

*This opinion is nonprecedential except as provided by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
A24-1459**

Richard Whitman,
Respondent,

vs.

Highland Management Group Inc.,
Appellant.

**Filed July 7, 2025
Affirmed
Wheelock, Judge**

Hennepin County District Court
File No. 27-CV-HC-24-4357

Mark W. Vyvyan, Maliya G. Rattliffe, Devin T. Driscoll, Fredrikson & Byron, P.A.,
Minneapolis, Minnesota (for respondent)

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

Considered and decided by Ross, Presiding Judge; Frisch, Chief Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

A district court determined that the apartment unit that appellant Highland Management Group Inc. rented to respondent Richard Whitman was uninhabitable due to a bed-bug infestation, granted Whitman's request for rent abatement, and awarded him

partial recovery of expenses that he incurred as a result of paying for alternative housing during the period the apartment was uninhabitable. We affirm.

FACTS

When Whitman signed his lease with Highland in October 2023, his apartment was in acceptable condition.¹ For several months, Whitman paid his monthly rent of \$1,175 on time and lived in his apartment without issue. But on May 6, 2024, Whitman notified Highland that he had discovered bed bugs in his apartment. Highland responded that same day, informing Whitman that pest control would be dispatched two days later, on May 8, 2024. Pest control did not visit Whitman’s apartment until May 10, 2024.

When the technician arrived for the inspection during the day on May 10, he opened the door to Whitman’s apartment and immediately saw bed bugs, which are typically active at night, crawling on the wall by the door. The technician determined that Whitman’s apartment was “extremely infested with bedbugs” and later opined that the infestation was an eight out of ten on a scale of severity and one of the worst infestations he had seen in his long career managing bed bugs. Specifically, he said, “I probably have seen worse over the years, but not a whole lot worse.” Pest control then left without applying any treatment for the bed bugs. Whitman contacted Highland numerous times, and Highland repeatedly told Whitman that it was trying to schedule an extermination treatment. On June 6, 2024—29 days after Whitman notified Highland of the issue—pest control applied the first heat treatment to Whitman’s apartment.

¹ We accept the factual findings of the district court, which neither party contests on appeal.

During the weeks following his discovery of bed bugs, Whitman attempted to live in his apartment notwithstanding the infestation, but to no avail. He stopped sleeping in his bed, then moved to a recliner, and finally tried to sleep on a chair in his office, but he was unable to do so without the bed bugs crawling on him. Eventually, Whitman felt the infestation had become so intolerable that he had to leave his apartment. On May 27, 2024, Whitman moved into the first of a series of hotels at which he stayed until he finally returned to his apartment on July 9, 2024.

While staying at the hotels, Whitman visited his apartment on several occasions. After pest control applied the initial heat treatment on June 6, 2024, Whitman visited his apartment and saw bed bugs still present. He notified Highland that the bed bugs were still present, and Highland responded by telling Whitman that pest control would apply another treatment three weeks after the initial treatment. On June 26—20 days after the heat treatment and within the three-week period Highland had indicated—pest control applied a chemical treatment to the apartment. On June 27, Whitman notified Highland that bed bugs were still present in his apartment.

The last living bed bug was discovered on July 12—67 days after Whitman first notified Highland of the problem. Throughout this ordeal, Whitman continued to pay rent to Highland.

On June 28, 2024, two days after the second treatment failed to correct the bed-bug infestation, Whitman filed an affidavit of rent escrow with the district court pursuant to

Minn. Stat. § 504B.385 (2024).² In the affidavit, he alleged that bed bugs had been present in his apartment since May 6, that he notified Highland about the bed bugs on that date, that Highland did not treat the apartment until June 6, and that he still had bed bugs as of June 21. He deposited his August 2024 rent with the district court and requested that the district court provide him relief by ordering any number of the following options: directing Highland to fix the problems, allowing Whitman to fix the problems and to deduct the cost for resolving the issue from his rent, directing Highland to pay a rent refund for the months during which the apartment was not fixed, directing Highland to reduce his rent each month until the repairs were completed, or directing Highland to pay for hotel costs and Uber fees from the hotel to his apartment. On July 11, 2024, Whitman and Highland attended a hearing at which Highland denied that it had violated any of the covenants codified in Minn. Stat. § 504B.161 (2022).³ The district court scheduled a hearing on issues of rent escrow and defenses for July 26, 2024, on which date the district court continued the matter until August 9, 2024.

² We cite the most recent version of Minn. Stat. § 504B.385 because it has not been amended in relevant part. *See Interstate Power Co. v. Nobles Cnty. Bd. of Comm'rs*, 617 N.W.2d 566, 575 (Minn. 2000) (stating that, generally, “appellate courts apply the law as it exists at the time they rule on a case”). For the same reason, we also cite the current versions of other statutes cited in this opinion unless otherwise noted.

³ “The covenants of habitability . . . are codified at section 504B.161.” *Ellis v. Doe*, 924 N.W.2d 258, 261 (Minn. 2019).

