STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1558

Stacey Marable,
Appellant,

vs.

City of Minneapolis,
Respondent,

Noah Schuchman, et al.,
Defendants,

Minneapolis Public Housing Authority,
Respondent.

Filed May 11, 2020
Affirmed in part, reversed in part, and remanded
Connolly, Judge

Hennepin County District Court
File No. 27-CV-19-1488

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

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

CONNOLLY, Judge

Appellant public-housing tenant challenges the district court's dismissal under Minn. R. Civ. P. 12.02(e) of her various claims arising from respondent City of Minneapolis's and respondent Minneapolis Public Housing Authority's alleged failures to conduct housing inspections and enforce the municipal housing-maintenance code on properties owned by the Minneapolis Public Housing Authority. We affirm in part, reverse in part, and remand for further proceedings.

FACTS

Appellant Stacey Marable, a public-housing tenant, challenges the district court's dismissal of her claims against respondents City of Minneapolis (Minneapolis) and the Minneapolis Public Housing Authority (the MPHA) for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e). Marable's action arises from Minneapolis's and the MPHA's alleged failures to conduct housing inspections and enforce or comply with the municipal housing-maintenance code. Marable argues that the district court erred in concluding that: (1) the MPHA, and not Minneapolis, was the "local authority" as contemplated under Minn. Stat. § 504B.185 (2018); (2) Marable failed to state a claim for Minneapolis's alleged violation of Minn. Stat. § 363A.12 (2018); (3) Marable failed to state a claim that she was denied equal protection following Minneapolis's failure to inspect the properties at issue; (4) Marable failed to state a claim that Minneapolis and the MPHA entered into a conspiracy to deny Marable access to public inspection services; (5) Marable failed to state a claim against the MPHA, as all of her

claims were preempted by federal law; (6) Marable failed to state a claim that the MPHA aided and abetted Minneapolis in violating Minn. Stat. § 363A.12; (7) Marable failed to state a claim for enforcing Minneapolis's housing-maintenance code against the MPHA; and (8) Marable failed to state a claim against the MPHA, as all claims were barred by official and discretionary immunity.

All of the following facts reflect allegations made by Marable in her complaint as required by Minn. R. Civ. P. 12.02(e). In 2013, Marable and her children moved into a single-family home owned and operated by the MPHA and located on 16th Avenue South in Minneapolis. The MPHA is an independent redevelopment agency responsible for administering low-income housing programs primarily funded by the U.S. Department of Housing and Urban Development (HUD) and is not a political or administrative subdivision of the City of Minneapolis. *See* 1980 Minn. Laws ch. 595, § 2, at 1106 (authorizing Minneapolis to establish by ordinance an independent redevelopment agency).

In March 2017, Marable notified the MPHA about "roof deterioration, a hole in the dwelling's roof and mold contamination." The next month, Marable hired an independent specialist to conduct mold testing. The testing returned spore values that greatly exceeded recommended safety thresholds. Following this testing, the MPHA conducted its own mold testing and determined that the spore levels were safe. Marable sent multiple notices of toxic mold contamination, and other examples of deterioration and disrepair, to the MPHA. She requested that the MPHA repair the problems or relocate her and her children. The MPHA denied her request and maintained that the property was safe and habitable.

In April 2017, Marable contacted Minneapolis regarding the conditions at her property using the city's "Minneapolis 311" system, which allows residents to report housing-maintenance-code violations and request Minneapolis inspectors to inspect their properties. While speaking with employees from "Minneapolis 311," Marable was informed that Minneapolis lacks the authority to inspect or enforce the municipal housing-maintenance code inside properties owned and managed by the MPHA and that Marable should contact the MPHA directly with her concerns. Following Minneapolis's direction, Marable continued to contact the MPHA with complaints about the condition of the 16th Avenue property. Eventually, the MPHA installed a new roof on the property. Shortly after, Marable discovered mold under the tiles in her kitchen. The MPHA agreed to replace the tiles as well.

In late October 2017, Marable hired a private housing inspector to conduct an inspection of the property. The inspector discovered over 20 housing-maintenance code violations. In light of these results, Marable requested that the MPHA make repairs on the property. Dissatisfied with the MPHA's response to her complaints, Marable submitted two "rental unit complaint forms" to Minneapolis via "Minneapolis 311"; Minneapolis failed to respond.

