Filed in District Court
State of Minnesota
03/06/2025

STATE OF MINNESOTA **IN DISTRICT COURT**

COUNTY OF OTTER TAIL **SEVENTH JUDICIAL DISTRICT**

Stephen Roy Svendsen,

Plaintiff,

vs.

Pamela Joy Minten, Ken Laney, Mikel Bruce Olson, Fergus Falls HRA, Christopher Harold Harig, Ryan Muchow, and City of Fergus Falls,

Defendants.

ORDER AND MEMORANDUM GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTIONS TO DISMISS

Court File No.: 56-CV-24-1426.

On December 9, 2024, the above-entitled matter came on before the undersigned Judge of District Court, remotely via Zoom, and at the Otter Tail County Courthouse, in Fergus Falls, Minnesota, for a Motion Hearing. Plaintiff appeared on his own behalf. Attorney Kendra Olson appeared on behalf of the City Defendants. Attorney Mackenzie Hertz appeared on behalf of the HRA Defendants. The parties submitted briefing in advance of hearing, and the Court accepted all briefing as timely. Based on the motions, the memoranda, the pleadings and attachments, the arguments of counsel, and the applicable law, the Court now makes the following:

ORDER

IT IS HEREBY ORDERED THAT:

1. The HRA Defendants' Motion to Dismiss is **GRANTED IN PART** and **DENIED IN PART**. The City Defendants' Motion to Dismiss is **GRANTED**. Specifically, Plaintiff's Amended Complaint is **DISMISSED**, with the exception of those parts of Count I identified in the following memorandum.

2. The Fergus Falls HRA shall serve and file its responsive pleading to Count I of the Amended Complaint within 14 days of the date of service of the Notice of Filing of this Order. *See* Minn. R. Civ. P. 12.01.
3. Plaintiff's motions are **DENIED** as moot.
4. Pursuant to Minn. R. Civ. P. 54.02, this is an interlocutory order.
5. The attached **MEMORANDUM** is incorporated by reference herein.

Dated this 6th day of March, 2025

BY THE COURT:



Court File No. 56-CV-24-1426

Honorable Kevin M. Miller
Judge of District Court

MINNESOTA JUDICIAL BRANCH

MEMORANDUM

Plaintiff, a self-represented litigant, filed this lawsuit against the Fergus Falls Housing and Redevelopment Authority (HRA), the City of Fergus Falls, and employees of each of them. He asserts claims for breach of contract, defamation, tenant-rights violations, negligence, and various claims derivative of these. The crux of his complaint is that the HRA declined to renew his lease, alleging that he had harassed its employees and tenants in violation of the lease terms. He also alleges that City employees either failed to keep proper records, or else destroyed or concealed records. And he draws a multitude of supposed connections between these events. Defendants now brings motions to dismiss the Amended Complaint for failure to state any viable claim. The Court substantially narrows the claims at issue.

Facts

For purposes of these motions to dismiss, the Court accepts the facts contained in the Amended Complaint as true. The Amended Complaint is more than one-hundred-fifty pages in length, with more than sixty attachments, comprising more than three-hundred pages.[1] A summary of the relevant factual allegations alleged in the Amended Complaint follows.

1. The Parties

Stephen Roy Svendsen (hereafter "Plaintiff") leased subsidized rental units from the Fergus Falls Housing and Redevelopment Authority (hereinafter the "HRA"). He lived in Unit 606 of Riverview Heights, located at 205 North Sheridan Street, Fergus Falls, Minnesota, from February 1, 2018 through December 3, 2021. He then relocated to Unit 401, where he lived until

[1] *But see* Minn. R. Civ. P. 8.01 (A complaint shall consist of "a *short* and *plain* statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." (emphasis added)).

June 4, 2023. Riverview Heights offers low-income subsidized housing for the elderly or disabled. Since departing Riverview Heights, Plaintiff has resided in Moab, Utah. (Compl. ¶ 7)[2]

A number of the Defendants in this case were employees of the HRA during the events underlying this case. Defendant Pamela Joy Minten (hereinafter "Housing Manager Minten") was the on-site manager of Plaintiff's building. Defendant Ken Laney (hereinafter "Caretaker Laney") was the on-site caretaker of Plaintiff's building. Defendant Mikel Bruce Olson (hereinafter "Director Olson") was the Executive Director of the HRA. The HRA, Housing Manager Minten, Caretaker Laney, and Director Olson are, collectively, the "HRA Defendants."

Also named as Defendants in this case are parties associated with the Fergus Falls Fire Department (hereinafter the "Fire Department"). These include Defendant the City of Fergus Falls (hereinafter the "City"), Defendant Christoper Harold Harig (hereinafter "Chief Inspector Harig"), and Defendant Ryan Muchow (hereinafter "Fire Chief Muchow"). The City, Chief Inspector Harig, and Fire Chief Muchow are, collectively, the "City Defendants."

2. The Lease

As relevant to the events here, the Lease governing Plaintiff's tenancy with the HRA was signed on December 5, 2021, concurrent with Plaintiff's move from one unit to another. The Lease provided that the HRA would comply with all applicable United States Department of Housing and Urban Development (HUD) regulations. (Ex. 1, at *11)[3] Specifically, the Lease provided that the HRA could not "terminate or refuse to renew the Lease other than for serious

[2] Citations to "Compl." refer to the Amended Complaint, found at Doc. 36.

[3] Exhibits to the Amended Complaint are cited by the page number within the PDF containing them, rather than by the internal pagination of the exhibit. Exhibits 1-9 are found at Doc. 2. Exhibits 10-63 are found at Doc. 39.

or repeated violation of material terms of the Lease," such as "[f]ailure to abide by necessary and reasonable rules made by the Landlord for the benefit and wellbeing of the housing development and the Residents." (Id. at *13) One rule contained in the Lease provided that a resident would not "act in a matter that will disturb the rights or comfort of neighbors." (Id. at *7) Additional house rules were also subject to change and posting. (Id. at *17-18) If the HRA wished to terminate the tenancy, it was required to provide a "written notice of the proposed termination," and that notice was required to comply with certain HUD guidelines. (Id. at *15) The Lease contained a one-strike-and-you're-out policy. (Id. at *18)

3. Plaintiff's Difficulties with Neighbors and Staff

Plaintiff's Amended Complaint paints the portrait of a tenant who had recurring issues. In the words of Housing Manager Minten, "[Plaintiff] has been a difficult tenant." (Ex. 63, ¶ 6) "He frequently complains about and confronts other tenants." (Id.) "He regularly is upset over minor and harmless behavior by his neighbors or other individuals in or near the building." (Id.)

For instance, while he was in his original unit, he made repeated noise complaints about a neighbor's dog. On February 17, 2021, Plaintiff and Housing Manager Minten exchanged emails about a dog barking in Unit 501. (Ex. 47, at *188-90) Over the weekend of February 20, 2021, Plaintiff complained about a dog barking in the unit. (Ex. 10) On February 22, 2021, Housing Manager Minten advised him to call law enforcement if it continued to be a problem. (Id.) Another exchange regarding the dog occurred on February 24, 2021, in which Housing Manager Minten noted that no one else was complaining about the dog. (Ex. 47, at *194-97) Plaintiff contacted law enforcement on February 25, 2021. (Ex. 11) An officer came to the building and attempted to contact the other resident. (Id.) She urged Plaintiff to relate the problem to property

management. (Id.) Plaintiff made additional noise complaints to law enforcement in March 2021, which he relayed to Housing Manager Minten. (Ex. 13) The City Attorney ultimately brought noise charges against the neighbor for an incident on February 13, 2021. (Ex. 12) Additionally, Plaintiff was ultimately moved to another unit.

On a prior occasion, Plaintiff had complained of "harassment" regarding "Black Lives Matter" and "ANTIFA" (Ex. 47, at *166-167); after which he made, then withdrew (Id. at *170) a request for an accommodation, alleging harassment by a neighbor (Id. at *184), including "stalking" (Id. at *186) by "BLM + Antifa members or their functionaries," (Id. at *187) which "the police have told me it is not against the law." (Id. at *170) He also made vague complaints about community members glaring at him. (Id. at *204-08)

Plaintiff's difficulties extended to contractors performing work for Riverview Heights. On October 13, 2021, he exchanged emails with Housing Manager Minten, in which he complained about contractors working after business hours, and in which he disparaged the contractors. (Ex. 47, at *240-41) Housing Manager Minten wrote a memo to file documenting that she and Caretaker Laney:

> were in contact with Kevin Jarhardsen regarding [Plaintiff] approaching Kevin and his employee about working after 4:30 and making loud noises while working in the apartment above him. [Plaintiff] told them that the noise level was way too loud and inconsiderate to the tenants.
>
> [Caretaker Laney] reported to me that Kevin's employee took the items that he needed into the unit and locked the door because [Plaintiff] had been opening the door and walking in telling him he was making too much noise and wondering how long he was going to be. [Plaintiff] continued knocking on the door multiple times telling him that the noise was too loud through the time he was there.

> When [Caretaker Laney] and [Housing Manager Minten] talked with [Plaintiff], he told [them] that the decibel levels were too high and that all tenants should be notified when work is being done at that level.

(Ex. 47, at *242)

4. Plaintiff's Conflict with the Tenant of Unit 403

Plaintiff's primary conflict with other tenants and staff revolved around Ross Steen (hereinafter "Co-Tenant Steen"), the tenant in Unit 403, near the second unit Plaintiff occupied. Plaintiff explains in his Amended Complaint that he is a self-identified Fundamentalist Christian. He asserts that Co-Tenant Steen is an Animist or practitioner of Witchcraft who "believed he was visited and/or inhabited by a Raven Spirit." (Compl. ¶ 157) Plaintiff's dislike for Co-Tenant Steen and his purported religion is quite apparent from the Amended Complaint.

