

*This opinion is nonprecedential except as provided by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
A24-0149**

Muska Electric Company,
Plaintiff,

vs.

Early Morning Farms-New Hope, LLC, et al.,
Respondents,

Shiloh Properties, LLC,
Appellant,

First Minnetonka City Bank, et al.,
Defendants.

**Filed August 12, 2024
Affirmed
Segal, Chief Judge**

Hennepin County District Court
File No. 27-CV-20-2768

Steven E. Antolak, Antolak Law Office, Minneapolis, Minnesota (for respondents)

Sarah E. Fisher-Otten, Fisher Law Firm, PLLC, Eden Prairie, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge;
and Cleary, Judge.*

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

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant-landlord challenges the district court's denial of its claim for a declaratory judgment that, under Minn. Stat. § 504B.271, subd. 1 (2022), it owned the equipment and other personal property of respondent-tenants that remained at the leased premises following an eviction. Appellant argues that the district court erred by (1) failing to address whether appellant disposed of respondents' personal property under Minn. Stat. § 504B.271, subd. 1(b); (2) determining that appellant failed to comply with various requirements in Minn. Stat. § 504B.271 (2022) and Minn. Stat. § 504B.365 (2022); and (3) determining that appellant forfeited any right to claim ownership of the personal property by failing to comply with certain requirements of the landlord-tenant laws. Because the district court's decision comports with the applicable statutes and has ample support in the evidentiary record, we affirm.

FACTS

Appellant Shiloh Properties LLC (Shiloh) is a Minnesota company that owned a commercial building in New Hope (the premises); Shiloh's sole member and manager is Chris Funke. Respondent Early Morning Farms LLC (EMF) and its wholly owned subsidiary, respondent Early Morning Farms-New Hope LLC (EMF-New Hope), are Minnesota companies specializing in vertical mushroom farming. The president and chief operating officer for both EMF and EMF-New Hope was, at all relevant times, Howard Rogers.

In 2017, Shiloh agreed to lease the premises, then an empty warehouse, to EMF for a 36-month term, beginning November 1, 2017. The lease included an option for EMF to purchase the premises during the first 33 months of the lease term for \$1.15 million and required EMF to pay real-estate taxes for the premises. EMF and EMF-New Hope (collectively, the tenants) spent six months and approximately \$1 million repairing the warehouse and installing “grow rooms” and mushroom-growing equipment. About \$325,000 was spent by the tenants on repairs and improvements to the premises with the balance for the equipment and installations required for the mushroom-growing operation. The repairs and improvements included overhauling the boiler, refitting and resealing the doors, replacing a main support beam, clearing the floor drains, and opening up a door for an additional loading dock in an area where a door had previously been located. The renovations were designed to make the building food-safe and to allow for mushrooms to grow in the building. The tenants also constructed 20 “grow rooms,” each with sensors, lighting, watering, and ventilation systems; construction of a lab and a cool room; and installed a 15-ton autoclave, a straw grinder, and other equipment.

In summer 2019, Shiloh learned of a mechanic’s lien that had been imposed on the premises by Muska Electric Company for work performed on behalf of the tenants. Shiloh then discovered that, while the tenants were current on rent, the 2019 real-estate taxes had not been paid. That September, Shiloh initiated an eviction action against the tenants based on the mechanic’s lien and unpaid taxes; it obtained a writ of recovery of the premises and order to vacate on November 19.

On November 25, 2019, Shiloh advised the tenants that the sheriff would remove them from the premises on November 27. Shiloh further advised that, if the tenants had not removed their personal property by the 27th,

[Shiloh] will store [the tenants'] personal property in the Premises for 28 days pursuant to Minnesota Statute Sections 504B.365, Subdivision 3(d) and 504B.271, Subdivision 1. If, after 28 days, [the tenants] fail to retake possession of their property, [Shiloh] will sell or otherwise dispose of it as allowed by Minnesota Statute Section 504B.271, Subdivision 1.

The next day, EMF told Shiloh that it had removed “certain items, including all intellectual property, critical materials and biological matter” and “all financial [records], and some furniture.” It also referenced earlier discussions about equipment removal and said it was “continuing to arrange for the removal of [the] equipment asap.” The sheriff executed the order to vacate. The tenants removed the items they had identified and relinquished the keys to Shiloh on November 27. The tenants’ grow rooms and equipment and some biological matter remained in the premises.

Rogers asked for more time to remove the larger pieces of equipment, indicating that removal would require hiring a contractor with a crane and trucks and that he could not line up a contractor between the holidays of Thanksgiving and Christmas. Funke refused to extend his deadline beyond December 26.