In December 2017, Marable again contacted the MPHA to request repairs. Before the end of the year, the MPHA made two visits to inspect and conduct repairs on the property. Unsatisfied, Marable contacted Minneapolis and requested an inspection in January 2018. Minneapolis did not respond to her request. Instead, Marable hired the same private housing inspector, and he found additional code violations. Many of the code

violations he first identified in October 2017 had not been rectified. Marable contacted the MPHA and submitted additional work orders; the MPHA returned to the property to address at least some of the complaints. While at the residence, the MPHA discovered additional mold contamination and floor deterioration. Marable again requested to transfer to a different property.

In April 2018, the MPHA granted her request and transferred Marable and her family to a property owned and operated by the MPHA on Humboldt Avenue. After moving, Marable noticed that the Humboldt Avenue property was infested with rodents and had a failure of "basic water services"; she informed the MPHA of both concerns. Marable also contacted Minneapolis about the water issue and requested an inspection of the Humboldt Avenue property. Minneapolis denied her request, once again informing Marable that Minneapolis does not conduct inspections of, or enforce the municipal housing-maintenance code on, MPHA properties.

In June 2018, Marable experienced leaking pipes and a problem with a basement drain. She contacted the MPHA, which twice sent repair workers to the property. The next month, Marable contacted Minneapolis once again, and Minneapolis denied her request for an inspection. Shortly after, the MPHA's regional property manager conducted an annual federally mandated inspection on the Humboldt Avenue property. This inspection looked for violations of federal, but not municipal, housing maintenance requirements. During the inspection, the regional property manager explained to Marable that Minneapolis does not conduct inspections on MPHA properties and does not accept complaints from MPHA tenants; however, Marable could contact the regional property manager directly with any

future complaints. Shortly after the inspection, the MPHA informed Marable of the results. At that same time, Marable hired the same private housing inspector, who identified 15 Minneapolis code violations in the Humboldt Avenue property—only three of which were identified in the MPHA inspection.

In late July 2018, Marable contacted Minneapolis again and requested an inspection. Minneapolis declined to perform one and informed Marable that she must contact the MPHA directly about any issues related to the property.

Marable brought an action in Hennepin County District Court alleging seven counts of wrongdoing by the MPHA, Minneapolis, and various officials. Minneapolis and the MPHA both moved to dismiss the action for failure to state a claim upon which relief can be granted under Minn. R. Civ. P. 12.02(e). The district court granted respondents' motions.

Marable appeals.

D E C I S I O N

A complaint "shall contain a short and plain statement of the claim showing that the pleader is entitled to relief and a demand for judgment for the relief sought." Minn. R. Civ. P. 8.01. A district court must dismiss a complaint when the plaintiff "fail[s] to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). "A Rule 12.02(e) motion raises the single question of whether the complaint states a claim upon which relief can be granted." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000).

"A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader's theory,

to grant the relief demanded." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014). "To state it another way, under this rule a pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Id.* at 602 (emphasis omitted) (quotation omitted). "[I]t is immaterial whether or not the plaintiff can prove the facts alleged . . . ." *Martens*, 616 N.W.2d at 739. However, "[a] plaintiff must provide more than labels and [legal] conclusions." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010).

"[Appellate courts] conduct a de novo review of a Rule 12 dismissal." *Krueger v. Zeman Constr. Co.*, 781 N.W.2d 858, 861 (Minn. 2010). We "consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Bahr*, 788 N.W.2d at 80 (quotation omitted).

In order to determine whether Marable's complaint sufficiently states claims for which relief can be granted under Minn. R. Civ. P. 12.02(e), we must begin this opinion by trying to answer one simple question: if the Minneapolis housing-maintenance code applies to MPHA properties, and we conclude that it does, who enforces this code? Is it Minneapolis or the MPHA? Both respondents deny it is their responsibility and assert that it is the responsibility of the other respondent. We conclude that the municipal housing-maintenance code does apply to MPHA properties, and that Minneapolis has the responsibility for enforcing it.

Claims against City of Minneapolis

I. The district court erred when it determined as a matter of law that Minneapolis was not the "local authority charged with enforcing" the housing-maintenance code on Marable's properties.

Marable claims that the district court erred when it determined that, as a matter of law, Minneapolis is not the "local authority charged with enforcing" the housing-maintenance code, and thus inspecting her properties, under Minn. Stat. § 504B.185. We agree.

