

STATE OF MINNESOTA

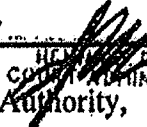
FILED

DISTRICT COURT

COUNTY OF HENNEPIN

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FOURTH JUDICIAL DISTRICT

BY  DEPUTY
HENNEPIN DISTRICT
COURT ADMINISTRATOR

Minneapolis Public Housing Authority,

MNCIS No. 27 CV HC 13-4766

Plaintiff,

ORDER

v.



Defendant.

On May 29, 2014, this matter was before the Court pursuant to the Defendant's motion to review the May 2, 2014, Referee's Order denying the Defendant's motion to expunge. Elizabeth Grossman, Esq. appeared for the Plaintiff. The Defendant appeared pro se. The Court is reversing the Referee's Order and remanding this case to Housing Court with directions to re-open the record so that the Defendant can present additional evidence in support of her motion to expunge.

On August 14, 2013, the Plaintiff brought this eviction action alleging failure to pay rent for July and August 2013. On August 28, 2013, at the first appearance, the parties entered into a settlement agreement calling for the Defendant to pay rent for July through September (\$987.00) by September 6, 2013, and "court fee[s]" (\$354.00) by December 6, 2013. The Defendant made these payments when due. She still occupies the premises.

On April 4, 2014, the Defendant filed a motion to expunge the eviction action using a form described as "LASM Form No. Exp-1 (April 2009)." The form contains

checkboxes for three separate grounds for expungement: 1) statutory expungement under Minn. Stat. § 484.014, subd. 2 (discretionary); 2) statutory expungement under Minn. Stat. § 484.014, subd. 3 (mandatory); and, 3) common law, inherent authority expungement.

In her motion, the only basis for expungement alleged by the Defendant was common law, inherent authority. In support of her motion, the Defendant said:

I still live at this property. I paid the full debt I agreed to pay in the settlement (Ex. A). I want to move out of public housing and to a safer area but the record of this case makes it difficult to find housing. I have a child with ADHD and autism. I want to provide a safe home for my daughter and this case is making it hard to do that.

On May 1, 2014, a hearing on the Defendant's motion was held before a Housing Court Referee. The Plaintiff appeared through an agent, Nancy Horan, and the Defendant appeared pro se. The bulk of the hearing was devoted to whether the Defendant had properly served the Plaintiff. This exchange then occurred:

COURT: So, ma'am, I have reviewed your petition.

MS. [REDACTED]: Yes.

COURT: And is there anything else you'd like to add?

MS. [REDACTED]: No.

The Referee then asked Ms. Horan if she had anything to say. Ms. Horan responded that the eviction action was filed in good faith because the Defendant was two months late on rent. The Defendant responded that she paid the rent and late fees in good faith and she wants to be able to move out of the property. The Referee took the matter under advisement.

The next day, May 2, 2014, the Referee issued his Order denying the Defendant's expungement motion. Citing Minn. Stat. § 484.014, subd. 2, the Referee said that because non-payment of rent is a sufficient basis to bring an eviction action and because there was a factual basis to the Plaintiff's claim (presumed by the Referee because the Defendant settled her case by agreeing to pay rent and late fees), there was no statutory basis for expungement.

The Referee's Order must be reversed because the Defendant did not allege a statutory basis for expungement. She only alleged a common law, inherent authority basis. The Referee must issue a new Order that responds to the Defendant's motion.

In addition to reversing the Order, the Court is directing the Referee to re-open the expungement motion hearing to allow the Defendant to present additional evidence in support of her inherent authority claim.

With respect to inherent authority, the Court notes that at the hearing on the Defendant's motion for review, Plaintiff's counsel questioned whether a court's inherent authority to seal its records applied to housing court records. There should be no such question.

In *Minneapolis Star & Tribune Co. v. Schumacher*, the Minnesota Supreme Court recognized the court's inherent authority to seal its records in civil cases. 392 N.W.2d 197 (Minn. 1986). Acknowledging the common law right of access to inspect civil court records, the Court said:

The common law right of access, however, is not absolute. [Citing *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598, 98 S.Ct. 1306, 1312 (1977).] "Every court has supervisory power

over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.” *Id.* A balancing test is applied to determine whose interests should prevail. Those interests supporting access, including the presumption in favor of access, are balanced against the interests asserted for denying access.

392 N.W.2d at 202-203. In *Schumacher*, the Court affirmed a district court’s order sealing civil court settlement records (and transcripts of public hearings relating to the settlement) on the grounds that the privacy interests of victims of an airplane crash together with the financial interests of a commercial airliner were sufficient to overcome a presumption of public access. *Schumacher* has been applied to seal family court records. See *Anderson v. Anderson*, 2012 WL 3641293 (Minn.App. Aug. 27, 2012) (unpublished), *review denied* (Minn. Oct. 24, 2012). The court’s inherent authority to seal criminal court records has long been recognized. See *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981). This Court can discern no principled reason why the court’s inherent authority to seal its own records should not apply to housing court records.

If the Defendant appears pro se at a re-opened hearing, the Referee may assist the Defendant in establishing facts relevant to her inherent authority claim.¹ Relevant factual issues include: 1) how long the Defendant resided at the Plaintiff’s premises, 2) the Defendant’s history of timely rent payments to the Plaintiff and other landlords, 3) the Defendant’s reasons for any failures to make timely rent payments, 4) whether there have

¹ “Where a litigant represents himself, the court in the interest of fair determination of the merits should ask such questions and suggest the production of such evidence as may be necessary to supplement or clarify the litigant’s presentation of the case.” *ABA Standards Relating to Trial Courts as Amended* § 2.23 (1987) (Chief Justice Douglas Amdahl, Chair, Judicial Administration Division, Committee on Standards of Judicial Administration).

been other eviction actions filed against the Defendant by this Plaintiff or by any other landlord (including eviction actions that have been expunged), and 5) any injustices that may arise from the housing market's likely treatment of the Defendant as a result of this action being a matter of public record.

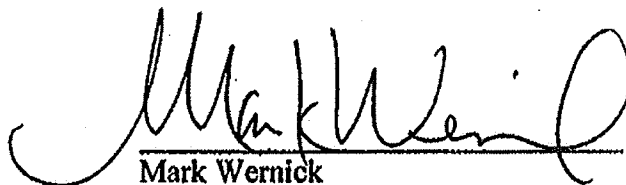
Finally, if the Referee denies the Defendant's expungement motion, the denial should be without prejudice. The passage of time could change the balance of equities.

Based on the foregoing, the Court makes the following,

ORDER

1. The Referee's Order dated May 2, 2014, is REVERSED.
2. The Referee must re-open the hearing on the Defendant's expungement motion to allow the Defendant to offer additional evidence regarding whether the Court should exercise its inherent authority to expunge this eviction action.

Dated: June 2, 2014


Mark Wernick
Judge of District Court

Judgment
I hereby certify that the above Order
constitutes the entire judgment of the Court.
Dated: 6-2-14
Court Administrator
By: [Signature] Deputy

Copies given to Plaintiff _____
Defendant _____ Date 6/2/14
By [Signature] Mailed 1A & 1B
reserved