STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0839

Khamar Abdulle,
Appellant,

vs.

WV Limited Partnership, d/b/a Washington Village West Apartments,
Respondent.

Filed January 3, 2023
Affirmed
Florey, Judge[*]

Olmsted County District Court
File No. 55-CV-21-4254

Peter C. Sandberg, Sandberg Law Firm, Rochester, Minnesota (for appellant)

Rachel B. Beauchamp, Cousineau, Van Bergen, McNee & Malone, P.A., Minnetonka, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Smith, Tracy M., Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant-tenant sued respondent-landlord under a breach-of-contract theory after appellant slipped and fell on ice outside her apartment building. Appellant appeals from a

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

district court's grant of summary judgment for respondent, arguing that summary judgment was not appropriate because (1) the implied covenants of habitability in Minn. Stat. § 504B.161 (2022) created a contractual duty that respondent breached and (2) a genuine issue of material fact existed as to the condition of the sidewalk. We affirm.

FACTS

Appellant Khamar Abdulle was a tenant of respondent Washington Village West Apartments (WV) in Rochester, Minnesota. The parties entered into a lease agreement in April 2018 for a rental period of July 2018 through June 2019.

A heavy snowstorm followed by lighter snowfall occurred in the Rochester area between February 23 and 27, 2019. WV placed a notice on the doors of Abdulle's apartment building on February 26 stating that snow removal would occur the following day, February 27.

WV kept a daily log of snow and ice maintenance at the property. The log indicated that a WV employee inspected the sidewalks, walkways, entrances, and steps around the apartment building, shoveled the sidewalks, and applied ice melt to the sidewalks, doors, and steps between 9:00 and 9:30 a.m. on February 27. Abdulle left her apartment on February 27 after the snow removal occurred. A few steps outside of the building, she slipped and fell on what she described as "black ice" and broke her right ankle.

Abdulle initially sued WV under a negligence theory, claiming that she was injured due to WV's negligence in failing to maintain, clear, sand, and salt the common areas outside the apartment building. WV moved for summary judgment based on its contention that Abdulle could not present evidence that WV had actual or constructive notice of the

ice that caused her fall. However, at the first hearing on WV's motion for summary judgment, Abdulle argued for the first time a breach-of-contract theory rather than a negligence theory to support her claim. The court continued the hearing to allow Abdulle to amend her complaint and WV to respond to the amended complaint.

Abdulle's amended complaint pleaded solely a breach-of-contract claim. The amended complaint stated that the lease required WV "to keep and maintain the sidewalks and entrances to its apartment building including but not limited to shoveling snow and clearing ice," and that WV breached the lease by failing to clear the ice on which Abdulle fell.

WV moved for summary judgment, this time arguing that Abdulle's amended complaint failed to identify any term or contractual requirement within the lease that WV breached. After the second hearing on WV's motion for summary judgment, the district court granted WV's motion and entered judgment of dismissal with prejudice against Abdulle.

This appeal follows.

DECISION

In granting summary judgment for WV, the district court noted that Abdulle's lease "does not reference snow or ice removal, nor does it reference any affirmative duty of [WV] to perform specific maintenance of snow and ice removal." Abdulle argues on appeal that "the lease clearly reserves a claim against WV for damages and injury to its renter caused by WV's negligence," and that the lease and the implied covenants of habitability under Minn. Stat. § 504B.161, subd. 1(a), "require WV to answer for a breach

[of contract] when its negligence causes damage or injury to a renter while crossing its common areas." This court can interpret Abdulle's argument in one of two ways: summary judgment was not appropriate as a matter of law because (1) WV's breach of contract gave rise to a valid negligence claim or (2) WV's negligence gave rise to a valid breach-of-contract claim.

"The [district] court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. Appellate courts review a district court's order granting summary judgment de novo. *Minn. Sands, LLC v. County of Winona*, 940 N.W.2d 183, 191 (Minn. 2020). Viewing the evidence in the light most favorable to the nonmoving party, the reviewing court must determine whether there are any genuine issues of material fact and whether the district court correctly applied the law. *Id.*

I. Summary judgment was appropriate as a matter of law because a breach of the implied covenants of habitability does not give rise to a negligence claim.

We first construe Abdulle's argument to be that summary judgment was not appropriate as a matter of law because the implied covenants of habitability created an affirmative contractual duty that WV breached, giving rise to a claim in negligence. We conclude that a breach of the implied covenants of habitability does not support a negligence claim.

A residential lease is a contract to which general principles of contract construction apply. *Knight v. McGinity*, 868 N.W.2d 298, 300 (Minn. App. 2015). All residential leases include the implied covenants of habitability, under which the landlord covenants "that the

premises and all common areas are fit for the use intended by the parties" and that the landlord will "keep the premises in reasonable repair during the term of the lease." Minn. Stat. § 504B.161, subds. 1(a)(1), 1(a)(2); *see Fritz v. Warthen*, 213 N.W.2d 339, 341 (Minn. 1973) ("These covenants are not made a part of the lease by agreement between the parties but by statutory mandate.").