The HRA was brought into this conflict when Co-Tenant Steen started putting up decorations of a purportedly religious nature. On June 18, 2021, Plaintiff emailed Housing Manager Minten to complain that someone had placed items on the fourth-floor lobby table display. (Ex. 14) An attached photograph showed a small ornament featuring a black feather and dried maple leaves placed on the table, along with a yellow rubber duckie. (Id.) Housing Manager Minten replied that she was "not really sure why you are having an issue with the items on the table" but that she would "have them move it down to the community room on one of the tables there." (Ex. 47, at *220) Later the same day, Plaintiff again emailed Housing Manager to complain further. (Ex. 15) An attached photograph showed that the table now contained a note saying "Don't you like me anymor[e] \ Little Rubber Duck." (Ex. 47, at *216-20)

On July 1, 2021, Plaintiff again emailed to complain that the matter "continues to spiral out of control." (Ex. 16) He attached a photograph of a doorway with small ice cream containers

on either side. (Id.) On one container was a Big Mouth Billy Bass. (Id.) The email stated that the other container contained "bones." (Id.) The Amended Complaint provides the further detail that it was "a raven standing over chicken or perhaps duck bones." (Compl. ¶ 157) Plaintiff characterized both ice cream pales as "shrine[s]." (Ex. 16) On July 1, 2021, Plaintiff contacted the Fire Department to report the 'shrines' as fire hazards. A Fire Department employee, Fire Inspector Dean Olson, visited on July 2, 2021. (Compl. ¶ 36) On July 2, 2021, HRA posted a notice to residents not to put items, such as rugs and figurines, outside their apartments in the hallways, as these could be tripping hazards. (Ex. 7) Plaintiff alleges that it was Housing Manager Minten who removed the 'shrines' on July 2, 2021, and that she did so "to cover up her violations" of the fire code "after the materials had remained up for 11 days." (Compl. ¶ 14.C)

It is abundantly clear from attachments to the Amended Complaint both: (1) that the decorations Plaintiff complained about were *not* fire hazards, and (2) that Plaintiff had objections to them, unrelated to physical safety, based on his perception of their non-Christian religious meaning. Indeed, the Amended Complaint alleges that Housing Manager "Minten understood the religion[s] of [Plaintiff] and [Co-Tenant] Steen and that there was a conflict that was of a religious nature taking place." (Compl. ¶ 14) Indeed, Plaintiff alleges that, by remaining neutral and failing to preferentially restrict Co-Tenant Steen's religious expression, the HRA created a "hostile religious environment" (Compl. ¶ 50.A) that "showed preferential treatment to witchcraft and animism and disfavor to Biblical Christianity." (Compl. ¶ 234.D.07)

> On August 18, 2021, Plaintiff sent another email complaining about Co-Tenant Steen:
>
> I have been having repeated difficulties with the tenant in 403 some of which you are aware of and filed a police report last evening. The continuing problem is this. For good cause I do not want to communicate with this person. At all. I have stated this to him on at least 3 occasions prior to last evening and again last night. He

> continues to speak to me and so I feel like he is intending to harass me. He continues to talk even when I am walking away peppering me with questions. The officer indicated that even though a crime is not being committed I could apply for a restraining order by filing an affidavit with the 7th District Court. I am not preparing to do this now but if I do file for a restraint it would include the history I have had with this person some of which you are aware of.
>
> He has told me that he worships what I and many people would consider to be evil spirits.
>
> He has set up shrines to worship them and attract them in the common area hallway and common area elevator lobby.
>
> You allowed this to continue after you became aware of it.
>
> Nothing was done about this when I requested that something be done.
>
> The situation escalated immediately after I reported this to you.
>
> Something was done after the Fire Marshal visited the property.
>
> A notice was distributed to all tenants after the Fire Marshal visited the property.
>
> So I wanted to let you know about this. I do not know if you have any op[ti]ons for helping ma[tt]ers. I certainly am not demanding that you do something. But I wanted you to know that I may file for a restraining order if the situat[i]on does not change. The worst outcome on that is that it would be denied. If I do file some of the history and evidence you know about and have seen would be included in the affidavit.
>
> Please do not think I do not appreciate the work you and your staff are doing at Riverview. I do.

(Ex. 3) Housing Manager Minton responded the same day, saying, in relevant part:

> I'm sorry that you are continuing to have a problem with this matter. I believe this tenant is just trying to be friendly to you and not stalking, however I will talk to him about it in hopes that this will help in this matter. Please be reminded that we have Customized Living Services in our building and they are here to help tenants that have mental/physical disabilities, dementia and other health issues.
>
> As to your comment about him setting up "shrines" in common areas and management not doing anything about it, I listened to you and I did ask and did

> remove the items when I found time to get to this. When managing multiple buildings in multiple areas sometimes there are other things that take precedence. We also need to remember that we live in America and we do have freedom of religion. * * *

(Ex. 4) Plaintiff wrote back that the tenant was "[h]arassing" rather than "stalking" him, and he asserted that it was "misguided" to think that taking action against the tenant might constitute religious discrimination, as what he was "doing was utterly unique and dangerous." (Ex. 47, at *226) On September 13, 2021, Plaintiff sent another email, complaining that:

> The tenant in 403 is placing items on the hallway floor again. I will be informing the Fire department if they are not removed today. There were [pinecones] yesterday and a small dog later yesterday. Again I think this could have been handled differently from the start and potential difficulties for everyone could have been eliminated. I think there are potential complications including for management if it continues which seems possible. He is aggressive and incorrigible and then he was encouraged.

(Ex. 17) On April 12, 2022, Plaintiff sent another email to Housing Manager Minten meant to report that Co-Tenant Steen had suspended a small raven figurine from one of the rafters of the designated outside smoking area. (Ex. 18) The same day, Housing Manager Minten wrote a memo to file stating that she spoke with Co-Tenant Steen and other individuals who had placed decorations in the smoking area, asking them to remove the items, and that they did so. (Ex. 47, at *250) Again, Plaintiff's Amended Complaint makes clear that he was not making a purely aesthetic complaint about the decorations. Rather, he found them religiously offensive.

In addition to the issues created by Co-Tenant Sheen's perceived religious expressions, Plaintiff also had complaints about noise coming from Unit 403. A November 2, 2021 email explains:

> The last several nights the person in 403 has been hammering on the wall and other things. On Monday Nov 1st at 2 am and between 4:10 am and around 4:40 am. This morning it began at about 6:10 and went on for 40 minutes. I called Jean Ross last

> night at 8:11 pm when it occurred again. * * * I have told you in the past that this person appears to be dangerous and especially to me. I have provided evidence to this effect and that they have acted in a threatening manner towards me. You seemed to encourage them for a long time and have not missed an opportunity to defend them and minimize my concerns. This person may have become so deranged that they are no longer a good tenant to have at Rivierview. You are in charge and it is your responsibility to them and to all tenants to maintain a reasonably safe and livable environment. This person evidently has a hammer and is using it to demonstrate aggression. The noise can be heard on at least [three] floors.

(Ex. 47, at *245) On August 16, 2022, Plaintiff again sent an email about the same unit, saying, in part:

> Beginning recently there have been recurring medication alarms coming from 403 that are not silenced for long periods of time. This has occurred in the past and your provider Recover Health at that time was able to silence them. You have never agreed with the documentation that supports the reasonable conclusion that there has been a pattern evidencing this person intentionally disturbs his neighbors. Nevertheless Riverview Heights tenants should not need to continue to be bothered by unattended or misused medical devices.

(Ex. 20) On August 31, 2022, Plaintiff sent another email about the same issue:

> This is a note to memorialize the medication alarm last Friday in 403 that continued for almost 1 hour. I called you at around 8:50 am and spoke with Tiffany. The alarm stopped a few minutes later.
>
> Also beginning recently overnight noise of a TV or radio has been coming from 403 that amounts to around 50 decibels in my living room. I have finally begun to play something to compensate for the noise and to offset the noise. The noise from 403 destroys the peace and quiet of the morning and overnight hours for many of your tenants. I believe this is intentional and that a reasonable person would also think this in light of the long record of documented events associated with unit 403. I know you do not and have not.
>
> * * * The medication alarm in 403 has been beeping for 14 minutes now.

(Ex. 47, at *260)

5. Termination of Plaintiff's Tenancy

On August 31, 2022, Housing Manager Minten drafted a letter to Plaintiff informing him that his annual lease was expiring on December 1, 2022, and inviting him to schedule an appointment to renew his lease. (Ex. 21) The letter was given to Plaintiff sometime in September 2022. (Exs. 21-23) Plaintiff filled out the enclosed forms on September 14, 2022. (Ex. 21) Plaintiff and Housing Manager Minten exchanged emails about the lease renewal. (Ex. 22) On September 12, 2022, an appointment was set for Plaintiff and Housing Manager Minten to meet to renew the lease on Thursday, September 15, 2022. (Ex. 22) Plaintiff alleges that the scheduling of the appointment meant that Housing Manager Minten "had pre-approved the automatic renewal of [his] lease, making the renewal process essentially guaranteed unless a significant issue arose." (Compl. ¶ 49.A)

Before the appointment could occur, additional events did ensue. A memo to file written by Housing Manager Minten documents that on the night of September 12, 2022, Plaintiff called Caretaker Laney after 9:00 PM asking that he take care of a medical alert alarm coming from Unit 403. (Ex. 47, at *270) Housing Manager Minten contacted Plaintiff the next day and told him that a medical alarm is not a maintenance emergency, and that Caretaker Laney was only to be called in emergencies. (Id.) On September 13, 2022, Plaintiff sent the following in an email message to Housing Manager Minten:

> I left you a detailed message with Tiffany a few minutes ago. You can skip the call back.
>
> Earlier today you instructed me to call the health care provider you have contracted with "New Dimensions" in the event of an unattended medical alarm at Riverview Heights. Also if no-one answers at New Dimensions to call the Police. You told me it was wrong to call [Caretaker Laney] who is the maintenance person here and who I did call and who was able to get ahold of someone that would and did respond to

> last night's alarm. You did not want to tell me who he called to get the device to silence. You also told me you were instructed by your superiors to not respond to my August 16, 2022 email in which I requested instructions on how to report a[n] unattended medical alarm. Today there was another unattended alarm and New Dimensions was able to confirm the person was in the unit but ignoring the alarm.
>
> I am performing an investigation to file an advisory police report this afternoon and to obtain a reference number on that report. The report will be available to responding officers in the event that the PD needs to be called per your instructions.

(Ex. 24) There were subsequent communication in which Plaintiff sought a list of all clients of New Dimensions. (Ex. 47, at *272-73) Plaintiff's tenant file contains a handwritten memo from a New Dimensions employee, dated September 20, 2022, indicating that Plaintiff confronted her about an alarm. (Ex. 47, at *276) "He continued to try to get information for about 10 minutes;" and he "[w]as very [r]ude to staff and made staff uncomfortable." (Id.) The memo notes that "[t]his" was "the second time that ha[d] happ[en]ed" — although it is not clear whether the first time occurred prior to September 15, 2022, or whether the HRA knew of it before that date.

Plaintiff's subsequent actions are detailed in a September 19, 2022 complaint that Plaintiff sent to the Fergus Falls Fire Department and others. (Ex. 23) In the letter he stated that, on September 13, 2022, he had made a report to the Police Department about the HRA's refusal to respond to ongoing disturbances on the part of other tenants. (Id.) He further explained that, to this end, he had also contacted the Fire Department on September 13, 2022, and requested records from his July 1, 2021 call for service and the July 2, 2021 visit by Fire Inspector Dean Olson. (Id.; Compl. ¶ 37) The Fire Department had been unable to find records of the call or visit. (Id.; Compl. ¶ 37) Plaintiff followed up with an email to Chief Inspector Harig on September 14, 2022. (Id.) The email attached the photograph Plaintiff had taken of the ice cream containers outside the doors of Unit 403. (Ex. 25) He stated they were "alt[a]rs to evil spirits"

and that the tenant "believes he is inhabited by a Raven spirit." (Id.) The Fire Department responded that there was not a report of the July 2021 call or visit. (Ex. 23)

Later, on September 14, 2022, Plaintiff emailed the HRA and copied the Fire Department, asking if the HRA had been informed about his call prior to the visit. (Ex. 26) He surmised that this might explain why there was no record. (Id.) According to a memo to file, sometime on September 14, 2022, Chief Inspector Harig visited Housing Manager Minten and showed her Plaintiff's email. (Ex. 28) The memo explains: "I told [Chief Inspector Harig] about the 'incident' ..... Fire Department came to Riverview on a call about 'hazards' in the hallways essentially on 4th floor ....." (Id. (ellipses in original)) "As we talked about the 'incident' [Chief Inspector Harig] thought that there probably wasn't a report completed." (Id.) Plaintiff alleges that, by having this meeting, Chief Inspector "Harig used his position to improperly share sensitive information with [Housing Manager] Minten." (Compl. ¶ 41) And Plaintiff alleges that the meeting between Chief Inspector Harig and Housing Manager Minten shows "a coordinated effort to retaliate against [him] for his persistent complaints." (Compl. ¶ 44)

