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STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2120

Brooke Ryan Dean,
Respondent,

vs.

Carla B. Paul,
Appellant.

Filed July 8, 2013
Affirmed
Stauber, Judge

Ramsey County District Court
File No. 62HGCV12344

Hans Erik Larson, Stillwater, Minnesota (for respondent)

Carla B. Paul, Winnipeg, Manitoba (pro se appellant)

Considered and decided by Hudson, Presiding Judge; Stauber, Judge; and Willis, Judge.*

U N P U B L I S H E D   O P I N I O N

STAUBER, Judge

On appeal in this landlord-tenant dispute, appellant-landlord argues that the district court erred by granting respondent-tenant's rent escrow action under Minn. Stat.

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

§ 504B.385 (2012). Because the statute was properly applied and the findings of fact are supported by the record, we affirm.

FACTS

In October 2011, pro se appellant Carla Paul and respondent Brooke Ryan Dean entered into a residential lease agreement (the lease) whereby respondent agreed to rent from appellant residential property located in St. Paul, (the property) from December 1, 2011, to May 30, 2012. Under the terms of the lease, appellant was required to make all necessary repairs, keep the premises up to code, and insure that the property was habitable.

Respondent took possession of the property on December 4, 2011. At that time, respondent sent appellant an e-mail complaining that the house was not clean, that it smelled of cat urine, and that several things needed "attention: the shower head in the basement is broken and needs [to be] replaced, smoke alarm needs [to be] put back together in upstairs hallway, door knobs need [to be] tightened, mold in basement windows needs [to be] treated, [and] floor in basement's coming up near back right bedroom."

Appellant viewed the property on December 10, at which time respondent showed her some of the mold. A few weeks later, respondent was apprised of additional areas of mold in the house after a plumber opened a crawl space to repair a pipe. Respondent also notified appellant of the extent of the mold problem. Appellant failed to remediate the mold problem and did not install working smoke detectors.

Respondent moved out of the property on January 20, 2012, due to an allergy to mold and could not "stand living in that house any longer with the smell." Three days later, an inspection for Renewal of Fire Certificate of Occupancy was conducted by Inspector Rick Gavin. During the inspection, 18 deficiencies were noted at the property, citing 31 specific code violations, including mold damage in the basement and uninstalled smoke detectors.

On February 1, 2012, respondent brought a rent-escrow action against appellant in housing court seeking to address violations of certain lease covenants as well as lease violations under Minn. Stat. § 504B.385. At the hearing on February 16, evidence and testimony was admitted establishing that the previous tenants informed appellant of the existence of mold and that the property lacked operable smoke detectors. Moreover, respondent testified that at the time of the hearing, appellant had made no attempt to install smoke-detectors, and that mold is still present in the house.

Following the hearing, the referee found that respondent and the previous tenants made appellant aware of the property's lack of smoke detectors and the existence of mold. The referee also found that appellant failed to take steps to repair or install smoke detectors or remediate the mold problem. The referee concluded that such failures constituted a breach of the terms of the lease, as well as specific covenants set forth under Minn. Stat. § 504B.161 (2012). The referee ordered that (1) the lease be terminated; (2) $2,800 in rent placed in escrow be returned to respondent; (3) the $1,500 security deposit be returned to respondent; (4) rent be abated in the amount of $924; and (5) appellant pay respondent $500 in attorney fees.

Appellant sought review of the referee's decision and, following a hearing, the district court denied appellant's request for relief and affirmed the decision of the referee. This appeal followed.

D E C I S I O N

Appellant challenges the district court's order granting respondent's rent-escrow action pursuant to Minn. Stat. § 504B.385. The construction of a statute is a legal issue, which this court reviews de novo. *Educ. Minn.-Chisholm v. Indep. Sch. Dist. No. 695*, 662 N.W.2d 139, 143 (Minn. 2003). But the district court's finding of fact will not be overturned "unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. A district court's finding of fact is clearly erroneous when "the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

Minnesota law provides that a residential tenant may bring a rent-escrow action to remedy violations that exist in a residential building. Minn. Stat. § 504B.385, subd. 1. If, under Minn. Stat. § 504B.001, subd. 14(1) (2012), the residential tenant alleges a violation of a state, county or city health, safety, housing, building, fire prevention, or housing maintenance code applicable to the building, the tenant may:

> deposit with the court administrator the rent due to the landlord along with a copy of the written notice of the code violation as provided in section 504B.185, subdivision 2. The residential tenant may not deposit the rent or file the written notice of the code violation until the time granted to make repairs has expired without satisfactory repairs being made,

> unless the residential tenant alleges that the time granted is excessive.

Minn. Stat. § 504B.385, subd. 1(b). Section 504B.385 also provides that if a tenant alleges a violation under section 504B.001, subdivision 14, clause (2) or (3), the tenant:

> must give written notice to the landlord specifying the violation. The notice must be delivered personally or sent to the person or place where rent is normally paid. If the violation is not corrected within 14 days, the residential tenant may deposit the amount of rent due to the landlord with the court administrator along with an affidavit specifying the violation.

