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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF OTTER TAIL SEVENTH JUDICIAL DISTRICT

Stephen Roy Svendsen, Plaintiff, v. Pamela J. Minten, Ken Laney, Mikel B. Olson, Fergus Falls HRA, Chris Harig, Ryan Muchow, and City of Fergus Falls, Defendants.	Case No.: 56-CV-24-1426 Case Type: Civil Other/Misc. Judge: Kevin M. Miller **DEFENDANT FERGUS FALLS HRA'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Summary judgment in Defendant Fergus Falls HRA's (the "HRA") favor is appropriate because (1) pro se Plaintiff Stephen Svendsen ("Plaintiff") had repeated material breaches of the lease agreement throughout his tenancy, precluding a contract claim by him against the HRA, (2) the HRA complied with the terms of the Lease in non-renewing it based on Plaintiff's material noncompliance with the Lease, and (3) Plaintiff has not produced sufficient evidence to sustain his claim of damages.

Plaintiff agreed that the HRA may terminate his lease for repeated violations, including any activity that the HRA determined may threaten the health, safety or right to peaceful enjoyment of the premises of any person on the premises, including guests, neighbors, HRA employees, or vendors. The evidence establishes that Plaintiff fixated on his various perceived issues around the premises and, as a result, badgered other tenants, HRA staff, and third parties such as HRA contractors. Upon review of the undisputed evidence, reasonable minds can arrive at only one conclusion: Plaintiff repeatedly breached the Lease with his misconduct in

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(1) threatening the rights of other tenants and HRA staff and contractors to safety or right to peaceful enjoyment of the premises and (2) interfering with the HRA's management of the premises. Since the undisputed evidence shows Plaintiff repeatedly had material breaches of the Lease through his conduct well before the non-renewal, this Court should grant judgment in the HRA's favor and dismiss Plaintiff's contract claim with prejudice.

Beyond the breach issue, the HRA is further entitled to judgment as a matter of law because Plaintiff has failed to prove that he suffered any damages from an alleged breach of the Lease by the HRA. Plaintiff cannot rely upon unsupported conclusory allegations. Summary judgment is mandatory against a party who fails to establish an essential element of the claim. This Court should further grant the HRA's motion and dismiss Plaintiff's claim with prejudice because Plaintiff has failed to establish any damages – an essential element to his claim.

II. STATEMENT OF FACTS

The HRA serves low-income families as well as individuals who are elderly, disabled, or require home healthcare. *See* Ex. 16 to Decl. of Pamela J. Minten ("Minten Decl.") at ¶ 3. Plaintiff first entered a lease with the HRA on or around February 1, 2018, to rent Unit # 606 located at 205 North Sheridan, Fergus Falls, Minnesota 56537 (the "Premises"). Plaintiff then entered into a lease agreement (the "Lease") with the HRA to rent Unit # 401 at the Premises on or around December 3, 2020. *See* Ex. 1 attached to Pl.'s Aff. (Index # 2). Plaintiff agreed that the HRA was entitled to terminate the Lease for serious or repeated violations of material terms of the Lease, such as, but not limited to:

> Any activity on or off the Premises engaged in by the Tenant … even in the absence of an arrest or conviction, that Fergus Falls HRA determines may threaten the health, safety or right to peaceful enjoyment of the Premises of any

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> person on the Premises, Tenant Family, Guest, neighbor, or Fergus Falls HRA's employee or vendor.

See Ex. 1 at p. 10 (Index # 2).

Since Plaintiff moved to the Premises, Plaintiff regularly created conflict over innocuous issues. *See* Ex. 16 to Minten Decl. at ¶ 6. Plaintiff repeatedly confronted and complained about his neighboring tenants, other residents, and various individuals in and around the Premises. *See id.* Plaintiff also harassed the HRA's staff regarding other tenants at the Premises and the HRA's security around the Premises, as well as interfered with contractors performing work onsite by confronting and challenging them. *See id.* at ¶¶ 8 and 11-16. In short, Plaintiff was a persistently difficult and disruptive tenant. *See id.* at ¶ 6.