Statutory interpretation is a matter of law that we review de novo. *Pepper v. State Farm Mut. Auto. Ins. Co.*, 813 N.W.2d 921, 925 (Minn. 2012). When interpreting a statute, we first look to the language of the statute to determine whether, on its face, the statute is ambiguous. *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001). An ambiguity exists only when a statute's language is subject to more than one reasonable interpretation. *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536, 539 (Minn. 2007).

When construing the language of a statute to determine whether ambiguity exists, courts generally give words and phrases their plain and ordinary meaning and construe them according to rules of grammar. Minn. Stat. § 645.08(1) (2018); *Am. Tower*, 636 N.W.2d at 312. Where the legislature's intent is clear from the plain and unambiguous language of the statute, courts apply the plain meaning. *Hans Hagen Homes*, 728 N.W.2d at 539. "If the meaning of statutory language is not plain, courts resolve ambiguity by looking to legislative intent, agency interpretation," and other canons of statutory

construction. *Occhino v. Grover*, 640 N.W.2d 357, 360 (Minn. App. 2002), *review denied* (Minn. May 28, 2002).

Minn. Stat. § 504B.185, subd. 1, states: "If requested by a residential tenant . . . an inspection shall be made by the local authority charged with enforcing a code claimed to be violated." Although the statute does not explicitly list who qualifies as a "local authority," it does state that a "local authority" is an authority "charged with enforcing a code claimed to be violated." Minn. Stat. § 504B.185, subd. 1. Thus, the local authority in this statute must be an authority statutorily authorized to enforce municipal housing-maintenance-code violations. Both Minneapolis and the MPHA deny that they are the authority statutorily authorized to enforce the municipal housing-maintenance code on MPHA properties.

The district court did not assess which entity is statutorily authorized to enforce the municipal housing-maintenance code when it determined that the MPHA was the local authority in the context of Minn. Stat. § 504B.185. Instead, the district court concluded that because housing authorities are sometimes classified as "local authorit[ies]," and municipal entities are able to enforce municipal codes against themselves (though when statutorily *charged* with doing so), then the MPHA must be the local authority to which the statute applied. But the district court's analysis focuses only on the meaning of "local authority" and does not consider the subsequent dependent clause that modifies "local authority," namely "charged with enforcing a code." Accordingly, the plain meaning of the statute limits its application to not merely local authorities, but rather local authorities

authorized to enforce the provisions of the municipal code.[1] *See* Minn. Stat. § 645.16 (2018) ("When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.").

A. Minneapolis is the local authority charged with enforcing the municipal housing maintenance code.

Minneapolis is a home rule charter city. *See* Minn. Const. art. XII, § 4 (allowing "[a]ny local government unit . . . [to] adopt a home rule charter for its government"); Minn. Stat. § 410.04 (2018) (stating that "[a]ny city in the state may frame a city charter for its own government in the manner" prescribed by chapter 410). Pursuant to its charter authority, Minneapolis enacted a housing-maintenance code "to protect the public health, safety and welfare" of the people of Minneapolis. Minneapolis, Minn., Code of Ordinances (MCO) § 244.20 (2019).

In Minneapolis, the director of regulatory services, or his or her designee, is required by ordinance to enforce the municipal housing-maintenance code. MCO § 244.120 (2019). Though "designee" is not defined, the "director or regulatory services" is defined as either

[1] Minneapolis cites to several cases that define a housing authority as a local authority that *administers* a HUD program; however, these cases do not define a housing authority as a local authority charged with enforcing a municipal code. We agree that the MPHA can be a local authority; yet Minn. Stat. § 504B.185 applies not merely to local authorities, but local authorities charged with enforcing a municipal housing code. *See Peterson v. Wash. Cty. Hous. & Redevelopment Auth.*, 805 N.W.2d 558, 561 (Minn. App. 2011) (stating that housing authorities are local government agencies that *administer* HUD programs), *review denied* (Minn. Oct. 26, 2011); *Edwards v. Hopkins Plaza Ltd. P'ship*, 783 N.W.2d 171, 177 (Minn. App. 2010) (stating that a redevelopment authority is a local authority charged with *administering* HUD programs).

the "legally designated director" or an "authorized representative" of the director of regulatory services. MCO § 244.40 (2019). An "authorized representative" is not defined in the ordinance. However, turning to the dictionary, "authorize" is defined as "[t]o grant authority or power to." *The American Heritage Dictionary* 120 (5th ed. 2011). Furthermore, "representative" is defined as "[o]ne that serves as a delegate or agent for another." *Id.* at 1490. Neither the language of the ordinance, nor any state statute, limits which entity can be designated as an "authorized representative." Accordingly, the director of regulatory services is free to designate an independent body as a representative. However, this designation must be authorized. Therefore, we conclude that an authorization requires an active and intentional delegation of authority from the director of regulatory services to an agent of that authority.

