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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2020**

Jill Mungall,
Respondent,

vs.

Daniel Garry,
Appellant,

Olga Garry,
Appellant.

**Filed June 17, 2019
Affirmed
Halbrooks, Judge**

Hennepin County District Court
File No. 27-CV-18-4209

Amy J. Roterling, Tulpen Law PLLC, St. Paul, Minnesota (for respondent)

Daniel J. Garry, Olga Garry, Eden Prairie, Minnesota (pro se appellants)

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant-landlords challenge the district court's determination that they violated Minn. Stat. § 504B.178 (2018) and its award to respondent-tenant of attorney fees, costs,

interest, and a statutory penalty, on the grounds that the district court erred in applying the statute and the district court's findings regarding their property-damage claims are clearly erroneous. We affirm.

FACTS

On August 8, 2015, appellants Daniel and Olga Garry and respondent Jill Mungall entered into an agreement for Mungall to lease a house owned by the Garrys. Mungall paid a \$1,450 security deposit. The initial lease period expired on August 1, 2016, but the parties entered into a second lease agreement that expired on August 2, 2017. Mungall provided the Garrys with 60 days' notice of her intent to move out on June 30, 2017, at which time her move-out date became August 31, 2017. Mungall moved out of the home by August 31.

On September 6, 2017, the parties conducted a walk-through inspection of the premises, and Mungall provided her forwarding address to the Garrys. The Garrys identified minor repairs in the course of the walk-through, which Mungall agreed to fix. On September 27, the Garrys emailed Mungall and advised her of additional damage to the premises that they considered beyond normal wear and tear. The alleged damages included nail holes in the ceilings and walls, damaged carpeting, a damaged refrigerator door, damage to the dishwasher and the lawn, and an unpaid water bill. The Garrys stated that the total cost of repairs was \$3,910 and informed Mungall that she would not receive her security deposit back. Mungall sent the Garrys a letter disputing the claims of damage and requesting that they refund her security deposit in full. The Garrys refused to do so.

Mungall filed suit against the Garrys in conciliation court. She sought to recover her security deposit and statutory damages pursuant to Minn. Stat. § 504B.178, subd. 4. She alleged that the Garrys told her that she did not have to complete the additional repairs and that they would return her full deposit. The Garrys filed a counterclaim, seeking to recover \$3,613.04 for property damage caused by Mungall, plus costs. They denied telling Mungall that she did not have to complete the repairs or that she would receive her full deposit back. They claimed the house was “often very messy and almost uninhabitable” and that Mungall violated the terms of the lease agreement by damaging the property. The conciliation court ruled against Mungall on both counts and ordered that judgment be entered in favor of the Garrys in the amount of \$3,683.04. Mungall subsequently removed the case to district court.

Following a court trial, the district court determined that the Garrys had violated Minn. Stat. § 504B.178, subd. 3, and awarded Mungall a statutory penalty, a portion of her security deposit, and reasonable attorney fees. The district court found that the Garrys were entitled to \$450.21 for damage to the refrigerator door and \$200 for the cost to remove leaves in the yard. But the district court found that the Garrys had not submitted sufficient evidence to support the remaining allegations of property damage. Accordingly, the district court determined that Mungall was entitled to a refund of \$799.79 of her \$1,450 security deposit. Based on the statutory penalty, partial security deposit, and interest on both, the district court awarded Mungall \$2,317.28 plus costs, disbursements, and reasonable attorney fees. Based on its determination that Mungall incurred \$2,198.51 in

attorney fees, the district court ordered judgment in favor of Mungall in the amount of \$4,884.79. This appeal follows.

DECISION

Several of the Garrys' claims relate to the district court's factual findings regarding property damage. But because the Garrys did not provide this court with a transcript, we cannot review the factual findings. *See Duluth Herald & News Tribune v. Plymouth Optical Co.*, 176 N.W.2d 552, 555 (Minn. 1970) (stating that without a transcript, "this court is not cognizant of the evidence upon which the trial court based its findings of fact"). Our review is limited to whether the findings of fact support the conclusions of law. *Id.* Therefore, our review is limited to the Garrys' assertions that the district court erred in determining that they violated Minn. Stat. § 504B.178, subd. 3, and abused its discretion by awarding unreasonable attorney fees.

I.