Also on September 14, 2022, at 1:19 PM, the HRA rescheduled Plaintiff's lease renewal appointment to an earlier time on September 15, 2022. (Ex. 23; Compl. 39.B) When Plaintiff showed up at that appointment on September 15, 2022, both Housing Manager Minten and Director Oslon were present. (Id.; Compl. ¶ 18) Plaintiff alleges that Director Oslon's presence was unusual. (Compl. ¶ 40) They informed Plaintiff that the HRA would not be renewing Plaintiff's lease. (Ex. 23) Housing Manager Minton provided Plaintiff with a written notice that the HRA would not be renewing Plaintiff's lease, requiring him to vacate the premises at the end of the lease term, on November 30, 2022. (Ex. 5; Compl. ¶ 18) The notice did not state the

reasons for the HRA's action. (Id.) Plaintiff further alleges that he had never been given any kind of prior warning that his behavior was considered to be harassing to others. (Compl. ¶ 17)

6. Events Following the Initial Notice

On September 19, 2022, Plaintiff emailed the above-described complaint to various officers of the Fire Department. (Ex. 29) He asked that it be forwarded to the City Attorney as well. (Id.) The email attached photographs labelled as evidence of "Witchcraft and Animism at Riverview Heights 2021 & 2022." (Id.) Plaintiff also emailed the complaint to Director Olson, asking that it be forwarded to the board of the HRA. (Exs. 31-32) There was no response by the HRA. (Compl. ¶ 52.A) Chief Inspector Harig responded, again confirming that there was no documentation of the July 2, 2021 visit, and stating that Fire Chief Muchow would forward Plaintiff's message to the City Attorney. (Ex. 33) Plaintiff alleges that "this was never done," and that he had to contact the City Attorney himself. (Compl. ¶ 50.B)

On September 22, 2022, Plaintiff sent a letter directly to the HRA's board of directors complaining that the notice of non-renewal had not complied with the HUD regulations incorporated into the Lease, requiring that the notice provide permissible reasons for the termination of the tenancy. (Exs. 34-35) The letter also stated that the non-renewal occurred "in the immediate context of a revelation that the … HRA employees may have been involved in a fire hazard cover-up." (Ex. 35) The board of the HRA did not reply. (Compl. ¶ 52.B) On September 26, 2022, Plaintiff sent the board a copy of the above-referenced complaint previously sent to the Fire Department. (Exs. 37-38) He also sent an email requesting access to board meeting minutes and agenda lists. (Ex. 36) A staffer replied the next day with a data request form. (Ex. 39) "[O]nce again, the Board did not reply." (Compl. ¶ 52.C)

On September 27, 2022, Plaintiff spoke on the phone with the City Attorney. (Ex. 41) The City Attorney sent a written response to Plaintiff indicating: (1) that, beginning sometime in 2022, Fire Department records are denominated by date; (2) that the Fire Department had no record of a call for service to Riverview Heights on July 1, 2021; (3) that it had no written record of an inspection on July 2, 2021; (4) that there was no county dispatch record of a response on that day; and (5) that there was a "reasonable determination that there was no inspection report created;" but that (6) the Fire Department's system does allow administrative permissions to be set to allow deletion of a report without flagging or detection. (Ex. 40)

Also on September 27, 2022, Housing Manager Minton authored a memo to file documenting a conversation with another tenant. (Ex. 47, at *280) The tenant reported that she was not using her assigned parking spot until Plaintiff put his motorcycle away for the winter because of an incident "last summer" in which she was backing out of her spot and Plaintiff started driving off at the same time. (Id.) The tenant reported that she had exited the car to apologize for a near collision, and Plaintiff was very rude to her. (Id.) A third tenant who had seen the events indicated that Plaintiff was at fault for the near collision. (Id.) The reporting tenant had not been comfortable using her parking spot since. (Id.) Housing Manager Minten attempted to reassure her. (Id.) Plaintiff alleges that the tenant's report was "baseless" and "misconstrue[d]," and that it had never been reported to him previously. (Compl. ¶ 52.D)

Finally, also on September 27, 2022, Housing Manager Minton sent Plaintiff an amended notice of the non-renewal. (Ex. 6) It provided the following reasons for the HRA's action: (1) "Repeated harassment by [Plaintiff] to other Riverview Heights Residents;" (2) "Repeated harassment by [Plaintiff] to [HRA] Employees;" and (3) "Repeated harassment by [Plaintiff] to [HRA] Contractors or Service Providers." The notice stated that documentation of these reasons

was found in: (i) "Multiple emails from November 2020 through September 2022;" (ii) "Notes to file from conversation with contractors or service providers;" and (iii) "Notes to file from other residents and their family *[sic]*." The notice informed Plaintiff that he could view his file, and that he could file a grievance and request a hearing. Plaintiff received the amended notice on September 29, 2022. (Ex. 43) Plaintiff alleges that, even though the only specific publication of the amended notice of termination and these supported documents was to him, because they were placed in his tenant file they were published to other agents of the HRA. (Compl. ¶¶ 53-54, 151)

On October 3, 2022, Plaintiff sent another letter to the board of the HRA requesting an informal telephone conference. (Exs. 42-43) Plaintiff asserted that the reasons given in the amended notice of non-renewal were pretextual, and that the HRA's "real motive" was "retaliation" for "protected activities," including his complaints about a "hostile environment" that the HRA had "nurtured against" him. He also alleged that the HRA had "discriminated against [him] because of religion." (Ex. 43) He made a second request on October 10, 2022. (Exs. 50-51) There was never a hearing. (Compl. ¶ 32.E)

Also on October 3, 2022, Plaintiff requested all documentation supporting the amended notice of non-renewal. (Exs. 55-56) On October 11, 2022, Plaintiff received an email from a law office representing the HRA informing him that documentation from his file regarding the termination of his tenancy was available for pickup at the law office. (Ex. 45) The Amended Complaint attaches a list of the documents in the file (Ex. 46) as well as the documents themselves. (Ex. 47) Much of the contents of the file have been discussed above.

It appears that Plaintiff's departure from Riverview Heights was delayed by a federal court action.[4] But Plaintiff did eventually depart. He alleges that he incurred moving costs, increased medical costs in order to treat a pre-existing medical condition, and damages for emotional distress. (Compl. ¶¶ 33.B-G, 57) He also alleges that he suffered damages for emotional distress during the tenancy, as a result of the HRA's failure to prevent other tenants from disrupting his peaceful enjoyment of the property. (Compl. ¶ 32.D, 33.A, 57)

7. Plaintiff's Attempt to Obtain Legal Representation

After Plaintiff was notified of the termination of his tenancy, he sought representation from Legal Services of Northwest Minnesota (hereinafter "LSNM"). (Compl. ¶ 58) The first of two steps toward forming an attorney-client relationship occurred. (Compl. ¶ 58.A) A potential attorney left a voicemail for him on September 22, 2022. (Compl. ¶ 58.A) On October 4, 2022, Plaintiff signed a Release of Information authorizing the Alexandria, Minnesota branch of LSNM to exchange information about him and his case files. (Ex. 44) However, as explained in a letter to Plaintiff dated October 18, 2022, LSNM ultimately declined to represent him:

> After receiving a signed Release of Information from you, I spoke with [Housing Manager] Minten at HRA. [She] indicated that all the documents in your file related to this matter had been compiled on a flash drive which would be provided to you. You then forwarded those documents to me. I reviewed the documents and informed you that while tenants generally have the right to make reasonable complaints to property management, the number of complaints and the fact that complaints were directed to third parties and other tenants, created some challenges in this matter. I told you that approval for representation in this matter would have to come from others within my program.

[4] All parties reference an action in the Federal District Court for the District of Minnesota, *Svendsen v. Minten et al.*, Case No. 22-cv-2667 (NEB/LIB), and the HRA Defendants ask the Court to take judicial notice of various contents of the file in that action. The Court declines to do so. Although taking judicial notice of case records would normally be appropriate, no party has provided copies of these records to the Court, and court staff have encountered repeated technical difficulties and delays attempting to access them from PACER. It would unduly delay issuance of this decision to wait until the Court has the ability to read these documents.

> I presented your case to our program's Litigation Director and Executive Director, and it was determined that we would not be able to provide direct representation on this matter. This means that we will provide no additional services in this matter and there is no attorney-client relationship between you and I or any other attorney in our program.

(Ex. 49) Plaintiff alleges that Housing Manager made "false statements" to his potential LSNM attorney that "directly influenced [her] decision to reconsider representing [him]," and that this is documented in Exhibit 49. (Compl. ¶ 55-56) However, that exhibit makes clear that no attorney-client relationship had yet been formed, that there were other obstacles to that representation, and that it was Plaintiff himself who provided the attorney with the information in question. (Ex. 49)

8. Allegations of a Cover Up

As part of his claims in this action, Plaintiff alleges various conspiracies involving employees of the HRA and the Fire Department. His basic assertion seems to be that the Fire Department has a policy of generating records of *all* activity. (Compl. ¶ 38) This is at odds with the fact that there is no record of his communication with the Fire Department on June 1, 2021 or the visit of Fire Inspector Olson on June 2, 2021, even though it seems to be agreed that these events occurred. Thus, Plaintiff alleges variously (1) that the records must have been made, then deleted; or (2) that the records must exist, but malicious actors are concealing the records; or (3) that there was a conspiracy to conceal fire code violations by never making a record in the first place. (Compl. ¶¶ 42-43 158, 164) Plaintiff implicitly discounts the possibility which the City raises — that the Fire Department employee simply found these events too trivial to document.

Plaintiff further alleges various conspiracies connecting HRA employees and Fire Department employees. He alleges that Housing Manager Minten and Caretaker Laney removed Co-Tenant Steen's 'shrines,' not in response to his request, but in order to cover up their own

negligence in responding to fire code violations. (Compl. ¶¶ 14.C, 155, 164) He alleges that Fire Department employees destroyed, concealed, or failed to document the call for service and visit so that Housing Manager Minten could construct a false narrative that Plaintiff was a troublesome tenant, so that his tenancy could be terminated. (Compl. ¶¶ 47.C, 72.D-E) In other words, the Fire Department employees engaged in a cover up so that Housing Manager Minten could terminate his tenancy. And he alleges that this was the effect of the cover up, as it deprived him of needed evidence to fight the termination. (Compl. ¶ 138)

Conversely, Plaintiff also alleges that Housing Manager Minten constructed a narrative that he was a troublesome tenant, and ultimately terminated his tenancy, in order to cover up the destruction, concealment, or failure to document the call and visit. (Compl. ¶¶ 50.A, 52.F, 130-131) In other words, Housing Manager Minten only terminated his tenancy to protect the Fire Department. Notwithstanding this, Plaintiff also argues that his tenancy was terminated due to "discriminatory and retaliatory motives." (Compl. ¶ 115) Plaintiff also alleges that Housing Manager Minten acted independently, and for her personal benefit, when terminating his tenancy, in order to cover up her own wrongdoing. (Compl. ¶¶ 5, 54) And he argues that Caretaker Laney similarly supported the claim that he was a difficult tenant in order to cover up his own wrongdoing. (Compl. ¶ 152) However, contrary to the claim that the two of them were freelancing, Plaintiff also argues that Director Olson conspired in this activity. (Compl. ¶ 47.B)

Plaintiff is, of course, permitted to plead contradictory facts in the alternative. But the many contradictions in his allegations reveal the basic lack of logic supporting his conspiracy theories. The attachments to the Amended Complaint belie any assertion that there was any cover-up. Housing Manager Minten did not hide the fact that Co-Tenant Steen had placed ornamental objects next to his door, nor did she hide the fact that Plaintiff had complained about

them to the Fire Department, or that this had prompted a Fire Department employee to come to the property. Rather, Housing Manager Minten maintained a record of the ornamental objects and the fact that the Fire Department had sent an employee out to the property. Far from hiding these events, she confirmed that this had occurred when asked. And the presence of an official Fire Department record of these events would not have helped Plaintiff. It would only have provided documentation for Housing Manager Minten's conclusion that Plaintiff is regularly upset over minor and harmless behavior by his neighbors. Conversely, if there had been a cover-up, nothing about terminating Plaintiff's tenancy helped to protect or effectuate that cover-up.