In 2024, the legislature amended Minn. Stat. § 504B.161, subd. 1(a)(2), to specifically require the “extermination of insects, rodents, vermin, and other pests on the premises.” 2024 Minn. Laws ch. 118, § 11, at 6. This amended language became effective as of January 1, 2025. 2024 Minn. Laws, ch. 118, § 32, at 21. Because the relevant events here occurred before the effective date, we review the decision under the 2022 statute.

On August 9, 2024, a referee held a hearing to take evidence on Whitman's rent-escrow action. The referee heard testimony from Whitman, two other witnesses on Whitman's behalf, the pest-control technician, and a Highland building manager. The referee admitted into evidence records of email exchanges between Whitman and Highland, including his May 6 notification of the bed-bug problem, Whitman's receipts for his hotel stays, and invoices for the visits made by pest control to Highland properties, including Whitman's apartment. The district court adopted the referee's recommendations in full.⁴

In addition to the above undisputed findings of fact, the district court made several determinations. First, Whitman experienced diminished use and enjoyment of the premises. Second, Whitman reasonably believed that his apartment was uninhabitable and that he had to seek alternative accommodations. Third, Whitman warranted no recovery of transportation costs because there was insufficient evidence in the record for the district court to make findings about the reasonableness of any expenditures. Therefore, the district court ordered Highland to pay Whitman \$2,112.85, which was half of the total amount (\$4,225.69) Whitman spent on hotel accommodations during the time his apartment was

⁴ A referee conducted the proceedings, made the factual findings, applied the relevant law, and made the legal determinations. *See* Minn. Stat. § 484.013, subds. 2-4 (2024). The district court confirmed the referee's findings and order, at which point they became the findings and order of the district court. *See* Minn. Stat. § 484.70, subd. 7(c) (2024); *Griffis v. Luban*, 601 N.W.2d 712, 715 (Minn. App. 1999); *see also* Minn. R. Civ. P. 52.01 ("The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court.").

uninhabitable. The district court also ordered that Whitman was entitled to full rent abatement in the amount of \$2,356.43 for a 61-day period.

Highland appeals.

DECISION

Highland argues that the district court was not authorized by statute to grant rent abatement or award partial recovery of alternative housing costs because Highland did not violate the statutorily implied covenants of habitability. Highland asserts that it did not cause the conditions and had timely and effectively corrected them and thus that it was never in breach of the covenants. Whitman responds that the district court properly granted him rent abatement and awarded partial recovery of expenses incurred because Highland violated its covenants of habitability by not ensuring that the apartment was fit for its intended use of habitation and failing to keep the premises in reasonable repair, which caused him to incur the cost to live elsewhere.

Certain covenants of habitability are incorporated into every residential lease in the state “not . . . by agreement between the parties but by statutory mandate.” *Fritz v. Warthen*, 213 N.W.2d 339, 340-41 (Minn. 1973); Minn. Stat. § 504B.161, subd. 1. Among these are the covenants “that the premises . . . are fit for the use intended by the parties” and that the landlord will “keep the premises in reasonable repair . . . except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant.”⁵ Minn. Stat. § 504B.161, subd. 1(a)(1)-(2). These covenants may not be waived or modified

⁵ Highland does not argue that Whitman engaged in willful, malicious, or irresponsible conduct.

and must be liberally construed. *Id.*, subds. 1(b), 3. And a “violation” of either of these covenants is defined as a “violation” for the purposes of chapter 504B of the Minnesota Statutes. Minn. Stat. § 504B.001, subds. 1, 14(2) (2022).⁶

The interpretation of a statute and the application of statute to undisputed facts are legal questions that we review de novo. *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008). The first step in statutory interpretation is to determine whether the statute is ambiguous on its face, and “[i]f a statute is unambiguous, we apply the statute’s plain meaning.” *Floding v. Gillespie*, 866 N.W.2d 905, 909 (Minn. 2015) (construing child-support statutes). Highland does not contend that Minn. Stat. § 504B.161 is ambiguous, and we see no ambiguity on the face of the statute; therefore, we apply the statute’s plain meaning.

Under Minnesota law, if a tenant believes his landlord is violating a covenant of habitability codified in section 504B.161, and if the tenant first gives the landlord notice of the violation and the violation is not corrected within 14 days, the tenant may deposit the rent and an affidavit specifying the violation with the district court. Minn. Stat. § 504B.385, subd. 1(c). Pursuant to Minn. Stat. § 504B.385, subd. 9(a)(1), if the district court determines that the landlord violated a statutory covenant of habitability as defined in section 504B.001, subdivision 14(2), the district court may order relief as provided in

⁶ In 2024, the legislature amended Minn. Stat. § 504B.001, subd. 14(2), to expand the scope of violative conduct to cover “a violation of [Chapter 504B].” See 2024 Minn. Laws, ch. 118, § 4, at 1942-43. This amended language became effective as of January 1, 2025. 2024 Minn. Laws, ch. 118, § 32, at 1957. Again, because the relevant events here occurred before the effective date, we review the decision under the 2022 statute.

