This opinion is nonprecedential except as provided by Minn.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
A23-1866

Deco Shakopee, LLC,
Respondent,

vs.

Janet K Fullenwiley,
Appellant.

Filed July 15, 2024
Affirmed
Harris, Judge

Scott County District Court
File No. 70-CV-23-14698

Nigel H. Mendez, Carlson & Associates, Ltd., Vadnais Heights, Minnesota (for respondent)

Janet K Fullenwiley, St. Louis Park, Minnesota (pro se appellant)

Considered and decided by Schmidt, Presiding Judge; Worke, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellant challenges an eviction judgment, arguing (1) the district court erred by not considering her alleged defenses and (2) the district court did not set the correct redemption amount. We affirm.

FACTS

In November 2022, appellant Janet K Fullenwiley entered a six-month residential lease with respondent Deco Shakopee LLC. Deco charged $1,474 for monthly rent, which included $1,419 for base rent, a $5 administration fee, and $50 for utilities. The lease also included a utilities provision that imposed a $30 monthly fee if the tenant did not place the utility bills in their name and the office was required to bill back for service. The lease contained a termination-of-lease provision that stated:

> Either party may terminate this Lease at the end of the Lease Term by delivering to the other written notice of termination. For the notice of termination to be effective, it must be (a) written and (b) given at least 60 days prior to the end of the lease period. If this Lease is not renewed, the Lease shall automatically renew on a month-to-month basis with an additional fee of $500 per month.

In May 2023, the lease ended and was not renewed. On September 28, 2023, Deco served a lease-termination notice on Fullenwiley, terminating the month-to-month lease effective October 31, 2023. On November 1, 2023, Deco filed an eviction action alleging that Fullenwiley failed to vacate the property. A day later, Fullenwiley filed a motion to dismiss. Fullenwiley argued the lease-termination notice was improper because Deco was required to provide a 60-day notice under the lease. In response, Deco filed an amended complaint and added a claim for nonpayment of rent for October and November 2023. Fullenwiley filed another motion to dismiss arguing improper notice.

The matter proceeded to trial. At the beginning of the trial, Deco informed the district court that it was dismissing its failure-to-vacate claim and proceeding solely on its nonpayment-of-rent claim. As a result, the district court excluded any evidence related to the notice to vacate.

The district court received the lease and ledger as exhibits without objection. Deco called its community manager as a witness. The community manager testified that Fullenwiley owed Deco $3,588.05, which did not include a $5 statutory attorney fee.[1] During cross-examination, Fullenwiley challenged the $298 filing fee and $55 writ-of-recovery charge. Fullenwiley also attempted to introduce evidence about improper notice and retaliation. The district court limited Fullenwiley to discussing the nonpayment-of-rent claim and informed her she could introduce her evidence when she presented her case in chief. Fullenwiley did not testify or offer any exhibits at the trial.

In its order after the trial, the district court found that Fullenwiley did not pay rent for October and November 2023 and ordered that Fullenwiley could redeem her tenancy by paying a redemption amount of $3,538.04[2], which included two utility-service fees ($30 each), two late fees ($113.52 each), the court-filing fees ($298), and the statutory attorney fee ($5) by 4:00 p.m. on November 27, 2023. The district court entered judgment for Deco and stayed the issuance of a writ of recovery of premises and order to vacate until the following day. Fullenwiley filed a request to vacate the order for judgment and grant a new trial, which the district court denied. Fullenwiley then filed an additional motion to vacate judgment and grant a new trial, making similar arguments to the previous motion

[1] Minn. Stat. § 504B.291, subd. 1(a) (2022).
[2] This is a $0.01 difference from the amount ordered on the record.

and arguing the district court denied the previous motion due to bias. Fullenwiley did not redeem the tenancy and vacated the apartment on December 1.[3] Fullenwiley appeals.

DECISION

An eviction action "is a summary proceeding through which an occupant may be removed from possession of real property by the process of law." *Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 904 (Minn. App. 2018), *rev. denied* (Minn. Mar. 28, 2018); Minn. Stat. § 504B.001, subd. 4 (2022).