9. Allegations of Religious Discrimination

As part of his claims in this action, Plaintiff also alleges religious discrimination. Plaintiff asserts that, of the sixty tenants at Riverview Heights, he was only one of two tenants who were Christian Fundamentalists. (Compl. ¶ 76) And he alleges that the HRA typically followed a three-step disciplinary process, involving warnings, for tenants either accused of violating rules regarding substance use or accused of improperly allowing pets in common areas. (Compl. ¶ 30) He points to a tenant not of his religion who was given a pet warning under this process. (Compl. ¶ 86-87) By contrast, there was no warning given to him. Thus, he alleges that tenants of other religions were afforded greater process than he was — although the subject of those lease violations was, of course, very different from the ones asserted here. (Compl. ¶ 83)

Plaintiff also alleges that Housing Manager Minten swiftly addressed a complaint by a non-Christian tenant who wanted a Christian tenant to cease religious communications with him, and ultimately relocated the Christian tenant. (Compl. ¶¶ 89-90, 92) By contrast, he alleges that Housing Manager Minten was less responsive to his own complaints, and that Co-Tenant Steen

was never relocated. He also points to a tenant not of his religious sect who was given a warning and relocated when another tenant complained about her conduct. (Compl. ¶ 95)

Legal Analysis

I. Rule 12 Standard

The HRA Defendants and the City Defendants each bring motions to dismiss which, taken together, seek to dismiss the entirety of Plaintiff's Amended Complaint for "failure to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). Such motions test "whether the facts alleged in the complaint set forth a legally sufficient claim for relief." *Bergstrom v. McEwen*, 960 N.W.2d 556, 563 (Minn. 2021). "To determine whether a plaintiff's claim survives a motion to dismiss," a court will typically "look only to the facts alleged in the complaint." *Hansen v. U. S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 325 (Minn. 2019). However, where the complaint attaches key documents, the court may also consider those documents in their entirety. *See N. States Power Co. v. Minnesota Metro. Council*, 684 N.W.2d 485, 490 (Minn. 2004); *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995).

In a challenge to the pleadings, a court must "accept factual allegations in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walmart Inc. v. Winona Cnty.*, 963 N.W.2d 192, 196 (Minn. 2021). "[T]he pleading of broad general statements that may be conclusory is permitted." *Barton v. Moore*, 558 N.W.2d 746, 749 (Minn. 1997). However, a court is not bound by legal conclusions in pleadings, as opposed to factual conclusions. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008). So long as sufficient facts are alleged, "[i]t is immaterial" at this stage "whether or not the plaintiff can prove the facts alleged." *Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980). The

motion to dismiss will be granted only where "it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Finn v. All. Bank*, 860 N.W.2d 638, 653 (Minn. 2015).

The Court will address the respective Defendants' motions to dismiss together, organized by Counts. However, the Court will reorder these claims for ease of analysis.

II. Breach of Contract (Count I)

The Court first addresses Plaintiff's breach-of-contract claims against the HRA. "The elements of a breach of contract claim are" (1) "formation of a contract," (2) "performance by plaintiff of any conditions precedent to his right to demand performance by the defendant," and (3) "breach of the contract by defendant." *Lyon Fin. Servs., Inc. v. Illinois Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014). In addition, "[l]iability for breach of contract requires proof that damages resulted from or were caused by the breach." *Border State Bank of Greenbush v. Bagley Livestock Exch., Inc.*, 690 N.W.2d 326, 336 (Minn. App. 2004). "A breach of contract claim fails as a matter of law if the plaintiff cannot establish that he or she has been damaged by the alleged breach." *Jensen v. Duluth Area YMCA*, 688 N.W.2d 574, 578-79 (Minn. App. 2004).

i. Peaceable Enjoyment Claims

Plaintiff's contract claims fall into two categories. First, he alleges that, during the period of his tenancy, the HRA violated various contractual provisions of the Lease meant to ensure his peaceful enjoyment of the property. The HRA Defendants argue that Plaintiff cannot maintain his breach-of-contract claim based on violations of contractual terms meant to ensure his peaceful enjoyment of the property because he has not alleged any cognizable damages flowing

from any breach of these terms. Rather, he pleads only that he experienced emotional distress as a result of these alleged breaches. The Court agrees that this portion of the claim, as currently pleaded, falls short of being viable.

"In a breach of contract action, the damage award is the monetary amount sufficient to place the plaintiff in the same situation as if the contract had been performed." *Christenson v. Milde*, 402 N.W.2d 610, 613 (Minn. App. 1987). "[D]amages for breach of contract are limited to the pecuniary loss sustained." *Johnson v. Radde*, 196 N.W.2d 478, 480 (Minn. 1972). Damages for "emotional distress" are not recoverable based on proof of a breach of contract; they require proof of an additional tort. *Lickteig v. Alderson, Ondov, Leonard & Sween, P.A.*, 556 N.W.2d 557, 561 (Minn. 1996); *Wild v. Rarig*, 234 N.W.2d 775, 789 (Minn. 1975).

Because Plaintiff's breach-of-contract claims stemming from terms of the Lease relating to Plaintiff's peaceful enjoyment are not supported by a claim of pecuniary damages, his claims must be narrowed to exclude this category of peaceful-enjoyment claims.[5]

ii. Non-Renewal of Lease Claims — Liability

Plaintiff's remaining contract claims fall into a second category of claims relating to the termination of his tenancy. He alleges that the HRA refused to renew his Lease without proper

[5] Notably, Plaintiff does not make even a conclusory allegation that violations of the peaceful-enjoyment provisions of the Lease resulted in a reduction of the reasonable rental value of his unit. Damages recoverable for a lease violation that does not result in dispossession are not damages for emotional distress. Ordinarily they are "the difference between the rental value of the premises in their actual condition and their rental value in the condition in which the lessor agreed to put them." *Force Bros. v. Gottwald*, 183 N.W. 356, 358 (Minn. 1921); *Geo. Benz & Sons v. Hassie*, 293 N.W. 133, 137 (Minn. 1940) ("the diminished rental value of the building by reason of the [breach]"); 25 Williston on Contracts § 66:88 (4th ed.) ("difference between the value of the use of the property as furnished and the rent reserved"). Although Minnesota has not directly addressed the question, there is authority that this measure of damages remains appropriate even in the case of a tenant of subsidized housing. *See, e.g., Cruz Mgmt. Co. v. Wideman*, 633 N.E.2d 384, 387 (Mass. 1994); *Colon v. Waukegan Hous. Auth.*, 729 F. Supp. 3d 831, 835 (N.D. Ill. 2024). But because Plaintiff has failed to identify diminution in rental value as a form of damages, no party has addressed the question. The Court declines to rule on it at this time.

cause, violating provisions of the Lease that incorporated HUD regulations prohibiting the termination of tenancies without proper cause. He also alleges that the HRA violated various procedural protections relating to the termination of his tenancy.

Under HUD regulations a "landlord may not terminate any tenancy in a subsidized project except" upon certain grounds. 24 C.F.R. § 247.3(a). Termination of a tenancy should not be confused with termination of a lease before its term. Termination of a tenancy *also* occurs when there is a non-renewal of the lease at the end of its term. *See, e.g., Newhouse v. Settegast Heights Vill. Apartments*, 717 S.W.2d 131, 134 (Tex. App. 1986) ("HUD materials … make it clear that landlords may not refuse to renew a lease solely because the term has expired.").

As relevant here, proper grounds for terminating a tenancy include: (i) "[m]aterial noncompliance with the rental agreement;" or (ii) "[o]ther good cause." 24 C.F.R. § 247.3(a). However, a landlord may not rely on "[o]ther good cause" — as distinct from material noncompliance with the rental agreement — "unless the landlord has" first "given the tenant prior notice that said conduct shall henceforth constitute a basis for termination of occupancy." 24 C.F.R. § 247.3(b). Material noncompliance with the rental agreement is defined to include both (1) a single "substantial violation[] of the rental agreement;" and (2) "[r]epeated minor violations of the rental agreement that," as relevant here, "[d]isrupt the livability of the project" or "[i]nterfere with the management of the project." 24 C.F.R. § 247.3(c).

The Lease signed by Plaintiff incorporates these regulations, both directly and indirectly. The HRA agreed to comply with HUD regulations. (Ex. 1, § 12.Landlord.b, at *11) And the HRA agreed it "shall not … refuse to renew the Lease other than for serious or repeated violations of material terms of the Lease." (Ex. 1, § 16, at *13) As relevant here, violations of

material terms of the lease include "[f]ailure to abide by necessary and reasonable rules made by the [HRA] for the benefit and well being of the housing development and the Residents," failure to abide by "house rules," and "[c]riminal activity" affecting the premises. (Ex. 1, §§ 16.6, 16.23, 16.26 at *13-14) Any supplementary rules were to be provided to tenants, either as attachments to the Lease, or in writing at the time of enactment. (Ex. 1, § 25, at *17-18) No copy of any rules in effect at the time Plaintiff's tenancy was terminated has been provided to the Court.

The HRA Defendants argue that Plaintiff's breach-of-contract claims relating to the termination of his tenancy must fail as a matter of law because the Amended Complaint itself conclusively shows that the HRA had proper grounds to terminate the tenancy. In the alternative, the HRA argues that Plaintiff may not maintain a breach-of-contract claim because he committed a material breach of the Lease prior to the non-renewal of the Lease. *See Carlson Real Est. Co. v. Soltan*, 549 N.W.2d 376, 379 (Minn. App. 1996) ("[A] party who first breaches a contract is usually precluded from successfully claiming against the other party."). Because a material breach is already one of the ways a landlord may show proper cause for termination of a tenancy under HUD regulations, the Court can analyze both arguments as one.