"A breach of contract is a failure, without legal excuse, to perform any promise that forms the whole or part of the contract." *Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 543 (Minn. 2014). The plaintiff must prove three elements to establish a breach-of-contract claim: first, formation of the contract, second, performance of any conditions precedent, and third, breach of contract by the defendant. *Id.*; *Com. Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006).

The only element at issue here is the element of breach of contract. This is an issue of law: whether the lease and its implied covenants of habitability created an affirmative duty that WV breached in failing to clear the ice from the sidewalk outside Abdulle's apartment, and whether the remedy for such breach is a claim for damages under a negligence theory.

Violation of the statutory covenants of habitability may be asserted as a defense to a landlord's unlawful detainer action. *Meyer v. Parkin*, 350 N.W.2d 435, 438 (Minn. App. 1984) (citing *Fritz*, 213 N.W.2d at 342), *rev. denied* (Minn. Sept. 12, 1984). However, the statutory covenants do not extend a landlord's liability to money damages for a tenant's injuries resulting from an unknown defect in the rental property. *Id.* The covenants "do not impose strict liability upon a landlord or expand the landlord's liability beyond that

previously articulated in caselaw." *Rush v. Westwood Village P'ship*, 887 N.W.2d 701, 709 (Minn. App. 2016).

This court's decision in *Wise v. Stonebridge Communities, LLC*, 927 N.W.2d 772 (Minn. App. 2019), is dispositive of the instant case. In *Wise*, a tenant brought a negligence claim against her landlord after she tripped and fell on both the uneven sidewalk and a mat outside of her apartment building. *Id.* at 774. The landlord moved for summary judgment, arguing that it did not have notice of the dangerous condition the mat presented, or in the alternative, that it did not have a duty to warn the tenant about the uneven sidewalk because it was an open-and-obvious condition. *Id.* at 774-75. The district court granted the landlord's motion for summary judgment. *Id.* at 775.

On appeal, the tenant argued that the landlord was liable in negligence for her injuries because it violated the statutory covenants of habitability by failing to repair the sidewalk. *Id.* at 775-76. We noted that the tenant's argument "ask[s] us to recognize a new statutory negligence cause of action," but we declined to do so. *Id.* at 776. Instead, we concluded that "the covenants of habitability do not support a negligence cause of action by a tenant against a landlord for breach of its duty to repair and maintain the common areas of the leased premises," and we affirmed summary judgment in favor of the landlord. *Id.*

The facts of the instant case are similar to those in *Wise*. Abdulle originally brought a claim against WV for negligence after she fell on the sidewalk in the common area of her apartment complex. Although she changed her complaint to a breach-of-contract theory, her underlying argument is that WV is liable in negligence because it violated the statutory

covenants of habitability by failing to clear the ice from the sidewalk. However, as the preceding caselaw makes clear, a violation of the statutory covenants of habitability does not give rise to such a claim. Furthermore, a review of Abdulle's lease confirms that the district court was correct in stating that the lease itself does not assign an affirmative duty to WV to shovel and de-ice the common areas.

II. Summary judgment was appropriate as a matter of law because Minnesota courts do not recognize a negligent breach-of-contract cause of action.

Alternatively, we construe Abdulle's argument to be that summary judgment was not appropriate as a matter of law because she had a valid breach-of-contract claim as a result of WV's negligence. However, this argument also fails because Minnesota courts do not recognize a cause of action for negligent breach of contract. [1] *See, e.g.*, *Lesmeister v. Dilly*, 330 N.W.2d 95, 102 (Minn. 1983); *Lampert Lumber Co. v. Joyce*, 405 N.W.2d 423, 424 (Minn. 1987); *Christenson v. Milde*, 402 N.W.2d 610, 612 (Minn. App. 1987).

Thus, under either of Abdulle's theories, summary judgment for WV is appropriate as a matter of law, and the district court's summary judgment should stand.[2]

Affirmed.

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[1] WV acknowledged that it had a common-law duty of reasonable care to maintain the common areas in the winter, which would include shoveling and de-icing. However, any alleged breach of this duty would give rise to a negligence claim; it would not be a breach of the lease or its covenants, as Abdulle argued. Abdulle forfeited her negligence claim when she amended her complaint to plead solely a breach-of-contract claim. *See Smola v. City of West St. Paul*, 47 N.W.2d 789, 790 (Minn. 1951) ("An amended complaint completely supersedes the original complaint and for the purpose of determining a cause of action is to be construed as the only one interposed in the case.").

[2] We do not reach Abdulle's argument regarding the presence of a genuine issue of material fact. Our conclusion that Abdulle did not forward a valid legal theory precludes this argument.