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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0570**

Charles Wahren,
Respondent,

vs.

Kate Radz, a/k/a Katherine Verzhbitska-Radzills,
Appellant.

**Filed January 21, 2020
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-CV-18-6717

Charles Wahren, Mahtomedi, Minnesota (*pro se* respondent)

Eric Johnson, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Tracy M.
Smith, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In this landlord-tenant dispute, the tenant moved out of a rented townhome two months before the expiration of the lease after the landlord said that he could do so. But the landlord refused to return the tenant's deposits on the ground that the expiration date of the written lease agreement could be modified only by a written lease amendment that

is signed by the parties. After a court trial, the district court determined that the tenant is entitled to the return of his deposits and ordered judgment in his favor. We conclude that the district court properly interpreted the parties' written lease agreement, which allows the tenant to terminate the lease before it expires if the landlord has approved. Therefore, we affirm.

FACTS

On July 13, 2017, Charles Wahren, his wife, and Kate Radz entered into an 18-page residential lease agreement, which was prepared by Radz's agent, Renters Warehouse. Wahren and his wife agreed to rent from Radz a townhome in the city of Mahtomedi, beginning on August 1, 2017, at a monthly rent of \$1,795. The lease agreement states that the "expiration date" is July 31, 2018. Wahren gave Radz a security deposit of \$1,795 and a pet deposit of \$1,500.

The lease agreement includes the following provisions:

25. INTENT TO VACATE. Tenant must provide Renters Warehouse, as Landlord's agent, at least two (2) full month's (rental periods) written notice of its intent to terminate the Lease upon the expiration of the Lease term. For example, a tenant vacating the Premises on December 31 would have to provide notice no later than October 31. And leases must terminate at the end of the month. For example, notice to vacate given on October 15, would mean the Tenant is allowed to vacate December 31.

Any notice provided under this Section does not imply permission on behalf of the Landlord or Renters Warehouse to vacate the Premises early, unless approved by Landlord or Renters Warehouse. Failure to provide notice of intent to terminate the Lease may require Tenant to be responsible for additional Rent charges, Late Fees and/or damages for any

additional costs or expenses incurred by Landlord and/or Renters Warehouse.

. . . .

28. MODIFICATION. The Parties hereby agree that this Lease contains the entire agreement between the Parties and this Lease shall not be modified, changed, altered or amended in any way except through the use of a written amendment signed by all of the Parties hereto. Any additions, deletions, or other modifications requested by Tenant shall be subject to a \$250.00 fee paid to Landlord.

In early 2018, Wahren contacted Renters Warehouse to ask whether Radz would agree either to renew the lease or to sell the property to him and his wife. On February 1, 2018, Josh Solie, a leasing agent for Renters Warehouse, sent an e-mail message to Wahren, stating, “Unfortunately the owner is not going to be renewing the lease. She also said if you find something before July and want to leave early, she is fine with that. Let me know if you have any questions.” Later that same day, Wahren responded to Solie with a short e-mail message, saying, “Ok, thanks.”

Wahren and his wife proceeded to look for other housing and eventually purchased a nearby home on the same street. On April 27, 2018, Wahren sent an e-mail message to Solie, stating: “As per your last email from the landlord wanting us out early, we finally found a place and will be vacating [the townhome] as of May 31st, [2018]. This is our 30 day notice. Please call me at your earliest convenience. Thanks. Charlie.” On May 8, 2018, Wahren and his wife signed and submitted to Renters Warehouse a one-page lease amendment that had been prepared and provided to them by Renters Warehouse. The draft lease amendment would have provided that the “move-out date shall be May 31st, 2018”

and that “the security deposit shall be addressed pursuant to Minnesota State Statute 504B.178.” But Radz did not sign the lease amendment. Wahren and his family moved out of Radz’s townhome on or about May 31, 2018, and did not pay rent for the months of June and July.

In June 2018, Wahren commenced this action against Radz in conciliation court to recover his security deposit and his pet deposit. After a hearing in August 2018, a conciliation-court referee entered judgment in Wahren’s favor in the amount of \$3,393.

In October 2018, Radz removed the case to the district court. The case was tried to the court on one day in February 2019. Wahren, who was self-represented, testified on his own behalf and introduced two exhibits. Radz’s attorney cross-examined Wahren, but Radz did not testify or introduce any other evidence. In her trial memorandum, Radz argued that Solie’s February 1, 2018 e-mail message to Wahren is inadmissible hearsay, that she did not authorize Solie to make such a communication, and that Solie’s communication was “simply a statement of [her] general future intent, not specific permission for an early move-out.” Radz also argued that Wahren’s claim fails as a matter of law on the ground that section 28 of the lease agreement provides that the lease agreement may be modified only by a written amendment that is signed by the parties.

