

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0211**

Central Towers Limited Partnership,
Appellant,

vs.

Norman Schiffman,
Respondent.

**Filed December 6, 2021
Affirmed
Reyes, Judge**

Ramsey County District Court
File No. 62-HG-CV-20-772

Christopher T. Kalla, Robert Schwartz, Hanbery & Turner, P.A., Minneapolis, Minnesota
(for appellant)

Laura Orr, Southern Minnesota Regional Legal Services, Inc., St. Paul, Minnesota (for
respondent)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant landlord challenges the denial of its eviction action against respondent tenant under the eviction-suspension exceptions in Emergency Executive Order 20-79. Appellant challenges the district court's determination that appellant failed to show that respondent's bedbug infestation seriously endangered the safety of others. We affirm.

FACTS

Appellant Central Towers Limited Partnership owns an apartment building in St. Paul, Minnesota. Central Towers' building contains 193 apartments which are leased to low-income seniors. Respondent Norman Schiffman leased an apartment at Central Towers. In June 2020, Central Towers had Plunkett's Pest Control conduct a periodic inspection of Schiffman's unit. Plunkett's determined that the unit had a heavy bedbug infestation. Plunkett's scheduled a bedbug-extermination treatment of Schiffman's unit for early July 2020 and gave Schiffman instructions on preparing for the treatment. Plunkett's had described Schiffman's unit during prior inspections as "cluttered." To prepare for the bedbug treatment, a Plunkett's technician directed Schiffman to remove many of his personal items and some of his furniture. When the technician returned the next day, Schiffman had not removed the personal items he had been told to remove. Central Towers had two of its workers move some of Schiffman's personal property into an empty unit so that Schiffman's unit could be properly treated. The treatment was not successful, and the bedbug infestation continued. Plunkett's informed Central Towers that, because Schiffman's unit was very cluttered, elimination of the bedbugs from the unit may be impossible and could lead to the bedbugs spreading to other units.

Central Towers reported a complaint to the City of St. Paul (the city), and on July 23, 2020, the city issued a correction notice instructing Central Towers to exterminate the bedbugs in Schiffman's unit and provide documentation of extermination from a licensed exterminator. On July 30, 2020, Central Towers filed an eviction complaint against

Schiffman on the grounds that the cluttered condition of Schiffman's apartment had prevented Central Towers from applying bedbug treatments in an effective manner.

Plunkett's treated Schiffman's unit again in early August. Schiffman failed to properly prepare his unit for that treatment. On August 10, 2020, the city reinspected Schiffman's apartment and issued another correction notice instructing Central Towers to exterminate the bedbugs in Schiffman's unit. Plunkett's treated Schiffman's unit in September and October. Plunkett's noted in its reports that the unit remained highly cluttered and that Schiffman had not properly prepared for the treatments. On November 3, 2020, Plunkett's inspected Schiffman's unit and reported that it had found no live bedbugs.

Schiffman's bedbug infestation occurred during the COVID-19 pandemic. When Central Towers filed its eviction complaint against Schiffman on July 30, 2020, evictions in Minnesota were suspended under Governor Tim Walz's Emergency Executive Order 20-73 (EO 20-73). Emerg. Exec. Order No. 20-73, *Clarifying Executive Order 20-14 Suspending Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency* (June 5, 2020). EO 20-73 suspended the ability of property owners to file an eviction action unless the tenant seriously endangered the safety of other tenants or others on the premises. The purpose of the suspension was to "allow households to remain sheltered during the peacetime emergency."

On August 4, 2020, five days after Central Towers filed its eviction complaint, Emergency Executive Order 20-79 (EO 20-79) replaced and superseded EO 20-73. See Emerg. Exec. Order No. 20-79, *Modifying the Suspension of Evictions and Writs of*

Recovery During the COVID-19 Peacetime Emergency (July 14, 2020). EO 20-79 maintained the eviction suspension but added an exception for significant property damage. EO 20-79 remained in effect until June 30, 2021, when the legislature declared it null and void in a phaseout of the emergency executive orders suspending most evictions. 2021 Minn. Laws 1st Spec. Sess. ch. 8, art. 5.

The district court denied Central Towers' eviction complaint after a one-day court trial on November 25, 2020. At trial, both parties acknowledged the eviction suspension and primarily argued whether Schiffman's bedbug infestation fell under an exception to the suspension. The district court heard testimony regarding Schiffman's bedbug infestation and the condition of his unit. Schiffman also introduced testimony from Dr. Stephen Kells, a professor of entomology at the University of Minnesota. Dr. Kells testified that he viewed bedbugs as a nuisance rather than a danger to humans.