For instance, Plaintiff complained to the Housing Manager at the HRA, Pamela Minten, that another tenant was not wearing a mask and that Plaintiff was allegedly "being stalking because of [his] history in Minneapolis as a Christian and the people migrating [to Fergus Falls]." *See* Ex. 1 to Minten Decl. Plaintiff reported the alleged stalking to the Fergus Falls Police Department and then badgered Ms. Minten about the HRA's process for inquiring "if people are current or past members Black Lives Matter or ANTIFA when they move in." *Id.* at p. 1. Plaintiff repeatedly hounded the HRA with alleged concerns about Black Lives Matter and ANTIFA members again on November 10 and 16, 2020. *See* Exs. 2 and 3 to Minten Decl.

Plaintiff then inundated the HRA with a barrage of petty gripes about his neighbor's dog. *See* Ex. 4 to Minten Decl. Plaintiff confronted Ms. Minten about this issue on February 17, 2021; February 22, 2021; February 24, 2021; February 25, 2021; and March 15, 2021. *See id.* Plaintiff even called the police when his neighbor's dog was barking for merely 15 minutes. *See id.* at pp. 9-10.

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Plaintiff also repeatedly hectored Ms. Minten with baseless and minor concerns about people around the Premises, including alleged "terroristic threat," "security related suspicious events," and "a prolonged threatened glare." *See* Ex. 5 to Minten Decl. Plaintiff's complaints were illusory. For example, Plaintiff burdened the HRA with a complaint of an individual simply walking by the front of the building as well as another individual walking "within 10 feet of [him] and in front of [his] field of vision." *See id.* at pp. 1 and 4.

On June 7, 2021, the Executive Director of the HRA, Mikel Olson, and Ms. Minten met with the Fergus Falls Police Chief to address Plaintiff's issues with certain individuals around the Premises. *See* Ex. 6 to Minten Decl. The Police Chief confirmed that he had not received similar complaints from anyone else. *See id.* After this meeting, Plaintiff's irrational and disruptive complaints about the HRA's tenants, employees, and contractors continued.

For example, in October of 2021, Plaintiff approached contractors hired by the HRA, Kevin Jarhardsen and his employee, and walked into the unit which they were working in and accosted them about the noise they were making. *See* Ex. 7 to Minten Decl. Because of Plaintiff's disruptiveness, Mr. Jarhardsen contacted Ms. Minten and Mr. Olson about Plaintiff's interruption of his work on the Premises. *See id.*

As another example, throughout 2021, Plaintiff also regularly hounded Ms. Minten about items simply being placed in the common areas of the Premises. *See* Exs. 8 and 9 to Minten Decl. Plaintiff complained to Ms. Minten regarding items placed in common areas on June 18, 2021; July 1, 2021; August 18, 2021; September 13, 2021, November 2, 2021, and April 12, 2022. *See* Ex. 8. For example, Plaintiff repeatedly complained and nagged of a neighboring tenant putting a rubber duck on a table in a common area as well as a "fish shrine" (which was Big Mouth Billy Bass), "bird shrine," pine cone, and a small fake dog outside the

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tenant's own door. *See id.* at pp. 1, 4, and 13. Plaintiff filed a police report against his neighboring tenant for allegedly "set[ting] up shrines to worship [evil spirits] and attract them in the common area hallway and common area elevator lobby." *See id.* at p. 11. Plaintiff even threatened Ms. Minten "I think there are potential complications including for management if [placing items on the hallway floor] continues which seems possible." *See id.* at p. 13.