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 "review the district court's legal conclusions de novo" and "uphold the district court's factual findings unless they are clearly erroneous." *Nationwide*, 906 N.W.2d at 907. "[Appellate courts] will not conclude that a factfinder clearly erred unless, on the entire evidence, [they] are left with a definite and firm conviction that a mistake has been committed." *NY Props., LLC v. Schuette*, 977 N.W.2d 862, 865 (Minn. App. 2022) (alterations in original) (quoting *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021)). The scope of an

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[3] On November 27, 2023, Deco filed correspondence requesting a writ of recovery because the redemption amount had not been paid. On November 29, 2023, the district court issued a writ of recovery of premises and order to vacate. On November 29 and 30, Fullenwiley filed two motions seeking to stay the judgment and either stay or quash the writ of recovery. On November 30, 2023, the district court denied Fullenwiley's motion to quash the writ of recovery and granted her motion to stay the writ pending appeal; however, the sheriff served the writ of recovery.

eviction proceeding is generally limited to "whether the facts alleged in the complaint are true." *NY Props., LLC v. Schuette*, 977 N.W.2d 862, 865 (Minn. App. 2022) (quotation omitted); Minn. Stat. § 504B.355 (2022).

I. The district court did not err by excluding Fullenwiley's alleged improper-notice and statutory retaliation defenses because the eviction was based solely on nonpayment of rent.

On appeal, Fullenwiley argues that the district court erred by entering judgment for Deco based on its nonpayment-of-rent claim.

A landlord may bring an eviction action for nonpayment of rent. Minn. Stat. § 504B.291, subd. 1(a). "Such an eviction action is equivalent to a demand for the rent." *Id.* There are limited defenses in an eviction action based solely on nonpayment of rent. A tenant may defend against an eviction action for nonpayment of rent by proving that rent actually has been paid. *See id.* (discussing rebuttable presumption that rent has been paid). Additionally, "a tenant may defend against an eviction action alleging non-payment of rent by proving that rent is not unpaid because it is not due." *SVAP III Riverdale Commons LLC v. Coon Rapids Gyms, LLC*, 967 N.W.2d 81, 85 (Minn. App. 2021). "But if rent is due and unpaid, the analysis is straightforward and clear: [w]here the plaintiff shows defendant in possession under a lease, and failure to pay the stipulated rent, his cause of action under the statute is complete. The defenses that can be interposed are strictly limited." *Id.* (quotation omitted).

Fullenwiley argues that she was entitled to improper-notice and retaliation defenses. We address each defense in turn.

Notice to Quit

First, Fullenwiley argues that Deco failed to provide her proper notice to quit before bringing an eviction action based on her failure to vacate the property. Fullenwiley's argument, however, ignores that Deco conceded that it did not provide sufficient notice for the failure-to-vacate claim, dismissed the claim, and proceeded solely on the claim for nonpayment of rent.

Fullenwiley also argues that, under Minnesota Statutes section 504B.135 (2022), a 14-day notice to quit for nonpayment must be given before a landlord can file an eviction action. Section 504B.135(b) provides notice requirements to terminate a tenancy at will for nonpayment of rent. "If a tenant neglects or refuses to pay rent due on a tenancy at will, the landlord may terminate the tenancy by giving the tenant 14 days notice to quit in writing." Minn. Stat. § 504B.135(b).[4] Here, Deco complied with section 504B.135(b) because it provided *more* than the required 14-days notice to quit. Even if notice was improper, Deco was not required to provide notice to Fullenwiley before bringing an eviction action for nonpayment of rent.[5] Therefore, the district court did not err by declining to consider Fullenwiley's improper-notice defense.

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[4] In 2023, the legislature repealed section 504B.135(b), which provided the shorter timeline to terminate a tenancy based on nonpayment of rent. 2023 Minn. Laws ch. 52, art. 19, § 97, at 1177. The repeal took effect for leases entered or renewed beginning January 1, 2024. 2023 Minn. Laws ch. 52, art. 19, § 102, at 1180. This change does not impact the analysis under this lease agreement.

[5] Effective January 1, 2024, Minnesota requires a 14-day notice before a landlord brings an eviction action for nonpayment of rent. Minn. Stat. § 504B.321, subd. 1a (2022 & Supp. 2023); 2023 Minn. Laws ch. 52, art. 19, § 117, at 1187.

