APPENDIX SC

OTHER DEFENSES SILVER CREST COULD HAVE RAISED BESIDES A SUCCESSOR'S LACK OF STANDING UNDER MINN. STAT. § 504.20, SUBD. 7

In district court, Silver Crest raised only one defense against Townridge's security-deposit claims – that a successor has no standing under Minn. Stat. § 504.20, subd. 7. Silver Crest ultimately won on appeal so its strategy was vindicated. However, I wonder if it overlooked some issues.

First, Townridge's complaint alleged that Silver Crest's delay in returning deposits to the tenants cost Townridge money because Townridge had to pay some exiting tenants their security deposits. This allegation was not based on subdivision 7 of § 504.20 but on subdivision 5. Silver Crest offered no defense to this claim. On the other hand, Townridge forwarded no evidence of the amounts it paid to exiting tenants; when it won the other issues on summary judgment it seems to have waived these subdivision 5 claims. Both sides apparently bypassed this issue.

Second, even if Townridge had standing under subdivision 7, that did not ensure a judgment for the full $11,600 = $200/deposit x 58 deposits. Subdivision 7 afforded an amount not to exceed $200 per deposit. Neither side presented any evidence or argument about whether Townridge deserved $200 or 1¢ or some amount in-between per deposit. Indeed, the district court also ignored this question, giving no reason why it picked $200.

Third, even if Townridge had standing under subdivision 7, that did not prove bad faith. Given that Silver Crest held onto the deposits for 144 days after June 8 and 68 days after being served with the Summons and Complaint, the presumption of bad faith set out in the second sentence of subdivision 7 was in play. Since Silver Crest produced no evidence on the issue, the district court rightly ruled that Silver Crest was in bad faith as a matter of law.

What if Silver Crest had produced evidence? Could Silver Crest have overcome the presumption? The record suggests Silver Crest was just being obstinate, so perhaps not. The appellate appendix includes a letter in which Silver Crest said it needed to get a loan to refund deposits and when it got the loan it would do so.[1] I don't think that is a valid indicator of good faith. Silver Crest should not have needed a loan because under Minn. Stat. § 504.20, subd. 2 it was required to have "held …the deposit[s] for the tenant[s]". *Nat'l Corp. for Housing Partnership v. Liberty State Bank,* 836 F.2d 433 (8th Cir.

[1] Appellant's Appendix at A-98.

1988)(deposits belong to the tenants and are not available to the landlord to spend or assign).

What if Silver Crest refunded the deposits by September 5, 1996 (two weeks after service of the Summons and Complaint)? Could Townridge have proved bad faith? Without more information, probably obtained in discovery, it is hard to know how a trial would have come out.

Also, who would have decided the whether Silver Crest overcame the presumption? Townridge's Complaint did not demand a jury trial so any trial would have been to the court. However, in another case would the jury, as the finder of fact, decide whether a predecessor retained deposits in bad faith? If the jury found bad faith, would it also decide how much to award per deposit? No Minnesota appellate court has faced this issue and I suspect neither has any Minnesota district court.