

STATE OF MICHIGAN  
COURT OF APPEALS

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DETROIT RESCUE MISSION MINISTRIES,  
Plaintiff-Appellee,

UNPUBLISHED  
September 22, 2011

v

No. 296554  
Wayne Circuit Court  
LC No. 08-125826-CZ

KENNETH MOORE,

Defendant,

and

RESIDENTIAL HOME CARE, INC., a/k/a  
RESIDENTIAL HOME SERVICES,

Defendant-Appellant.

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Before: SAAD, P.J., and JANSEN and K.F. KELLY, JJ.

SAAD, P.J. (*concurring in part and dissenting in part*).

I concur with the majority's opinion in all but part II(C). I respectfully dissent from that part and would hold that plaintiff is entitled to at least some past due rent after April 2006 at the holdover rate specified in the lease. Though, in late 2005, defendant moved from a second-floor unit to Suite 309, defendant continued to also occupy the adjoining Suite 315, which is the space contemplated in the lease containing the holdover provision. Because the holdover provision states that the holdover rate applies if the tenant retains possession of the premises "or any part thereof," plaintiff is entitled to recover at the holdover rate from the time plaintiff sent notice that it sought to end the rental rate of \$806 a month and charge the new, higher rate. In essence, plaintiff was ending the month-to-month tenancy, at which point defendant became a holdover tenant, subject to the holdover rate in the original lease. Further, Michigan case law does not state that plaintiff is barred from recovering rent because plaintiff cashed the checks for \$806. Though, as the trial court acknowledged, unpublished opinions are not binding on this Court, it remains true that, as stated in *Popovski v New Jersey Enterprises, LLC*, unpublished opinion per curiam of the Court of Appeals, issued November 26, 2006 (Docket No. 262309), there is "no binding Michigan authority holding that a landlord is prohibited from collecting additional rent under the express terms of a holdover provision in a lease by accepting rent payments for less than the full amount due." *Id.* at 3. This issue is controlled by a clear holdover provision that is plainly applicable based on defendant's retained possession of at least a portion of the premises

as a holdover tenant. Accordingly, for the period after 2006, I would affirm the trial court's award of rent at the holdover rate specified in the lease.

/s/ Henry William Saad