

*This opinion is nonprecedential except as provided by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
A24-0201**

Pebble Creek LLC,
Appellant,

vs.

Yatta Emma Sao,
Respondent,

John Doe, et al.,
Defendants.

**Filed September 16, 2024
Affirmed in part and remanded
Frisch, Judge**

Hennepin County District Court
File No. 27-CV-HC-23-4915

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Considered and decided by Frisch, Presiding Judge; Segal, Chief Judge; and
Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following the cancelation of an eviction trial, appellant-landlord argues that the district court improperly delayed the issuance of the summons, erred in setting the amount of and then returning funds deposited with the court, and erred in canceling the trial. Because the issuance of the summons is moot, the district court did not err with respect to funds deposited with the court, and the order canceling the eviction trial does not affect the landlord's ability to seek relief in the district court regarding the pending claims for money damages remaining in this action, we affirm in part and remand.

FACTS

Appellant-landlord Pebble Creek LLC brought an eviction action against respondent-tenant Yatta Emma Sao alleging nonpayment of rent. Pebble Creek sought “judgment against [Sao] and an Order for possession of the property and the issuance of an immediate Writ of Recovery” and costs. Sao raised a defense based on Pebble Creek's alleged breach of the covenants of habitability and requested a trial. Pebble Creek requested that the housing court order that Sao deposit \$4,842 with the court to assert the habitability defense. The housing court ordered Sao to deposit \$2,712 into court.¹

¹ The findings and orders of the housing court were confirmed by the district court and are therefore the findings and orders of the district court. Minn. Stat. § 484.013, subd. 5 (2022). But we use the term “housing court” to describe the activity occurring initially before the housing referee and to distinguish this activity from the district court's later review.

Pebble Creek subsequently amended its complaint three times. The third amended complaint contains eight counts: (1) “Eviction—Non-payment,” (2) “Fraud,” (3) “Damages for Nonpayment,” (4) “Breach of Lease—Chronic Late Rent,” (5) “Breach of Lease—Unlawful Activity,” (6) “Attorney’s Fees,” (7) “Breach of Lease—Unauthorized Occupant,” and (8) “Breach of Lease—Disconnected Electricity.” Pebble Creek sought “judgment against [Sao] and an Order for possession of the property and the issuance of an immediate Writ of Recovery” for Sao’s eviction. Pebble Creek sought monetary judgments in the amounts of \$2,550 for its fraud claim, \$4,530 for its damages-for-nonpayment claim, and an amount “to be determined at trial or by post-trial motion” for its attorney-fees claim.

Sao answered the first amended complaint, alleging that she did not pay rent because Pebble Creek violated the covenants of habitability. Sao asked the housing court to dismiss the complaint, award judgment to her for possession of the premises, and abate rent until Pebble Creek completed repairs required by the covenants of habitability. Sao later moved for “[a]n order striking the fraud claims” because they were not pleaded with sufficient specificity and Pebble Creek had not provided Sao with evidence to support those claims.

The housing court denied Sao’s motion to strike Pebble Creek’s fraud claim and ordered Sao to pay into court “all future rent by the 5th day of each month until further Order of the Court, or the Court will issue a Writ of Recovery of Premises and Order to Vacate.”

After Sao failed to make the required deposit into court, the housing court issued an order canceling trial. It also ordered that the deposited funds, totaling \$2,712, be returned

to Sao and that a “Writ of Recovery of Premises and Order to Vacate shall be issued immediately upon request and payment of fee.” Sao’s counsel requested that the housing court amend its order to direct that the deposit ordered to be paid to Sao instead be paid to the Volunteer Lawyer’s Network Habitability Fund (VLN fund), which had posted the money on Sao’s behalf.

Pebble Creek requested that the district court review the order pursuant to Minn. Stat. § 484.70, subd. 7(d) (2022), and Minn. R. Gen. Prac. 611, specifically asserting that the housing court erred by (1) canceling the trial of Pebble Creek’s fraud, damages-for-nonpayment, and attorney-fees claims and (2) ordering the deposited funds to be returned to Sao. Pebble Creek also requested a writ of recovery of premises, which has now been issued and executed.