Minn. Stat. § 504B.385, subd. 1(c). Subdivision 14, clause 2 concerns violations of any covenants set forth in Minn. Stat. § 504B.161, subd. 1(1), (2), and subdivision 14, clause 3 concerns "a violation of an oral or written agreement, lease, or contract for the rental of a dwelling in a building." Minn. Stat. § 504B.001, subd. 14(2), (3) (2012). The covenants set forth in section 504B.161, subdivision 1, provide in relevant part:

> In every lease or license of residential premises, the landlord or licensor covenants:
>
> (1) that the premises and all common areas are fit for the use intended by the parties;
>
> (2) to keep the premises in reasonable repair during the term of the lease or license, except that when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

Minn. Stat. § 504B.161, subd. 1(a)(1), (2).

"Upon a finding that a violation exists, the court may, in its discretion," provide the appropriate relief. Minn. Stat. § 504B.385, subd. 9(a) (listing several remedies).

"The statutes' use of 'may' combined with their non-exclusive lists of remedies show that no particular remedy is mandatory and that the district court has broad discretion to select the remedy appropriate to the facts of the case." *Scroggins v. Solchaga*, 552 N.W.2d 248, 251-52 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996).

Appellant argues that the district court erred by granting respondent's rent-escrow action because "no notice was provided, [she] was not allowed any opportunity to repair, and the [district] court inferred notice from a variety of legally insufficient sources." To support her claim, appellant appears to take the position that the district court's decision failed to comply with Minn. Stat. § 504B.385, subd. 1(b), because respondent filed the written notice of code violation with the court administrator before the time granted to make the repairs had expired. But appellant's focus on section 504B.385, subdivision 1(b) is misplaced because the referee did not base her decision on violations of the city code pursuant to Minn. Stat. § 504B.001, subd. 14(1). Rather, the referee focused on section 504B.385, subdivision 1(c), concluding that appellant violated the terms of the lease, and the covenants contained in Minn. Stat. § 504B.161, subd. 1(a)(1), (2). Therefore, any error by respondent in not honoring the time limits contained in the inspection report pertaining to appellant's opportunity to cure does not require reversal.

Moreover, even if the referee's decision was premised on section 504B.385, subdivision 1(b), that statute provides that the residential tenant need not wait to file the written notice of code violation until after the time to make the repairs has expired *if* the residential tenant alleges that the time to cure "is excessive." Here, respondent's complaint specifically alleged that "the time granted to make repairs is excessive in light

of the six month duration of the lease, and the continued failure to make the repairs in spite of being provided notice and ample opportunity already to make the repairs." Under Minn. Stat. § 504B.385, subd. 1(b), nothing more need be alleged. Because respondent alleged that the time to make repairs is excessive, respondent was not required to wait to bring the rent-escrow action before the time to make the necessary repairs had expired. Thus, respondent appropriately complied with the statutory procedures set forth in Minn. Stat. § 504B.385, subd. 1(b).

Appellant also contends that the decision to grant respondent's rent-escrow action was erroneous because, under to the plain language of the statute, she had inadequate notice of the violations. We disagree. Minn. Stat. § 504B.385, subd. 1(c), states that the tenant "must give written notice to the landlord," and the notice "must be delivered personally or sent to the person or place where rent is normally paid." But in order to determine whether respondent complied with the notice requirements of the statute, a review of the applicable lease provisions is necessary. The lease provides that: "Tenant shall pay the Rent at Electronic Funds Transfer or other reasonable place requested by Landlord." The lease agreement also states that "[t]he Landlord or agent authorized to accept service of process and receive and give receipts for notices is . . . [appellant], e-mail contact is best at [her email address]." And there is no mailing address on the lease.

We conclude that when the lease is read in conjunction with Minn. Stat. § 504B.385, subd. 1(c), appellant had adequate notice of the violations. The record reflects that in an e-mail dated December 5, 2011, respondent informed appellant that the smoke detectors did not work and that there was mold in the basement. An e-mail is a

written communication and, thus, satisfies the "written notice requirement." Moreover, although section 504B.385, subd. 1(c), provides that the notice must be "delivered personally or sent to the person or place where rent is normally paid," the language contained in the lease indicates that the rent was paid via an electronic transfer of funds, with the rent presumably being deposited into a bank account. It would be impractical for a tenant to deliver written notice to a bank address where the rent is being deposited. Rather, it is likely that when the statute was recodified in 1999, the legislature did not contemplate that advances in technology would make the electronic transfer of funds so prevalent. *See* 1999 Minn. Laws ch. 199, art. 1, § 57, at 1112-14. Further, the lease agreement fails to provide a mailing address at which written notice could be sent. Instead, the lease states that appellant's e-mail address is the appropriate address at which to provide notice. Respondent complied with the lease by providing notice to appellant via e-mail. And in addition to the notice provided by respondent, an exchange of e-mails between appellant and the previous tenants demonstrates that the previous tenants informed appellant that the smoke detectors were non-functioning and that the house contained mold. We conclude that appellant received adequate notice under the statute.

Finally, appellant argues that because there is "no provision in the legislation that recommends the remedy of termination of the lease by a tenant," the order terminating the lease is erroneous. But Minn. Stat. § 504B.385, subd. 9(a)(1), provides that "[u]pon finding that a violation exists, the court may . . . order any relief as provided in section 504B.425." Although section 504B.425 does not list termination of the lease as possible remedy, there is no statutory language forbidding such a remedy. And the statute does

provide that the "court may grant any other relief it deems proper." Minn. Stat. § 504B.425(g) (2012). The referee, in her discretion, determined that termination of the lease was an appropriate remedy, and the district court affirmed that decision. Appellant cannot establish that such a decision was an abuse of discretion.

Affirmed.