Although no formal pathway for the delegation of enforcement authority is described by ordinance, the city council has determined that one authorized representative of the director of regulatory services is the director of inspections. *See* MCO § 28.10 (2019) (establishing the department of inspections). The director of inspections is required to appoint and remove "duly appointed and qualified inspectors" and assistants as provided by the city council. MCO §§ 28.20-.30 (2019). Although the director of inspections is authorized to delegate his or her power to enforce municipal codes, this authorization is limited to "assistants." MCO § 28.60 (2019). An "assistant" is defined as someone who is explicitly authorized "[t]o assist in the administration of the department," and is appointed by "the director of inspections . . . as shall be provided by the city council." MCO § 28.30. Additionally, assistants "perform such duties as shall be assigned by the

director of inspections," *id.*, and thus are limited to employees of the director of inspections. Accordingly, the director of inspections is not authorized to delegate enforcement authority outside of the department of inspections.

In contrast, the MPHA is an independent local governmental agency located within the geographic boundary, though not the political body, of Minneapolis. *See* Minn. Stat. §§ 469.001-.047 (2018) (outlining the state's housing and redevelopment authority programs). Though local in nature, federal law authorizes redevelopment authorities, such as the MPHA, to administer HUD housing programs. *See, e.g.*, 42 U.S.C. §§ 1437f, 3535(d) (2018) (authorizing local authorities to administer the Section 8 housing voucher program).

Federal regulations dictate minimum standards for HUD housing, directing that the properties be "decent, safe, sanitary and in good repair." 24 C.F.R. § 5.703 (2019). Federal regulations also require local housing programs, such as the MPHA, to "*comply*" with and "*adhere*" to state and local codes. *Id.* (g) (emphasis added). Although federal regulations do not explicitly authorize redevelopment authorities to enforce municipal housing-maintenance codes, the regulations require redevelopment authorities and cities to enter into cooperative agreements regarding the administration of programs. 24 C.F.R. § 905.602(a) (2019) ("[T]he [redevelopment authority] must enter into a cooperation agreement with the applicable local governing body that includes sufficient authority to cover the public housing being developed under this subpart . . . ."). Finally, state law provides that all redevelopment authority projects "shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which

the project is situated." Minn. Stat. § 469.012, subd. 4. Although a redevelopment authority "may recommend to the city concerning the enforcement of the applicable health, housing, building, fire prevention, and housing maintenance code requirements," *id.*, subd. 2d, state law does not grant these agencies the independent authority to enforce these codes.

The district court relied on *United States v. City of St. Paul* for the proposition that a city may not unilaterally impose a municipal housing-maintenance code on a HUD-owned and operated property. 258 F.3d 750, 754 (8th Cir. 2001). However, *St. Paul* does not necessitate an unquestioning ceding of state authority to the federal government. Instead, *St. Paul* clearly states that where a federal statute fails to give "clear and unambiguous authorization" for municipal ordinances to apply to HUD-owned properties, cities are prohibited from subjecting HUD to a patchwork of local regulations. *Id.* at 753-54. However, because HUD regulations explicitly and unambiguously direct all redevelopment authorities to adhere to the municipal housing-maintenance code, we find *St. Paul* inapplicable.

Therefore, as the MPHA is not statutorily charged with enforcing Minneapolis's housing-maintenance code by federal or state law, and the MPHA is directed by federal law to adhere to the municipal housing-maintenance code, we conclude as a matter of law that Minneapolis, and not the MPHA, is the "local authority charged with enforcing" the municipal housing-maintenance code as contemplated under Minn. Stat. § 504B.185.

B. Minneapolis has not delegated the authority to enforce Minneapolis's housing-maintenance code to the MPHA.

Although the department of regulatory services is free to designate the MPHA as an authorized representative, and to delegate enforcement authority to the MPHA, we can find no authorized delegation of specific enforcement authority between the MPHA and Minneapolis.