Following a hearing, the district court affirmed the housing court order canceling trial and ordered the deposited money to be released to the VLN fund. The district court reasoned that the order canceling trial was proper, as it related to only the eviction action. The district court also reasoned that it was not required to order the deposited funds to be disbursed to Pebble Creek.

Pebble Creek appeals.

DECISION

Pebble Creek argues that the district court (1) improperly delayed the issuance of the summons, (2) erred in determining the amount of funds to be deposited into court and in returning those funds to the VLN fund, and (3) erred in canceling trial for the claims for money damages. We address each issue in turn.

I. Any claim related to the timing of the issuance of the summons is moot.

Pebble Creek argues that the housing court improperly issued the summons eight days after it filed its eviction complaint. Pebble Creek reasons that because Minn. Stat. § 504B.321, subd. 1 (2022),² “affords no basis to delay the issuance of the summons,” any delay in issuing the summons is contrary to the summary nature of an eviction action. At oral argument, Pebble Creek requested the following relief for this assignment of error: that we “direct the state court administrators to issue prompt summonses after a complaint is filed in an eviction.” Sao asserts that this issue is moot, to which Pebble Creek responds that it is functionally justiciable. We agree with Sao.

“Justiciability is an issue of law, which we review de novo.” *Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015). “An appeal should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible.” *Id.* at 5. But we can review a moot issue if it is “functionally justiciable and presents an important question of statewide significance that should be decided immediately.” *Id.* at 6 (quotation omitted). “A case is functionally justiciable if the record contains the raw material (including effective presentation of both sides of the issues raised) traditionally associated with effective judicial decision-making.” *Id.* (quotation omitted).

² This subdivision was amended effective for actions filed on or after January 1, 2024. 2023 Minn. Laws ch. 52, art. 19, §§ 105, 116, at 1181-84, 1187. The district court now issues a summons pursuant to Minn. Stat. § 504B.321, subd. 4 (Supp. 2023).

This issue is moot. We do not consider Pebble Creek’s requested directive as effective relief, particularly when the summons was issued eight days after the eviction complaint was filed, judgment has been entered, and the writ of recovery of the premises and order to vacate has issued and been executed.³ And we otherwise decline to consider the issue, as it is not an issue “that should be decided immediately.” *Id.* (quotation omitted).

II. We discern no error in the orders setting the amount to be posted with the court to assert the habitability defense or in directing the disbursement of the posted amount.

Pebble Creek raises three arguments related to the money Sao deposited into court to raise a habitability defense: (1) the amount the housing court ordered to be deposited was too low; (2) the district court erred by ordering that the funds be disbursed to the VLN fund, and not Pebble Creek, when it canceled the trial; and (3) a new statute, Minn. Stat. § 504B.335(e) (Supp. 2023), which limits a district court’s ability to order a posting requirement, is unconstitutional. We address each argument in turn.

On appeal from an eviction judgment, we “review the district court’s legal conclusions de novo” and “uphold the district court’s factual findings unless they are clearly erroneous.” *Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 907 (Minn.

³ We further note that the plain language of the statute does not require a district court to issue a summons within a certain time. Minn. Stat. § 504B.321, subd. 1(c) (providing that the court “shall issue a summons, commanding the person against whom the complaint is made to appear before the court on a day and at a place stated in the summons”). And none of the other statutory language identified by Pebble Creek creates such a requirement. *See* Minn. Stat. §§ 504B.321, subd. 1(d) (requiring an appearance “not less than seven nor more than 14” days from when the summons is issued), .331(a) (requiring that the summons be served “at least seven days before the date of the court appearance specified in section 504B.321”) (2022).