The Court disagrees with the HRA Defendants that Plaintiff's wrongful termination claim can be resolved on the pleadings alone. Plaintiff alleges that he was never given warning that his actions constituted "[o]ther good cause" to terminate his tenancy. 24 C.F.R. § 247.3(a)(4),(b). Thus, for purposes of the present motion, the HRA must rely on asserting "[m]aterial noncompliance with the rental agreement." 24 C.F.R. § 247.3(a)(1). That requires showing a violation of a specific provision of the Lease. *See* 24 C.F.R. § 247.3(c). The HRA Defendants argue that Plaintiff violated the Lease by harassing residents, staff, and contractors. But they do not identify any particular Lease term governing 'harassment.' The HRA has not demonstrated

how anything it has alleged rises to the level of a criminal violation. So the Court presumes that the HRA takes the position that the alleged 'harassment' was harassment in a less technical sense, and that it violated 'house rules' incorporated into the Lease. But none of those house rules have been put before the Court. Simply put, the records and briefing do not allow the Court to identify a specific term of the rental agreement which was violated. Thus, the Court cannot tell if Plaintiff committed "serious or repeated violations" of that specific term prohibiting 'harassment' as somehow defined. (Ex. 1, § 16, at *13) *See* 24 C.F.R. § 247.3(c).

Moreover, even if the Court had the materials before it to conclude that the HRA's allegations of harassment constituted proper grounds to terminate the tenancy, they are just that — *the HRA's allegations*, not the allegations of the Amended Complaint. The HRA Defendants rely on Exhibit 47, which they take as true, to show that there were proper grounds to terminate Plaintiff's tenancy. But that misconstrues the nature of the pleadings and the Rule 12 standard. Plaintiff attached Exhibit 47. But, unlike with other documents, Plaintiff did not attach this exhibit in order to establish the truth of the matters asserted therein. Rather, he did so in order to prove that the HRA communicated those assertions, and to show the effect on the recipients. Plaintiff explicitly denies the truth of key parts of the matters asserted, alleging that the communication was defamatory. It would be contrary to the Rule 12 standard to treat as true the very statements which Plaintiff explicitly asserts contain falsehoods.

Because the HRA Defendants are relying on what the pleadings allege are disputed facts in order to show that Plaintiff's tenancy was terminated for proper cause, their arguments for dismissal are premature at the Rule 12 stage. The HRA may, of course, renew its arguments at the Rule 56 stage. It is clear what documents the HRA will rely upon to set forth a *prima facie* case that Plaintiff did engage in 'harassment.' And Plaintiff will not be allowed to rely on bare

allegations in the pleadings at that stage; he will be required to produce specific evidence. But these proceedings are not yet to that stage. Plaintiff needs only to satisfy the requirements of 'notice pleading' at this point. It is sufficient under the 'notice pleading' standard that Plaintiff alleges that some of the reasons for non-renewal of his lease contained in Exhibit 47 are false.

Plaintiff may proceed to discovery on his claim that the HRA breached the Lease by refusing to renew the Lease, and by other actions related to the non-renewal.

iii. Non-Renewal of Lease Claims — Damages

The HRA Defendants argue that, even if Plaintiff can show liability for breach, he cannot show cognizable damages resulting from the breach. A plaintiff whose tenancy is unlawfully terminated by the breach of a lease is "entitled to such damages as, at the time of the making of the contract, the parties could reasonably have contemplated would result from a breach." *Poppen v. Wadleigh*, 51 N.W.2d 75, 78 (Minn. 1952); *see also Moore v. John E. Blomquist, Inc.*, 256 N.W.2d 518, 518 (Minn. 1977); *Vault, Inc. v. Michael-Nw. P'ship*, 372 N.W.2d 7 (Minn. App. 1985); *Shikur v. Halverson*, 2024 WL 3755986 (Minn. App. Aug. 12, 2024) (non-precedential) (A lease "is subject to the general principles of contract law.").

Such damages "are those arising naturally from the breach or those which can reasonably be supposed to have been contemplated by the parties when making the contract as the probable result of that breach." *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831, 838 (Minn. App. 1994); *Lesmeister v. Dilly*, 330 N.W.2d 95, 103 (Minn. 1983); *Beaulieu v. Great N. Ry. Co.*, 114 N.W. 353, 355 (Minn. 1907); *Frohreich v. Gammon*, 11 N.W. 88, 89 (Minn. 1881); Restatement (Second) of Contracts § 351. In other words, "consequential damages … are not recoverable unless they are reasonably foreseeable to the parties at the time of the breach." *DeRosier v. Util.*

Sys. of Am., Inc., 780 N.W.2d 1, 4-5 (Minn. App. 2010); *Cnty. of Blue Earth v. Wingen*, 684 N.W.2d 919, 924 (Minn. App. 2004). And not every consequence of a tenant's dispossession will be contemplated by the parties. *See, e.g., Glaubitz v. Meyer*, 182 N.W. 1002, 1003 (Minn. 1921) (loss of livestock due to lack of storage space was not within contemplation).

The general measure of damages for the breach of a lease resulting in dispossession is the difference between the rent under that lease and the cost of leasing comparable housing elsewhere. *Vault, Inc.*, 372 N.W.2d 7, 9 (Minn. App. 1985) ("damages resulting from increased rent"); *Glaubitz v. Meyer*, 182 N.W. at 1003; *Knowles v. Steele*, 61 N.W. 557, 558 (Minn. 1894) ("the difference between the rent agreed … and the actual market rental value…."); 90 Causes of Action 2d 185 ("difference between the monthly rental rate of the premises … and that of the tenant's new accommodations"); Restatement (Second) of Property, Land. & Ten. § 10.2 ("fair market value of the lease"); 49 Am. Jur. 2d Landlord and Tenant § 519; *see also State v. Belmont*, 384 N.W.2d 214, 216 (Minn. App. 1986) ("fair rental value of the premises less the amount of the rent for the remainder of the term") (condemnation).

Additionally, several types of special damages are the natural result of an eviction, such that they will be held to have been in the contemplation of the parties at the time of contract formation. These typically include "reasonable relocation costs," such as the cost of movers or storage. Restatement, at § 10.2; 90 Causes of Action 2d 185 ("moving costs"); 49 Am. Jur. 2d Landlord and Tenant § 519 ("the cost of moving"); 49 Am. Jur. 2d Landlord and Tenant § 853 ("the cost of moving"); 25 Williston on Contracts § 66:88 (4th ed.) ("cost of moving articles"); *but see* 49 Am. Jur. 2d Landlord and Tenant § 520 (noting split of authority); *Les Jones Roofing, Inc. v. City of Minneapolis*, 373 N.W.2d 807, 809 (Minn. App. 1985) (not always foreseeable).

Special damages may also include the value of property destroyed by the landlord. *Bass v. Equity Residential Holdings, LLC*, 849 N.W.2d 87, 93 (Minn. App. 2014); 90 Causes of Action 2d 185; 49 Am. Jur. 2d Landlord and Tenant §§ 519, 520, 853. But the damages contemplated by the parties generally do not include damage caused by the subsequent act of some third party. *See, e.g., Carsten v. N. Pac. R. Co.*, 47 N.W. 49, 49 (Minn. 1890) (subsequent loss of employment). And the damages contemplated by the parties do not necessarily include the emergence of particular medical ailments. *See, e.g., Sargent v. Mason*, 112 N.W. 255, 257 (Minn. 1907). This is because damages cannot be too "remote" to have been foreseeable. *Cardinal Consulting Co. v. Circo Resorts, Inc.*, 297 N.W.2d 260, 267 (Minn. 1980).

Plaintiff alleges a number of items of damage from the termination of his tenancy:

- First, he alleges $3,500 in moving costs, such as those for a moving truck, fuel, and supplies. The Court agrees with Plaintiff that such costs were a natural consequence of the termination of the tenancy, and so may be recovered.
- Second, Plaintiff alleges that his motorcycle sustained $2,000 in damages when it fell from the moving truck. That is a contingency that, as a matter of law, is not a natural consequence of the termination, and there is no reason to conclude that it could have been in the contemplation of the parties. As such, it may not be recovered.
- Third, Plaintiff alleges increased medical costs, because it is harder and more expensive to get the same medical treatments now that he lives in a new place, farther from a metro area, as compared to when he lived in Fergus Falls, Minnesota. Plaintiff has offered no explanation for why he had to move to a place where his medical costs are higher. And he has offered nothing to show that the HRA would have contemplated this. Because neither causation nor foreseeability is properly alleged, these increased medical costs cannot be recovered.
- Fourth, Plaintiff alleges various forms and causes of emotional distress. As explained above, damages for emotional distress are not available in a breach-of-contract action.

Because $3,500 of the damages pleaded by Plaintiff was foreseeable, and it is clear how these damages were caused, Plaintiff's breach-of-contract can survive a Rule 12 motion in part.

III. Defamation (Counts IV & XII)

The Court next addresses Plaintiff's claims of defamation. Plaintiff alleges that Housing Manager Minten defamed him in the amended notice of non-renewal and in memos to file produced to justify the amended notice of non-renewal. He further alleges that Caretaker Laney defamed him in statements transmitted by him and recorded in the memos to file. He alleges that the contents of these documents were placed in his tenant file, leading to them being published to himself, to his prospective attorney, and to other employees or directors of the HRA.

"The elements of a cause of action for defamation include" (1) "a false and defamatory statement about the plaintiff;" (2) "an unprivileged publication to a third party;" and (3) "a tendency to harm the plaintiff's reputation in the community." *Britton v. Koep*, 470 N.W.2d 518, 520 (Minn. 1991); *Johnson v. Freborg*, 995 N.W.2d 374, 384 (Minn. 2023); *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 873 (Minn. 2019).[6] Both aspects of the second element are at issue in this case. Defendants argue that there was no publication to a third party, or if there was, then the publication was privileged. The Court agrees.

a. Publication to Plaintiff Himself

First, there was a publication of the materials to Plaintiff himself. But this publication was not actionable because it was not a publication to a third party. To support a claim for defamation, the statement "must be communicated to someone other than the plaintiff," such that

[6] Many authorities also require "at least negligence" as to the truth or falsity of the statement on the part of the declarant. *Britton*, 470 N.W.2d at 520; *DeRosa v. McKenzie*, 936 N.W.2d 342, 345 (Minn. 2019) ("fault"). But they arise from a particular stage in First Amendment jurisprudence, *see Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476 (Minn. May 3, 1985), which has since been revised. *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (June 26, 1985). It is an open question whether fault is better addressed separately or as an aspect of the privilege inquiry. Because no argument about fault or negligence is before the Court, and because Defendants couch their arguments in terms of privilege, this issue may be set aside.

