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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2058**

Daniel Hill,
Respondent,

vs.

Dallas Jason Primeaux, et al.,
Appellants.

**Filed September 8, 2020
Reversed
Segal, Chief Judge**

St. Louis County District Court
File No. 69DU-CV-19-2984

Daniel Hill, Proctor, Minnesota (pro se respondent)

Jude Schmit, Legal Aid of Northeastern Minnesota, Duluth, Minnesota (for appellants)

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

UNPUBLISHED OPINION

SEGAL, Chief Judge

In this eviction appeal, appellants argue that the record does not support the district court's determination that respondent-landlord rebutted the defense of retaliatory eviction

under Minn. Stat. § 504B.285, subd. 2 (2018).¹ Because the record does not support that the termination of appellants' tenancy was wholly unrelated to and unmotivated by appellants' protected activity, we reverse.

FACTS

In 2016, appellants Dallas Jason Primeaux and Maria Cruz Herrera (tenants) signed a one-year lease for the lower unit of a duplex owned by respondent Daniel Hill. After the expiration of the one-year term, the lease became month-to-month and remained so through the remainder of their tenancy. In July 2019, the tenants notified Hill about a bug infestation in the apartment and asked him to remedy it. Hill testified that he did not receive the request until a couple of months later when, on September 15, he sent an email to the tenants stating, "I really like you guys but this threat[en]ing me with legal and housing stuff instead of working with me to fix problem[s] makes it hard. [W]ork with me in a nice way and I will do the same and we can probably fix the problem."

In addition to notifying Hill, the tenants filed a complaint with the Housing and Redevelopment Authority (HRA) of Duluth requesting a special inspection of their unit because they believed there was a bedbug infestation. The inspection confirmed the tenants' suspicions of bedbugs, and the HRA informed the tenants and Hill of this conclusion in a letter received by Hill on September 16. The letter notified Hill that the

¹ The tenants also argue that the determination of the district court is against public policy because it "departs from the legislative intent behind the retaliation defense" and it "endangers the retaliation defense through a chilling effect." Because we are reversing on other grounds, we need not reach this argument.

HRA's housing assistance payments would be abated unless there was a clearance of the infestation.

On the same day that Hill received the letter from the HRA, September 16, 2019, Hill provided the tenants with a notice to quit telling them to "please be out along with all of your possessions no later than October 31, 2019."² In the notice, Hill told the tenants "we have decided to fix up the house . . . and then put it up for sale." The tenants received the notice the next day, but they did not vacate the premises as requested. On October 31, the tenants emailed Hill asking when they should pay rent, and Hill responded that he was selling the house and would not accept the rent payment. He told them that if they were not out with all of their possessions, he would have them evicted.³

On November 4, 2019, Hill filed an eviction action against the tenants based on their failure to vacate the property after written notice was given. At the eviction hearing, the tenants did not dispute that they held over. They instead presented a retaliation defense under Minn. Stat. § 504B.285, subd. 2 based on their contention that the notice was in retaliation for their filing of a complaint with the HRA about the infestation. Hill admitted at the hearing that he received reports from the tenants of "spiders, ants, bumblebees, fungus, gnats, flies, fan tails, rollie pollies, moths, mice, spotted silver fish, fleas and

² The tenants had made a previous complaint to the HRA in 2017 about a bug infestation in the apartment, which was confirmed by the HRA's inspection. Hill had also provided the tenants with a 30-day notice to quit the property back in 2017 unless the tenants agreed to sign off on an HRA form stating that the issue had been remedied. Herrera testified at the hearing in this case that they signed the form even though the bedbug issue persisted because they didn't want to be evicted.

³ Hill gave a notice to quit to the upstairs tenant on the same day. She had already advised Hill that she would be leaving and had been looking for another residence.

earwigs.” But he denied that he knew of any ongoing issue with bedbugs until he received the HRA letter on September 16.

Hill testified that the reason for the notice to terminate the tenancy was financial, not retaliatory. He testified that the house needed serious upgrades, the rental license was set to expire in February 2020, and the property would not pass inspection for renewing a rental license. Hill further testified that the property “makes \$1750 a month with \$1,080.75 in expenses, for a profit of \$669.25 per month.” Hill testified that he loses \$1,000 per month on his rental properties overall because of high interest rates on some of his loans and that he was “behind \$5,741 plus penalties on property taxes.” Hill testified that he planned to quit being a landlord after he sold the property in question to pay for repairs on his other two properties and sell them.

The housing court referee found that “[Hill] proved a non-retaliatory purpose for the Notice to Quit even after the shifting of the statutory burden” The referee found Hill’s testimony credible and that “[o]n this record the Court will give [Hill] the benefit of the doubt that he is sincere in his desire to no longer be a landlord of this property PERIOD, not just as to these particular tenants. That is the real issue here.”

