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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1456**

Burlington Coat Factory of Minnesota, LLC, successor to
Burlington Coat Factory Warehouse of Minneapolis, Inc.,
Respondent,

vs.

Jerry Chapman, d/b/a Jerrys Auto Specialties Ltd.,

John Doe,

Mary Roe,

XYZ Corporation,
Appellants.

**Filed September 2, 2008
Affirmed
Lansing, Judge**

Hennepin County District Court
File No. 27-CV-HC-07-5317

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Considered and decided by Wright, Presiding Judge; Lansing, Judge; and Minge,
Judge.

UNPUBLISHED OPINION

LANSING, Judge

In this appeal from a judgment of eviction, Jerry Chapman challenges the district court's judgment on the grounds that the lease-termination notice failed to comply with the requirements of the lease, that the notice was waived by acceptance of rent, and that the ninety-day notice was insufficient in failing to specify a calendar date on which it terminated the lease and required the premises be vacated. Because the notice was not waived and because it effectively met the requirements of the lease and a preexisting district court order, we affirm.

FACTS

Burlington Coat Factory of Minnesota leased garage space to Jerry Chapman to house his automobile-repair business. Burlington and Chapman signed the lease in the summer of 1992 and amended it in May 2000.

The original lease provided for a term with an annual rent prorated over twelve months with payment due on the first day of each month. Either party could terminate the agreement "with written notice of [ninety] days," and "[a]ll notices . . . [were] deemed given as of the date received." The 2000 amendment extended the lease on the same terms and conditions as the original lease except that it was "continue[d] on a month-to-month basis only."

Burlington attempted to terminate the lease in the fall of 2006. It mailed Chapman three termination notices. When Chapman did not vacate the premises, Burlington filed an eviction action. The district court determined that none of the termination notices

provided by Burlington had allowed Chapman the ninety days required under the lease. The district court entered judgment permitting Chapman to remain in possession of the premises but included in the judgment a specific provision on notice:

[Burlington] needs to give [ninety] days notice to [Chapman] that he has to vacate the leased property or terminate the tenancy. . . . [T]his notice needs to be sent by certified mail and is valid when received If [Chapman] then fails to vacate the leased property after receiving this [ninety-]day notice, [Burlington] may bring an eviction action to have him evicted from the leased property.

Two days after the district court issued its order, Burlington mailed Chapman a letter stating, “[Y]ou are hereby notified that [Burlington] is terminating [Chapman’s] tenancy and that [Chapman] has ninety (90) days to vacate the [p]remises.” Chapman received the letter on March 19, 2007.

On June 21, 2007, Burlington’s attorney sent Chapman a follow-up letter to its March 16 notice, requesting that Chapman contact him to turn over the keys on or before July 1, 2007. Chapman did not contact Burlington’s attorney or vacate the premises, and Burlington filed its second eviction action on July 3, 2007. The district court entered judgment in favor of Burlington for recovery of the premises. Chapman now appeals from the district court’s judgment and order to vacate.

DECISION

On appeal, Chapman contends that Burlington’s lease-termination notice was invalid, and he offers three separate arguments to support this contention. First, he asserts that Burlington’s notice of termination did not comply with the terms of the lease. Second, he argues that Burlington waived its ninety-day notice of termination when it

accepted a rent payment. And third, Chapman argues that Burlington’s ninety-day notice to terminate the lease was invalid because it failed to state the calendar date on which the notice was effective and on which he had to vacate the premises. We address each of the three arguments.

I

Chapman’s first argument—that the termination notice did not comply with the terms of the lease—involves a question of contract interpretation that we review de novo. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003).

The lease provides that “[e]ither party may terminate with written notice of [ninety] days” and that “[a]ll notices . . . shall be deemed given as of the date received.” Burlington therefore gave Chapman notice of termination under the lease provisions on March 19, 2007, when Chapman received Burlington’s letter stating, “[Y]ou are hereby notified that [Burlington] is terminating [Chapman’s] tenancy and that [Chapman] has ninety (90) days to vacate the [p]remises.”

Chapman argues that this notice violated the lease provisions in two ways. He argues first that the notice claimed to be presently terminating the tenancy, rather than giving notice of termination in the future. The second claimed violation is that, because the notice was dated March 16, 2007, it must be interpreted as stating that Chapman had ninety days from March 16 to vacate the premises rather than ninety days from the date provided by the lease.

Both of these arguments are overly technical interpretations of the lease-termination notice. *See Hyman Realty Co. v. Kahn*, 199 Minn. 139, 140, 271 N.W. 248, 248 (1937) (stating that construction of notice to quit must be reasonable and that “there is no justification for the splitting of legal hairs”). The letter plainly notifies Chapman that under paragraph two of the lease agreement and paragraph two of the district court’s order, Chapman has “ninety (90) days to vacate the [p]remises.” Furthermore, based on the language of the lease agreement stating that termination notices are deemed given on the date received, it was clear that the ninety-day period would not begin until Chapman received the letter. Therefore, the district court did not err when it determined that Burlington’s ninety-day notice complied with the terms of the lease.