App. 2018), *rev. denied* (Minn. Mar. 28, 2018). “An appealing party bears the burden of demonstrating both error and prejudice.” *Palladium Holdings, LLC v. Zuni Mortg. Loan Tr. 2006-OA1*, 775 N.W.2d 168, 178 (Minn. App. 2009), *rev. denied* (Minn. Jan. 27, 2010).

A. The housing court did not err in setting the amount to be posted.

Pebble Creek argues that the housing court erred by ordering Sao to deposit into court an amount less than the rent owed to assert a habitability defense. We disagree.

By way of background, when Pebble Creek filed its initial complaint, it alleged that Sao owed rent for April through June 2023, totaling \$2,420—\$2,897, with fees. Sao’s rent was \$955 per month. At the first hearing, Pebble Creek asserted that the total amount owed as of the date of the hearing was \$3,515 and asked that the court set the amount to be posted at \$4,842.⁴ Following arguments on the posting requirement and amount, the housing court concluded that it was “not going to require the full posting” and was instead going to “take that and put it in half.” It ultimately ordered Sao to pay “the rent of \$2,712” into court and to pay all future rent on or before the second business day of each month until further order or issuance of a writ of recovery of premises and order to vacate.

When a tenant asserts a habitability defense in Hennepin County housing court, they “shall deposit forthwith into court an amount . . . equal to the rent due as the same accrues or such other amount as determined by the court to be appropriate as security for the plaintiff, given the circumstances of the case.” Minn. R. Gen. Prac. 608; *see also* Minn. R. Gen. Prac. 601 (providing that general rules of practice 601-12 apply to actions in

⁴ The amount that Pebble Creek stated was owed changed throughout the hearing, ranging from \$3,387 to \$5,465.

Hennepin County housing court). The rule accords discretion to the court to determine the amount required to provide security for the landlord.

The record reflects that the housing court considered the claims made by Pebble Creek and Sao, and ultimately determined that \$2,712 was an appropriate amount to secure Pebble Creek under the circumstances of this case. The rule does not mandate that a district court order a specific amount of security to be posted.

The supreme court endorsed such a discretionary approach in *Fritz v. Warthen*, 213 N.W.2d 339, 343 (Minn. 1973). There, the supreme court, in holding that a tenant may assert a breach of the covenants of habitability as a defense to an action for nonpayment of rent, recognized that landlords would be left without income from that rent during the proceedings despite continuing to experience operating expenses. *Fritz*, 213 N.W.2d at 341-43. Accordingly, the supreme court directed district courts to “order the tenant to pay the rent to be withheld from the landlord into court pursuant to Rule 67.03, Rules of Civil Procedure for the Municipal Court, and that until final resolution on the merits, any future rent withheld shall also be paid into court.” *Id.* at 343. But the supreme court *also* explained that “in the exercise of its discretion,” a district court “in lieu of the payment of rents, may require adequate security therefor if such a procedure is more suitable under the circumstances.” *Id.* The supreme court therefore accorded discretion to a district court to order a posting requirement in an amount other than the rent owed.

Because both rule 608 and *Fritz* accord a district court discretion to order a posting requirement in an amount other than the rent owed, we discern no error by the housing

court in ordering Sao to post an initial amount less than the rent Pebble Creek asserted it was owed.

B. The district court did not err by ordering the disbursement of posted monies to the VLN fund.

Pebble Creek argues that the district court erred by ordering that the monies deposited into court be disbursed to the VLN fund, rather than to Pebble Creek, because doing so undermines the purpose of the posting requirement. We decline to reverse the district court’s order on this issue.