In or about January 2020, the tenants gave Shiloh a depreciation schedule that had been prepared for accounting purposes showing the major pieces of equipment that were left at the premises. The list did not identify all items that remained.

In March 2020, the tenants offered to purchase the premises for \$1.65 million. Shiloh rejected the offer, wanting a price in the range of \$1.9 million. Funke claimed that Shiloh owned the tenants’ personal property that remained in the premises and claimed that the purchase price should include the value of the personal property.

Around the same time, Funke noticed fruit flies on the premises and surmised that the biological matter that the tenants left in the grow rooms was decomposing. He enlisted the aid of several others interested in a potential mushroom business to clean out and prepare the premises, grow rooms, and equipment, so they could set up their own growing operation. Those individuals cleaned for several weeks and, in May 2020, they created a new company, NH Farmacy Inc., and began growing mushrooms. The following month, Shiloh sent EMF a letter terminating the lease.

NH Farmacy started making sales in August 2020 and operated in the premises until early 2022. In March 2022, Shiloh leased the premises to NH Farmacy’s primary customer, R&R Cultivation. And that November, Shiloh sold the premises—along with the grow rooms, equipment, and other personal property that the tenants had left inside—to R&R for a price of \$2.3 million. The tenants did not learn of the sale until the following January, during testimony presented at the trial in this matter.¹

¹ The district court noted in its findings of fact, conclusions of law, and order for judgment that in opening statements at trial—a trial that involved the issue of ownership of the tenants’ personal property—Shiloh claimed to be the owner of the personal property and the premises “without revealing that such property had been sold to a non-party, R&R, months earlier.” The district court further noted that Funke began his testimony at trial by claiming Shiloh remained the owner of the personal property, and that it was only in the “midst of trial” that the tenants and the district court first learned that the premises and the personal property had been sold two months before the start of trial. The district court

This matter began as a mechanic’s lien foreclosure action that Muska Electric initiated in February 2020, just months after the eviction. Ultimately, the only parties involved by the time of trial were Shiloh and the tenants, and the remaining issues focused solely on the numerous crossclaims that Shiloh asserted against the tenants in June 2021, including the declaratory-judgment claim at issue in this appeal and breach-of-contract claims regarding payment of rent and real-estate taxes. Following a court trial, the district court held that, because Shiloh violated several provisions of landlord-tenant law, it forfeited any claim to have acquired ownership of the personal property. Consequently, the district court denied Shiloh’s request for declaratory relief.² The district court also awarded Shiloh past-due rent payments and real-estate taxes for the premises through April 30, 2020, after which Shiloh used the premises for its own purposes. The district court further found that, “to the extent Shiloh claimed to be owed storage costs for keeping the Tenants’ personal property in place following the eviction, . . . Shiloh failed to prove the reasonable costs of such storage.” Shiloh moved for amended findings of fact and conclusions of law, which the district court largely denied.

stated that these false statements and failures to disclose the sale “contributed to the Court’s findings . . . that Funke’s credibility as a witness was questionable.”

² A parallel action was brought by the tenants against Shiloh in 2020 alleging conversion and civil theft of the personal property, among other claims. A motion by Shiloh to consolidate the two lawsuits was denied by the presiding civil judge of the district. The district court noted in its order in this case that it “expresse[d] no views on the merits of any claim asserted in that separate action.”

DECISION

In this appeal, Shiloh challenges the district court's denial of its claim for a declaratory judgment that, under Minn. Stat. § 504B.271, subd. 1(b), Shiloh became the rightful owner of the tenants' personal property that remained in the premises after the eviction, including the right to sell the personal property and retain all proceeds from that sale.³ We review a district court's findings of fact for clear error. *Bass v. Equity Residential Holdings, LLC*, 849 N.W.2d 87, 91 (Minn. App. 2014). In doing so, we view the findings "in the light most favorable to the district court's decision, and defer to the district court's credibility determinations." *Id.* But we review legal conclusions de novo. *Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 907 (Minn. App. 2018), *rev. denied* (Minn. Mar. 28, 2018).

