STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0677

Turk Trust, LLC,
successor-in-interest to LAD, LLC,
Appellant,

vs.

Cinema Ballroom, LLC,
Respondent.

Filed February 5, 2018
Reversed and remanded
Jesson, Judge

Ramsey County District Court
File No. 62-HG-CV-16-2956

Daniel N. Moak, W. Knapp Fitzsimmons, Cyrus C. Malek, Briggs and Morgan, P.A., Minneapolis, Minnesota (for appellant)

Robert M. McClay, McClay-Alton, P.L.L.P., St. Paul, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Cleary, Chief Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

JESSON, Judge

Respondent Cinema Ballroom, LLC entered into a lease for the use of parking spaces with LAD, LLC, whose property was later sold to appellant, Turk Trust, LLC. The language of the lease allowed for termination only under specific circumstances or by

Cinema Ballroom, in writing, whenever it desired. Turk Trust asserted that because there was no end date in the lease, the tenancy is a tenancy at will. Accordingly, Turk Trust attempted to evict Cinema Ballroom from its use of the parking spaces through the tenancy-at-will statutory procedures. Cinema Ballroom challenged the eviction action and the district court held the tenancy was not a tenancy at will and, as a result, the lease could only terminate based on its provisions. We reverse and remand.

FACTS

In March 2011, respondent Cinema Ballroom entered into a written lease agreement with LAD to rent parking spaces for Cinema Ballroom customers to use at all times except from 7:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 4:00 p.m. on Saturdays. Cinema Ballroom needed these parking spaces in order to obtain a license from the City of Saint Paul to use its ballroom as an event space. According to Cinema Ballroom, the city recommended that Cinema Ballroom be the only party who could terminate the parking space lease. A lease was drafted that included that provision. Ultimately, the language in the lease allowed for its termination under three circumstances: (1) when Cinema Ballroom notifies the lessor in writing; (2) when the lessor is ordered to discontinue parking on the real estate by the City of Saint Paul; and (3) when the real estate is taken by eminent domain. The lease further allowed for cancellation if rent is unpaid. Cinema Ballroom consistently paid its monthly rent.

In September 2012, LAD obtained a loan from a bank. LAD secured that loan with its property, including the parking lot where Cinema Ballroom rented periodic parking spaces. LAD later defaulted on that loan, and the bank foreclosed on the property. The

bank subsequently sold the property to appellant Turk Trust, in May 2015. When Turk Trust purchased the property, it received the assignment of rents. At the time of assignment, Turk Trust had little information about any active leases. Turk Trust was told all agreements were verbal and terminable with 30 days' notice. Turk Trust later found out that this was incorrect, that there were written leases, such as the one entered into with Cinema Ballroom. Turk Trust entered into negotiations with its other lessees to add 30-day termination clauses to the written leases. While other lessees agreed to the new clause, Cinema Ballroom did not.

Turk Trust sent a notice of termination to Cinema Ballroom on July 22, 2016, stating that the termination of its lease would become effective August 31, 2016. Cinema Ballroom responded with a letter stating Turk Trust could not terminate the lease.

Turk Trust then filed an eviction action against Cinema Ballroom under Minnesota Statutes section 504B.301 (2016), which allows for eviction of any person who unlawfully "retains possession of real property," arguing that Cinema Ballroom's lease is a tenancy at will. There was a bench trial, where Cinema Ballroom argued that the lease did not establish a tenancy at will and is therefore terminable only by the lease terms. The district court agreed with Cinema Ballroom.[1]

Turk Trust appeals.

[1] At the district court level, the parties also disagreed as to whether a breach of the lease provision requiring Cinema Ballroom to advertise Sweeney's Dry Cleaners, owned by LAD, was material, and therefore allowed for lease termination. The court determined the provision was immaterial. Turk Trust contests this determination again in this appeal. Because we decide this case solely on the question of whether the lease constitutes a tenancy at will, we do not address the materiality issue.

D E C I S I O N

Historically, tenancies at will are created either by express words or implication of law. *Thompson v. Baxter*, 107 Minn. 122, 123, 119 N.W. 797, 797 (1909). We turn to whether a lease constitutes a tenancy at will by "implication of law" where there is no definite time stated in the underlying contract. *Id.* at 124, 119 N.W. at 797-98; *see* Minn. Stat. § 504B.001, subd. 13 (2016) (a tenancy at will is a tenancy without a "fixed ending date"). The issue before us is whether Cinema Ballroom's lease is a tenancy at will—despite the fact that it clearly allows for termination when *Cinema Ballroom* provides written notice—because it lacks that definite time. Turk Trust argues that what constitutes a definite time is set out in Minnesota Statutes section 504B.001, subdivision 13, which requires a "fixed ending date." Cinema Ballroom counters this assertion, arguing that the lease is not a tenancy at will under that statute because—according to common law—a "fixed ending date" may include an event. Here the "event," according to Cinema Ballroom, is its right to terminate the lease upon written notice.[2]