In denying Central Towers' eviction action, the district court found that Central Towers had not met its burden of showing that Schiffman had seriously endangered others' safety or caused significant property damage. Instead, the district court found that the evidence and testimony showed that bedbugs were a nuisance rather than a serious safety concern and that Central Towers failed to show significant property damage. Although the district court found that Schiffman had violated the terms of his lease by not keeping his unit clean, the district court found that the violation did not rise to the level of the narrow exceptions to the eviction suspension set forth in EO 20-79. This appeal follows.

DECISION

I. The district court did not abuse its discretion when it determined that Central Towers failed to show that Schiffman's bedbug infestation seriously endangered the safety of others.

Central Towers argues that Schiffman's bedbug infestation seriously endangered the safety of others because bedbugs are a serious problem and because the correction notices issued by the city in response to the infestation put other residents at risk of losing their housing. We are not persuaded.

At the time of Schiffman's trial, eviction actions were governed by EO 20-79. EO 20-79 suspended most eviction actions, unless "the tenant: (a) Seriously endangers the safety of other residents," or "(d) Materially violates a residential lease by the following actions on the premises . . . (i) Seriously endangers the safety of others; or (ii) Significantly damages property." Whether Schiffman's failure to comply with bedbug treatment protocol seriously endangered others is a mixed question of law and fact. "When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard." *In re Estate of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (quotation omitted). A district court abuses its discretion when it acts under a misapprehension of the law or when its factual findings are clearly erroneous. *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). If there is reasonable evidence to support the district court's findings of fact, the reviewing court should not disturb those findings. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999). Finally, it is a landlord's burden to establish that an exception to the suspension of evictions applies. *Cf.*

Cloverdale Foods of Minnesota, Inc. v. Pioneer Snacks, 580 N.W.2d 46, 49 (Minn. App. 1998) (quoting *Mac-Du Props. v. LaBresh*, 392 N.W.2d 315, 317 (Minn. App. 1986) (noting that the landlord has the burden of proving grounds for an eviction), *rev. denied* (Minn. Oct. 29, 1986)).

Here, reasonable evidence supports the district court's findings and ultimate determination that Central Towers did not meet its burden of showing that Schiffman's failure to comply with the bedbug-treatment protocol seriously endangered the safety of others. Central Towers presented no evidence that bedbugs ever spread from Schiffman's unit to any other units or to common areas. By the time of trial, the extermination treatments had eradicated the bedbug infestation in Schiffman's unit. The district court did not find credible Central Towers' claim that Schiffman intentionally sought to spread bedbugs or that Schiffman had intentionally or willfully caused the infestation. We are not inclined to generalize that a bedbug infestation is just a "nuisance" and could never seriously endanger the safety of others. However, in this case, the lack of spread beyond Schiffman's unit and the eventual successful eradication of Schiffman's bedbug infestation support the district court's determination that Schiffman's failure to fully comply with extermination protocol did not seriously endanger others.

Central Towers points to a few landlord-tenant cases involving bedbugs to argue that bedbugs are a serious problem with legal consequences. Central Towers cites *Delamater v. Foreman*, 239 N.W. 148, 149 (Minn. 1931) (affirming constructive eviction verdict when cracks in tenant's floor allowed large numbers of bedbugs to continually invade tenant's apartment); *Hill v. Primeaux*, No. A19-2058, 2020 WL 5361080, at *3

(Minn. App. Sept. 8, 2020) (concluding district court clearly erred in determining landlord overcame presumption of retaliation under Minn. Stat. § 504B.285, subd. 2 (2020), when landlord’s notice to quit was given within 90 days of tenants’ report to housing authority of bedbug infestation); and *Rush v. Westwood Village Partnership*, 887 N.W.2d 701, 709 (Minn. App. 2016) (holding that landlord did not violate covenant of habitability by electing to remove bedbugs with chemical rather than heat treatment and that tenants could be required to bear cost of cleaning and personal property repair related to that treatment), *rev. denied* (Minn. Mar. 14, 2017).