"[g]enerally, there is no publication where a defendant communicates a statement directly to a plaintiff, who then communicates it to a third person." *Lewis v. Equitable Life Assur. Soc. of the U.S.*, 389 N.W.2d 876, 886 (Minn. 1986) (citing Restatement (Second) of Torts § 577, *cmt.* m).

b. Publication to Prospective Attorney

Second, there was a publication to Plaintiff's prospective attorney. But the attachments to the Amended Complaint indicate that Plaintiff was the first to self-publish these materials to this attorney. The Court questions whether any subsequent publication is relevant. *Cf. Church of Scientology of Minnesota v. Minnesota State Med. Ass'n Found.*, 264 N.W.2d 152, 155 (Minn. 1978) (single publication rule). Self-publication may support a defamation action only "if [the] defamed person was in some way compelled to communicate the defamatory statement to a third person…." *Lewis*, 389 N.W.2d at 886. This doctrine is applicable only in the narrow circumstances where "the defamed person has no reasonable means of avoiding publication of the statement." *Id.* at 888. Self-publication to a prospective attorney does not fit within this narrow exception for compelled self-publication because it is avoidable.[7]

Moreover, even if Housing Manager Minten did communicate the same matter to the prospective attorney, that was only because the prospective attorney was requesting vital information from her, as the representative of an adverse party, in direct contemplation of future litigation. Voluntary compliance with such pre-filing discovery requests serves the interests of judicial efficiency, and it should be absolutely privileged. *See Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 306 (Minn. 2007) ("Voluntary witness testimony given in a deposition or

[7] Plaintiff argued at hearing that he may also be compelled to disclose the documents to a future landlord, and that this would constitute compelled self-publication. Perhaps, if that had occurred. But Plaintiff does not allege any actual occasion on which he was compelled to self-publish to a landlord. Any hypothetical future publication is purely speculative and will not support a defamation claim.

affidavit published prior to a judicial proceeding is also protected by absolute privilege."). A publication subject to absolute privilege cannot sustain a defamation claim. *Id.*

c. Publication within the HRA

Third, Plaintiff alleges that the materials were placed into his tenant file, and so must have been communicated to other employees and directors of the HRA. The Court questions whether mere placement of materials in a file constitutes a publication, as materials can exist in a file without anyone ever reading them. *Cf. Nw. Airlines, Inc. v. Friday*, 617 N.W.2d 590, 594 (Minn. App. 2000) (publication "must be understood by [a] third party"). But it is true that, when read and understood, "intra-corporate communications" may be regarded as "publications." *Frankson v. Design Space Int'l*, 394 N.W.2d 140, 143, 144 (Minn. 1986).

Nonetheless, the Court questions whether Plaintiff has adequately pleaded an intra-corporate publication, given that he largely fails to allege when it was published, how it was received, or who received it. Generally, under Minnesota law, a plaintiff must plead 'a defamation claim with a certain degree of specificity, including pleading who made the alleged defamatory statement, to whom the statements were made, and where the statements were made.'" *Sagehorn v. Indep. Sch. Dist. No. 728*, 122 F. Supp. 3d 842, 868 (D. Minn. 2015) (quoting *Magee v. Trs. of the Hamline Univ., Minn.*, 957 F.Supp.2d 1047, 1074 (D. Minn. 2013)); *Walker v. Wanner Eng'g, Inc.*, 867 F. Supp. 2d 1050, 1056 (D. Minn. 2012).

However, even assuming that Plaintiff has validly pleaded an intra-corporate publication, such publications are subject to a qualified privilege when made under the circumstances alleged here. *Frankson*, 394 N.W.2d at 143 (intra-corporate communications); *Bol v. Cole*, 561 N.W.2d 143, 149 (Minn. 1997) (Statements made "upon a proper occasion, from a proper motive, and …

based upon reasonable or probable cause."). Where a qualified privilege applies, a plaintiff cannot recover without a showing that the privilege has been abused. *Frankson*, 394 N.W.2d at 143. Abuse of the privilege is also referred to, somewhat misleadingly, as 'actual malice' or 'common-law malice.'[8] Abuse of the privilege "may be proved by extrinsic evidence of personal ill feeling, or by intrinsic evidence such as the exaggerated language of the libel, the character of the language used, the mode and extent of publication, and other matters in excess of the privilege." *Id.*

But the mere fact that the communication occurred, or that it was false, or that it had an adverse consequence for the plaintiff, or that there was tension between the parties is insufficient to show abuse of the privilege. *Bauer v. State*, 511 N.W.2d 447, 451 (Minn. 1994). "[W]hen the only evidence" that the privilege was abused is "an alternative reason for the defendant's action" and "there is direct evidence that probable cause existed for the action taken," then "no jury question exists" regarding abuse of the privilege. *Sherman v. Rinchem Co.*, 687 F.3d 996, 1010 (8th Cir. 2012) (quoting *El Deeb v. Univ. of Minn.*, 60 F.3d 423, 427 (8th Cir. 1995)). "[I]f this were not so, qualified privilege would be a mirage." *Bauer*, 511 N.W.2d at 451.

Plaintiff's Amended Complaint is exceedingly long and detailed. But it does not contain any allegation capable of raising a jury question as to the abuse of a qualified privilege. First, the allegations intrinsic to the publication do not support an inference of common-law malice. None of the language used was exaggerated or unprofessional. Rather, it consisted of verbatim emails and business-like memos to file summarizing important interactions with others in a matter-of-

[8] Although similarly-named, the common-law 'actual malice' necessary to overcome a qualified privilege is distinct from the constitutional 'actual malice' standard required to overcome the constitutional privilege derived from *New York Times v. Sullivan*, 376 U.S. 254 (1964). *Compare Johnson v. Freborg*, 995 N.W.2d 374, 384 (Minn. 2023) (constitutional actual-malice standard), *with Bahr v. Boise Cascade Corp.*, 766 N.W.2d 910, 922 (Minn. 2009). To be clear, this case does not involve the constitutional privilege or the constitutional actual malice standard.

fact manner. And these were not published in a manner, or to an extent, unnecessary for their essential function. Second, the allegations extrinsic to the publication do not logically support an inference of common-law malice. There is no allegation that the HRA Defendants expressed personal animus toward Plaintiff, and there is ample evidence provided that they showed great patience and forbearance toward him on numerous occasions. Finally, the conspiracy claim Plaintiff advances that the HRA Defendants defamed Plaintiff in order to cover up the very events that are evidenced in their own statements fails to sustain logical weight.

Although Plaintiff is permitted to plead broad conclusory statements in his Amended Complaint, the conclusions he alleges are nothing more than an "alternative reason for" the HRA Defendants' actions. *Sherman*, 687 F.3d at 1010. That is not what is required to overcome a qualified privilege. Thus, even at the Rule 12 stage of proceedings, it is clear that no facts could be introduced, *consistent with the theory of the pleadings*, that would support recovery in defamation. *See, e.g., Larson v. Minnesota Dep't of Hum. Servs.*, 2018 WL 2293532 (Minn. App. May 21, 2018) (unpublished) (affirming Rule 12 dismissal on grounds of qualified privilege); *O'Donnell v. City of Buffalo*, 2008 WL 314366 (Minn. App. Feb. 5, 2008) (unpublished); *Day v. Miner*, 1998 WL 279229 (Minn. App. June 2, 1998) (unpublished).

Because Plaintiff has failed to specially plead any actual publication to a third party, and because even if he had pleaded such a publication it would be a privileged publication, the Court grants the motion to dismiss the defamation claims.

IV. Tortious Interference with Contract (Count III)

Next the Court addresses Plaintiff's claim that Housing Manager Minten tortiously interfered with the Lease contract between himself and the HRA. Plaintiff alleges that she

terminated the tenancy in bad faith, to cover up her own misconduct, rather than in the interests of the HRA. Additionally, Plaintiff makes reference to Chief Inspector Harig in the heading of this claim, although he does not explain how Harig's conduct might have been tortious.

The elements of a claim for tortious interference with a contract are (1) "the existence of a contract;" (2) "the alleged wrongdoer's knowledge of the contract;" (3) "[her] intentional procurement of its breach;" (4) "without justification;" and (5) "damages resulting therefrom." *Bouten v. Richard Miller Homes, Inc.*, 321 N.W.2d 895, 900 (Minn. 1982). The parties have no dispute about (i) the existence of Lease, (ii) Housing Manager Minten's knowledge of it, or (iii) the fact that she was the employee who declined to renew the Lease. Moreover, as the Court has explained in the context of Plaintiff's breach-of-contract claim, the Alleged Complaint has put into question whether this non-renewal constituted a breach of contract that caused damages. Thus, the issue is whether Housing Manager Minten interfered "without justification."

A claim of tortious interference "requires that the interference be both intentional and improper." *Wicker v. Roering*, 364 N.W.2d 479, 481 (Minn. App. 1985). The Third Restatement persuasively synthesizes authorities defining when interference is 'wrongful' or without 'justification.' This occurs (a) if "the defendant acted for the purpose of appropriating the benefits of the plaintiff's contract" (b) if "the defendant's conduct constituted an independent and intentional legal wrong" or (c) if "the defendant engaged in the conduct for the sole purpose of causing harm to the plaintiff." Restatement (Third) of Torts: Liab. for Econ. Harm § 17 & *cmt.* a; *see also Harman v. Heartland Food Co.*, 614 N.W.2d 236, 242 (Minn. App. 2000).

In this case, there is no allegation that Housing Manager Minten appropriated the benefits of Plaintiff's contract. And, for reasons explained throughout this opinion, Plaintiff has not

successfully pleaded an independent tort; his only viable claim is a breach-of-contract claim against the HRA, rather than Housing Manager Minten. Therefore, the only method of alleging wrongfulness is to allege that Housing Manager Minten was acting for the "sole purpose" of harming Plaintiff, and not for the benefit of the HRA, or with a mixed motive. *Id.* This method of proving wrongfulness implicates the question of an agent's responsibility for corporate actions.

As a general matter, "[o]fficers of a corporation may not be held personally liable for interference with a contract merely for causing the corporation not to perform the contract." *Bouten*, 321 N.W.2d at 900. "If a corporation's officer or agent acting pursuant to his company duties terminates [a contract], the actions are those of the corporation; the [counter-party's] dispute is with the [corporation] for breach of contract, not the agent individually for a tort." *Nordling v. N. States Power Co.*, 478 N.W.2d 498, 505 (Minn. 1991). "To allow the officer or agent to be sued and to be personally liable would chill corporate personnel from performing their duties and would be contrary to the limited liability accorded incorporation." *Id.* at 505-06.

"[A] corporate officer or agent may be liable for tortious contract interference" only if "she acts outside the scope of … her duties." *Nordling* 478 N.W.2d at 506. "[B]ad motive or malice … is often persuasive evidence" that a person is acting for personal reasons, rather than within the scope of her duties. *Id.* But this "is only one factor" in the inquiry. *Id.* "[E]ven if gratifying," the breach of a contract "may have been a byproduct of legitimate efforts at … protection of the defendant's own interests." Restatement, at § 17, *cmt.* f. Thus, a plaintiff generally "bears the burden of proof … [of] proving that the defendant was motivated entirely by personal gain at the corporation's expense." *Id.*, *cmt.* o. "Mixed motives will not suffice." *Id.*

Moreover, in certain cases, even if an agent had acted maliciously, the conduct is necessarily still attributable to the corporation. For instance, "when the defendant is the sole owner of a corporation," her "identity with [the] corporation is so complete that the plaintiff cannot make out a claim of tortious interference under any circumstances." Restatement, at § 17, *cmt.* o. Likewise, a plaintiff cannot turn a contract claim into a tort claim where it is clear that the defendant's actions were affirmatively sought or sanctioned by the corporation. *See, e.g., Ulrich v. City of Crosby*, 848 F. Supp. 861, 872 (D. Minn. 1994) ("[W]e find it unmistakably clear that, in submitting his … job performance [appraisal], [the agent] was honoring the request of his employer that such an appraisal be prepared and, accordingly, he was acting within the scope and course of his employment duties").

