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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1796**

Madeline Guminiak,
Respondent,

vs.

Doug Sowokinos,
Appellant,

Diane Sowokinos, et al.,
Defendants.

**Filed May 1, 2017
Affirmed
Kirk, Judge**

Dakota County District Court
File No. 19AV-CV-16-2646

Robin M. Wolpert, Towle Neu, Sapientia Law Group, PLLC, Minneapolis, Minnesota; and
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Considered and decided by Worke, Presiding Judge; Ross, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant tenant challenges an eviction judgment, arguing that tenant redeemed the
tenancy by depositing past-due rent into court, tenant should have been granted additional

time to pay past-due rent, and nonpayment of rent is not a ground for eviction when a rental property is not registered as required by local ordinance. We affirm.

FACTS

Beginning in late 2014, respondent Madeline Guminiak leased her single-family home in Eagan to appellant Doug Sowokinos and his family (collectively, tenants). In May 2016, a new one-year lease began, under which tenants were to pay monthly rent of \$3,520, with a \$240 late fee added on the 4th of the month. Tenants made their rent payments by bank deposit. With limited exceptions, the rent was paid late.

On September 3, 2016, Guminiak inquired about the September rent. On September 6, 2016, Sowokinos responded that he was sick but would make the deposit by the end of the day. After additional inquiries by Guminiak, Sowokinos replied that there was water damage at the house. Sowokinos claimed that water was pouring from under the furnace. Guminiak replied immediately, sending a plumber, and eventually a furnace technician, to the house.

Guminiak filed an eviction complaint on September 27, 2016, alleging nonpayment of rent and multiple non-monetary breaches of the lease. The district court held a hearing on October 10, found that a dispute existed regarding the amount of rent due and/or whether the leased premises are habitable, and ordered tenants to deposit into court \$7,040 (rent for September and October, not including late fees) by October 14 to secure a trial. That same day, Guminiak registered the house as a rental property with the City of Eagan, which she had just learned was required by city ordinance.

The district court held an evidentiary hearing on October 27-28 that addressed both nonpayment-of-rent and breach-of-lease grounds for eviction. Both parties were represented by counsel. Guminiak, Sowokinos, and Guminiak's inspector testified.

The district court rejected tenants' assertions about a furnace leak, determining that the furnace was in good repair and the leak originated from the front-load washer, which was tenants' responsibility to maintain. The district court found that tenants did not pay September or October rent and that Guminiak relies on rent to pay her mortgages. The district court found that although Sowokinos claimed that the property was uninhabitable, he lacked credibility. And although Guminiak did not register her rental property until October 10, 2016, the district court found that the failure to register the property did not compromise habitability or void the lease. The district court found that tenants had "paid \$7,040.00 into escrow to secure a court hearing." The district court entered judgment of eviction based on nonpayment of rent. Sowokinos appeals.

D E C I S I O N

I. The expiration of the lease on April 30, 2017, does not make this appeal moot.

We first address Guminiak's assertion that the appeal is moot because the lease expired by its terms on April 30, 2017. The mootness doctrine requires appellate courts to "decide only actual controversies and avoid advisory opinions." *In re McCaskill*, 603 N.W.2d 326, 327 (Minn. 1999). An assessment of mootness requires "a comparison between the relief demanded and the circumstances of the case at the time of decision in order to determine whether there is a live controversy that can be resolved." *In re Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997). "If a party to an appeal suggests that the

controversy has, since the rendering of judgment below, become moot, that party bears the burden of coming forward with the subsequent events that have produced that alleged result.” *Cardinal Chem. Co. v. Morton Int’l, Inc.*, 508 U.S. 83, 98, 113 S. Ct. 1967, 1976 (1993).

Generally, a tenant’s eviction appeal becomes moot if the tenant voluntarily vacates the property. See *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 355 (Minn. App. 2006) (concluding that appeal was not moot because tenant’s move from property was not voluntary when precipitated by eviction judgment, issuance of writ of recovery, and tenant’s inability to meet the conditions of a stay); *Lanthier v. Michaelson*, 394 N.W.2d 245, 246 (Minn. App. 1986) (concluding that because appellant relinquished the premises voluntarily before execution of the writ of restitution, unlawful detainer appeal was moot), *review denied* (Minn. Nov. 26, 1986). The record reflects that tenants remain in possession of the property under the terms of a stay pending appeal. Based on the record before us, Guminiak has not met her burden of showing that events subsequent to the district court’s ruling make effective relief impossible. Thus, the appeal is not moot.

II. Tenants did not redeem under Minn. Stat. § 504B.291, subd. 1(a) (2016), did not object to a combined eviction hearing on multiple grounds, and had already deposited rent required by Minn. Stat. § 504B.285, subd. 5(c) (2016).