We begin our analysis with a brief review of the pertinent provisions of landlord-tenant law. If the tenant's personal property remains in the premises after the tenant's removal in an eviction, the landlord "is responsible for the proper removal, storage, and care of the [tenant's] personal property." Minn. Stat. § 504B.365, subd. 3(f). The landlord has two choices of what to do with the personal property. *Conseco Loan Fin. Co. v. Boswell*, 687 N.W.2d 646, 650 (Minn. App. 2004) (discussing Minn. Stat. § 504B.365, subd. 3, "and its related section," Minn. Stat. § 504B.271, subd. 1), *rev. denied* (Minn. Jan. 20, 2005). The landlord may have the personal property removed from the premises and stored in another location. Minn. Stat. § 504B.365, subd. 3(a)-(c). Or the landlord may

³ Shiloh also claimed ownership of the property under the terms of the lease, but the district court rejected that claim, and Shiloh does not challenge that decision on appeal.

store the personal property on the premises. *Id.*, subd. 3(d). If the landlord elects to store the personal property on the premises, it must prepare and mail to the tenant an inventory of the property. *Id.*

Minnesota Statutes section 504B.271 governs a tenant's personal property that remains in "abandoned" premises. Minn. Stat. §§ 504B.271, subd. 1(a), .365, subd. 3(d). It provides:

(a) If a tenant abandons rented premises, the landlord may take possession of the tenant's personal property remaining on the premises, and shall store and care for the property. The landlord has a claim against the tenant for reasonable costs and expenses incurred in removing the tenant's property and in storing and caring for the property.

(b) The landlord may sell or otherwise dispose of the property 28 days after the landlord receives actual notice of the abandonment, or 28 days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs last.

(c) The landlord may apply a reasonable amount of the proceeds of a sale to the removal, care, and storage costs and expenses Any remaining proceeds of any sale shall be paid to the tenant upon written demand.

(d) Prior to a sale, the landlord shall make reasonable efforts to notify the tenant of the sale at least 14 days prior to the sale, by personal service in writing or sending written notification of the sale by first class and certified mail

Minn. Stat. § 504B.271, subd. 1.

The district court determined "that Shiloh failed to comply with the requirements of Minnesota landlord-tenant law regarding the personal property left behind by the Tenants after the eviction, in several respects." Specifically, the district court found:

(1) Shiloh failed to provide the Tenants with an inventory of the Tenants' personal property that Shiloh was

electing to store in place at the Property, as required by Minn. Stat. § 504B.365, subd. 3(d).

(2) Shiloh failed to comply with Minn. Stat. § 504B.271, subd. 1(d) by making reasonable efforts to notify the Tenants of its planned sale of their personal property to R&R at least fourteen days prior to the sale which closed in November 2022; instead Shiloh admittedly chose not to notify the Tenants in advance of the sale and continued to keep the Tenants ignorant of the sale until mid-trial in January 2023.

(3) Shiloh failed to apply any portion of the R&R sale proceeds to reduce any amounts it claimed were owed to it by the Tenants, contrary to Minn. Stat. § 504B.271, subd. 1(c); moreover, Shiloh failed to account for what portion of the R&R purchase price was reasonably attributable to the included personal property.

(4) By not advising the Tenants of the R&R sale, Shiloh provided no opportunity for the Tenants to make a demand that “[a]ny remaining proceeds of any sale” of the Tenants’ personal property “be paid to the tenant upon written demand.”

The district court held that, because of these violations, Shiloh “forfeited” any claim to ownership of the tenants’ personal property that it stored on the premises after the eviction.

Shiloh challenges that decision, arguing that the district court erred by (1) failing to address whether it properly “disposed of” the tenants’ personal property by leaving it in place, (2) determining that Shiloh failed to comply with inventory and sale requirements, and (3) determining that those failures resulted in forfeiture of a claim to own the personal property. We address each argument in turn.

I. The record supports the district court’s implicit rejection of Shiloh’s claim to have properly disposed of the tenants’ personal property.

Shiloh contends that selling the tenants’ personal property was not the only proper means of managing the personal property remaining after the tenants were evicted from the premises. Shiloh focuses on the phrase in subdivision 1(b) of section 504B.271 that allows

a landlord to “sell or otherwise dispose of” a tenant’s personal property under the conditions set out in that section. Minn. Stat. § 504B.271, subd. 1(b). Shiloh argues that it “otherwise dispose[d] of” the tenants’ personal property within the meaning of subdivision 1(b) by leaving it in place and that it thus already “owned” that personal property before the sale of the premises to R&R.

This argument requires us to interpret what it means to “dispose of” personal property, which is a question of statutory interpretation that we review de novo. *Nationwide Hous.*, 906 N.W.2d at 905. In doing so, we aim to effectuate the legislature’s intent. *Id.* We interpret words and phrases “according to their common and approved usage,” *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016), and construe a statute “to give effect to all of its provisions,” Minn. Stat. § 645.16 (2022). If a statute is unambiguous, we “must apply the statute’s plain meaning.” *Nationwide Hous.*, 906 N.W.2d at 905.