In her complaint, Marable alleges the existence of an agreement between the MPHA and Minneapolis regarding the inspection enforcement of the municipal housing-maintenance code on MPHA properties. Minneapolis points to a cooperation agreement between the MPHA and Minneapolis to support its argument that the MPHA is the local authority charged with enforcing the municipal housing-maintenance code as contemplated under Minn. Stat. § 504B.185, as the MPHA is defined as a local authority in the agreement. However, we have already determined that just because the MPHA may be a local authority charged with administering HUD programs does not mean that the MPHA is also a local authority charged with enforcing the municipal housing-maintenance code.

Conversely, the MPHA points to a provision of the very same cooperation agreement to argue that although Minneapolis remains the local authority charged with inspecting and enforcing the municipal housing-maintenance code, the MPHA is somehow exempt from being subject to municipal inspections and code enforcement by Minneapolis and thus does not assume any inspection or enforcement authority. We recognize that Minneapolis is authorized by state and federal statute to enter into a cooperation agreement with the MPHA and that Minneapolis and the MPHA have maintained such an agreement

since 1957. However, the explicit text of the provision at issue does not support either party's arguments.

The text of the exemplar cooperation agreement presented in the record acknowledges a general need to cooperate as the entities "may find necessary in connection with the development and administration" of housing projects. Furthermore, the text also states that "[i]n so far as the municipality may *lawfully* do so," the municipality shall "grant such deviations from the *building* code of the Municipality as are reasonable and necessary to promote economy and efficiency in the development and administration" of an MPHA project. (Emphasis added.)

The first problem we identify with relying on this provision to support either respondent's arguments is that this provision recognizes that deviations may be lawfully granted from the Minneapolis building code, not the Minneapolis housing-maintenance code at issue here. The Minneapolis housing-maintenance code is an utterly different code than the Minneapolis building code. *Compare* MCO §§ 85.10-.650 (2019) (establishing and detailing the Minneapolis building code), *with* MCO §§ 244.10-.2170 (2019) (establishing and detailing the Minneapolis housing-maintenance code). Accordingly, we are not persuaded that the text of this provision even applies to the claims raised by Marable.

Furthermore, even if we were to determine that a provision authorizing a deviation from the municipal building code also permits the respondents to deviate from the municipal housing-maintenance code, the provision is explicitly limited to only allowing deviations in so far as the municipality may lawfully do so. The cooperation agreement

does not further address issues related to the inspection of MPHA properties or the enforcement of the municipal housing-maintenance code. Although this language recognizes that the authorized delegation of enforcement authority consistent with the delegation pathway established by Minneapolis ordinance is permissible, this recognition alone, without any subsequent provision detailing a deviation or delegation of authority, is not sufficient to indicate that the MPHA is either an authorized representative of the director of regulatory services or exempted from compliance with the municipal housing-maintenance code.[2]

Therefore, in light of Minneapolis's ordinance that explicitly defines the delegation of enforcement authority under the limited circumstances of an authorized representative, and the MPHA's assertion that it is not an authorized representative, we conclude that the cooperation agreement between Minneapolis and the MPHA did not delegate enforcement authority from the director of regulatory services to the MPHA. Absent some cooperation agreement that explicitly lays out the responsibilities of either Minneapolis or the MPHA to enforce the municipal housing-maintenance code, we conclude that Minneapolis, and

[2] This conclusion is all but necessitated by the fact that the MPHA denies any authority to enforce Minneapolis's housing-maintenance code on MPHA properties. Furthermore, Minneapolis fervently contends that "MPHA inspectors do not now nor have they ever been employees of the City"—let alone authorized representatives delegated enforcement authority—and "the MPHA plays no role in adopting or enforcing" the municipal housing-maintenance code. Furthermore, while the MPHA denies that it enforces the housing code on its properties, it nevertheless recognizes that it is required by federal law to comply and adhere to the municipal code. Finally, Minneapolis's former director of inspections confirmed that the MPHA has never been employed by the department of regulatory services and that the MPHA has never been "in [the] chain of command" of the department of inspections.

not the MPHA, remains the local authority charged with enforcing its housing-maintenance code on MPHA properties.

II. The district court erred when it determined that Marable's complaint failed to state a claim for Minneapolis's alleged violation of Minn. Stat. § 363A.12.

Marable argues that the district court erred when it determined, as a matter of law, that she failed to state a claim for Minneapolis's alleged violation of Minn. Stat. § 363A.12 because Minneapolis was not the local authority charged with enforcing the housing maintenance code. As we have determined that Minneapolis is that local authority, we must now assess whether Marable's complaint sufficiently stated a claim for Minneapolis's violation of Minn. Stat. § 363A.12 upon which relief could be granted.