Furthermore, Plaintiff repeatedly needled Ms. Minten about a neighbor's medical alarm and other sounds, such as complaints on August 16, 2022; August 31, 2022; and September 12, 2022. *See* Exs. 10 and 11 to Minten Decl. On September 12, 2022, Plaintiff called the HRA's Maintenance Supervisor, Ken Laney, after 9:00 p.m. and requested that he take care of a medical alarm from a neighboring tenant. *See* Ex. 11. Plaintiff then threatened Ms. Minten that he would be "performing an investigation to file an advisory police report" on September 13, 2022, regarding an alleged unattended medical alarm for another tenant. *See* Ex. 10 at p. 3. Plaintiff proceeded to badger Jim Salentine—the CEO of New Dimensions, which is an organization that renders services to the HRA's tenants—demanding the names of New Dimensions' patients despite Mr. Salentine informing him that information was confidential. *See* Ex. 12 to Minten Decl. Plaintiff then confronted an employee of New Dimensions, Megan Schultz, regarding a medical alarm in his neighbor's apartment. *See* Ex. 13 to Minten Decl. Plaintiff proceeded to badger Ms. Schultz requesting confidential information regarding New Dimensions' patients and demanding that New Dimensions do something regarding the medical alarm. *See id.* Ms. Schultz felt that Plaintiff "was very rude and made staff uncomfortable" and documented that this was the second time staff had such an encounter with Plaintiff. *See id.*

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In follow up, on September 14, 2022, Plaintiff next extended his haranguing to the Fergus Falls Fire Department, requesting a report regarding an inspection of the Premises on July 2, 2021. *See* Ex. 14 to Minten Decl. (833). Plaintiff also demanded statements from Mr. Olson and Ms. Minten regarding the fire inspection. *See* Ex. 15 to Minten Decl.

As a result of Plaintiff's repeated misconduct, and incessant disruptions, throughout his tenancy towards neighboring tenants, HRA staff, and HRA contractors, the HRA notified Plaintiff that it was not renewing his Lease. *See* Ex. 6 attached to Pl.'s Aff. (Index # 2). Although the initial notice was less specific, in an amended non-renewal notice, the HRA specifically notified Plaintiff that it was non-renewing his Lease for numerous material breaches of the same, including "[r]epeated harassment" of other residents, employees, and contractors. *See id.* at Exs. 5-6 (Index # 2).

Plaintiff then filed this lawsuit alleging numerous claims against the HRA, the City of Fergus Falls, and a number of their employees. *See generally* Pl.'s Am. Compl. (Index # 36). After the HRA's motion to dismiss, this Court determined that Plaintiff's claim that the HRA breached the Lease by non-renewing the Lease survived the motion to dismiss stage. *See* Order and Memorandum at p. 28 (Index # 96). Despite being requested to itemize and provide documentation supporting Plaintiff's claimed damages for moving expenses, Plaintiff has failed to provide any support for his claimed damages and solely relied on his conclusory allegations in his Amended Complaint. *See* Ex. 1 to Decl. of Jack M. Buck ("Buck Decl.") at pp. 24 (Interrog. No. 15) and 39 (Req. for Prod. No. 13).

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III. LAW AND ARGUMENT

A. Standard of Review.

Rule 56.01 of the Minnesota Rules of Civil Procedure provides that a party may move for summary judgment, identifying each claim or defense on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law. Minn.R.Civ.P. 56.01.

"[I]t needs to be remembered that a purpose of the summary judgment procedure is to separate the wheat from the chaff and relieve the court system of the burden and expense of unfounded litigation." *Cook v. Connolly*, 366 N.W.2d 287, 292 (Minn. 1985); *see also Home Mut. Ins. Co. v. Snyder*, 356 N.W.2d 780, 783 (Minn. Ct. App. 1984) (Summary judgment serves a salutary purpose of avoiding useless and time consuming trials). Summary judgment is appropriate when the parties do not dispute material facts and a determination of the applicable law will resolve the controversy. *Com. Union Ins. Co. v. Minn. Sch. Bd. Ass'n*, 600 N.W.2d 475, 478 (Minn. Ct. App. 1999); *see also Curtis v. Klausler*, 802 N.W.2d 790, 793 (Minn. Ct. App. 2011) (A fact question for the jury becomes a question of law and may be disposed of by summary judgment where reasonable minds can arrive at only one conclusion).

