STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0060

Larry Wajda,
Respondent,

vs.

Jamie S. Schmeichel,
Appellant.

Filed November 26, 2018
Reversed
Florey, Judge

Hennepin County District Court
File No. 27-CV-HC-17-4221

Larry Wajda, Minneapolis, Minnesota (pro se respondent)

Paul Birnberg, Samuel Spaid, HOME Line, Minneapolis, Minnesota (for appellant)

John T. Sullivan, Michael A. Brey, Dorsey & Whitney, L.L.P., Minneapolis, Minnesota (for amicus curiae InquilinXs UnidXs por Justicia)

Considered and decided by Florey, Presiding Judge; Ross, Judge; and Reyes, Judge.

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

FLOREY, Judge

In this appeal from an eviction judgment based on breach of lease and holdover after notice to quit, under Minn. Stat. § 504B.285, subd. 1(a)(2), (3) (Supp. 2017), in conjunction with unlawful occupancy, under Minn. Stat. § 504B.301 (2016), appellant-tenant argues that there is no basis for eviction under respondent-landlord's pleaded claims and that the

district court erred by relying on section 504B.301, which was not pleaded, as a basis for eviction.

We conclude that eviction for breach of lease is improper because the lease is void on public-policy grounds, and eviction for holdover after notice to quit is improper because respondent did not give proper written notice to appellant terminating the tenancy at will. Eviction for unlawful occupancy under section 504B.301 is improper because respondent was not unlawfully occupying the property; she maintained a tenancy at will at the time of the eviction. We therefore reverse the eviction and award of costs and disbursements.

FACTS

In October 2011, respondent-landlord Larry Wajda rented the upper level of his Minneapolis duplex to appellant-tenant Jamie S. Schmeichel. The parties entered into a six-month written lease for $575 per month. Under the terms of the lease, appellant could vacate the property after the six-month term with proper notice of one month and one day, or elect to remain after the six-month term "with a month to month lease." Appellant was responsible for paying for electricity, and respondent was responsible for all other utilities. Respondent did not have a license to rent the property. Appellant learned that respondent was unlicensed, and beginning in the first half of 2017, stopped paying rent.

In July 2017, respondent filed an eviction action alleging nonpayment of rent. The action proceeded to housing court but was dismissed and later expunged. On August 2, 2017, the City of Minneapolis ordered that the property be vacated by appellant by September 2, 2017, due to the unlawful occupancy (single-family dwelling used as a duplex), and this deadline was later changed by the city to October 1, 2017.

On September 1, 2017, respondent filed a second eviction action, and it is from this action that the present appeal arises. In the complaint, respondent alleged that the parties entered into a written lease covering October 2011 to November 2012, with current rent of $630 per month.[1] The stated grounds for eviction were failure to pay rent and utilities ($4,280 total); failure to vacate by August 1, 2017, after written notice provided on July 24, 2017; and breach of the lease for failure to pay rent and utilities.

On September 18, 2017, a trial was held before a housing-court referee. Appellant testified that she stopped paying for electricity in May 2016 because she was being overcharged and was not being properly billed. She did not dispute that she failed to pay rent. After the trial, the referee's confirmed order awarded respondent a writ of recovery and costs and disbursements. The referee found that respondent did not have a rental license and therefore did not have a right to collect rent, but appellant's occupancy was unlawful because she had "no right to retain possession," and therefore eviction is proper under Minn. Stat. § 504B.301. The referee concluded that no notice is required under section 504B.301, but appellant had notice that respondent wanted her to vacate since July 24, 2017. The referee effectively admitted that section 504B.301 was not pleaded, but cited to Minn. R. Civ. P. 15.02 in a footnote, noting that issues not raised may be tried by implied consent of the parties.

[1] Although this amount does not coincide with the written lease, the district court found that the rent was $630 per month, and no party disputes this finding on appeal. It appears that the rent was raised at some point.

Appellant sought review from the district court. The district court examined the plain language of Minn. Stat. § 504B.285, subd. 1(a)(2), and concluded that, although a person without a rental license may not collect rent, no statutory language requires a person to possess a rental license in order to evict for failure to pay rent, breach of lease, or unlawful occupancy. The court determined that the housing court did not err in finding that appellant unlawfully occupied the property "for failure to pay rent," and appellant breached the lease agreement by failing to pay rent and utilities. The court further found that the housing court did not err by finding that appellant failed to vacate after notice because a 30-day notice is not required under section 504B.301, and appellant received "ample and repeated notice to vacate." The court affirmed the referee's confirmed findings of fact and conclusions of law. This appeal followed.

