FILED
OCT 17 2023
JOAN M. GILMER
CIRCUIT CLERK; ST. LOUIS COUNTY

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

ERIC A. GARLAND Plaintiff,	)	
v.	)	Case No. 23SL-AC24108
AAMINA AKHTAR, et al.	)	

PLAINTIFF'S SUGGESTIONS IN OPPOSITION TO DEFENDANTS AKHTAR AND UMMER'S MOTION TO DISMISS

Plaintiff Eric A. Garland, *pro se,* hereby prays that this Court deny Defendants Akhtar and Ummer's Motion to Dismiss and states the following to the Court in support thereof:

INTRODUCTION

On or about October 9, 2023, approximately thirty-seven (37) days after being served with a summons, Defendants Akhtar and Ummer ("Defendants") filed their Motion to Dismiss. Defendants assert that Plaintiff failed to state a claim on which this Court could grant relief due to his failure to attach a copy of the lease to rent their property at 1933 Meadowtree Lane, Kirkwood, Missouri ("Property") and his failure to demonstrate his performance as a party to said contract.

On or about October 12, 2023, Plaintiff filed an amended petition to which two contracts were attached. Said two contracts have been the basis of Plaintiff's continuous

tenancy in Defendants' Property since 2015 and 2019, respectively. Plaintiff's amended petition recites directly from the contracts and alleges Defendants' failure to perform maintenance explicitly required under said contracts. That Plaintiff has performed his side of the contract should be inferred, for the purpose of dismissal under Rule 55.27(a)(6), by his alleged continued tenancy of eight years.

Accordingly, this Court should deny Defendants Akhtar and Ummer's Motion to Dismiss.

LEGAL STANDARD

Rule 55.27(a)(6) encourages early resolutions in order to avoid the expense and delay of baseless claims and to promote judicial efficiency. *Town v. Hart*, 244 S.W.3d 187, 189 (Mo. Ct. App. 2008). "When considering whether a petition fails to state a claim upon which relief can be granted, this Court must accept all properly pleaded facts as true, giving the pleadings their broadest intendment, and construe all allegations favorably to the pleader." *Bromwell v. Nixon*, 361 S.W.3d 393, 398 (Mo. 2012). "When considering whether a petition fails to state a claim upon which relief can be granted, we review the petition 'in an almost academic manner, to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case." *Dibrill v. Normandy Assocs., Inc.*, 383 S.W.3d 77, 83 (Mo. Ct. App. 2012).

ARGUMENT

I. Plaintiff has filed an amended petition which recites directly from the contracts to which Akhtar and Ummer are counterparties as owners of the Property.

On or about October 12, 2023, Plaintiff filed an amended petition to which two contracts were attached. As alleged, Defendants are the owners of the Property. They are parties to the contract because the counterparties listed as agents, Jean Lake Properties LLC and AMOSO, respectively, acted as agents of Defendants. Thus, Defendants are not released from liability due to their breach of contract. See *Abbott v. Epic Landscape Prods., L.C.*, 361 S.W.3d 13 (Mo. Ct. App. 2012). Plaintiff alleges that Akhtar and Ummer are, as landlords, in breach of contract because they have failed to complete necessary repairs to the Property. Thus, Plaintiff has stated a claim on which this Court can grant relief.

II. Plaintiff alleged that he has paid rent since 2015, and thus has performed pursuant to the lease.

Defendants assert that Plaintiff has failed to allege that he performed or tendered performance pursuant to a contract, and thus failed to state a claim on which relief can be granted, citing to *Jennings v. SSM Health Care St. Louis*, 355 S.W.3d 526, 531 (Mo. Ct. App. 2011). On the contrary, Plaintiff alleged that he performed pursuant to the lease from 2015 until 2023.

As alleged, Plaintiff has been a tenant at the Property since 2015. Plaintiff alleged that he owed no rent as of August 30, 2023. Plaintiff paid $1650.00 per month pursuant to

the contract through Jean Lake Properties LLC between 2015 and 2019. Plaintiff paid $1710.00 per month pursuant to the contract through AMOSO between 2019 and the present. As such, Plaintiff has paid Defendants in excess of $150,000 since 2015 pursuant to the contracts. He has, as such, allegedly performed pursuant to the lease for eight years. Their assertion that Plaintiff failed to properly plead this fact is frivolous.

III. Defendants' assertion that they are not parties to the lease of their property is absurd.

Defendants, like their business partners Seth Reeder and West End Management, assert that they are not parties to the contract for the rental of the property they are alleged to own. "Plaintiff fails to plead any facts that he entered into a contract with Defendants Dr. Aamina Akhtar, M.D. and Vijoy Ummer."

As alleged, Defendants are owners of the Property according to the St. Louis County Assessor. Further, Defendants have had a number of agents through which they have leased their Property to Plaintiff for the past eight years. Moreover, they are alleged to demand access to the Property on twenty-four hours notice.

For the purposes of dismissal, Defendants should be assumed to be the landlords of the Property they allegedly own.

CONCLUSION

Defendants Aamina Akhtar and Vijoy Ummer have been in a contractual relationship with Plaintiff since 2015. They are required under the lease of the Property at

1933 Meadowtree Lane to provide reasonable repairs due to wear and tear. They are required under both the lease and the ordinances of the city of Kirkwood not to neglect repairs so recklessly that their Property becomes dangerous for its occupants and a nuisance to the city. They have breached their contract with Plaintiff for years. Their breach has resulted in damages to Plaintiff.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully prays that this Court DENY Defendants Akhtar and Ummer's Motion to Dismiss, and for such other and further relief as it deems meet and proper in the premises.

Respectfully submitted,

ERIC A. GARLAND

/s/ Eric A. Garland

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