Minn. Stat. § 504B.425 (2024), which includes rent abatement. *See* Minn. Stat. § 504B.425(e) (providing rent abatement as a remedy). We review the decision to grant or deny rent abatement for abuse of discretion. *Scroggins v. Solchaga*, 552 N.W.2d 248, 251-52 (Minn. App. 1996), *rev. denied* (Minn. Oct. 29, 1996); *see* Minn. Stat. § 540B.385, subd. 9(a)(1) (stating that, “[u]pon finding that a violation exists, the court may, *in its discretion* . . . order . . . retroactive rent abatement” (emphasis added)).

The district court’s findings, which Highland does not challenge on appeal, include that Whitman followed the rent-escrow procedure established by statute. The district court credited Whitman’s testimony that he notified Highland of the bedbug problem on May 6, 2024, and evidence in the record demonstrates that Whitman also notified Highland of the problem in writing on May 15. Whitman filed his affidavit of rent escrow with the district court on June 28, 2024, much later than 14 days after he notified Highland. He had already paid his July rent by the time he filed his affidavit, and he deposited his August rent with the district court before his August 29, 2024 rent-escrow hearing.

Following the rent-escrow hearing, the district court determined that Highland violated the statutory covenants of habitability. The district court made findings that the bed-bug issue had not been addressed within 14 days of May 6, 2024, the date on which Whitman notified Highland of the issue; that Whitman left his apartment on May 27 and began living in hotels because he could not sleep in his apartment without bed bugs crawling on him; and that Highland had not corrected this problem by June 7—in fact, it did not correct the problem until July 12. The district court therefore determined that, because the statutory covenants require that the landlord ensure “that the premises and all

common areas are fit for the use intended by the parties” and “keep the premises in reasonable repair during the term of the lease,” Minn. Stat. § 504B.161, subd. 1(a)(1)-(2), and because the bed-bug infestation was not eliminated for over two months after Whitman notified Highland of the problem and was severe enough to cause Whitman to vacate the apartment, Highland violated two of the covenants of habitability.

The district court’s findings support its determination that the premises were not fit for Whitman’s intended use and were not in reasonable repair as required by Minn. Stat. § 504B.161, subd. 1(a)(1)-(2). The record contains testimony from Whitman and the pest-control technician that supports the district court’s findings that an extreme bed-bug infestation existed in Whitman’s apartment from May 6 to July 12, that Whitman gave Highland notice of the infestation on May 6, that the bed-bug infestation was not eliminated for over two months after Whitman notified Highland of the problem, and that the problem was so severe that Whitman could not sleep in his apartment without bed bugs crawling on him. The record also shows that Whitman intended to use the apartment as a living space, including for nightly sleep. But a tenant cannot use an apartment for nightly sleep when that sleep is constantly interrupted by bed bugs crawling on the tenant, and we conclude that the presence of bed bugs can render a property not “fit for the use intended by the parties” or not kept “in reasonable repair.” Therefore, based on the plain meaning of the statute, we conclude that Highland violated the covenants of habitability.

Based upon its determination that the bed-bug infestation impaired the use and enjoyment of the apartment for which Whitman contracted, the district court ordered rent abatement pursuant to Minn. Stat. § 504B.425(e).

If the district court grants the residential tenant rent abatement, it “may grant *any other relief* it deems just and proper.” Minn. Stat. § 504B.425(g) (emphasis added); *see also Murphy v. Aeon*, No. A24-1159, ___ N.W.3d ___, ___, 2025 WL 1679852, at *8 (Minn. App. June 16, 2025) (holding that district courts may award alternative housing costs and emphasizing the discretionary nature of remedies under section 504B.425(g)). The relief the district court grants is purely discretionary. *See* Minn. Stat. § 504B.385, subd. 9(a)(1) (“Upon finding that a violation exists, the court may, *in its discretion* . . . order relief as provided in section 504B.425, including retroactive rent abatement” (emphasis added)). Here, the district court determined that rent abatement was available for a 61-day period and that Whitman lived out of various hotels at his own expense because of his need for alternative accommodations while his apartment was uninhabitable. In addition to ordering rent abatement, the district court ordered Highland to pay Whitman partial recovery of the hotel expenses incurred for the period Whitman was displaced. The district court did not award Whitman full recovery of the incurred lodging expenses, reasoning that to award Whitman full recovery would simply be “a windfall” under the circumstances. The district court also declined to award any recovery for transportation expenses because Whitman did not provide evidence justifying each expense and because Highland did not have input into Whitman’s chosen lodgings and so did not have input into the transportation expenses to be incurred. Highland challenges only the district court’s legal authority to issue this order but does not challenge the payment amount ordered. We conclude the award was just and proper and conclude that

the district court did not abuse its discretion when it awarded Whitman partial recovery of his incurred expenses.

In sum, the district court correctly interpreted and applied the statutory rent-escrow provisions to Whitman's circumstances and did not abuse its discretion by granting Whitman's request for rent abatement and awarding partial recovery of incurred expenses.

Affirmed.