Sowokinos asserts that the district court failed “to adhere to” Minn. Stat. § 504B.291, subd. 1(a), which entitles a tenant to redeem a tenancy under certain circumstances. In “an eviction action for nonpayment of rent . . . unless the landlord has also sought to evict the tenant by alleging a material violation of the lease under section 504B.285, subdivision 5,” a tenant may redeem the premises and be restored to possession

if the tenant pays “rent that is in arrears, with interest, costs of the action, and an attorney’s fee not to exceed \$5.” Minn. Stat. § 504B.291, subd. 1(a).

Sowokinos argues that by depositing \$7,040 into court to secure a court hearing, tenants redeemed the tenancy. We need not resolve Sowokinos’s argument that the right to redeem applies here, where the complaint alleges both breach of lease and nonpayment of rent, because even if section 504B.291, subdivision 1(a), applies, Sowokinos did not satisfy its requirements. Sowokinos acknowledged at oral argument that he did not specifically raise the redemption issue to the district court. And although it is undisputed that tenants deposited September and October rent with the court, it is also undisputed that tenants did not deposit late fees, interest, costs of the action, or attorney fees of \$5, nor did tenants request additional time to do so.

The right to redeem extends up until the time that “possession has been delivered.” Minn. Stat. § 504B.291, subd. 1(a). Possession is delivered within the meaning of the statute when the court issues “an order dispossessing the tenant and permitting reentry by the landlord.” *Paul McCusker & Assocs., Inc. v. Omodt*, 359 N.W.2d 747, 748 (Minn. App. 1985) (quoting *614 Co. v. D.H. Overmyer Co.*, 297 Minn. 395, 397, 211 N.W.2d 891, 894 (1973)), *review denied* (Minn. March 29, 1985). Thus, the right to redeem extends up until the court issues a writ of recovery of the premises and order to vacate. *Id.* Here, the district court entered judgment on November 2 and issued the writ of recovery on November 14. From the filing of the complaint through issuance of the writ of recovery, the record reveals no attempt by tenants to invoke or fulfill the redemption requirements of

Minn. Stat. § 504B.291. We therefore conclude that, assuming redemption was available, tenants did not redeem the tenancy.

Sowokinos also argues that eviction was not available because the district court was required by Minn. Stat. § 504B.285, subd. 5(c), to afford tenants an additional seven days to pay any rent determined by the court to be due. When multiple grounds for eviction are alleged, nonpayment-of-rent and breach-of-lease allegations are to be heard as alternative grounds, with breach-of-lease allegations addressed first. Minn. Stat. § 504B.285, subd. 5 (2016). A tenant is not required to pay into court to defend against breach-of-lease allegations. Minn. Stat. § 504B.285, subd. 5(b). If a tenant prevails on breach-of-lease grounds, the tenant may then present defenses to nonpayment of rent. *Id.*, subd. 5(c). The tenant “shall be given up to seven days of additional time to pay any rent determined by the court to be due.” *Id.*; *see also Fritz v. Warthen*, 298 Minn. 54, 61, 213 N.W.2d 339, 343 (1973) (holding that when a tenant withholds rent and claims breach of statutory covenants of habitability as a defense to eviction based on nonpayment of rent, the district court “will order the tenant to pay the rent to be withheld from the landlord into court”).

Here, Sowokinos had already deposited September and October rent with the court on October 13. Sowokinos had an opportunity to present defenses to breach of lease and nonpayment of rent on October 27 and 28. Although the statute calls for consideration of breach-of-lease allegations before a deposit is required to proceed to trial on nonpayment of rent, Sowokinos did not object to the district court’s order to deposit rent before a combined hearing. Moreover, Sowokinos received a full hearing on nonpayment of rent,

including his habitability defense.¹ Accordingly, the procedure employed by the district court does not warrant reversal.

III. Landlord’s failure to register the rental property as required by local ordinance is not a breach of the implied covenant to maintain the premises in compliance with applicable health and safety laws under Minn. Stat. § 504B.161, subd. 1(a)(4) (2016).

Minnesota law implies, in every residential lease, statutory covenants known as the covenants of habitability. *See Fritz*, 298 Minn. at 56-57, 213 N.W.2d at 340-41. The covenants of habitability cannot be waived and are liberally construed. Minn. Stat. § 504B.161, subds. 1(b), 3 (2016). Relevant to this dispute, a landlord covenants “to *maintain the premises* in compliance with the applicable health and safety laws of the state, and of the local units of government where the premises are located.” *Id.*, subd. 1(a)(4) (emphasis added). It is well settled that “[b]ecause the statutory covenants of habitability are made a part of every residential lease and are mutual with the covenant to pay rent, the rent, or at least part of it, is not due under the terms of the lease when the landlord has breached the statutory covenants.”² *Fritz*, 298 Minn. at 59, 213 N.W.2d at 342.