As a threshold matter, Pebble Creek cites to no authority—and we are aware of none—requiring a district court to disburse deposited funds to the landlord. Declining to order the money be disbursed to Pebble Creek is not inconsistent with the purpose of an eviction proceeding. *See Cmty. Hous. Servs. – Park Towers, Inc. v. Gay*, 954 N.W.2d 836, 844 (Minn. App. 2020) (stating that an eviction action is a “summary proceeding that is intended to adjudicate only the limited question of present possessory rights to the property” (quotation omitted)), *rev. denied* (Minn. Mar. 16, 2021); *see also* Minn. Stat. § 504B.001, subd. 4 (2022) (defining evict or eviction as “a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property by the process of law set out in this chapter”). And an eviction action is distinct from an action for rent or damages. *See* Minn. Stat. § 484.013, subd. 2 (2022) (providing for consolidation of various actions, including an action under section 504B, an action for “landlord-tenant damage,” and an action for “rent”).

In this matter, there has been no determination of the merits of the habitability defense. The district court reasoned that because *Fritz* does not require disbursement of habitability-defense deposits to landlords, it was proper to disburse the \$2,712 deposited into court to the VLN fund. The housing court made no findings about the amount of rent owed when it canceled trial, entered a judgment of eviction, and issued a writ of recovery of the premises and order to vacate to Pebble Creek. Based on these circumstances and absence of authority compelling the relief that Pebble Creek seeks, we conclude that Pebble Creek has not established that the district court erred by declining to order the \$2,712 deposited be dispersed to Pebble Creek. *See Palladium Holdings*, 775 N.W.2d at 178 (“An appealing party bears the burden of demonstrating both error and prejudice.”).

C. Pebble Creek’s constitutional challenge to Minn. Stat. § 504B.335(e) is forfeited.

In its reply brief, Pebble Creek argues that the newly enacted Minn. Stat. § 504B.335(e) is unconstitutional because it violates separation-of-powers principles.⁵ We

⁵ Minn. Stat. § 504B.335(e) provides:

The court may not require the defendant to pay any amount of money into court, post a bond, make a payment directly to a landlord, or by any other means post security for any purpose prior to final disposition of an action, except if the final disposition of the action may be delayed for more than ten days, the court may order the defendant to provide security in a form and amount that the court approves, based on the totality of the circumstances, provided that the amount of security may not include any amounts allegedly owed prior to the date of filing of the action and may not exceed the amount of the monthly or periodic rent that accrues during the pendency of the action. Nothing in this paragraph shall affect an appeal bond under section 504B.371, subdivision 3.

permitted the attorney general to intervene to the extent that we reach this constitutional question.

The constitutionality of Minn. Stat. § 504B.335(e) was not argued before the district court because the statute was not yet in effect. 2023 Minn. Laws ch. 52, art. 19, §§ 107, 116, at 1185, 1887 (setting forth the amendment and providing that the amendment would be effective January 1, 2024, and apply to actions filed on or after that date). We therefore decline to consider this argument on appeal.⁶ *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those questions previously presented to and considered by the district court).

III. Pebble Creek’s appeal from the district court’s order affirming the cancelation of trial is premature.

Pebble Creek argues that the district court erred by affirming the order canceling trial to the extent the order affects its claims for fraud and nonpayment of rent and for which it sought money damages. The factual circumstances in this case are unusual. It appears that there is a final judgment in the eviction proceeding but not with respect to the damages claims. The district court’s order does not specifically address the disposition of the damages claims, and we do not read the district court’s order or the underlying housing court order canceling trial as an adjudication of Pebble Creek’s claims for money damages.

⁶ We also observe that given the circumstances of this case, there is no need to address the constitutionality of the statute. Pebble Creek had argued that the statute is unconstitutional in response to Sao’s contention that issues concerning the deposited funds are moot. Because the district court addressed issues related to the deposited funds on the merits and did not address the mootness argument, and we likewise address the merits of the issues related to the deposited funds, we need not address the constitutionality of the statute.

Indeed, Pebble Creek asserted at oral argument before this court that its claims for money damages remain pending in district court. Because Pebble Creek retains the ability to seek relief in district court with respect to these pending claims, including requesting that the court schedule a trial on these claims, we decline to consider Pebble Creek's related arguments on appeal.

Affirmed in part and remanded.