II

Chapman also argues that Burlington’s termination notice was ineffective because Burlington waived the notice when it accepted rent for the full month of June. It is well established under Minnesota law that a landlord may waive or revoke its notice to terminate a lease. *See Pappas v. Stark*, 123 Minn. 81, 83, 142 N.W. 1046, 1047 (1913) (holding that landlord waived notice to terminate lease). Waiver occurs when the landlord’s conduct sufficiently demonstrates an intent to allow the tenant to stay in possession of the property. *Arcade Inv. Co. v. Gieriet*, 99 Minn. 277, 279, 109 N.W. 250, 250 (1906). When the facts are not in dispute, the question of waiver may be reviewed de novo as a matter of law. *Montgomery Ward & Co. v. County of Hennepin*, 450 N.W.2d 299, 304 (Minn. 1990); *see also Westminster Corp. v. Anderson*, 536 N.W.2d 340, 341 (Minn. App. 1995) (reviewing de novo whether acceptance of housing-

assistance payments constituted waiver of landlord's right to terminate lease), *review denied* (Minn. Oct. 27, 1995).

In this case, the evidence shows that Burlington did not intend to allow Chapman to stay in possession of the property. Burlington tried to terminate the lease three times in the fall of 2006, but on March 14, 2007, the district court held that Burlington's notices of termination were ineffective. Two days after the district court issued its decision, Burlington mailed Chapman the ninety-day termination notice that is at issue in this case. Burlington sent Chapman another letter on June 21, 2007, requesting that Chapman arrange a time for Burlington to inspect the property and for Chapman to turn over the keys on or before July 1, 2007. And, when Chapman did not vacate the premises, Burlington promptly filed an eviction action on July 3, 2007, to recover the property. These undisputed facts do not support a claim of waiver.

Furthermore, Chapman's waiver argument is based on his contention that Burlington's notice of termination of the lease resulted in a requirement that he must vacate the premises on June 17, 2007, ninety days from March 19. According to this argument, Burlington's accepting rent for the full month of June waived its notice to vacate. It is true that acceptance of rent for a period beyond the expected date of vacancy is evidence, though not always conclusive evidence, that a landlord waived the notice of termination. *Minneapolis Cmty. Dev. Agency v. Powell*, 352 N.W.2d 532, 534 (Minn. App. 1984). In this case, however, the district court found that Burlington did not "believe that it could force [Chapman] to vacate the premises before the end of June 2007." This finding, which Chapman has not disputed, is supported by Burlington's

letter of June 21 and confirms that Burlington accepted June rent because it intended to comply with the law, not because it intended to waive its notice of termination. The evidence amply demonstrates that Burlington did not waive its notice of termination.

III

Finally, Chapman argues that the notice to terminate the lease was ineffective for failing to specify a date on which the lease would terminate and Chapman would be required to vacate. Although a lease-termination notice is generally invalid if it does not fix with reasonable exactness the time at which the tenancy terminates, we conclude that under the specific notice in the district court's preexisting order, combined with the provision of the amended lease, Burlington's termination notice was effective.

Minnesota's landlord-tenant statute provides that a tenancy at will cannot be terminated by either party unless the terminating party gives notice that is "at least as long as the interval between the time rent is due or three months, whichever is less." Minn. Stat. § 504B.135(a) (2006). The Minnesota Supreme Court has interpreted an older version of this statute as requiring a termination notice to "fix with reasonable exactness" the time at which the tenancy terminates. *Grace v. Michaud*, 50 Minn. 139, 141, 52 N.W. 390, 391 (1892) (noting that rights of both parties depend on time of termination—landlord's right to enter and tenant's right to quit paying rent). Furthermore, the supreme court has stated that a termination notice that requires vacation of the premises "on any day in the interval between the times of payment[] is not the notice contemplated by the statute, and will be unavailing." *Id.* at 140-41, 52 N.W. at 391. Although some states have abandoned these common-law rules, Minnesota has not.

Cf. Mercer County Agric. Soc’y v. Barnhardt, 459 A.2d 811, 815 (Pa. Super. Ct. 1983) (abandoning common-law rule and adopting position set forth in Restatement (Second) of Property that, if date stated in notice for termination is not at end of rental period, notice will be effective to terminate lease at earliest possible date after date stated).

Burlington’s lease-termination notice did not specify a calendar date for termination or a calendar date for Chapman to vacate the premises. Burlington’s letter to Chapman stated that it was providing the ninety-day notice to terminate the lease and vacate the premises. Even if we accept Chapman’s argument that this would result in a termination date that falls in the middle of the rental period rather than at the end of the rental period, we nonetheless conclude that the notice was valid. The terms of Chapman’s lease with Burlington, combined with the provisions of the preexisting district court order, override the default provisions of the statute and the common law.

When negotiating the terms of the lease, Burlington and Chapman replaced the statutory and common-law rules governing lease termination with their own lease-termination provision that required ninety days’ notice. Based on this lease provision, the district court ruled that Burlington’s first three attempts to terminate the lease were ineffective and interpreted the lease as requiring that Burlington send Chapman a general ninety-day notice. In its order, the court issued a “notice” that specifically instructed Burlington to “give [ninety] days’ notice to [Chapman] that he has to vacate the leased property or terminate the tenancy” and to send the notice by certified mail. The court concluded, “If [Chapman] then fails to vacate the leased property after receiving this [ninety-]day notice, [Burlington] may bring an eviction action to have him evicted from

the leased property.” Because the lease provides that notice is effective when received and does not require either a specific termination date beyond the ninety days or that the date must fall at the end of a rental period, the court did not include those provisions in its order directing the form of Burlington’s notice to terminate Chapman’s tenancy.

Chapman has not cited any authority indicating that the district court’s interpretation of the lease-termination provision was erroneous. In addition to precisely following the district court’s instructions, Burlington waited until July 3—three days after the rental period had ended—to file its eviction complaint. In light of the lease provisions and the provisions in the preexisting district court order, we decline to hold Burlington’s notice invalid for failing to state the date on which the lease would terminate.

Affirmed.