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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0216**

Timberland Partners, Inc.,
Respondent,

vs.

Harriet Liedtke,
Appellant.

**Filed August 19, 2019
Affirmed
Kalitowski, Judge***

Dakota County District Court
File No. 19AV-CV-18-2764

Malcolm P. Terry, Bernick Lifson, P.A., Minneapolis, Minnesota (for respondent)

Harriet M. Liedtke, Burnsville, Minnesota (pro se appellant)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Kalitowski, Judge.

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

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

KALITOWSKI, Judge

In this eviction-judgment appeal, appellant-tenant argues that (1) the district court abused its discretion by failing to hear the rent-escrow and eviction actions together; (2) the termination provision of the lease agreement is ambiguous; and (3) the eviction action was retaliatory. We affirm.

FACTS

Appellant-tenant Harriet M. Liedtke and respondent-landlord Timberland Partners, Inc. (Timberland) entered into a residential lease agreement with an end date of February 28, 2014. The lease provided that if the tenant remained in the apartment after the end date, then the tenancy would become month-to-month, which either party could terminate by giving a written 61-day notice to the other party. On April 5, 2018, Timberland gave Liedtke written notice that it was terminating her tenancy, requiring her to vacate by June 30. Timberland stated that it decided to terminate the tenancy because Liedtke's rent was well below market rate.

In June, Liedtke filed a rent-escrow action against Timberland, alleging numerous problems including issues with drainage pipes, the garbage disposal, and the laundry room. In light of previous litigation between the parties, Timberland moved the district court to declare Liedtke a frivolous litigant and impose sanctions. The district court deemed Liedtke a frivolous litigant, and Liedtke appealed. The district court stayed the rent-escrow action pending the frivolous-litigant appeal. While the frivolous-litigant appeal was

pending, Timberland filed an eviction complaint based on holding over after notice to quit. After a three-day hearing, the district court entered judgment of eviction against Liedtke.

D E C I S I O N

I. The district court did not abuse its discretion by hearing the eviction and rent-escrow actions separately.

Liedtke implies that the district court was required to stay the eviction action until it could be consolidated with the rent-escrow action, which was stayed pending the frivolous-litigant appeal. We disagree.

"Generally, whether to stay a proceeding is discretionary with the district court," and we will not alter its decision absent an abuse of that discretion. *Fed. Home Loan Mortg. Corp. v. Nedashkovskiy*, 801 N.W.2d 190, 192 (Minn. App. 2011). "[T]he district court has considerable discretion in scheduling matters and in furthering what it has identified as the interests of judicial administration and economy." *Rice Park Prop. v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556, 556 (Minn. 1995). But "when the counterclaims and defenses are necessary to a fair determination of the eviction action, it is an abuse of discretion not to grant a stay of the eviction proceedings when an alternate civil action that involves those counterclaims and defenses is pending." *Nedashkovskiy*, 801 N.W.2d at 192 (quotation omitted).

Rent-escrow actions "and eviction actions which involve the same parties must be consolidated and heard on the date scheduled for the eviction action." Minn. Stat. § 504B.385, subd. 8 (2018).

The district court decided not to consolidate the rent-escrow and eviction actions to further the interests of judicial administration and economy. The rent-escrow proceedings were already well underway when the eviction-action complaint was filed four months later. Moreover, Liedtke's rent-escrow claims did not need to be decided to evaluate whether Liedtke held over or Timberland retaliated. Thus, the claims asserted by Liedtke in the rent-escrow action were not necessary to her defense of the eviction action. Accordingly, the district court did not abuse its considerable discretion in hearing the matters separately.

But even if hearing the matters separately was an abuse of discretion, Liedtke has not shown any prejudice. The mere existence of an error is, by itself, insufficient to require a grant of relief; appellant must also show that the error prejudiced appellant. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored). As Liedtke presented no evidence that she was prejudiced by the rent-escrow and eviction actions being heard separately, we conclude that any error is harmless.

II. The termination provision of the residential lease agreement is not ambiguous.

We apply general principles of contract construction to leases. *Knight v. McGinity*, 868 N.W.2d 298, 300 (Minn. App. 2015). A contract is ambiguous if, judged by its language alone, it is reasonably susceptible of more than one meaning. *Kaeding v. Auleciems*, 886 N.W.2d 658, 666 (Minn. App. 2016). We apply de novo review to the question of whether a contract is ambiguous. *Id.*

The lease provides, "When the Lease is month-to-month, management *and* resident may terminate the Lease only by giving the other party written notice equal to the notice

period." (Emphasis added.) Liedtke argues that the word "and" makes the provision ambiguous as to whether "both the landlord and the tenant have to give notice together, at once, separately, with or without the consent of the other." But Minnesota law provides that "[a] tenancy at will may be terminated by *either* party by giving notice in writing." Minn. Stat. § 504B.135(a) (2018) (emphasis added). And under Liedtke's interpretation that *both* parties need to give notice to terminate the lease, no tenant could ever vacate without the landlord's approval. Liedtke's interpretation is unreasonable because it would provide an absurd result that contradicts Minnesota law. The only reasonable interpretation is that either the landlord or the tenant could provide notice to terminate the lease. Therefore, we conclude the lease is not ambiguous.

