COMMONWEALTH OF MASSACHUSETTS TRIAL COURT

Hampden, ss:

HOUSING COURT DEPARTMENT

WESTERN DIVISION

CASE NO. [redacted]

ELMIR SIMOV.

Plaintiff,

v.

[redacted]

Defendants

10-29-21

MOTION TO RECONSIDER AND MODIFY ORDER

Definitions: "*De minimis*" means "too trivial or minor" according to the Oxford dictionary.

Judge Fields,

I understand your concern about the tenants privacy rights when you say that the Tenant is not "obligated to share" the National Grid information. However, that needs to be balanced out with the fundamental rights of the Landlord to enter and make repairs and improvements, in this case weatherize his building and with the State's public policy and interest to insulate buildings in order to combat Global Warming – an urgent environmental issue. Is the sharing of National Grid information with MassSave possibly a *de minimis* invasion of privacy? Sure. But that's part of the tenant-landlord relationship. There are many instances where the tenant has to sacrifice a little bit of privacy in order to qualify to be a tenant or in order to remain in good standing as a tenant. Providing full names, address, credit report, pay stubs, rental history information or allowing the landlord to enter to inspect are some examples that come to mind. A much bigger invasion of privacy is to be asked to provide her SSN and

DOB and since she has been a tenant for 15 years, I have had that information for that long without any issues. The Lease is clear – the tenant must cooperate with management of the property and with improvements and repairs. The request to share her National Grid number with an Agent of National Grid (the MassSave Contractor) is not unreasonable, capricious or personal. It's done in the normal course of business. Also as proof that this is a *de minimis* inconvenience and invasion of privacy is the fact that my other 44 tenants have already provided that information and their buildings have already been weatherized.

As far as it being ok for the tenant to violate the lease as long as the violation is *de minimis*, my lease has a clause that specifies that every lease violation is of material nature, in other words there are no *de minimis* violations. A judge can certainly void a clause if it's illegal or unfair or fraudulent or shocking the conscience and in some other limited cases but in all other cases the Lease is a contract which should be enforced. Otherwise it throws the whole contract law up in the air. I looked up the *Father Walter Martin* case but the statement about "the courts in MA" finding that if the breach is *de minimis* "the tenant's rights would not be terminated by forfeiture" is just a statement without any substantiation because it doesn't mention which courts and which cases. I also read the *Chestnut Park Associates* case mentioned in the 2021-10-20 Order. This case doesn't apply here because it's a Section 8 case having to prove "good cause" in order to evict. The good cause doctrine does not apply to residential landlords like me in MA. Not yet, anyway. So if the Lease says that all violations are material, they all are regardless how minor they appear.

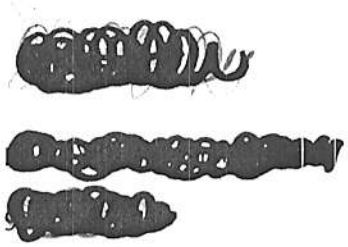
1. I am asking the court to compel the tenant to provide the information required by MassSave because her invasion of privacy is *de minimis* compared to the fundamental right of the landlord to repair and improve his property and compared to the Public's interest to combat Global Warming by weatherizing buildings in MA. Her not sharing that information with MassSave is de facto preventing me from insulating my building with MassSave. That's a big deal and it's an odd result. It is also against the Public's interest. If I cannot work with MassSave in order to insulate for free I have to hire a private company at about $20,000 and that's not practical and it's a non-starter which means the building will remain uninsulated which is not much of a problem for me because tenants pay all utilities but it comes with a negative environmental impact so it's not in the Public's interest.

2. I am asking the Court to remind the tenant that she can only remain in good standing if she allows access upon reasonable notice because otherwise she would be in violation of the Lease and the landlord-tenant law. Her exact text message to me is "we don't have to let anyone in during a pandemic." As part of this project I had asked for her to allow access to me and my electrician to inspect and possibly remove any old knob and tube wiring. She did not agree to allow access and that's a fire hazard issue.

3. I am asking the Court to remind the tenant that she needs to promptly reply to my texts and to keep lines of communication open. Even since I started these proceedings against her she has gone full silence by fully ignoring my texts or calls and that's dangerous. A landlord needs to be able to communicate with a tenant if the tenant is to remain in good standing – maybe I need to schedule an upcoming Fire or Town inspection or maybe I need to address a neighbor's complaint or a fire or flood issue. It could be life and death.

I don't want to evict this tenant but only if she follows the landlord-tenant law and the Lease contract when it comes to cooperation for repairs, allowing access and maintaining open lines of communication, among other things. If she doesn't follow the Lease, then I want her out so that I can find someone who would.

Elmir Simov, Plaintiff



This Motion was filed on EfileMA on 10-29-21 and mailed to Defendants on 10-30-21