Retaliation

Second, Fullenwiley argues that the district court erred by declining to consider her alleged retaliation defense under Minnesota Statutes section 504B.285, subdivision 2 (2022) Fullenwiley argues that Deco has a history of retaliating by threatening evictions, filing evictions, overcharging for rent, and allowing tenants to disturb her by making excessive noise.

Statutory retaliation defenses do not apply to all eviction actions. *See* Minn. Stat. § 504B.285, subd. 2 (providing for retaliation defense in eviction action "following the alleged termination of a tenancy by notice to quit"); *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 51 (Minn. App. 1998) (concluding that the statutory retaliatory-eviction defense does not apply to eviction based on breach of lease). As discussed above, Deco proceeded solely on its claim for nonpayment of rent, so Fullenwiley has not demonstrated that the statutory retailiation defense under Minnesota Statutes section § 504B.285, subdivision 2, applies.

A tenant may defeat an action based solely on nonpayment of rent if the tenant proves "that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part" because of the tenant's "good faith attempt to secure or enforce rights under a lease" or "good faith report to a governmental authority of the plaintiff's violation of a health, safety, housing, or building code or ordinance." Minn. Stat. § 504B.285, subds. 2, 3 (2022).

At the trial, Fullenwiley did not allege or argue that Deco improperly increased her rent or decreased her services, nor did she allege that she attempted to secure rights under a lease or report a violation. Fullenwiley stated that retaliation was her basis for not paying rent. Fullenwiley stated that she reported noise disturbances that prevent her from sleeping, but nothing has been done. When given the opportunity, Fullenwiley did not testify or attempt to introduce additional evidence related to retaliation. Nothing in the record suggests that Fullenwiley complained to any government entity. Therefore, the district court did not err by excluding the retaliation defense because the eviction was based on nonpayment of rent and Fullenwiley did not otherwise introduce evidence related to an applicable defense.

II. The district court did not clearly err in setting the statutory redemption amount.

Fullenwiley also argues that the eviction judgment was improper because the district court erred in setting the amount of redemption.

Under Minnesota law, "the tenant may, at any time before possession has been delivered, redeem the tenancy and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, costs of the action, and an attorney's fee not to exceed $5." Minn. Stat. § 504B.291, subd. 1(a).

> If the tenant has paid to the landlord or brought into court the amount of rent in arrears but is unable to pay the interest, costs of the action, and attorney's fees required by paragraph (a), the court may permit the tenant to pay these amounts into court and be restored to possession within the same period of time, if any, for which the court stays the issuance of the order to vacate . . . .*Id.*, subd. 1(b).

Specifically, Fullenwiley argues that Deco had a history of overcharging her and she wanted to go over the ledger with the office. During the trial, Fullenwiley argued the correct redemption amount was $3,175.04, which consists of two months' rent and two late fees. Fullenwiley believed this was the correct amount because it was the amount Deco previously told her she owed. Fullenwiley also disputed the inclusion of the filing fee and writ fee and requested to pay costs of the action and the attorney fees later.

Here, the record contains reasonable evidence to support the redemption amount ordered by the district court. The district court included in its redemption amount two months' rent, two late fees, and two utility fees, amounts that are "the amount of the rent that is in arrears" as required by Minnesota Statutes section 504B.291, subdivision 1(a), and that Fullenwiley agreed with. The district court also included the court filing fees in the amount of $298 and a $5 attorney fee, amounts that are the "costs of the action, and an attorney's fee not to exceed $5," as required by Minnesota Statutes section 504B.291, subdivision 1(a). The lease and ledger support the $3,538.04 redemption amount. Therefore, the redemption amount of $3,538.04 was supported by the record and not clearly erroneous. Any error by the district court in calculating the redemption amount is also harmless. Fullenwiley did not pay, or attempt to pay, any amount to redeem the tenancy before the writ issued, or otherwise argue how she was prejudiced by the district court's inclusion of the utility fee, filing fee, and attorney fee. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

In sum, Fullenwiley's improper-notice and statutory retaliation defenses are not applicable to the allegation of nonpayment of rent. Fullenwiley did not present a defense that rent was not due and owing, or that rent was increased as a penalty. Fullenwiley agreed she owed rent for October and November and agreed she owed late fees. The district court received evidence of what Fullenwiley owed, and the redemption amount is supported by the record. Therefore, the district court did not err in entering judgment for the landlord.

Affirmed.