

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1640**

Mike Volstad, et al.,
Respondents,

vs.

Janet Fullenwiley,
Appellant.

**Filed July 1, 2019
Affirmed
Cleary, Chief Judge**

Hennepin County District Court
File No. 27-CV-HC-18-2388

Patricia A. E. Whitney, St. Paul, Minnesota (for respondents)

Janet Fullenwiley, Coon Rapids, Minnesota (pro se appellant)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

In an appeal from an eviction judgment, appellant Janet Fullenwiley argues that the district court erred in determining that respondents Mike Volstad and Minnesota Home Rental Inc. are entitled to possession because respondents did not waive notice to quit.

Because the district court’s findings that respondents did not accept rent—and therefore did not waive notice to quit—are not clearly erroneous, we affirm.

FACTS

Minnesota Home Rental Inc. (MHR) manages the property at issue, which is owned by Volstad. Fullenwiley entered into a lease with MHR and began residing on the property in 2014. After a year, the lease automatically converted to a month-to-month lease, under which either party could terminate the lease by giving advance notice of two months and one day.

A few years later, Volstad started trying to sell the property. In order to facilitate a sale, MHR sent Fullenwiley notice to quit in March 2018, stating that it was terminating the lease, and that she must vacate the property by May 31, 2018. Fullenwiley did not vacate the property by May 31, and respondents commenced an eviction action against her. In her answer, Fullenwiley alleged that respondents accepted June rent and waived the notice to quit.¹ A trial was held before a housing-court referee, at which Volstad, Fullenwiley, and the president of MHR testified.

The referee found that respondents did not waive the notice to quit and recommended entry of judgment for respondents. The district court approved the referee’s recommendation. Fullenwiley requested that the district court review the order, and the district court affirmed the decision.

¹ Fullenwiley also argued that respondents did not provide proper notice. The referee found notice was proper, the district court adopted the finding, and Fullenwiley does not raise the issue on appeal.

DECISION

Fullenwiley challenges the district court's finding that respondents did not waive notice to quit. Waiver is the voluntary relinquishment of a known right. *Pollard v. Southdale Gardens of Edina Condo. Ass'n, Inc.*, 698 N.W.2d 449, 453 (Minn. App. 2005). To waive a right, the party must know about the right and intend to waive that right. *Id.* Whether a landlord's conduct manifests waiver is ordinarily a question of fact. *Id.* We review the district court's findings of fact for clear error. *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003).

Fullenwiley argues that after MHR gave notice to quit, it waived that notice by accepting rent when her son electronically deposited one month's rent into MHR's account on June 6. A landlord's acceptance of a rent payment, after giving notice to quit, may show waiver of that notice. *Pappas v. Stark*, 142 N.W. 1046, 1047 (Minn. 1913). This is because "the landlord, by accepting the rent, effectively reaffirms the lease between parties." *Oak Glen of Edina v. Brewington*, 642 N.W.2d 481, 486 (Minn. App. 2002). The district court, however, found that MHR did not accept rent, and we must decide whether that finding was clearly erroneous. We conclude that it was not.

The district court reasoned that MHR never accepted the rent payment because it could not prevent someone from attempting to make an electronic payment. The district court further explained that although Fullenwiley's son deposited money into MHR's account, MHR took prompt steps to return the payment. This reasoning is supported by the record. The president of MHR testified that he cannot stop someone from attempting to deposit funds into MHR's account. He also testified that while it is possible to cancel a

payment, in order to do so, he must cancel the payment almost immediately. If he misses that tight window, he must wait until the funds clear and are deposited into the account before refunding the payment. The president further testified that within two days of the payment, he initiated a refund. MHR's limited ability to stop an incoming payment and its conduct in quickly initiating a refund support the district court's conclusion that MHR did not accept June rent.

Fullenwiley's argument focuses on the fact that the funds were withdrawn from her son's account and briefly deposited into MHR's account. But this was not the result of MHR's conduct; it was the result of the son's conduct in initiating the transfer. MHR did not request that Fullenwiley make a payment or take any action to obtain a payment from her. Fullenwiley also argues that by not canceling the payment, MHR accepted rent. Although MHR has the ability to cancel an incoming payment if it is aware of the payment and acts quickly, MHR's conduct as a whole indicates that it did not accept the payment. Accordingly, the district court's finding that MHR did not accept rent is not clearly erroneous. Because Fullenwiley does not argue that any other conduct manifests intent to waive notice, the district court's finding that respondents did not waive notice to quit is not clearly erroneous.

Affirmed.