These cases are inapposite. This is not a case about constructive eviction or breach of lease. The single, narrow issue here is whether Central Towers proved that Schiffman seriously endangered others as required for eviction under the limited exceptions to the EO 20-79 eviction suspension. We do not find error in the district court’s determination that under the unique and specific facts of this case, Central Towers failed to show that Schiffman seriously endangered others.

We are also not persuaded by Central Towers’ argument that a city ordinance defining insect infestations as “material endangerment” per se establishes that Schiffman’s bedbug infestation seriously endangered others. The city ordinance states: “The following violations *may* constitute material endangerment if in combination or alone the conditions are substantial and expose the occupants or the public to danger or peril: . . . Whenever the dwelling unit, structure or any portion thereof, has a substantial or severe insect . . . infestation” St. Paul, Minn., Legislative Code § 34.23(7)(d) (2017) (emphasis added). The ordinance does not define a bedbug infestation as a per se material

endangerment: it states only that an insect infestation *may* constitute material endangerment if the infestation is substantial and exposes the occupants or the public to danger. Whether an insect infestation is a material endangerment is therefore a fact-specific inquiry.

Similarly, we are not persuaded by Central Towers' related argument that the correction notices issued by the city in response to Schiffman's bedbug infestation establish that Schiffman seriously endangered the safety of others. The two correction notices issued by the city to Central Towers instructed Central Towers to exterminate the bedbugs in Schiffman's unit and to provide proof of extermination from a licensed exterminator. The notices included a statement that "Failure to comply *may* result in a criminal citation or the revocation of the Certificate of Occupancy." (Emphasis added.) Central Towers argues that these notices seriously endangered others by putting the other residents of Schiffman's building at risk of losing their housing if the city did indeed revoke Central Towers' occupancy certificate. But the correction notices only listed revocation as one possible consequence of failure to comply with the notices. Additionally, the record shows that Central Towers *did* continue to engage a licensed exterminator to treat Schiffman's unit, the city took no further action after its August notice, and by the time of trial, Central Towers' exterminator found no live bedbugs in Schiffman's unit. The district court rejected appellant's argument that the correction notices showed Schiffman's infestation seriously endangered others and implicitly determined that, based on the particular circumstances of Schiffman's infestation, the risk posed by the correction notices was too remote to constitute the type of serious endangerment required for an eviction action to

proceed under EO 20-79. We conclude that the district court did not abuse its discretion when it determined that Central Towers had not shown that an exception to the EO 20-79 eviction suspension applied.¹

II. The district court did not err when it found relevant the apparent cure of Schiffman's bedbug infestation.

Central Towers argues that the district court should not have found relevant the eradication of Schiffman's bedbugs because, under this court's decision in *Minneapolis Community Development Agency v. Smallwood*, 379 N.W.2d 554, 556 (Minn. App. 1985), *rev. denied* (Minn. Feb. 19, 1986), a landlord's right of action for eviction is complete upon a violation of a lease condition regardless of subsequent remedial action by the tenant. We disagree.

Smallwood does not apply here, because Central Towers' eviction action does not turn on whether there was a breach of the lease or on whether the breach was cured. In fact, the district court found that Schiffman breached his lease by not keeping his unit clean, and Schiffman does not challenge that finding. But the determinative question for an eviction action proceeding under EO 20-79 is not whether there had been a breach of the lease but whether that breach seriously endangered others. The district court could properly consider the successful eradication of bedbugs from Schiffman's unit as part of

¹ The district court also found that Central Towers failed to show that Schiffman caused significant property damage, the other exception to the EO 20-79 eviction suspension. Because Central Towers did not challenge the district court's finding on significant property damage, we do not address it here.

its determination that Schiffman's failure to fully comply with the bedbug extermination treatments did not seriously endanger others.²

Affirmed.

² To be clear, as this court recently clarified in *Fairmont Housing and Redevelopment Authority v. Winter*, ___ N.W.2d ___, ___, No. A21-0244, slip op. at 16-17 (Minn. App. Nov. 22, 2021), once serious endangerment has occurred, an eviction action under EO 20-79 may proceed regardless of a subsequent remedy of the danger. In *Fairmont Housing and Redevelopment Authority*, the tenants failed to inform the landlord that a lockbox containing a key to every apartment in the building had been left unlocked, and this court determined that the district court did not abuse its discretion by determining that the tenants had seriously endangered the safety of the building's residents for a month before the broken lockbox was reported and fixed. Here, the record supports the district court's determination that Schiffman's bedbug infestation never rose to the level of serious endangerment.