The Minnesota Human Rights Act (the MHRA) provides that it is unlawful to "discriminate against any person in the access to, admission to, full utilization of or benefit from any public service because of . . . status with regard to public assistance." Minn. Stat. § 363A.12, subd. 1. A "public service" includes "any public facility, department, agency, board or commission, owned, operated or managed by or on behalf of the state of Minnesota." Minn. Stat. § 363A.03, subd. 35 (2018). Housing inspections fall under the category of a "public service." *Cf.*, *Cracraft v. City of St. Louis Park*, 279 N.W.2d 801, 805 (Minn. 1979) (determining that a municipality has a public duty to conduct fire inspections).

In *City of Minneapolis v. Richardson*, the supreme court noted that an unfair discriminatory practice in violation of the MHRA may occur when "the record establishes . . . an adverse difference in treatment with respect to public services of one or more persons

when compared to the treatment accorded others similarly situated except for the existence of an impermissible factor such as race, color, creed, sex, etc." 239 N.W.2d 197, 202 (Minn. 1976).

Marable's complaint alleges that, while as a recipient of public assistance, Marable was denied access to municipal code inspections and enforcement by Minneapolis explicitly because of her public-assistance status. Marable states that she reported code violations through "Minneapolis 311," requested a municipal inspection of her properties on several occasions, and was denied these services—services to which other residents of Minneapolis are entitled—because Minneapolis does not provide inspection services within MPHA properties to MPHA tenants. Marable's complaint also contends the existence of an arrangement between Minneapolis and the MPHA in which Minneapolis refused to inspect MPHA properties and instead directed all complaints to the MPHA. This agreement, Marable alleges, only applies to individuals who receive public assistance through their tenancy with the MPHA. Accordingly, Marable's complaint states that Minneapolis uses the classification of an individual receiving housing assistance to limit the rights of those individuals to access a public service from Minneapolis relative to the ability of a private tenant to access the same service.

Because Minn. Stat. § 504B.185, subd. 1, mandates a city to provide inspection services upon a tenant's request of those services, and Marable's complaint details circumstances in which Marable was denied access to inspection services because of her public-assistance status, we hold that the complaint contains sufficient facts to support a claim for the violation of Minn. Stat. § 363A.12, subd. 1. Accordingly, the district court

erred when it determined that Marable's claim against Minneapolis for violation of Minn. Stat. § 363A.12, subd. 1, failed under Minn. R. Civ. P. 12.02(e). Regardless of whether Marable ultimately succeeds on her claim, her allegations in the complaint are sufficient to, at the minimum, state a claim for relief.

III. The district court erred when it determined that Marable failed to state a claim for the denial of equal protection.

Marable argues that the district court erred when it determined that Marable failed to sufficiently allege an equal-protection violation under the rational-basis standard. Minneapolis argues that the district court properly determined that Minneapolis had a rational basis for treating MPHA and non-MPHA tenants differently so as to allow HUD programs to be implemented uniformly.

The Minnesota Constitution guarantees that "[n]o member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. art. I, § 2. An equal-protection analysis "begin[s] with the mandate that all similarly situated individuals shall be treated alike, but only invidious discrimination is deemed constitutionally offensive." *Kolton v. County of Anoka*, 645 N.W.2d 403, 411 (Minn. 2002) (quotations omitted). When an equal-protection challenge does not implicate a fundamental right or a suspect classification, a reviewing court applies a rational-basis standard. *Greene v. Comm'r of Minn. Dep't of Human Servs.*, 755 N.W.2d 713, 725 (Minn. 2008).

Unlike the federal rational-basis standard, which requires only that a court assess "whether the challenged classification has a legitimate purpose and whether it was

reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose," Minnesota applies a more stringent standard and is unwilling to merely "hypothesize a rational basis to justify a classification, as the more deferential federal standard requires." *Id.* at 729 (quotations omitted). Instead, Minnesota courts "require[] a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals." *Id.* (quotation omitted). Additionally, a party may raise an equal-protection challenge to an ordinance based on an ordinance's application and not merely its expressed terms. *See State v. Frazier*, 649 N.W.2d 828, 832-33 (Minn. 2002) (discussing an as-applied challenge to a facially neutral statute).