To undertake the task of determining whether the lease here is a tenancy at will, we begin by examining the statutory definition of a tenancy at will. We next compare that

[2] In its brief, Cinema Ballroom focuses its argument that the lease contains a fixed ending date almost exclusively on its own right to terminate the lease. While it includes city action—ordering parking to cease on the property—as another possible event, it does not develop an independent argument to that affect. Nor does Cinema Ballroom argue the taking of the real estate by eminent domain provides a fixed ending date in the lease. The district court applied Cinema Ballroom's right to terminate to make its decision that the lease contained a sufficient ending date. Because both the district court and Cinema Ballroom rely on the termination provision that gives Cinema Ballroom the right to terminate the lease, this is the only provision we focus on to determine whether the lease contains a fixed ending date.

interpretation with the common law definition urged by Cinema Ballroom and applied by the district court. We then apply our analysis to the facts at hand to determine that this lease lacks that definite end date—a fixed ending date—and constitutes a tenancy at will.

A tenancy at will is defined by Minnesota Statutes section 504B.001, subdivision 13, as a tenancy where "the tenant holds possession by permission of the landlord but without a fixed ending date." If a tenancy is a tenancy at will, it can be terminated by either party, as long as the party gives written notice of termination. Minn. Stat. § 504B.135(a) (2016). Generally, "[t]he time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less." *Id*.; *see* Minn. Stat. § 504B.135(b) (2016).

This case centers on the interpretation of one phrase of the tenancy-at-will statute: fixed ending date. This statutory interpretation issue presents a question of law that this court reviews de novo. *Lee v. Lee*, 775 N.W.2d 631, 637 (Minn. 2009). And in addressing this question, our task is to determine what the legislature intends by this phrase. Minn. Stat. § 645.16 (2016). To do so, we first determine whether the statute containing the phrase is unambiguous, based on the plain and ordinary meaning of its words. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). If it is, we apply the clear meaning irrespective of any other considerations including underlying policy reasons and the equities of a particular situation, including this one. *See id*. ("Where the legislature's intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted.").

We are satisfied that the statutory definition of a tenancy at will is unambiguous. It defines a tenancy at will as one without a fixed ending date. A date is "[t]he day when an event happened or will happen." *Black's Law Dictionary* 478 (10th ed. 2014); *see also American Heritage Dictionary* 475 (3rd ed. 1992) (defining date as "[t]ime stated in terms of the day, month, and year"). A fixed ending date is just that—an actual calendar date. And because the statutory language is clear and unambiguous, it is all that a court need apply. *See Am. Tower, L.P.*, 636 N.W.2d at 312. Therefore the statute unambiguously classifies a lease without an ending calendar date as a tenancy at will.[3]

Cinema Ballroom, however, contends that the phrase "fixed ending date" could, according to common law, include events, such as when Cinema Ballroom may choose to terminate its lease with Turk Trust. When a statute is subject to more than one reasonable interpretation, it is ambiguous. *Occhino v. Grover*, 640 N.W.2d 357, 360 (Minn. App. 2002), *review denied* (Minn. May 29, 2002). If the statute is ambiguous, a court can look to common law to interpret that statute, which Cinema Ballroom urges us to do here. *See* Minn. Stat. § 645.16(5) (2016) ("When the words of a law are not explicit, the intention of the legislature may be ascertained by considering . . . the former law."). But even assuming the common law here informs the statute on what constitutes a "fixed ending date," we conclude this lease remains a tenancy at will.

The common law standard requires that to constitute a tenancy at will, the tenancy must have (1) an uncertain term; and (2) the right of either party to terminate it by proper

[3] We note that a lease for a term of years would also satisfy the requirement for a fixed ending calendar date.

notice. *See Thompson*, 107 Minn. at 124, 119 N.W. at 798; *Birk v. Lane*, 354 N.W.2d 594, 596-97 (Minn. App. 1984). Cinema Ballroom contends that caselaw defining an "uncertain term" establishes that an event can be a fixed ending date. Both Cinema Ballroom and the district court cite seminal cases *Thompson* and *Birk*, which apply the common-law rule and address what is an uncertain term. In *Thompson*, the lease at issue created a life estate in the tenant, "terminable only at his death or removal from Albert Lea." 107 Minn. at 123, 119 N.W. at 797. While the landlord in that case argued the tenancy was a tenancy at will and therefore terminable with adequate notice, the Minnesota Supreme Court disagreed. *Id*. at 125, 119 N.W. at 798. Applying the common-law rule, the court held that the lease clause was an adequately definite term to take the lease out of the class of tenancies at will. *Id*. Almost 80 years later, in *Birk*, this court applied that same rule to a case where the tenant, by the terms of the lease, was allowed to remain on property until a "quiet title action was decided," including a specified time for the running of the right to appeal. 354 N.W.2d at 597. In that case, too, this court held that "[a] lease providing for a tenancy until litigation between the tenant and landlord is resolved creates a tenancy for a fixed term," and therefore again the lease did not constitute a tenancy at will. *Id*.[4]