Once the moving party has made a prima facie case that entitles it to summary judgment, the burden shifts to the nonmoving party to produce specific facts that raise a genuine issue for trial. *Bebo v. Delander*, 632 N.W.2d 732, 737 (Minn. Ct. App. 2001). The nonmoving party may not rely upon mere averments in the pleadings or unsupported allegations but must come forward with specific facts to satisfy its burden of production. *Id.* Summary judgment is

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mandatory against a party who fails to establish an essential element of the claim, if that party has the burden of proof, because this failure renders all other facts immaterial. *Id.*

Upon the HRA's motion to dismiss, this Court determined that Plaintiff's claim that the HRA breached the Lease by non-renewing the Lease survived the motion to dismiss stage. *See* Order and Memorandum at p. 28 (Index # 96). Judgment as a matter of law in the HRA's favor is appropriate because: (1) there is no genuine dispute as to any material fact that Plaintiff materially breached the Lease first, barring any contract claim by him, (2) there is no genuine dispute that the HRA properly nonrenewed the Lease in light of those material breaches by Plaintiff, and (3) Plaintiff has failed to come forward with specific facts or evidence sufficient at the summary judgment stage to demonstrate any alleged damages.

B. Plaintiff's breach of contract claim fails as a matter of law because the undisputed facts establish that Plaintiff materially breached the Lease first.

Plaintiff's contract claim fails because Plaintiff breached the Lease first through his conduct in continuously harassing and pestering other residents, HRA staff, and HRA contractors throughout his tenancy. To prevail on a breach-of-contract claim, Plaintiff must prove: (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. Ill. Paper and Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014). A breach of contract occurs when contract performance is hindered or rendered impossible by the other party. *Zobel & Dahl Constr. v. Crotty*, 356 N.W.2d 42, 45 (Minn. 1984). Interpretation of contract language is a question of law for the court to determine. *Krollman v. City of Hibbing*, 550 N.W.2d 314, 316 (Minn. Ct. App. 1996). When the contract language is unambiguous, courts enforce the parties' agreement as expressed in the language of the

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contract, and do not rewrite, modify, or limit its effect by a strained construction. *Kuhn v. Dunn*, 8 N.W.3d 633, 637 (Minn. 2024).

"A rule in the law of contracts is that a party cannot raise to its advantage a breach of contract against another party when it has first breached the contract itself." *MTS Co. v. Taiga Corp.*, 365 N.W.2d 321, 327 (Minn. Ct. App. 1985). Under general contract law, a party who first breaches a contract is precluded from successfully claiming against the other party. *See Carlson Real Est. Co. v. Soltan*, 549 N.W.2d 376, 379-80 (Minn. Ct. App. 1996) (citing 17A C.J.S. *Contracts* § 458 (1963) ("a party who commits the first breach is *** deprived of the right to complain of a subsequent breach by the opposite party"). The first breach serves as a defense against the subsequent breach. *Id.* Put another way, "A rule in the law of contracts is that a party cannot raise to its advantage a breach of contract against another party when it has first breached the contract itself." *MTS Co.*, 365 N.W.2d at 327; *see also Kuhn*, 8 N.W.3d at 640-41 (defining "a 'material breach' is a breach that goes to the essence of the parties' agreement, affecting the purpose of the contract in a vital way").

This general rule applies with particular force in this case. A landlord may terminate any tenancy in a subsidized project upon: (1) material noncompliance with the rental agreement. *See* 24 C.F.R. § 247.3(a). The term "material noncompliance" with the rental agreement includes: (1) one or more substantial violations of the rental agreement and (2) repeated minor violations of the rental agreement that: (i) disrupt the livability of the project, (ii) adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, (iii) interfere with the management of the project, or (iv) have an adverse financial effect on the project. *See* 24 C.F.R. § 247.3(c).