Shiloh’s assertion that the phrase “dispose of” includes continuing to store a tenant’s personal property in place is inconsistent with the plain language of the statute. To dispose of something generally means to “give or transfer to someone else, especially permanently,” or to “get rid of” or “throw out.” *The American Heritage Dictionary of the English Language* 521 (5th ed. 2018). Shiloh itself recites a virtually identical definition, asserting that “dispose of” means “to transfer to the control or ownership of another,” and “to deal with conclusively: determine finally.” (Quotation omitted.) These definitions make clear that the phrase to “dispose of” requires a permanent transfer of control or ownership. Shiloh’s act of leaving the personal property in its warehouse does not

constitute a permanent transfer; leaving it in place is simply a method of *storing* personal property. *See* Minn. Stat. § 504B.271, subd. 1(a). It is not a method of permanent transfer. Consequently, Shiloh did not “dispose of” the tenants’ personal property by storing it in the warehouse.

The logic of this interpretation is reinforced when “dispose of” is viewed in the context of the full phrase in the statute, which provides that a landlord may “sell or otherwise dispose of” abandoned personal property. Minn. Stat. § 504B.271, subd. 1(b). A sale is a final disposition of the personal property, so to “otherwise dispose of” the personal property would need to be similarly final. Thus, to give effect to the full phrase—to “sell or otherwise dispose of”—disposing of personal property must mean something different than storing it. *Id.*; *see* Minn. Stat. § 645.16 (“Every law shall be construed, if possible, to give effect to all its provisions.”).

Moreover, Shiloh’s own conduct demonstrated that it did not “otherwise dispose of” the personal property by leaving it in place because Shiloh in fact sold the personal property to R&R in conjunction with the sale of the premises for a total sum of \$2.3 million. Under the statute, a landlord may “sell *or* otherwise dispose of” personal property. Minn. Stat. § 504B.271, subd. 1(b) (emphasis added); *see Binkley v. Allina Health Sys.*, 877 N.W.2d 547, 552 (Minn. 2016) (stating that “the word ‘or’ should be given its ordinary meaning as a disjunctive”). If Shiloh had previously “disposed of” the personal property, it would have lost ownership at that time and could not have later sold the same personal property to R&R at a later date. Accordingly, the district court did not err by treating the sale of the

personal property to R&R as Shiloh's sole disposition of the property under Minn. Stat. § 504B.271, subd. 1(b).

II. The record supports the district court's determination that Shiloh failed to comply with various landlord-tenant laws.

Shiloh also challenges the district court's determination that it failed to comply with the inventory requirement in Minn. Stat. § 504B.365, and the requirements for notice of a sale and distribution of sale proceeds in Minn. Stat. § 504B.271.

Inventory

Shiloh first assigns error in the district court's determination that it violated the requirement in Minn. Stat. § 504B.365, subd. 3(d), to prepare and mail to the tenants an inventory of their stored personal property. It does not dispute that it stored the tenants' personal property on the premises, triggering the requirement to provide an inventory of the personal property. Nor does it dispute that it failed to provide an inventory of the personal property. Shiloh argues only that it was "unnecessary" for it to do so here because the tenants prepared their own inventory, the parties are "sophisticated business entities," and Shiloh continued to provide the tenants access to the premises and to permit them to remove small items of personal property into March 2020.⁴ But Shiloh does not advance any legal argument as to why the language of the statute supports such exceptions. Nor does it identify any supporting caselaw. Such a failure to present supporting argument and

⁴ Shiloh's reference to an inventory having been provided by the tenants presumably relates to the tenants' depreciation schedule of its major equipment and property.

authority generally constitutes forfeiture. *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *rev. denied* (Minn. Apr. 26, 2017).

Moreover, independent review reveals no caselaw supporting Shiloh's argument. And, in fact, the plain language of the statute refutes it. The statute calls for the landlord to prepare, sign, and date the inventory "in the presence of the officer" who executes the order to vacate. Minn. Stat. § 504B.365, subd. 3(d). The statute also provides that this requirement, like others in the statute, "may not be waived or modified" by agreement. *Id.*, subd. 5. And we previously determined, in a nonprecedential but persuasive decision, that a failure to prepare an inventory of a tenant's personal property stored on premises was a violation of the statute that amounted to ouster. *Follis v. State Armory Bldg. Comm'n*, No. A14-2198, 2015 WL 7940309, at *4 (Minn. App. 2015). Because the statute recognizes no exception to the inventory requirement, Shiloh has not demonstrated any error in the district court's determination that its failure to prepare an inventory was a violation.