The district court announced a decision for Wahren from the bench at the conclusion of the trial. Four days later, the district court filed a five-page order with findings of fact and conclusions of law. The district court ruled that the evidence of Solie’s February 1, 2018 e-mail message is admissible. The district court determined that Radz is bound by Solie’s February 1, 2018 e-mail message because the lease agreement required Wahren to

give notice of an early move-out to Renters Warehouse. The district court also determined that Wahren “was justified in relying on [Solie’s] representations.” The district court found that Wahren “provided appropriate notice of his intent to vacate early,” that Wahren properly attempted to modify the lease agreement pursuant to section 28 by signing the lease amendment that Renters Warehouse had provided to him, and that Radz improperly “refused to sign” the written lease amendment “despite agreeing to the modification through her agent.” The district court ordered judgment in Wahren’s favor in the amount of \$3,175. Radz appeals.

D E C I S I O N

Radz argues that the district court erred by ordering judgment in Wahren’s favor. Specifically, she argues that, for two reasons, the district court erred by finding that the parties entered into a valid modification of the lease agreement with respect to the expiration date of the lease.

First, Radz argues that the e-mail correspondence between Wahren and Solie did not modify the lease agreement on the ground that it lacked essential elements, such as the specific date of the termination of the lease. Radz did not present this argument to the district court; she is making it for the first time on appeal. Consequently, the district court did not consider the issue. Because Radz did not preserve the argument by presenting it to the district court, it has been forfeited. This court will not consider a forfeited argument. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Doe 175 v. Columbia Heights Sch. Dist.*, 842 N.W.2d 38, 42 (Minn. App. 2014).

Second, Radz argues that she and Wahren did not agree to a valid modification of the expiration date of the lease on the ground that section 28 of the lease agreement provides that the lease agreement may be modified only by a written amendment that is signed by the parties. She acknowledges the caselaw providing that a written-modification-only clause may be waived. *See, e.g., New Amsterdam Cas. Co. v. Lundquist*, 198 N.W.2d 543, 551 n.5 (Minn. 1972); *Pollard v. Southdale Gardens Condo. Ass’n*, 698 N.W.2d 449, 453 (Minn. App. 2005); *Larson v. Hill’s Heating & Refrigeration, Inc.*, 400 N.W.2d 777, 781 (Minn. App. 1987), *review denied* (Minn. Apr. 17, 1987). But she contends that “there is no evidence in this case that the parties agreed to waive the . . . modification clause.” She further contends that Wahren “vacated the premises . . . at his own risk, aware that he had not received the required permission to vacate the premises early.”

The district court rejected this argument by reasoning that Wahren was justified in relying on Solie’s February 1, 2018 e-mail message, which communicated to him that Radz had said that he could move out before July 31, 2018. The district court found that Wahren attempted to enter into a written modification of the lease agreement pursuant to section 28 but that Radz wrongly refused to sign the lease amendment that Renters Warehouse had prepared.

The district court’s reasoning reflects a proper interpretation of the lease agreement. Two different sections of the lease agreement are relevant, and they must be read together. *See Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998); *Current Technology Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 543 (Minn. 1995). Those sections are section 28, which is captioned “Modification,” and section 25,

which is captioned “Intent to Vacate.” The second paragraph of section 25 specifically refers to the situation in which a tenant wishes to terminate the lease before its expiration, and the first sentence of that paragraph provides, “Any notice provided under this Section does not imply permission on behalf of the Landlord or Renters Warehouse to vacate the Premises early, *unless approved by Landlord or Renters Warehouse.*” (Emphasis added.) The exception in the last clause of this sentence is triggered in this case. The plain meaning of the entire sentence is that, *if the landlord has approved*, it may be implied that the landlord will give permission to the tenant to vacate the premises before the expiration date. Solie communicated Radz’s pre-approval of Wahren’s early move-out pursuant to section 25. That approval justified Wahren’s belief that he had permission to move out before July 31, 2018, so long as he gave proper notice, and Radz does not argue that Wahren did not give proper notice. In light of Radz’s prior approval, she cannot argue that, due to her own refusal to sign the written lease amendment that her agent had prepared, there was not a proper modification of the expiration date of the lease pursuant to section 28 of the lease agreement.

Thus, the district court did not err by concluding that Wahren is entitled to the return of his security deposit and his pet deposit and by entering judgment in his favor.

Affirmed.