III. The eviction action was not retaliatory.

On appeal from an eviction judgment, we review the district court's factual findings for clear error. *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 555 (Minn. App. 1985), *review denied* (Minn. Feb. 19, 1986). "But we review the 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). We review the record in the light most favorable to the district court's decision and defer to its credibility determinations. *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999).

The landlord entitled to the premises may recover possession by eviction when any tenant at will holds over after the termination of the tenancy by notice to quit. Minn. Stat. § 504B.285, subd. 1(a)(3) (2018). Liedtke was a tenant at will and Timberland provided notice to quit in accordance with the lease and statutory requirements. Liedtke failed to

vacate following the 61-day notice to quit. Liedtke does not challenge the assertion that she held over after the termination of the tenancy, but instead argues that the eviction action was retaliatory.

The legislature has provided two separate retaliation defenses: Minn. Stat. §§ 504B.285 (2018) and 504B.441 (2018). And the Minnesota Supreme Court recently recognized a common-law retaliatory-eviction defense in *Olson*. *Cent. Hous. Assocs., LP v. Olson*, ___ N.W.2d ___, ___, 2019 WL 2439728, at *1-2 (Minn. June 12, 2019). But the supreme court limited the common-law defense to "residential breach-of-lease eviction action[s]." *Id.* at *1. As this eviction action is not for a breach of the lease, the common law defense does not apply here. *Cf. Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987). Thus, we address Liedtke's retaliation defense under each statute.

As recently clarified by the supreme court, section 504B.441 provides that a residential tenant may not be evicted if the eviction is intended as a penalty for the tenant's complaint of a violation to a government entity or commencement of a formal legal proceeding. *Olson*, 2019 WL 2439728, at *1. "[S]ection 504B.441 constructs a 90-day window following the complaint during which the landlord bears the burden of proving the adverse action was not retaliatory unless the complaint was not made in good faith." *Id.* at *3. Here, the district court found that Timberland's community manager credibly testified that the prior litigation and complaints made by Liedtke were not the basis for the notice to quit. Although Liedtke made many complaints to the city of Burnsville, she did not

make a complaint about any violation by Timberland within the 90-day window. And the district court found that the community manager credibly testified that the city "did not contact [Timberland] at any time in 2018 prior to the notice to terminate with regard to complaints made." We defer to the district court's determination that the testimony was credible. After reviewing the record in the light most favorable to the district court's decision, we conclude that the district court did not err in determining that Timberland's notice to quit was not intended as a penalty for Liedtke's complaints to the city.

Under section 504B.285, subd. 2, retaliation is a defense to an eviction action if the tenant proves by a preponderance of the evidence that the termination was intended in whole or in part as a penalty for the tenant's good faith: (1) attempt to enforce rights under a lease; or (2) report to a governmental authority of the landlord's violation of a health, safety, housing, or building code or ordinance. Minn. Stat. § 504B.285, subd. 2. If the notice to quit was served within 90 days of the tenant's good-faith action, the landlord bears the burden of proving that the notice to quit was not served for a retaliatory purpose. *Id.* But the retaliatory-eviction defense fails if the tenant's complaints were not made in good faith. *See id.* (requiring tenant's "good faith" attempt to enforce rights or report to government authority). And even if the complaints were made in good faith and within the 90-day window, the landlord may still succeed in the eviction action by proving that the eviction was not retaliatory. *See id.*

The district court did not find that any of Liedtke's complaints were made in good faith. The district court found that the only complaints Liedtke made within the 90-day window were complaints to Timberland about another tenant's parking spot and noise

coming from a different unit. But the district court found no evidence that the noise complaints were made in good faith because they were never substantiated by anyone. Moreover, the district court found that the community manager credibly testified that Liedtke's complaints were not the basis for the notice to quit. The record supports the district court's findings. Liedtke failed to prove that the eviction action was intended in whole or in part for a good-faith assertion of her rights.

Furthermore, Timberland met its burden to prove that the notice to quit was not retaliatory. "A nonretaliatory reason is a reason wholly unrelated to and unmotivated by any good-faith activity on the part of the tenant protected by the statute . . . ." *Parkin v. Fitzgerald*, 240 N.W.2d 828, 829 (Minn. 1976). Timberland's nonretaliatory reason is that Liedtke's rent was well below market rate, which the district court found credible. This purpose is wholly unrelated to any good-faith activity by Liedtke, and she does not challenge that her rent was well below market rate. Therefore, we conclude that the district court did not err in determining that the eviction action was not retaliatory.

Finally, Liedtke also argues that the district court abused its discretion by admitting into evidence a specific statement that contained hearsay. We decline to consider this argument because appellant failed to provide a transcript of the proceeding. *See* Minn. R. Civ. App. 110.02, subd. 1 (appellant has burden to provide a transcript of the proceedings); *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 146 (Minn. App. 2011) ("[A]ppellant bears the burden of providing a record sufficient to show alleged errors."), *review denied* (Minn. Mar. 15, 2011).

Affirmed.