Notice of Sale

Shiloh asserts a similar assignment of error with respect to the district court's determination that it violated the requirement to provide the tenants notice of the sale of the personal property and thereby deprived them of an opportunity to make a "written demand" for the sale proceeds. Minn. Stat. § 504B.271, subd. 1(c). Shiloh acknowledges that a landlord must "make reasonable efforts to notify the tenant of the sale at least 14 days prior to the sale." *Id.*, subd. 1(d). It also acknowledges that a tenant is entitled to net proceeds from the sale "upon written demand." *Id.*, subd. 1(c). And it does not dispute

that it did not notify the tenants of the November 2022 sale of their personal property, along with the premises, until trial in January 2023. But Shiloh contends the district court erred by concluding that it violated the notice requirement because it provided notice several times, before and after the tenants vacated the premises, that it would sell or otherwise dispose of personal property that the tenants did not remove within 28 days. We are not persuaded.

The plain language of Minn. Stat. § 504B.271 requires advance notice of a specific planned sale, not the mere possibility of a sale. This meaning is apparent from the statute’s use of the definite article “the,” which “is a word of limitation that indicates a reference to a specific object.” *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 637 (Minn. 2019). It also is apparent from the requirement that the notice precede the sale by “at least 14 days.” Minn. Stat. § 504B.271, subd. 1(d). And reading the statute as requiring advance notice of a specific, planned sale, instead of notice of a mere intention or possibility, makes sense of the provision that a tenant is entitled to the net sale proceeds upon the tenant’s “written demand.” *Id.*, subd. 1(c).

Shiloh counters that the absence of an “end point” for the notice requirement seems to obligate a landlord “in perpetuity,” which it describes as absurd. But the requirement continues only as long as the landlord stores the personal property on the premises before selling it or otherwise disposing of it. Moreover, adopting Shiloh’s construction here would turn the law on its head. Indeed, as the district court noted, it was only in the “midst of trial”—a trial where the central issue was determining ownership of the personal

property between Shiloh and the tenants—that the court and the tenants learned that the personal property had been sold two months earlier.

In sum, the district court’s decision that Shiloh violated the requirement to provide notice of the sale and thereby deprived them of an opportunity to demand sale proceeds comports with the language of Minn. Stat. § 504B.271, subd. 1, and is supported by the evidentiary record.

Sale Proceeds

Shiloh also claims error in the district court’s determination that it violated Minn. Stat. § 504B.271, subd. 1(c), by not using the sale proceeds to reduce any amounts it claimed that the tenants owed it. Shiloh’s argument ignores the mandate in that section that “[a]ny remaining proceeds of any sale *shall* be paid to the tenant upon written demand.” Minn. Stat. § 504B.271, subd. 1(c) (emphasis added). In other words, all of the sale proceeds belong to the tenant unless the landlord has compensable expenses. But Shiloh retained all sale proceeds and also pursued a claim against the tenants for storage expenses. On this record, the district court did not err by determining that Shiloh violated Minn. Stat. § 504B.271, subd. 1(c).

III. The district court properly determined that Shiloh cannot claim ownership of the personal property under Minn. Stat. § 504B.271.

Finally, Shiloh contends the district court erred in its ultimate determination that Shiloh was not entitled to a declaration that Shiloh owned the personal property “free and clear” of any claim by the tenants. Shiloh argues that it became owner of the personal property because the tenants did not remove the property within the time required by

statute. Shiloh maintains that the tenants thereby “abandoned” the personal property, allowing Shiloh to sell or otherwise dispose of the property as it pleased.

The failure to remove the personal property, however, did not transfer ownership of the personal property to Shiloh. To the contrary, the statute charges the landlord with storing and caring for “the *tenant’s* property.” Minn. Stat. § 504B.271, subd. 1(a) (emphasis added). And it repeatedly affirms that the tenant retains ownership of the personal property with the attendant right to request its return, receive notice if the landlord intends to sell it, and to receive all sale proceeds except those necessary to cover the landlord’s reasonable expenses in storing and caring for the personal property.⁵ *Id.*, subds. 1(c)-(d), 2. If the provisions of the statute had been followed, Shiloh could have lawfully sold the personal property, so long as net proceeds of the sale were paid to the tenants. *Id.*, subd. 1(c). But as discussed above, the record amply establishes that Shiloh did not act in accordance with the statute. As such, the record and the plain language of the statute support the district court’s denial of Shiloh’s ownership claim.

Affirmed.

⁵ With regard to any expenses incurred by Shiloh in storing the personal property, as noted above, the district court found that “Shiloh failed to prove the reasonable costs of such storage.”