The application of the common law "uncertain term" standard in these cases demonstrates that even if we were to use the common law to inform our interpretation of what the statute's "fixed ending date" includes, this lease would continue to constitute a

[4] While neither case required the court to reach the issue of whether both parties had a right to terminate the leases, the court stated in both cases that such a right is required for a tenancy to be at will. *Thompson*, 107 Minn. at 124, 119 N.W. at 798; *Birk*, 354 N.W.2d at 596-97.

tenancy at will. In both *Thompson* and *Birk*, the leases presented more determinant, fixed terms than what is present in the lease between Turk Trust and Cinema Ballroom. In *Thompson*, the expected lifespan of the tenant provided some parameters to the "life estate" created by the lease. 107 Minn. at 123, 119 N.W. at 797. In *Birk*, the fixed term was the length of litigation. 354 N.W.2d at 597. There is no such length of time present here, merely the indefinite decision of a party, Cinema Ballroom, to terminate whenever it sees fit. Regardless of whether we apply the plain language of "fixed ending date" or let caselaw inform that definition, we reach the same result.

Cinema Ballroom further argues that, in addition to allowing caselaw to define "fixed ending date," we must apply the second factor of the common-law standard—a right of either party to terminate the lease with proper notice—despite this factor being absent from the statutory definition. We decline to do so. Prior common law that is *incompatible* with a statute is entirely inapplicable. *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 458-59 (Minn. 2016). While we generally presume that statutes comport with the common law, a statute can abrogate the common law by express wording or necessary implication. *Brekke v. THM Biomedical, Inc.*, 683 N.W.2d 771, 776 (Minn. 2004). Here, the statutory definition of tenancy at will does not include an element requiring the lease to contain a right to terminate for either party. We therefore determine that this common-law element is no longer required under the statute and is inapplicable.[5]

[5] While another statutory provision allows for termination of a tenancy at will by either party, because that element is not included in the statutory definition, we read this as a procedural provision that applies only after a tenancy is established as a tenancy at will. *See* Minn. Stat. § 504B.135(a).

Next, we turn to apply our analysis to the lease between the parties here. Under the statute, a tenancy at will is one without a "fixed ending date." Minn. Stat. § 504B.001, subd. 13. The lease here does not have a fixed ending date. Nor, if we turn to common law to construe the statute, does it contain an adequately certain term. While there are provisions that allow for the lease's termination or cancellation, none of those provisions provide the defined time needed to take it out of the class of tenancies at will. And the second common-law element, requiring the lease contain a right of either party to terminate it, is no longer applicable because it is incompatible with the statutory definition. Accordingly, we hold that the tenancy held by Cinema Ballroom is a tenancy at will and can be terminated with proper notice. Minn. Stat. § 504B.135(a).

All this said, we acknowledge the harshness of the result in our holding this lease is a tenancy at will. Here two parties, LAD and Cinema Ballroom, entered into a contract to lease parking spaces. One of those contractual provisions allowed Cinema Ballroom to terminate the contract at its will, in writing. A similar provision was not included for LAD. Yet, LAD signed that contract; it agreed to that provision and Turk Trust was assigned that agreement. As the district court stated:

> Cinema and LAD negotiated a lease with a term that specifically allowed the lease to continue until notice was given by Cinema to terminate. There was no confusion as to the reason for the provision or the meaning of it. The City required it in order to grant a license to Cinema for further events. The clause has real meaning and a sound basis in the history of the relationship of the parties.

But when the statutory language is clear, it is not our role to address the equities or inequities of the situation. *See Anker v. Little*, 541 N.W.2d 333, 336 (1996) (holding that

even if the application of a statute's unambiguous language produces a troubling result, it is that language that must be applied), *review denied* (Minn. Feb. 9, 1996).

We further observe that our determination is consistent with the general proposition that contracts in perpetuity are disfavored. *See Glacial Plains Coop. v. Chippewa Valley Ethanol Co.*, 897 N.W.2d 834, 839 (Minn. App. 2017), *review granted* (Minn. Aug. 22, 2017) (*citing Trient Partners I Ltd. v. Blockbuster Entm't Corp.*, 83 F.3d 704, 708-09 (5th Cir. 1996) (explaining that the general rule is applied to avoid perpetual contracts); *Jespersen v. Minnesota Mining & Mfg. Co.*, 700 N.E.2d 1014, 1017 (Ill. 1998) (noting that "perpetual contracts are disfavored")). As written, the lease could continue into perpetuity. Classifying this tenancy as a tenancy at will avoids that possibility.

Cinema Ballroom entered into a lease to use parking spaces that contained no fixed ending date. The lease is therefore a tenancy at will. As a result, it is terminable by either party with proper notice. *See* Minn. Stat. § 504B.135(a). We remand to the district court to determine whether Turk Trust properly terminated the lease.

Reversed and remanded.