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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0246**

Doran 610 Apartments, LLC,
Respondent,

vs.

Latrice Merritt,
Appellant.

**Filed July 23, 2018
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CV-HC-17-4246

Greg M. Miller, Trepanier MacGillis Battina P.A., Minneapolis, Minnesota (for
respondent)

Latrice Merritt, Osseo, Minnesota (pro se appellant)

Considered and decided by Reilly, Presiding Judge; Larkin, Judge; and Bjorkman,
Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges her eviction, arguing that the district court erred in
determining that she breached her residential lease and that the breach was material. We
affirm.

FACTS

In early July 2017, appellant Latrice Merritt and respondent Doran 610 Apartments, LLC, entered into a residential lease that was effective from July 7, 2017 to August 8, 2018. Under the terms of the lease agreement, Merritt was prohibited from installing a private security system in her apartment.

On July 18, 2017, a maintenance worker entered Merritt's apartment to respond to her maintenance request. While in the apartment, the worker triggered a private security system Merritt had installed. The worker reported Merritt's security system to Doran, and a company representative notified Merritt by email that installing a security system without Doran's consent was a breach of the lease. Doran told Merritt that she must remove the security system as soon as possible. On July 26, Merritt's security alarm sounded and police came to the apartment. Police responded to another false alarm a few days later. On both occasions, Merritt was not home and Doran was unable to deactivate the security system.

On July 31, Merritt and Doran signed an addendum to the lease. The addendum permitted Merritt to install and maintain a private security system at her own expense as long as she (1) gave Doran a "separately assigned access code to disarm" the security system and (2) permitted Doran employees to enter her apartment to respond to "malfunction[s] and false alarms."

Despite her express agreement, Merritt was not forthcoming with the agreed-to access code. On August 21, several weeks after Doran first requested the access code, Merritt responded that the security company told her not to give out any codes. Two days

later, Doran advised Merritt by email that her refusal to send the access code was a breach of the lease addendum. In the same email, Doran gave Merritt two days to furnish the access code. Merritt responded the next day in two emails. The first stated that she would not provide the access code. The second provided contact information for her attorney and an “emergency password.”

On September 6, Doran sent Merritt a letter explaining that she was still in breach of her lease because she had not provided the access code. On September 15, a Doran employee went to Merritt’s apartment to see if the “emergency password” would disarm the system. It did not.

Doran commenced this eviction action based on Merritt’s breach of the lease addendum as well as an unrelated violation of her parking-license addendum.¹ During the eviction trial, Merritt testified that she gave Doran the access code. The district court found that Merritt’s testimony was not credible and it was “clear from [Merritt’s] emails that the access code she gave Landlord was to cancel an alarm if the alarm goes off.” The district court concluded that Merritt materially breached the lease by failing to provide the access code, and entered judgment for recovery of the premises.

Merritt requested judicial review of the referee’s countersigned eviction judgment. The district court affirmed, concluding that the record contained sufficient evidence to support the finding that Merritt breached a material provision of the lease. Merritt appeals.

¹ The district court concluded that Doran failed to show Merritt violated the parking-license addendum.

DECISION

Eviction proceedings are summary in nature, limited in scope to the question of who has a present possessory right to real property. Minn. Stat. § 504B.001, subd. 4 (2016); *Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445-46 (Minn. App. 2001). A landlord's right to evict a tenant is complete upon the tenant's violation of a material provision of a lease agreement. *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 556 (Minn. App. 1985), *review denied* (Minn. Feb. 19, 1986). We review a district court's findings of fact in an eviction case for clear error. *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003). A factual finding is clearly erroneous if there is a "clear demonstration that it is without substantial evidentiary support or that it was induced by an erroneous view of the law." *Schuett Inv. Co. v. Anderson*, 386 N.W.2d 249, 252 (Minn. App. 1986). We review a district court's legal conclusions de novo. *Cent. Hous. Assocs., LP v. Olson*, 910 N.W.2d 485, 487 (Minn. App. 2018), *review granted* (Minn. June 27, 2018).

First, Merritt challenges the district court's factual determination that she did not provide Doran with the access code. She argues that "[n]o witness called to testify against the defendant ha[d] personal knowledge of the fact in controversy," and she asserts that Doran's maintenance worker did not actually test the "emergency password" because the security system was not armed at the time he conducted the test. The record evidence defeats both assertions.

On cross-examination, the maintenance worker who used the "emergency password" testified as follows:

Q: So when did you go in to test the emergency code?
A: I believe last week. . . .
Q: Were you able to use that code—
A: No.
Q: —to disarm the [security system]—
A: No.
Q: —on that day?
A: No, the [security system] was not set at that time. But the code that I was given did nothing.

Documentary evidence Doran submitted at trial establishes that use of the access code Doran requested—and Merritt was obligated to provide—would have itself armed the security system. And documents from Merritt’s security company indicate that there are at least two different types of secondary security codes that would have met the lease addendum’s requirement. Merritt implicitly acknowledged this in an August 24th email in which, after being told that she was still in breach, she tried to renegotiate the lease addendum by stating, “I will not give you the code access to my alarm and that is my right as a [t]enant . . . [but] I will [give] you the emergency call code.” On this record, we discern no clear error by the district court in finding that Merritt breached her lease by failing to provide Doran with the access code.

Second, Merritt contests the district court’s finding that her breach was material. The materiality of a breach is a question of fact. *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49 (Minn. App. 1998). A breach is material when “one of the primary purposes” of a contract is violated. *Steller v. Thomas*, 232 Minn. 275, 282, 286-87, 45 N.W.2d 537, 542, 544 (1950); *see also Cloverdale*, 580 N.W.2d at 49 (applying material-breach standard to lease agreement). Landlords are obligated to provide tenants with a safe and habitable living environment. *See* Minn. Stat. § 504B.161, subd. 1(a)

(2016) (the warranty of habitability is an implied term in every residential lease). When a tenant’s breach of a lease provision interferes with her landlord’s ability to perform this duty, the breach is material.

Merritt argues that “[l]andlords do not have the authority to determine a material breach through a lease that conveniently includes the term material breach for self-serving purposes.” This argument mischaracterizes the record and is unpersuasive. The district court did not base its materiality finding on the lease terms. Rather, the court found Merritt’s breach was material because it prevented Doran from entering her apartment when maintenance was needed and in emergency situations. According to the district court, “the issue is one for safety.” The record evidence supports this finding. Two of Doran’s witnesses testified that Doran needs access to individual apartments to perform repairs and to respond to emergencies. Merritt’s private security system failed, causing two false alarms, on two occasions. Doran’s maintenance supervisor testified that false alarms are disruptive and can compromise the safety of staff members who may be inside an apartment when police arrive. In sum, the record demonstrates Merritt’s breach implicated the safety and security of building residents—concerns that landlords are required to address. Accordingly, we conclude that the district court’s finding that Merritt’s breach was material is not clearly erroneous.²

Affirmed.

² Merritt also argues that the district court erred in not allowing her to present video evidence that the emergency password she provided to Doran was functional. Because Merritt never offered the video evidence, the district court was not in a position to consider it.