¹ Sowokinos contends that the district court improperly suggested that he was required to pursue a rent-escrow action instead of relying on a habitability defense to eviction and that the district court did not fully consider his defenses. Sowokinos appears to take out of context the district court’s findings that Sowokinos gave no reason for his refusal to pay rent and that he did not file a rent-escrow action. The record reflects that the district court considered and rejected Sowokinos’s habitability defense.

² A residential tenant may also initiate a rent-escrow action to remedy violations of the covenants of habitability. Minn. Stat. § 504B.385, subd. 1 (2016); *see* Minn. Stat. § 504B.001, subd. 14 (2016) (defining “violation” to include violations of the covenants of habitability in section 504B.161, subdivision 1).

Sowokinos argues that Guminiak’s failure to register her rental property with the City of Eagan constitutes a breach of a statutorily implied covenant that excuses his duty to pay rent and precludes his eviction for nonpayment of rent. The relevant city ordinance provides, “All residential rental properties shall be registered with the city by either the residential rental property owner or rental manager.” Eagan, Minn., City Code § 6.55, subd. 5(A) (2015). The ordinance specifies certain information that must be submitted with the registration form, such as the contact information for the owner or manager and a statement whether criminal background checks are conducted on all tenants. *Id.*

Sowokinos asks us to apply our unpublished opinion in *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. App. Sept. 4, 2007), to reverse the eviction judgment. In *Beaumia*, we concluded that a landlord’s failure to comply with a similar registration ordinance enacted by the City of Alexandria was a breach of the covenant to “maintain the premises in compliance with the applicable health and safety laws.” *Beaumia*, 2007 WL 2472298, at *2. But unpublished opinions are not precedential, *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993) (citing Minn. Stat. § 480A.08, subd. 3(c) (1992)), and with respect to the Eagan ordinance, *Beaumia* is not persuasive.³

³ Sowokinos also points to *Mac-Du Props. v. LaBresh*, 392 N.W.2d 315 (Minn. App. 1986), *review denied* (Minn. Oct. 29, 1986), but in *Mac-Du*, the terms of the lease conditioned tenant’s duty to pay rent on landlord’s completion of improvements required to bring the commercial property into compliance with city ordinances. *Mac-Du*, 392 N.W.2d at 316. Because no similar lease provision exists here, and the covenants of habitability expressly apply only to residential properties, *Mac-Du* is inapposite.

Guminiak argues that her failure to register the property as required by Eagan City Code section 6.55 is not a breach of the covenant “to maintain the premises in compliance with” applicable law because registration is not directly related to maintenance of the premises. The district court agreed with Guminiak, finding that Guminiak was unaware of the registration requirement, Eagan does not require an on-site inspection as part of the registration process, and the plain language of Minn. Stat. § 504B.161 does not require registration.

The district court’s construction of the ordinance and relevant statutory covenant of habitability is sound. The relevant covenant requires a landlord “to maintain the premises in compliance with the applicable health and safety laws,” not simply to “comply with the applicable health and safety laws.” When interpreting a statute, “no word, phrase, or sentence should be deemed superfluous, void, or insignificant.” *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000). “Maintain” in this context means “to care for” or “engage in general repair or upkeep.” *Black’s Law Dictionary* 1097 (10th ed. 2014). “Maintain the premises” thus refers to the care and upkeep of the rental property.

Eagan’s rental-property registration ordinance does not require a showing that the premises are maintained in compliance with health or safety laws. The ordinance provides that upon completion of a basic registration form that requires no information about a rental house aside from its address, “the city shall issue to the registrant a certificate of registration as proof of the registration.” Eagan, Minn., City Code § 6.55, subd. 5(B) (2015). Furthermore, the Eagan ordinance does not prohibit a landlord from collecting rent in the

absence of a registration certificate, and the statutory covenants do not expressly require compliance with business-licensure requirements.

Here, Guminiak submitted a registration form to the city on October 10, the same day she learned of the registration requirement, and was issued a registration certificate immediately. The city did not require an inspection of the property in connection with the registration. With respect to the maintenance of the premises, the district court rejected Sowokinos's claim that the property was uninhabitable. These factual findings are not challenged on appeal.

In light of the unchallenged factual findings, the minimal requirements of the Eagan registration ordinance, and the plain language of Minn. Stat. § 504B.161, subd. 1(a)(4), the district court properly concluded that Guminiak did not breach the covenant "to maintain the premises in compliance with the applicable health and safety laws" by failing to register the property with the city before October 10.

Affirmed.