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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1783**

Dane Limited LLC,
Respondent,

vs.

Teflon Edwards,
Appellant,

John Doe, et al.,
Defendants.

**Filed June 29, 2020
Reversed and remanded
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CV-HC-19-1991

Brian Hage, Clarice Scarnecchia, Hage Law PLC, Minneapolis, Minnesota (for respondent)

Jeffer Ali, Colleen Daly, Mid-Minnesota Legal Aid, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant former tenant challenges the district court's decision affirming the housing court order in favor of respondent landlord. Appellant argues that the district court erred by concluding that he is not entitled to relief based on procedural errors made in housing court because he failed to post security under Minn. R. Gen. Prac. 611(b) and the writ of recovery was executed. We reverse and remand.

FACTS

Appellant Teflon Edwards rented a house from respondent Dane Limited LLC (landlord) under a month-to-month lease. On April 29, 2019, landlord provided Edwards written notice to vacate by May 31.

On May 8, landlord initiated this eviction action, alleging that Edwards failed to pay May rent and breached the lease by failing to pay utilities, having unauthorized residents in the residence, and habitually paying rent late; landlord subsequently added an allegation that Edwards breached a crime-free lease addendum.

At the initial hearing on May 20, Edwards was in custody on an unrelated matter but appeared by telephone. He disputed the allegations, claimed that the property needed repairs, and requested a continuance to retain counsel. Landlord agreed to continue the trial until June if it could amend the complaint to add a claim that Edwards held over after notice to vacate. The housing court referee permitted the amendment.

When trial began on June 5, landlord provided a copy of the notice to vacate, acknowledging that it had not been attached to the original complaint; landlord did not file

an amended complaint. At the conclusion of landlord's case-in-chief, the housing court referee granted Edwards's motion to dismiss the breach-of-lease claims. On the second day of trial, Edwards presented his defense to the remaining claims. He denied receiving written notice to vacate. But he acknowledged that he had not paid May or June rent and did not dispute his obligation to do so.

The referee found that Edwards held over after notice to vacate and concluded that landlord was entitled to possession of the property on that basis. The referee also found that it is undisputed that Edwards did not pay rent in May or June and presented no evidence of an affirmative defense. But the referee did not adjudicate the nonpayment claim because Edwards's "failure to vacate after notice to quit is determinative in this action." The district court confirmed the referee's recommended order and entered judgment.

Edwards timely requested judicial review under Minn. R. Gen. Prac. 611, arguing that the referee erred by permitting landlord to add a holdover claim before it was ripe; he also challenged numerous findings of fact, but not the finding that he owed overdue rent. Edwards requested a stay pending judicial review and proposed "paying monthly rent into court" as security. The district court granted the stay, conditioned on Edwards depositing \$3,525 (the overdue rent for May, June, and July) with the court by July 5, and \$1,175 each month thereafter. The district court advised Edwards that the stay would be lifted if he failed to make the payments. Edwards did not make the deposit. On July 8, the district court lifted the stay and issued a writ of recovery, and landlord recovered possession of the property.

Landlord thereafter argued that Edwards's request for judicial review is moot because he voluntarily declined to pay security and no longer had possession of the property. Edwards countered that his request is not moot because he did not voluntarily vacate the property. He asked the district court to remand to the referee to address the nonpayment claim and, if that claim was sustained (as he acknowledged it would be), afford him an opportunity to redeem the property under Minn. Stat. § 504B.291, subd. 1(a) (2018).

The district court affirmed the judgment in landlord's favor, reasoning that the referee erred by permitting landlord to add a holdover claim on May 20, when no such claim was ripe, but concluding that Edwards is not entitled to relief because he did not pay into court to retain possession of the property. Edwards appeals.

D E C I S I O N

When a district court reviews a housing court decision under Minn. R. Gen. Prac. 611, we review the court's factual findings for clear error. *Bass v. Equity Residential Holdings, LLC*, 849 N.W.2d 87, 91 (Minn. App. 2014). We review de novo the interpretation of statutes and procedural rules. *Sela Invs. Ltd. v. H.E.*, 909 N.W.2d 344, 346 (Minn. App. 2018).

Upon confirming a housing court referee's recommended order in favor of a landlord, the district court "shall immediately enter judgment" and "issue a writ of recovery of premises and order to vacate." Minn. Stat. § 504B.345, subd. 1(a) (2018); see Minn. R. Gen. Prac. 609. The tenant may request judicial review of the decision. Minn. R. Gen. Prac. 611(a). But the review request does not automatically stay the entry of judgment and

issuance of a writ of recovery. Minn. R. Gen. Prac. 611(b). To retain possession, the tenant must request a stay and make payments into court, post a bond, or obtain a waiver. *Id.*

Edwards argues that the district court erred by denying him relief for the erroneous addition of the holdover claim¹ because the plain language of rule 611 entitles him to judicial review even if he does not obtain a stay. We agree with Edwards's interpretation of rule 611. The rule sets only two requirements for obtaining judicial review: (1) the request for review is timely and (2) the petitioner is not in default. Minn. R. Gen. Prac. 611(a). If those requirements are satisfied, the tenant is entitled to review, and the district court "shall" schedule a hearing. *Id.*