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In this case, Plaintiff repeatedly engaged in disruptive and confrontational conduct that disrupted the livability of the project, adversely affected the health and safety of other tenants, employees, and third parties, and interfered with the HRA's management of the property and its ability to operate the project safely and effectively. Plaintiff's conduct therefore constituted "material noncompliance" under 24 C.F.R. § 247.3(c), as well as material violations of the Lease itself.

In fact, Plaintiff agreed that the HRA may terminate the Lease for serious or repeated violations of material terms of the Lease, such as, but not limited to:

> Any activity on or off the Premises engaged in by the Tenant … even in the absence of an arrest or conviction, that Fergus Falls HRA determines may threaten the health, safety or right to peaceful enjoyment of the Premises of any person on the Premises, Tenant Family, Guest, neighbor, or Fergus Falls HRA's employee or vendor.

See Ex. 1 at p. 10 (Index # 2); *see also* 24 C.F.R. § 247.3. Plaintiff repeatedly and materially breached the Lease as demonstrated through numerous examples of his conduct threatening the safety and right to peaceful enjoyment of the Premises of other residents, HRA staff, and HRA vendors or contractors. Plaintiff's misconduct likewise disrupted the livability of other tenants at the Premises and interfered with the HRA's management of the Premises.

First, Plaintiff disrupted the safety, livability, and right to peaceful enjoyment of other tenants by baselessly alleging that he was being stalked by members of Black Lives Matter and ANTIFA. *See* Ex. 1 to Minten Decl. Plaintiff also complained of other individuals simply being around him as committing a "terroristic threat," "security related suspicious events," and "a prolonged threatened glare." *See* Ex. 5 to Minten Decl. Furthermore, Plaintiff repeatedly griped about other tenants' conduct in merely living at the Premises. Plaintiff complained of a tenant's dog barking on numerous occasions and even called the police when the dog barked

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for fifteen (15) minutes. *See* Ex. 4 to Minten Decl. Plaintiff also repeatedly complained about another tenant's medical alarm. *See* Exs. 10 and 11 to Minten Decl. Plaintiff even complained about other tenants placing harmless décor in the common areas around the Premises. *See* Ex. 8 to Minten Decl. For example, Plaintiff complained about a rubber duck placed on a table in the common area as well as pine cones and a small fake dog placed in the hallway outside the tenant's door. *See id.*

Plaintiff chose to live at the Premises – a multi-family residential building. Plaintiff then disrupted the safety, livability, and right to peaceful enjoyment of the other tenants at the multi-family Premises by complaining about and reporting other tenants to the police for simply residing at the Premises. The other tenants could not: walk near Plaintiff, look at Plaintiff, have their dog bark or their medical alarm beep around Plaintiff, or simply place décor in a common area without Plaintiff accusing them of being a terrorist supposedly threatening him or filing a baseless claim against them to the police and/or fire department.

Second, Plaintiff interfered with the HRA's management of the Premises through his misconduct towards Ms. Minten, the HRA's Housing Manager. Plaintiff continuously pestered Ms. Minten on the HRA's security measures, including whether the HRA currently has a process for inquiring "if people are current or past members Black Lives Matter or ANTIFA when they move in," requesting the HRA install "no trespassing" signs, and requesting security footage. *See* Ex. 1 at p. 1; *see also* Ex. 5 at pp. 2-3. The email correspondence demonstrates that Plaintiff would continually pester Ms. Minten about his perceived issues at the Premises on a weekly, if not daily, basis for each particular issue. *See* Exs. 4, 5, 8, 9, 10, and 11 to Minten Decl. First, Plaintiff pestered Ms. Minten about the neighboring tenant's dog barking, then it was alleged terroristic threats and suspicious events around the Premises, then it was

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other residents placing décor to Plaintiff's displeasure around the common areas, and finally, it was a neighboring tenant's medical alarm. *See id.* Notably, Ms. Minten and the Fergus Falls Police Department did not receive any other complaints like Plaintiff's complaints. *See* Ex. 6 to Minten Decl.