D E C I S I O N

Eviction actions are summary in nature, limited in scope, and determine only present possessory rights. Minn. Stat. § 504B.001, subd. 4 (2016); *Lilyerd v. Carlson*, 499 N.W.2d 803, 812 (Minn. 1993); *Dahlberg v. Young*, 42 N.W.2d. 570, 576 (Minn. 1950). We review a district court's findings of fact supporting an eviction for clear error, and we review a district court's legal conclusions de novo. *Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 907 (Minn. App. 2018), *review denied* (Minn. Mar. 28, 2018); *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003).

The district court relied upon three interconnected bases for eviction. The court relied upon breach of lease and holdover after notice to quit in determining that appellant's occupancy was unlawful, and the court then relied upon unlawful occupancy under section

504B.301 as the primary basis for eviction. Respondent also pleaded nonpayment of rent, governed by Minn. Stat. § 504B.291 (2016), but neither the referee nor the district court addressed that statutory basis for relief, and therefore we do not address the merits of that basis. *See Minn. Cent. R.R. Co. v. MCI Telecomm. Corp.*, 595 N.W.2d 533, 539 (Minn. App. 1999) (stating that "[a] reviewing court will not address an issue raised in the district court if the district court did not rule on the issue"), *review denied* (Minn. Sept. 14, 1999). We first address breach of lease.

I. Eviction for breach of lease, under section 504B.285, subdivision 1(a)(2), is improper because the lease is void on public-policy grounds.

Appellant asserts that respondent's claim of breach fails because the rent and utility terms in the lease are illegal. We agree. The lease is void and unenforceable on public-policy grounds. A landlord may not seek eviction for breach of a lease if the landlord is unlicensed and commits a criminal act by entering into a lease and renting a dwelling.

In Minneapolis, it is a crime to rent out a dwelling without a license. Under Minneapolis, Minn., Code of Ordinances (MCO) § 244.1810 (2017):

> No person shall allow any dwelling unit to be occupied, or let or offer to let to another any dwelling unit for occupancy, or charge, accept or retain rent for any dwelling unit unless the owner has a valid license, administrative registration, short term rental registration or provisional license under the terms of this article.

Under MCO § 244.1980 (2017):

> A person who allows to be occupied, lets or offers to let to another, any dwelling unit, without a license as required by this article, is guilty of a misdemeanor . . . .

In Minnesota, the general rule is that a contract entered into for business, in violation of a statute that prohibits such business if unlicensed, is void if the statute as a whole indicates that the legislature intended such a contract to be illegal. *Dick Weatherston's Assoc. Mech. Servs., Inc. v. Minn. Mut. Life Ins. Co.*, 100 N.W.2d 819, 824 (Minn. 1960). Whether a contract is void as a matter of law is an issue decided de novo. *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90, 92 (Minn. 2006). Although we are dealing with Minneapolis city ordinances and not statutes, we see no reason why the ordinances at issue should be given any less effect. Minneapolis is a home-rule charter city with the power to legislate in regard to municipal affairs and enact ordinances that promote health and safety. *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 306 (Minn. 2017); *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 6 (Minn. 2008); *A.C.E. Equip. Co. v. Erickson*, 152 N.W.2d 739, 741 (Minn. 1967); *see also Lew Bonn Co. v. Herman*, 135 N.W.2d 222, 223-24 (Minn. 1965) (considering whether failure to file plans and specifications as required by city ordinance resulted in contract being void).

"Not every illegal contract must be voided in order to protect public policy," and we must examine the particular contract "to determine whether the illegality has so tainted the transaction that enforcing the contract would be contrary to public policy." *Isles Wellness, Inc.*, 725 N.W.2d at 92-93. Here, we examine "the nature and circumstances of the [lease] in light of the applicable . . . ordinance." *Lew Bonn Co.*, 135 N.W.2d at 225.