The facts contained in Plaintiff's Amended Complaint falsify the assertion that Housing Manager Minten could have been acting outside the scope of her employment when she issued Plaintiff the notices of non-renewal. First, it is clear that she had the blessing of the HRA when she acted. Plaintiff affirmatively alleges that Director Olson is not normally at tenant renewal meetings, but he was present when the initial non-renewal was delivered and knew what was occurring. The deliberate presence of the Executive Director is a clear indication that Housing Manager Minten was not freelancing. Moreover, Plaintiff repeatedly contacted the board of directors of the HRA, and they did not respond directly. Instead, their response came through Housing Manager Minten, in the form of the amended notice of non-renewal. Again, this indicates that she was acting within the scope of her employment, not at the HRA's expense.

Indeed, the Amended Complaint makes clear that Plaintiff could not conceivably introduce evidence to rebut the presumption that Housing Manager Minten had either a pure motive or a mixed motive. The pleadings make clear that Plaintiff was a difficult tenant, and that

this was affecting more than just Housing Manager Minten. The HRA thus had a good-faith interest in terminating Plaintiff's tenancy, even if it did not do so competently. The Court has already explained why Plaintiff does not have a viable argument that Housing Manager Minten displayed actual malice in the context of his defamation claim. For very similar reasons, he cannot show actual malice in the context of his tortious interference claim.

Because Plaintiff has no viable argument that Housing Manager Minten was acting outside the scope of her corporate duties, he cannot convert his breach-of-contract claim against the HRA into a tort claim against the HRA's employee. And because Plaintiff has not offered an explanation for why Chief Inspector Harig committed tortious interference — including why his conduct appropriated anything, was independently tortious, or was motivated by desire to harm Plaintiff — the Court also dismisses the claim with respect to him as well.

V. Tortious Interference with Prospective Advantage (Count V)

Next the Court addresses Plaintiff's claim that Housing Manager Minten tortiously interfered with his prospective attorney-client relationship with LSNM. "[T]o recover for tortious interference with prospective economic advantage, a plaintiff must prove, *among other things*, that "the intentional interference [was] either independently tortious or in violation of a state or federal statute or regulation." *Gieseke ex rel. Diversified Water Diversion, Inc. v. IDCA, Inc.*, 844 N.W.2d 210, 219 (Minn. 2014). Plaintiff argues that there was independently tortious conduct because Housing Manager Minten defamed him to his prospective attorney. As the Court has already explained, Plaintiff's defamation claim involving publications to his prospective attorney fails on the basis of absolute privilege. "Absolute privilege also bars claims sounding in defamation" — "that is claims where the injury stemmed from and grew out of the

defamation" — "such as tortious interference." *MSK EyEs Ltd. v. Wells Fargo Bank, Nat. Ass'n*, 546 F.3d 533, 544 (8th Cir. 2008) (quoting *Mahoney & Hagberg*, 729 N.W.2d at 309-10). This claim for tortious interference must be dismissed along with the defamation claim.

VI. Minnesota Human Rights Act — Discrimination (Count VII)

Next the Court addresses Plaintiff's religious discrimination claim under the Minnesota Human Rights Act (MHRA). The MHRA provides that "[i]t is an unfair discriminatory practice for [any] owner [or] person having the right to … lease any real property … to refuse to … lease … any real property" or to "discriminate … in the terms, conditions or privileges of the … lease" on the basis of "creed [or] religion." Minn. Stat. § 363A.09, subd. 1(1)-(2). Plaintiff brings a claim against both the HRA and Housing Manager Minten, alleging that he was discriminated against on the basis of being a Christian Fundamentalist, in that he was denied the peaceful enjoyment of his unit, and in that his Lease was not renewed.

A claim of religious discrimination may be based on "disparate treatment" in which "some people" are treated "less favorably than others because of their … religion." *Sigurdson v. Isanti Cnty.*, 386 N.W.2d 715, 720 n.1 (Minn. 1986); *Bilal v. Nw. Airlines, Inc.*, 537 N.W.2d 614, 618 (Minn. 1995). A claim of disparate treatment requires showing: (1) that the plaintiff is a member of a protected class; (2) that the defendant discriminated against the plaintiff; and (3) that the discrimination was because of the plaintiff's membership in the protected class. *Monson v. Rochester Athletic Club*, 759 N.W.2d 60, 63 (Minn. App. 2009). The HRA Defendants assume the first two elements are validly pleaded, but they contest the third element — causation.

To show the element of causation, "proof of discriminatory motive is critical." *Minneapolis Police Dep't v. Minneapolis Comm'n on C.R.*, 425 N.W.2d 235, 239 n.1 (Minn.

1988). "Although it can in some situations be inferred from the mere fact of differences in treatment." *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 442 n.12 (Minn. 1983). A plaintiff may show discriminatory motive either (1) directly, such as on the basis of comments that express animus; or (2) indirectly, on the basis of circumstances. *Edwards v. Hopkins Plaza Ltd. P'ship*, 783 N.W.2d 171, 175 (Minn. App. 2010).

This case must turn on the application of standards for indirect evidence. Plaintiff alleges no direct evidence of discriminatory motive, such as disparaging comments about his religion. And, contrary to Plaintiff's contentions, the mere fact that the HRA tolerated purported expressions of religion by non-Christian tenants does not show that the HRA had animus toward his religion or was creating a hostile environment for him. Plaintiff's right to be free from religious discrimination does not imply a right to demand the suppression of competing faiths.

Where, as here, direct evidence of animus is absent, the indirect method of showing discriminatory motive requires proof that (1) the plaintiff was a member of the protected class; (2) the plaintiff was qualified for something; (3) the plaintiff was denied that thing; and (4) that "circumstances exist that give rise to an inference of discrimination." *Henry v. Indep. Sch. Dist. #625*, 988 N.W.2d 868, 883 (Minn. 2023); *Cole v. Grp. Health Plan, Inc.*, 105 F.4th 1110, 1113 (8th Cir. 2024); *Shirrell v. St. Francis Med. Ctr.*, 793 F.3d 881, 887 (8th Cir. 2015). Again, it is the last part of this test that HRA Defendants contest for purposes of this motion.

Indirect evidence of discriminatory motive may come from the circumstances of a person's own case. For instance, an inference of discrimination may arise from: (1) a defendant's "deviation from its past practice," (2) "the proximity between the protected activity and the

adverse … action," or (3) the plaintiff's "strong … record and … qualifications." *Norgren v. Minnesota Dep't of Hum. Servs.*, 96 F.4th 1048, 1056 (8th Cir. 2024).

This is not a case where the circumstances of the adverse housing action itself support a discriminatory motive. The Amended Complaint alleges no genuine temporal connection between the termination of his tenancy and any activity relating to his religion; rather, it shows that the HRA had previously renewed his lease in December 2021, which was *after* the bulk of the religiously tinged conflict between Plaintiff and Co-Tenant Steen in June through September of 2021. Nor can discrimination be inferred from Plaintiff's qualifications as a renter. Rather, the Amended Complaint shows that Plaintiff was not otherwise a desirable tenant, but for his religion; instead, his own acknowledged words show that he was a difficult tenant, and that he was being particularly difficult around the time that the HRA declined to renew his lease.

Finally, indirect evidence of discriminatory motive may also arise by looking at comparators. Specifically, an inference of discrimination may be raised if the plaintiff was "treated differently than similarly situated persons who are not members of the protected class." *Bennett v. Nucor Corp.*, 656 F.3d 802, 819 (8th Cir. 2011). But "[t]he test to determine whether individuals are similarly situated is rigorous and requires that the other [individuals] be similarly situated in all relevant respects before the plaintiff can introduce evidence comparing [himself] to the other [individuals]." *Id.* Where a plaintiff is accused of misconduct, an appropriate comparator is another person who committed misconduct "of the same or comparable seriousness." *Said v. Mayo Clinic*, 44 F.4th 1142, 1148 (8th Cir. 2022). A plaintiff cannot simply "assume[] … that the defendants would treat a hypothetical similarly situated non-[class member] differently." *Mitchell v. Kirchmeier*, 28 F.4th 888, 902 (8th Cir. 2022).

Once again, Plaintiff's Amended Complaint is exceedingly long and detailed. But it does not give notice of a valid theory by which he might show religious discrimination. Plaintiff offers supposed comparators, but he does not actually allege the existence of any similarly-situated person who received better treatment. He alleges that other tenants who were accused of pet- or drug-related violations were given warnings as part of a three-part disciplinary process. But the Amended Complaint acknowledges that this process explicitly applied to those particular violations. Plaintiff's alleged violations of the Lease were of a different character. Thus, he is not similarly situated to those violators.

Plaintiff also alleges that when another tenant experienced religious conflict with a co-tenant, Housing Manager Minten stepped in to remedy the situation by talking to the co-tenant. But that is not different than what she did for Plaintiff. The attachments to the Amended Complaint are replete with instances of Housing Manager Minten asking Co-Tenant Steen to voluntarily remove items in order to appease Plaintiff. Finally, Plaintiff alleges that when another tenant and co-tenant had a conflict, Housing Manager Minten moved one of the tenants. But that is not different that what she did for Plaintiff. The Amended Complaint demonstrates that the HRA also moved Plaintiff once in an attempt to address his complaints about a co-tenant and her dog. Offering to move Plaintiff a *second* time would have been a more significant step, and the fact that the HRA did not do this is not evidence of disparate treatment.

The Court acknowledges that the dismissal of MHRA claims at the Rule 12 stage is rare under this state's pleading standard. Bare complaints often survive motions to dismiss on the pleadings because courts must accept their conclusory allegations as true and draw all reasonable inferences in their favor. By contrast, the Amended Complaint in this case is so detailed that it effectively forecloses the possibility that any novel facts could be introduced consistent with the

pleadings that would support the inferences Plaintiff needs to prove. The Court dismisses Plaintiff's religious discrimination claim under the MHRA.

VII. Minnesota Human Rights Act — Retaliation (Count VIII)

Next the Court addresses Plaintiff's retaliation claim under the Minnesota Human Rights Act (MHRA). The MHRA provides that "[i]t is an unfair discriminatory practice for any individual who participated in the alleged discrimination as … [an] owner … or managing agent of any real property … to intentionally engage in any reprisal against any person because that person … opposed a practice forbidden under" the MHRA. Minn. Stat. § 363A.15. "A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment." *Id*. Plaintiff alleges that he took protected action by sending letters of complaint between September 19, 2022 and September 26, 2022. And he alleges that the HRA and Housing Manager Minten retaliated against him by issuing the amended notice of non-renewal on September 29, 2022.

A tenant retaliation claim under the MHRA requires showing: (1) that the tenant engaged in statutorily-protected conduct; (2) that the landlord took an adverse housing action against the tenant; and (3) "a causal connection between the two." *Hubbard v. United Press Int'l, Inc.*, 330 N.W.2d 428, 444 (Minn. 1983). Complaints of religious discrimination are statutorily protected conduct. And termination of a lease is, of course, an adverse housing action. But the problem for Plaintiff is that the non-renewal of his Lease occurred *before* his complaints of religious discrimination. He cannot establish that the original notice of non-renewal was retaliatory on the basis of protected actions he took *after* that notice.

Plaintiff instead tries to argue that the amended notice of non-renewal was an adverse housing action. The Court is not convinced. Plaintiff seems to argue that the amended notice of

non-renewal was retaliatory because it doubled down on the HRA's decision to terminate his tenancy. But the amended notice did not change anything. The HRA had already provided effective notice of its decision to terminate the tenancy. The mere continuance of an existing condition is not an adverse housing action. *Cf. Ewald v. Royal Norwegian Embassy*, 2 F.Supp.3d 1101, 1121 (D. Minn. 2014) ("Although Plaintiff has demonstrated that she was paid less than [a comparator], she has not demonstrated that there was a *change* in her salary or benefits after she started her employment that could constitute an adverse action." (emphasis in original)).