The Garrys argue that the district court erred in applying Minn. Stat. § 504B.178, subd. 3(a). The application of a statute presents a question of law, which we review de novo. *Davies v. W. Publ'g Co.*, 622 N.W.2d 836, 841 (Minn. App. 2001), *review denied* (Minn. May 29, 2001). The Garrys contend that they complied with the statute because they provided a written statement of damages within three weeks of receiving Mungall's mailing address. Mungall argues that the three-week time frame is triggered by the termination of the tenancy, not the receipt of the mailing address. We agree.

Minn. Stat. § 504B.178, subd. 3(a) provides:

(a) Every landlord shall:

(1) within three weeks after termination of the tenancy;

or

(2) within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant, and after receipt of the tenant's mailing address or delivery instructions, return the deposit to the tenant, with interest thereon as provided in subdivision 2, or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof.

Mungall moved out by August 31, 2017.¹ The Garrys did not provide her with a written statement explaining why they were withholding her security deposit until September 27—more than three weeks after she terminated her tenancy. The district court, determining that this delay constituted a violation of Minn. Stat. § 504B.178, subd. 3, awarded Mungall a statutory penalty pursuant to Minn. Stat. § 504B.178, subd. 4.

The statute provides for two different time frames for return of the security deposit based on the situation that led to the termination of the tenancy. The tenant must provide a mailing address in each situation, but the time frame for return of the security deposit is determined by which situation led to the tenant vacating the premises.

Mungall's tenancy terminated on August 31, and the Garrys did not provide her with a written statement explaining why they were withholding the security deposit within three weeks of that date. Minn. Stat. § 504B.178, subd. 4, provides that any landlord who fails to provide such a statement within three weeks of termination of the tenancy "is liable to

¹ The Garrys challenge this factual finding, arguing that Mungall did not terminate the tenancy until September 6, 2017. As noted above, we are unable to review the factual finding.

the tenant for damages in an amount equal to the portion of the deposit withheld by the landlord and interest . . . as a penalty.” The district court therefore did not err by awarding Mungall a statutory penalty.

II.

The district court determined that the parties’ lease agreement authorized an award of attorney fees and awarded Mungall attorney fees in the amount of \$2,198.51. The district court may award attorney fees when authorized by contract or statute. *Material Movers, Inc. v. Hill*, 316 N.W.2d 13, 18 (Minn. 1982). We review a district court’s award of attorney fees for an abuse of discretion. *Becker v. Alloy Hardfacing & Eng’g Co.*, 401 N.W.2d 655, 661 (Minn. 1987).

The lease agreement provides for an award of attorney fees to the prevailing party of a legal action between the landlord and tenant. The Garrys argue that Mungall was not the prevailing party and therefore is not entitled to attorney fees. Minn. R. Gen. Prac. 524(c) provides that a party who removes a case to district court is considered the prevailing party “if the removing party recovers at least \$500 or 50 percent of the amount or value of property that the removing party requested on removal, whichever is less, when the removing party was denied any recovery in conciliation court.” Mungall was denied recovery in conciliation court. When she removed the case to district court, Mungall sought the return of her \$1,450 damage deposit and \$29.95 in statutory interest. She was ultimately awarded \$2,317.28 based on the statutory penalty and the refund of a portion of her security deposit. Accordingly, she was the prevailing party in district court.

The Garrys also challenge the amount of attorney fees awarded. They argue that “no reasonable person would pay \$2,198.51 to win an award of \$799.79.” The Garrys’ assertion that Mungall was awarded \$799.79 is based on the amount of the security deposit that was returned to her and does not include the statutory penalty awarded to her. She ultimately achieved a reversal of the conciliation-court judgment and an award of \$2,317.28 based on the partial security deposit refund and the statutory penalty. The Garrys’ assertion that Mungall paid \$2,198.51 to obtain an award of only \$799.79 is therefore without merit.

The Garrys generally allege that the billing rate of \$200 per hour is unreasonable and that Mungall’s attorney “acted in bad faith by inflating the attorney’s fees.” But they do not provide any support for their claims. The district court reviewed the affidavit and billing statements submitted with Mungall’s motion for attorney fees and determined that the amount of time spent on the case, the billing rate, and the total amount requested were all reasonable given the circumstances of the case. The district court noted that Mungall did not hire an attorney until after she had lost in conciliation court, and therefore the attorney had to review the prior case and prepare for trial. The district court’s findings related to the reasonableness of the award are thorough and well-founded based on the record provided. We therefore conclude that the district court properly exercised its discretion in its award of attorney fees.

Affirmed.