Third, Plaintiff threatened and interfered with the safety of the HRA's vendors and contractors at the Premises and their right to peaceful enjoyment of the Premises. Specifically, Plaintiff interrupted the HRA's contractor, Kevin Jarhardsen, when he was working in another unit at the Premises. *See* Ex. 7 to Minten Decl. Plaintiff then questioned Mr. Jarhardsen about the noise of his work and how long he would be working in the unit - which was not Plaintiff's unit. *See id.* Plaintiff's interference with contractors was not an isolated incident. Plaintiff also confronted New Dimension's employee, Megan Schultz, when she was on the Premises working with a patient who had a medical alarm. *See* Ex. 13 to Minten Decl. Plaintiff then badgered Ms. Schultz requesting confidential information regarding New Dimensions' patients and demanding that New Dimensions do something regarding the medical alarm. *See id.* Ms. Schultz felt that Plaintiff "was very rude and made staff uncomfortable" and documented that this was the second time staff had such an encounter with Plaintiff. *See id.*

Based upon the undisputed evidence provided by the HRA, reasonable minds can arrive at only one conclusion: Plaintiff's misconduct towards other residents, HRA staff, and HRA contractors materially breached Clause 16(12) of the Lease. As Plaintiff's misconduct in breach of the Lease was the justification for the Lease not being renewed, Plaintiff's misconduct in question clearly occurred prior to any alleged breach with the non-renewal. *See* Ex. 6 attached to Pl.'s Aff. (Index # 2).

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Under settled Minnesota law, Plaintiff cannot maintain a breach of contract claim where he was the first party to materially breach the Lease. *See Carlson Real Est. Co*, 549 N.W.2d at 379-80. The record demonstrates that Plaintiff repeatedly engaged in disruptive, confrontational, and interfering conduct that undermined the livability of the project, adversely affected other tenants, employees, and third parties, and materially interfered with the HRA's management of the property. These were not isolated or technical violations. Rather, Plaintiff's repeated conduct went directly to the core purposes of the Lease and subsidized housing arrangement: maintaining a safe, habitable, and properly managed residential environment for all residents. *See, e.g.*, *MTS Co.*, 365 N.W.2d at 327.

Plaintiff's repeated violations therefore constituted "material noncompliance" under 24 C.F.R. § 247.3(c) and material breaches of the Lease itself. Having first materially breached the Lease, Plaintiff cannot now seek to impose liability on Defendants for subsequent actions taken in response to Plaintiff's own conduct. Minnesota's first material breach doctrine bars such claims as a matter of law. *See Carlson Real Est. Co*, 549 N.W.2d at 379-80. The undisputed facts demonstrating Plaintiff's misconduct in violation of the Lease prior to any alleged breach with the non-renewal dictate that this Court grant the HRA's motion, enter judgment as a matter of law in favor of the HRA, and dismiss Plaintiff's breach of contract claim with prejudice.

C. For the same reasons, the HRA complied with the terms of the Lease in nonrenewing it based on Plaintiff's repeated material breaches throughout his tenancy.

In its prior Order on the Motion to Dismiss, the Court artfully articulated the rules for the HRA's nonrenewal of the Lease. As the Court explained, proper grounds include (1) material noncompliance with the lease and (2) other good cause. 24 C.F.R. § 247.3(a).

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Material noncompliance includes not only a single substantial violation, but also repeated minor violations that disrupt the livability of the project or interfere with its management. *See id.* § 247.3(c). More specifically, the undisputed record evidence shows Plaintiff materially breached Section 16(12) of the Lease, barring activity (whether or not criminal) that disturbs the safety or peaceful enjoyment of others, by his incessant confrontations and complaints about innocuous matters to neighbors, the HRA staff, and third parties. *See* Ex. 1 at p. 10 (Index # 2); *see also* 24 C.F.R. § 247.3.

