancy, because Defendant had asked her to rescind her August 2, 2010 letter regarding harassment, and she had refused to do so. She hoped this underscored the objections in her letter and meant that Defendant understood that his harassment was wrong and that he would refrain from harassing her in the future.

25. But this was not the case. During Plaintiff's second tenancy the harassment recurred and worsened.

26. Defendant constantly called Plaintiff and frequently entered the Premises without notice and stayed for long periods of time.

27. Defendant attempted to monitor Plaintiff's whereabouts, driving by the property in his work vehicle and sitting in his own vehicle, parked up the street.

28. When Plaintiff had visitors, particularly male visitors, Defendant would show up and question their reason for visiting.

29. Defendant continued to make unwelcome sexual comments to Plaintiff, focused on her breasts and "sexy body."

30. Respondent also made inappropriate comments about Petitioner's then three-year-old daughter, referring to her as "sexy" and "hot," focusing on her underwear, and discussing whether she could be a contestant in a "wet T-shirt contest." Ignoring Plaintiff's strong objections, he repeatedly attempted to place Plaintiff's daughter on his lap. Plaintiff was concerned for her daughter's safety.

31. On one occasion, Defendant demanded to show Plaintiff's teenage son a YouTube video featuring young women dancers and refused to leave until they watched the video. He repeatedly commented to her son about how "sexy" and "flexible" the young woman appeared. These comments made Plaintiff and her family very uncomfortable.

32. As a response to Respondent's constant harassment, Plaintiff developed headaches, anxiety, and high blood pressure.

33. Maintenance issues also worsened significantly during Plaintiff's second tenancy.

34. Problems developed with the furnace in early 2012 but Defendant refused to repair it. Plaintiff contacted the energy company and the furnace was "red-tagged" as unsafe and unusable due to high levels of carbon monoxide emissions. Plaintiff's family suffered from related illnesses and Plaintiff believes that she miscarried a pregnancy due to carbon monoxide poisoning.

35. Defendant also failed to fix water leaks, infestation, and code violations cited by City of Richfield housing inspectors.

36. In September, 2012, during the Labor Day weekend, Plaintiff confronted Defendant about the maintenance issues and his sexually harassing conduct. She told him she could not take the harassment anymore, and that he had to stop calling her, entering the Premises, and making comments about her breasts and other sexual topics.

37. Defendant responded with a notice to vacate the property within days, and shortly thereafter filed an eviction notice action against Plaintiff. Plaintiff settled the eviction matter and moved out of the Premises by February 1, 2013.

38. On July 19, 2013, with the assistance of Mid-Minnesota Legal Aid, Plaintiff filed a charge of sex discrimination with the Minnesota Department of Human Rights.

39. On September 16, 2014, the Minnesota Department of Human Rights issued a right to sue letter, permitting Plaintiff to bring suit within 45 days.

COUNT I***Violation of Minnesota Statute § 363A.09
Unfair Discriminatory Practices Relating to Real Property***

40. Plaintiff realleges the above allegations as if hereinafter set forth in full and further states and alleges as follows:

41. The property located at 6845 14th Avenue South, Richfield, Minnesota, 55423, is real property under Minnesota Statute 363A.03, subd. 39.

42. Defendant discriminated against Plaintiff on the basis of her sex by committing numerous acts of sexual harassment, including controlling and intrusive behaviors, repeated unwelcome sexual comments, unwelcome touching, and sexualized interactions with Plaintiff's children. These actions created a hostile environment in Plaintiff's home and limited her full use of the rental dwelling.

43. Defendant's discriminatory actions violated Subdivision 1 of Minnesota Statute § 363A.09.

44. As a result, Plaintiff was damaged in an amount in excess of \$50,000.

COUNT II***Violation of Minnesota Statute § 363A.15
Freedom from Reprisal***

45. Plaintiff realleges the foregoing paragraphs as though fully set forth herein, and further states and alleges as follows:

46. The property located at 6845 14th Avenue South, Minneapolis, MN is real property under Minn. Stat. § 363A.03, subd. 39.

47. Plaintiff opposed discrimination forbidden under Chapter 363A of the Minnesota Statutes when she refused Defendant's repeated sexual advances and stated that his harassing behavior was wrong and had to stop.

48. Defendant took reprisal against Plaintiff when he refused to properly maintain the property and when he evicted her.

49. Defendant's actions violated Minnesota Statute § 363A.15.

50. As a result, Plaintiff is damaged in an amount in excess of \$50,000.

COUNT III

Common Law – Privacy Claim – Intrusion Upon Seclusion

51. Plaintiff realleges the foregoing paragraphs as though fully set forth herein, and further states and alleges as follows:

52. Defendant intentionally entered Plaintiff's bedroom for the purpose of viewing Plaintiff while her breasts were exposed. Defendant was repeatedly told that Plaintiff was not available because she was nursing her infant daughter. Defendant ignored those statements and proceeded to enter the bedroom where Plaintiff was trying to keep her body private.

53. Neither Plaintiff nor her father gave permission to the Defendant to enter the Plaintiff's apartment or Plaintiff's bedroom. Defendant proceeded without Plaintiff's knowledge or consent.

54. As a result, Plaintiff is damaged in an amount in excess of \$50,000.

RELIEF REQUESTED

Plaintiff respectfully requests that this Court enter judgment against Defendant and award the following relief:

1. Declare that the Defendant's actions violate the Minnesota Human Rights Act, Minnesota Statute §§ 363A.09, 363A.15.

2. Declare that Defendant's actions were intentional, willful, and malicious.

3. Enjoin and restrain Defendant, his agents, employees, successors, and all others acting in concert with him, from discriminating on the basis of sex through limiting the full use and privileges of the rental dwelling.

4. Order Defendant take such affirmative steps as may be necessary to restore, as nearly as practicable, Plaintiff to the position she would have been in but for the discriminatory conduct.

5. Order Defendant to take affirmative action to prevent the reoccurrence of the discriminatory conduct in the future and to eliminate, to the extent possible, the effects of his unlawful practices.

6. Award ordinary and statutory damages, punitive damages where available, and other relief as cited by the statutes herein, including treble damages where appropriate.

7. Award pre-judgment and post-judgment interest on such monetary relief.

8. Award the costs of bringing this suit, including reasonable attorney's fees and costs where allowed by law.

9. Award all other relief to which Plaintiff may be entitled which the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial in this action.

Dated: December 10, 2014

GENDER JUSTICE

s/ Jill R. Gaulding
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HOME Line

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Counsel for Plaintiff

ACKNOWLEDGMENT

Pursuant to Minn. Stat. 549.211, the undersigned acknowledges that sanctions may be imposed under Minn. Stat. 549.211, subd. 2, that costs, disbursements, and reasonable attorney and witness fees may be awarded to the opposing party or parties in this litigation if the Court should find that the undersigned acted in bad faith, asserted a claim or defense that is frivolous and that is costly to the other party, asserted an unfounded position solely to delay the ordinary course of the proceedings or to harass, or committed a fraud upon the Court.

Dated: October 30, 2014

s/ Jill R. Gaulding