The district court accepted the referee’s recommendation and entered judgment in favor of Hill, ordering recovery of the premises as of December 18, 2019. This appeal follows.

DECISION

On appeal from an eviction judgment, we determine whether the evidence sustains the findings of fact and whether the findings support the legal conclusions. *Minneapolis Pub. Hous. Auth. v. Greene*, 463 N.W.2d 558, 560 (Minn. App. 1990). We will not set aside findings of fact unless they are clearly erroneous and we defer to the district court's credibility determinations. Minn. R. Civ. P. 52.01.

Generally, a landlord may recover possession of a property by eviction when any tenant holds over after termination of the tenancy by notice to quit. Minn. Stat. § 504B.285, subd. 1(a)(3) (2018). A landlord may not, however, terminate a tenancy in retaliation for a tenant's good-faith attempts to enforce his or her rights. *Id.*, subd. 2(1). If the notice to quit was served within 90 days of a tenant's good faith action, the burden of proving that the notice to quit was not served in whole or in part for a retaliatory purpose shall rest with the landlord. *Id.*, subd. 2.

"A landlord must establish by a fair preponderance of the evidence a substantial nonretaliatory reason for the eviction, arising at or within a reasonably short time before service of the notice to quit." *Parkin v. Fitzgerald*, 240 N.W.2d 828, 832 (Minn. 1976). "A nonretaliatory reason is a reason *wholly unrelated to and unmotivated by* any good faith activity on the part of the tenant protected by the statute" and includes "removal of a housing unit from the market for a sound business reason." *Id.* at 832-33 (emphasis added).

In this appeal, the tenants argue that Hill failed to rebut the defense of retaliatory eviction under Minn. Stat. § 504B.285, subd. 2. They rely on the fact that Hill provided tenants with a notice to quit on the very same day that Hill received the letter from the

HRA. They also point to the fact that only the day before, on September 15, Hill had sent them an email complaining about being threatened with “legal and housing stuff instead of working with me to fix problem[s].” Finally, they point to the fact that Hill had taken similar action in 2017 after the prior HRA complaint, when Hill gave them a notice to quit and refused to retract it unless the tenants signed a form saying the problem had been abated. They claim that this evidence undermines the district court’s ruling and requires a reversal.

Hill argues in response that he was sincere in his desire to sell the property and that this satisfies his duty to establish a legitimate nonretaliatory motive. The district court found Hill’s testimony credible. While the district court noted that the evidence concerning communications between the parties “could support either parties’ arguments,” the district court concluded nevertheless that “[o]n this record [it] will give [Hill] the benefit of the doubt that he is sincere in his desire to no longer be a landlord of this property. . . .” When viewed in the context of the record in this case, however, sincerity alone is not enough to rebut the presumption under Minn. Stat. § 504B.285, subd. 2. Under *Parkin*, the “nonretaliatory reason” must not only be “substantial” but it also must be “*wholly unrelated to and unmotivated by* any good faith activity on the part of the tenant protected by the statute.” *Id.* at 832 (emphasis added).

In *Parkin*, “[t]he notice to quit came within 5 days of the housing inspector’s visit and was contemporaneous with discussions between [the] landlord and one of the tenants about the rate of completion of repairs.” *Id.* at 833. Moreover, the *Parkin* court noted that “even a legitimate business purpose must be closely examined to ensure that it is not

contrived or colored in any way by tenants' protected activities.” *Id.* at 832. The *Parkin* court reversed, finding that the landlord's notice to quit was retaliatory. *Id.* at 833.

Applying *Parkin* to this case, we come to the same conclusion. We defer to the district court's credibility finding that Hill was sincere in his desire to be rid of tenants and out of the landlord business. But that is not the end of the inquiry. It is Hill's burden to prove that his desire to sell was “wholly unrelated to and unmotivated by any good faith activity on the part of the tenant[s]” *Id.* at 832. It is in the application of this high standard that the district court's ruling falls short. Hill presented no evidence to explain away the suspect timing that he decided to sell the property on the same day that he received the HRA letter. Indeed, the email he sent to the tenants just the day before, on September 15, evidences an intent to stay in the landlord business and to work with the tenants to “fix the problem.”

The only thing that changed between this email on September 15 and the notice to quit on September 16 is that Hill received the HRA letter requiring him to abate the bug infestation. When combined with the fact that Hill had written an email to the tenants the day before expressly complaining about the threat of “legal and housing stuff,” it leads to the inescapable conclusion that Hill's desire to sell and the notice to quit were “colored” in some manner by the tenants' “protected activities.” *Id.* Thus, even though Hill had a sincere desire to sell his rental properties, we conclude that the record does not support that Hill's motivation for the notice to quit was “wholly unrelated to and unmotivated by” the HRA complaint. *Id.*

We conclude that the district court clearly erred in its determination that Hill overcame the presumption that he acted at least in part in retaliation for the tenants' complaint to the HRA.

Reversed.