The rule also states the requirements for obtaining a stay of the underlying judgment pending review and the parameters for obtaining a transcript for the review. Minn. R. Gen. Prac. 611(b), (c). But those requirements are not limitations on the right to judicial review. *See Sela Invs.*, 909 N.W.2d at 348-49 (concluding that obtaining a transcript is not a condition of review); *Bass*, 849 N.W.2d at 90 n.1 (concluding that the district court erred by determining that landlord, which did not request a stay, forfeited its right to review by failing to pay ordered damages). Thus, while Edwards was permitted to seek a stay to

¹ Landlord does not challenge the district court's conclusion that adding the holdover claim was error. We agree that it was improper to permit landlord to add the claim on May 20, before it was ripe. *See Leiendecker v. Asian Women United of Minn.*, 731 N.W.2d 836, 841 (Minn. App. 2007) (stating that a justiciable controversy must exist in order for a litigant's claim to be properly before a court), *review denied* (Minn. Aug. 7, 2007). But we observe that it is undisputed that Edwards remained in the property after May 31, so a holdover claim was ripe by the time trial commenced on June 5. Landlord could have added the claim in a supplemental pleading and attached the notice to vacate. Minn. R. Gen. Prac. 604(c).

forestall issuance of a writ of recovery, he was not required to do so to preserve his right to judicial review.²

We therefore turn to the district court's determination that, despite the referee's error, Edwards is not entitled to relief. The court reasoned that the relief Edwards requested—redemption—is “effectively the same relief which was already provided to [him]” in the order granting a stay of the eviction judgment, “which [he] failed to exercise” by failing to pay the security. To assess this equivalency, we consider each form of “relief” in turn.

Redemption is a statutory right, applicable in eviction actions for nonpayment of rent except those in which the landlord also asserts other eviction grounds. Minn. Stat. § 504B.291, subd. 1(a). An eviction action based on nonpayment of rent “is equivalent to a demand for the rent.” *Id.* A tenant may “redeem the tenancy” by paying the landlord “the amount of the rent that is in arrears, with interest, costs of the action,” and a \$5 attorney fee. *Id.* The tenant need not wait for an adjudication in favor of the landlord but may redeem “at any time before possession has been delivered.” *Id.* By doing so, the tenant is “restored to possession” of the property, ending the eviction action. *Id.*

² Landlord contends this appeal is moot because Edwards “voluntarily opted” not to pay security and is no longer in the property. An eviction appeal becomes moot if a tenant requests a stay but fails to pay security and voluntarily relinquishes the property. *Lanthier v. Michaelson*, 394 N.W.2d 245, 246 (Minn. App. 1986), review denied (Minn. Nov. 26, 1986). But inability to pay security and resulting execution of a writ of recovery does not moot an appeal. *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 355 (Minn. App. 2006). Landlord identifies no evidence that Edwards voluntarily relinquished the property. To the contrary, the record indicates landlord requested a writ of recovery to have him removed. We are not persuaded that this eviction appeal is moot.

By contrast, a stay of an eviction judgment under Minn. R. Gen. Prac. 611(b) is a form of temporary relief applicable only in eviction actions tried before a housing court referee. Minn. R. Gen. Prac. 601 (providing that Minn. R. Gen. Prac. 601-612 “apply to all proceedings in Housing Court”). The stay enables a tenant who did not prevail in housing court to retain possession of the property pending judicial review. And because the landlord is meanwhile deprived of use of the property, the tenant generally must provide security for the stay in the form of payment or bond. Minn. R. Gen. Prac. 611(b); *see* Minn. R. Civ. App. P. 108.02, subd. 4(c).

These descriptions illustrate that, while redemption and a stay of eviction judgment both involve a tenant’s payment for possession of the property, the two are not equivalent. Paying security for a stay and temporary possession under Minn. R. Gen. Prac. 611(b) cannot be construed as paying to redeem and be fully restored to possession under Minn. Stat. § 504B.291, subd. 1(a), and failure to pay security for a stay cannot be construed as forfeiture of the right to redeem the tenancy. This is particularly true when the tenant is required to pay security for a stay under circumstances where he could not have been restored to possession by paying the cost of redemption because the judgment was not based on nonpayment of rent. That is the case here.

At the time of trial, Edwards faced not only a nonpayment claim but also breach-of-lease and holdover claims. Redemption was unavailable, and paying would have been insufficient to restore Edwards to possession of the property until those other claims were resolved in his favor. Minn. Stat. § 504B.291, subd. 1(a). That did not happen in housing court, so he exercised his right to judicial review. Pending review, he sought a stay to

retain possession of the property. His failure to pay security resulted in his removal. But as noted above, it did not deprive him of his right to judicial review. And the district court ultimately ruled in his favor on the holdover claim. That decision leaves only landlord's claim that Edwards failed to pay rent—a claim that, under Minn. Stat. § 504B.291, subd. 1(a), Edwards is entitled to resolve by paying the overdue rent and other costs.

Landlord contends a remand is unnecessary because Edwards's failure to pay security indicates that he lacks the necessary funds to redeem. We are not persuaded. It may be true that Edwards failed to pay security last July because he lacked the necessary funds. But even if that is true, we decline to draw the critical inference that he would have been unable to redeem when the district court resolved the holdover claim in his favor in October, or that he is currently unable to redeem. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.