The Minneapolis rental-dwelling-license ordinances make no reference to the validity of lease agreements entered into without proper licensing, but they strongly imply that such agreements are void and unenforceable on public-policy grounds. *See* MCO

§§ 244.1800-.2020 (2017). As stated, MCO § 244.1810 not only prohibits renting a dwelling without a license, but it prohibits even offering a dwelling, and it expressly prohibits "charg[ing], accept[ing] or retain[ing] rent." MCO § 244.1980 criminalizes renting a dwelling without a license. MCO § 244.1970 requires a dwelling occupied without a license to be vacated within a "reasonable time," indicating that any contractual-lease term is effectively void. These ordinances are designed to ensure that dwellings meet minimum health and safety standards. *See* MCO § 244.1910 (licensing standards). While respondent seeks only eviction, deeming the lease valid would directly contradict the city ordinances and signals to landlords that they may sidestep the minimum health and safety standards inherent in rental licensure. It is simply illogical to conclude that appellant breached her duty to pay rent when MCO § 244.1810 prohibits respondent from charging or accepting rent. Respondent cannot rely upon the lease to seek eviction.

II. Eviction for holdover after notice to quit, under section 504B.285, subdivision 1(a)(3), is improper because appellant received insufficient notice.

Appellant was a tenant at will. As previously discussed, appellant took possession under a void lease. A tenant who takes possession under a void lease and makes payments accepted by the landlord becomes a tenant at will. *Fisher v. Heller*, 219 N.W. 79, 80 (Minn. 1928).

Minnesota Statutes section 504B.135 (2016) governs termination of a tenancy at will. Section 504B.135 requires notice in writing "at least as long as the interval between the time rent is due or three months, whichever is less," and for failure to pay rent, "14

days notice to quit in writing." Only eight days of notice was provided in this case. Respondent notified appellant on July 24, 2017, that she must move out by August 1, 2017.

A notice to terminate a tenancy at will "is a distinct act, which must be sufficient and complete of itself, without reference to subsequent events or proceedings," and it matters not "which party attempts to terminate the tenancy." *Eastman v. Vetter*, 58 N.W. 989, 989-90 (Minn. 1894). Here, there was insufficient notice. Thus, appellant was not a holdover tenant, and eviction for holdover after notice to quit was improper.

III. Eviction for unlawful occupancy under section 504B.301 is improper because appellant was a tenant at will and therefore lawfully occupying the residence.

The district court relied upon section 504B.301 to evict appellant. Appellant argues that eviction under section 504B.301 is improper because it provides no independent statutory basis for eviction,[2] and respondent failed to plead it as a basis for eviction. We need not reach appellant's arguments because, even assuming that section 504B.301 provides an independent basis for relief and was properly raised, eviction under section 504B.301 is improper.

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[2] Section 504B.301, titled "eviction action for unlawful detention," covers instances were real property is "forcibly occupied," a scenario that Minn. Stat. § 504B.285, subd. 1(a) (2016) does not reference. *See Davis v. Woodward*, 19 Minn. 174, 174 (1872) (discussing unlawful detainer "by force and strong hand"). It also covers instances where property is being unlawfully detained because the tenant is using the property to store certain contraband or controlled substances. *See* Minn. Stat. §§ 504B.301, 609.5317, subd. 1 (2016). This language indicates that it provides a basis for eviction independent of section 504B.285, subdivision 1(a). *See also* Minn. Stat. § 327C.09, subd. 5 (2016) (providing for eviction from a manufactured-home park).

Under Minn. Stat. § 504B.301, "A person may be evicted if the person has unlawfully or forcibly occupied or taken possession of real property or unlawfully detains or retains possession of real property." Appellant had a right to possession as a tenant at will, and her tenancy had not been properly terminated prior to the commencement of the eviction action. The district court relied upon breach of lease and holdover after notice to quit to conclude that appellant unlawfully occupied the residence, but as previously discussed, these were not proper bases to terminate appellant's tenancy. At the time of the eviction, appellant was not unlawfully or forcefully occupying the property or unlawfully detaining or retaining possession of the property. Even accepting that the city's notice that appellant's occupancy was unlawful as sufficient proof of an unlawful occupancy for purposes of section 504B.301, the city gave appellant until October 1, 2017, to vacate. Respondent's complaint was filed, and the eviction trial occurred, prior to this deadline. Therefore, appellant's occupancy was not unlawful for purposes of eviction under section 504B.301.

While we conclude that an eviction was not proper, in part, because respondent lacked a rental license, respondent and those in his situation are not without recourse. Respondent could have obtained an eviction with proper notice to quit. We reverse the eviction and any award of costs and disbursements.

Reversed.