Plaintiff also seems to argue that the amended notice of non-renewal was retaliatory because it caused negative statements about him to be placed in his tenant file. But there is no authority for the proposition that negative statements themselves constitute an adverse housing action. *Cf. Burchett v. Target Corp.*, 340 F.3d 510, 518 (8th Cir. 2003) ("A negative performance review is not in itself an adverse employment action, however, and it is actionable only if the employer *subsequently* uses that review to alter the terms or conditions of employment to the detriment of the employee." (emphasis added)); *LaCroix v. Sears, Roebuck, & Co.*, 240 F.3d 688, 692 (8th Cir. 2001). Because the negative statements were simply offered in support of an adverse housing action that had already occurred before the alleged protected conduct, those negative statements cannot meet the test to be considered an adverse housing action.

Moreover, even if the amended notice of non-renewal could be considered an adverse action, it still would not be solely retaliatory. "[I]t is not enough that retaliation was a 'substantial' or 'motivating' factor in the [landlord's] decision;" rather "retaliation must be the 'but for' cause of the adverse [housing] action." *Liles v. C.S. McCrossan, Inc.*, 851 F.3d 810, 819 (8th Cir. 2017) (cleaned up). The "but for" cause of the amended notice of non-renewal was not Plaintiff's allegation of religious discrimination. Rather, the amended notice was obviously the

result of legal compliance. HUD regulations require that a landlord of subsidized housing must give its reasons for termination of a tenancy. 24 C.F.R. § 247.4. When Plaintiff pointed out this requirement, it was only natural that the HRA would have to amend its notice to comply. *But for* Plaintiff's religious discrimination complaint, the HRA would *still* have had to issue an amended notice of non-renewal of tenancy disclosing its basis for action.

As a matter of law, there was no retaliatory act which occurred after Plaintiff engaged in the protected activity he alleges in his Amended Complaint. Therefore, the Court must dismiss Plaintiff's retaliation claim under the MHRA.

VIII. Negligence (Count VI)

Next the Court addresses Plaintiff's claim for negligence against the City. Plaintiff alleges that the City has a duty to maintain accurate and complete records of all calls for service and employee site visits, and that it negligently failed to do so by maintaining a system that had the capacity to delete records. The City's factual response is that it does not have a practice of generating records for events as trivial as those here, nor should it. In addition, the City's legal response is that it does not have the tort duty Plaintiff alleges. And even if it did, the City would be entitled to discretionary-act immunity from a breach of that duty. The Court agrees.

"To recover for a claim of negligence, a plaintiff must prove" (1) "the existence of a duty of care," (2) "a breach of that duty," (3) "an injury," and (4) "that the breach of the duty of care was a proximate cause of the injury." *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011). "[A] defendant's duty to a plaintiff is a threshold question because in the absence of a legal duty, the negligence claim fails." *Id.*

As a general matter, cities and fire departments do not owe a duty of care to individual plaintiffs to enforce laws, perform inspections, or suppress fires. *Woehrle v. City of Mankato*, 647 N.W.2d 549, 553 (Minn. App. 2002); *Dahlheimer v. City of Dayton*, 441 N.W.2d 534, 537 (Minn. App. 1989); *Frank's Livestock & Poultry Farm, Inc. v. City of Wells*, 431 N.W.2d 574, 579 (Minn. App. 1988); *Erickson v. Great Northern Railway Co.*, 135 N.W. 1129 (Minn. 1912); *Grube v. City of St. Paul*, 26 N.W. 228 (Minn. 1886). As explained in *Cracraft v. City of St. Louis Park*, 279 N.W.2d 801, 804 (Minn. 1979), the law-enforcement and fire-suppression functions of a fire department are provided for the general public, not for specific individuals. And "general duties owed to the entire public rather than [to] a specific class of persons cannot form the basis of a negligence action." *Id.*

Whatever obligation a fire department has to keep records of inspections, that obligation is no less general that its obligation to perform inspections in the first place. As such, it follows logically that a negligence action may not be premised on a purported general duty of a fire department to keep records of inspections. Like the duty to inspect, the duty to keep inspection records could not be invoked by individual tort plaintiffs. The conclusion that a fire department has no duty of care to keep specific types of records or to keep them in a specific way is also bolstered by the fact that "the Official Records Act does not authorize a private cause of action." *Halva v. Minnesota State Colleges & Universities*, 953 N.W.2d 496, 507 (Minn. 2021). And it is further bolstered by the fact that related statutes both limit the collection of data on individuals and explicitly contemplate the lawful destruction of that data. Minn. Stat. § 13.05.

Plaintiff argues that *Cracraft* allows for the possibility of special or assumed duties. *Cracraft*, 279 N.W.2d at 804. And he argues that the City assumed such a duty based on its activities directed at the general public — such as the Fire Department issuing publications to the

general public broadcasting its values, its statistics about its calls for service, and its reports of its activities. But that is not how special duties operate. They involve duties "for the protection of a *particular class* of persons rather than the public as a whole." *Id.* at 806 (emphasis added). Plaintiff cannot assert a "special duty" that would apply to *any* member of the public who made a call for service. As in *Cracraft*, the Fire Department here has no tort duty.

Relatedly, the City is also immune from liability in this case under the doctrine of discretionary-act immunity, which is a companion doctrine to the authorities discussed above. By statute, municipalities are not subject to tort liability for "[a]ny claim based upon the performance or the failure to exercise or perform a discretionary function or duty, *whether or not the discretion is abused*." Minn. Stat. § 466.03, subd. 6 (emphasis added). "Choice of the use of police and fire manpower involves the use of discretion and falls squarely within [this] statutory exception from liability…." *Silver v. City of Minneapolis*, 170 N.W.2d 206, 209 (Minn. 1969); *see also Minder v. Anoka Cnty.*, 677 N.W.2d 479, 481 (Minn. App. 2004) (maintenance).[9] The City's decisions about when Fire Department records should be generated, and how they should be kept, are discretionary policymaking decisions akin to the choice of how to deploy Fire Department manpower. They are not ministerial duties spelled out in detailed statutes. Accordingly, they are protected by discretionary-act immunity.

[9] The City Defendants cite caselaw discussing immunity for individual officials, as opposed to municipalities themselves. These authorities hold that "a public official charged by law with duties which call for the exercise of his judgment or discretion is not personally liable to an individual for damages *unless he is guilty of a willful or malicious wrong.*" *Elwood v. Rice Cnty.*, 423 N.W.2d 671, 677 (Minn. 1988) (emphasis added). The reader should not confuse (1) statutory discretionary-act immunity, with (2) common-law official immunity and vicarious official immunity. The latter doctrines apply to the counts against the individual City Defendants. But Count VI is explicitly plead as a claim against the City itself, without reference to any individual official, based on a purported duty of the City *itself*. Therefore, the Court declines to discuss official immunity (and vicarious official immunity) or its exceptions for willful or malicious wrongs.

Because the City had no tort duty owed to Plaintiff, and because it is immune from suit for its discretionary policies and practices, the Court grants the motion to dismiss Plaintiff's claim of negligent recordkeeping against the City.

IX. Negligent Supervision (Counts IX & XIV)

The Court next addresses Plaintiff's claims of negligent supervision. Plaintiff alleges that Fire Chief Muchow negligently supervised Fire Inspector Dean Olson and Chief Inspector Harig, allowing the deletion of, concealment of, or failure to make a record of, Plaintiff's call and Fire Inspector Dean Olson's visit. Plaintiff also alleges that Director Olson negligently supervised Housing Manager Minten, leading to the termination of his lease, the statements in support of that termination, and various conditions of the housing complex. The injuries that Plaintiff claims as part of each of these claims are purely economic, not physical injuries.

"[A] corporate officer is not liable for the torts of the corporation's employees unless he "participated in," "directed," or personally "was negligent" in violation of some supervisory duty to "prevent the tort." *Morgan v. Eaton's Dude Ranch*, 239 N.W.2d 761, 762 (Minn. 1976); *Avery v. Solargizer Int'l, Inc.*, 427 N.W.2d 675, 681 (Minn. App. 1988). "Minnesota recognizes" direct liability in negligence "where a claimant sues an employer in negligence for injuries caused by one of its employees" due to the employer's own "negligent supervision." *M.L. v. Magnuson*, 531 N.W.2d 849, 856 (Minn. App. 1995).

However, "some form of physical injury is required to recover under a claim of negligent supervision." *Bruchas v. Preventive Care, Inc.*, 553 N.W.2d 440, 443 (Minn. App. 1996); *Johnson v. Peterson*, 734 N.W.2d 275, 277 (Minn. App. 2007) ("[I]t is well established that a viable negligent-supervision claim must allege physical injury."). A director has a duty of care to

supervise others only with respect to "his or her employee's physical conduct while on the employer's premises or while using the employer's chattels … in order to prevent intentional or negligent infliction of personal injury." *Semrad v. Edina Realty, Inc.*, 493 N.W.2d 528, 534 (Minn. 1992). The duty does not apply to "case[s] involving economic loss only." *Id.*

None of the harms that Plaintiff alleges in either of his negligent supervision claims involves physical harms suffered due to personal injuries inflicted by employees' physical conduct. Rather, all allegations relate to verbal or legal acts that allegedly caused economic or emotional harm. While a corporation itself may have vicarious liability for an employee's actions, a supervisor has no direct duty of care to prevent another employee from causing economic harms to a plaintiff. As such, Plaintiff's negligent supervision claims are not viable and must be dismissed.

X. Civil Conspiracy and Aiding and Abetting (Counts II, X, XI & XIII)

Finally, the Court addresses the remainder of Plaintiff's claims, all of which are denominated as either civil conspiracy claims or aiding-and-abetting claims. Both "civil conspiracy" and "civil aiding and abetting" are "theor[ies] of liability under which a plaintiff can establish that a defendant is vicariously liable for some tortious act committed by another." *Leiendecker v. Asian Women United of Minnesota*, 848 N.W.2d 224, 228 n.2 (Minn. 2014). A claim of civil conspiracy lies only when the plaintiff has been harmed by the underlying tort of one of the conspirators. *Harding v. Ohio Cas. Ins. Co.*, 41 N.W.2d 818, 825 (Minn. 1950). Likewise, "[a] claim for aiding and abetting the tortious conduct of another" requires, among other things, that "the primary tort-feasor must commit a tort that causes an injury to the plaintiff." *Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 187 (Minn. 1999).

Here, the only viable underlying claim Plaintiff has pleaded is a contract claim. He has not pleaded an underlying *tort* claim that is viable. As such, his claims for vicarious liability, on the basis of civil conspiracy or aiding-and-abetting, must also be dismissed. In light of this, it is unnecessary for the Court to discuss Defendants' other challenges to these claims.

Conclusion

In conclusion, the Court dismisses each of Plaintiff's tort claims, leaving only his breach-of-contract claim to progress to discovery. Furthermore, the Court limits that claim to the type of damages obtainable in a breach-of-contract action. Plaintiff may obtain discovery on his claim for $3,500 in damages for breach of contract.

MINNESOTA JUDICIAL BRANCH