Under these circumstances, as described in greater detail above, the HRA was within its rights to non-renew the Plaintiff's Lease.

D. Plaintiff has failed to ascertain any damages that he allegedly sustained as a result of the alleged breach of the Lease.

Even if this Court determines there is a factual dispute whether the Lease was breached, the HRA is still entitled to judgment as a matter of law because Plaintiff has failed to prove that he suffered any damages from the alleged breach. Liability 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.*, 690 N.W.2d 326, 336 (Minn. Ct. App. 2004); *see also Faust v. Parrott*, 270 N.W.2d 117, 120 (Minn. 1978) (As a prerequisite to recovery it was incumbent on plaintiffs to prove the amount of the damages they sustained). Speculative, remote, or conjectural damages are not recoverable at law. *Lassen v. First Bank of Eden Prairie*, 514 N.W.2d 831, 839 (Minn. Ct. App. 1994). Damages must be ascertainable with reasonable exactness and may not be the product of benevolent speculation. *Faust*, 270 N.W.2d at 120. A breach of contract claim fails as a matter of law if the plaintiff cannot establish that

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he or she has been damaged by the alleged breach. *Jensen v. Duluth Area YMCA*, 688 N.W.2d 574, 578-79 (Minn. Ct. App. 2004).

Rule 56.03 specifies that a party asserting that there is no genuine issue as to any material fact must support the assertion by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations, admissions, interrogatory answers, or other materials." Minn.R.Civ.P. 56.03. A non-moving party "cannot rely on assertions in his pleadings to create fact issues" at summary judgment. *Ahlm v. Rooney*, 143 N.W.2d 65, 68 (Minn. 1966); *see also Credo Salon & Spa, Inc. v. Liberty Vill. I, LLC*, No. A21-1037, 2022 WL 1297853, at *2, *6 (Minn. Ct. App. May 2, 2022) (specifically acknowledging that "general statement[s]" in a "complaint" are insufficient to establish damages on summary judgment).

In this case, Plaintiff alleged in his pleadings that he incurred expenses during his relocation, including moving supplies, U-Haul rental, and fuel totaling $3,500. *See* Pl.'s Am. Compl. at p. 16 (Index # 36). The HRA asked Plaintiff to state and describe all damages that he alleges he sustained as a result of the alleged breach of the Lease. *See* Ex. 1 to Buck Decl. at p. 24 (Interrog. No. 15). In response, Plaintiff objected and then broadly stated that he sustained $3,500 in relocation expenses. *See id.* The HRA also requested Plaintiff to produce each and every document which he believed supported his claim for economic damages. *See id.* at p. 39 (Req. for Prod. No. 13). In response, Plaintiff again objected and restated the allegations in his Amended Complaint that he sustained $3,500 in relocation expenses. *See id.* Plaintiff has failed to produce any evidence that he sustained damages caused by the alleged breach of the Lease. Plaintiff has also failed to itemize any of his alleged relocation expenses.

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The HRA is entitled to judgment as a matter of law because Plaintiff has wholly failed to demonstrate any damages that he sustained as a result of the alleged breach of the Lease.

IV. CONCLUSION

In sum, Plaintiff's contract claim fails as a matter of law because Plaintiff materially breached the Lease through his repeated misconduct that disrupted the livability of other tenants at the Premises and the HRA's ability to manage the Premises. As a result, he is precluded from bringing his own contract claim, and the HRA acted within its rights to nonrenew the Lease. Even if the Court determines there is a fact issue on whether the Lease was breached, the HRA is entitled to judgment as a matter of law because Plaintiff has failed to demonstrate any damages that he sustained as a result of the alleged breach. Accordingly, this Court should grant the HRA's motion, enter judgment in the HRA's favor, and dismiss Plaintiff's breach of contract claim with prejudice.

Dated this 26th day of May, 2026.

VOGEL LAW FIRM

/s/ Jack M. Buck

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