As the district court determined that Minneapolis was not the "local authority" charged with enforcing the housing-maintenance code on MPHA properties, it concluded that public tenants and private tenants were not similarly situated, and thus Marable's claim did not implicate or violate equal protection. However, as we have concluded that Minneapolis is the local authority charged with enforcing the housing-maintenance code, and thus Minneapolis is required to inspect and enforce the housing-maintenance code for tenants of private and MPHA-owned properties, failure to inspect properties of MPHA tenants due to their status as MPHA tenants constitutes dissimilar treatment of similarly situated people.

Relying on *St. Paul*, the district court determined that even if Marable and a non-MPHA tenant were similarly situated, a rational basis existed for the differential treatment because "HUD must be able to carry out its federal functions in a uniform way" and

"[s]ubjecting HUD to the array of local ordinances and laws across the United States would make such uniformity impossible." Quoting *Kottschade v. City of Rochester*, the district court stated that the government need only articulate a "rational relation to a legitimate government objective" when conducting a rational-basis review. 537 N.W.2d 301, 306 (Minn. App. 1995) (quotation omitted), *review denied* (Minn. Nov. 15, 1995). Though a correct statement of law, *Kottschade* relies on the federal standard, and not the more restrictive standard applied in Minnesota, when determining what constitutes a rational basis. As Marable's claim is under the Minnesota Constitution, we must determine whether there is "a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals." *State v. Russell*, 477 N.W.2d 886, 889 (Minn. 1991).

Minnesota's rational review necessitates that a court ask three questions: (1) whether the distinctions that separate those included within the classification from those excluded are not arbitrary, but are genuine and substantial; (2) whether there is an evident connection between the distinctive needs of the class and the prescribed remedy; and (3) whether the purpose of the statute is one that the state can legitimately attempt to achieve. *Greene*, 755 N.W.2d at 729.

In her complaint, Marable states that she was denied equal protection of the law when Minneapolis failed to send an inspector or to identify code violations within her home, a service provided to all residents of the city, because she was a tenant on MPHA properties. Marable claims that she was told by Minneapolis staff that the city has no authority to conduct inspections or to enforce the municipal housing-maintenance code on

MPHA properties. Marable correctly notes that public-housing tenants and private-housing tenants are entitled to the same services and protections under Minnesota's landlord-tenant laws. *See, e.g.*, Minn. Stat. § 504B.001, subd. 12 (2018) (defining a residential tenant as a person who occupies a dwelling in a residential building under a lease or contract that requires the payment of money or the exchange of services); Minn. Stat. § 504B.275 (2018) (directing the attorney general to prepare an educational statement notifying residential tenants in public housing to consult their leases for additional rights and obligations as provided by federal law in addition to the rights granted to them as Minnesota tenants). Additionally, she states that Minn. Stat. § 504B.185, subd. 1, provides a nondiscretionary statutory duty for the local authority to conduct code inspections upon a request from a resident.

Nevertheless, even if Marable has sufficiently pleaded dissimilar treatment in the enforcement of Minn. Stat. § 504B.185, subd. 1, such treatment may still be permissible so long as there is a "reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals." *Russell*, 477 N.W.2d at 889.

The goal of the municipal housing-maintenance code is to "protect the public health, safety and welfare" of the citizens and to "[p]rovide[] for administration and enforcement." MCO § 244.20. As Minneapolis acknowledges, there are limited resources and a significant unmet need for inspections and code enforcement within the city. Additionally, MPHA properties are subject to yearly inspections mandated by the terms of several federal housing programs that fund the properties. *See* 42 U.S.C. § 1437d(f)(1)-(3) (2018). Though the safety requirements of these federal programs are minimum standards, and the

regulations dictate that they do not preempt more restrictive municipal codes, Marable's complaint alleges that Minneapolis decided to forgo enforcement responsibility and instead rely on, essentially, the federal minimum health and safety standards for MPHA properties. Thus, Minneapolis directed individuals to submit their complaints directly to the MPHA, which could then fix the reported problems, thereby cutting out any intermediary. However, as Minneapolis and the MPHA both disclaim enforcement authority, Marable, a similarly situated individual to a private tenant, has sufficiently pleaded facts to support a claim for the denial of municipal housing-maintenance-code inspection and enforcement services.

Although the method currently relied on by Minneapolis to cede inspection and enforcement authority to the MPHA is contrary to state and municipal law, we freely acknowledge that a reasonable connection may exist between Minneapolis's general goal of providing for the safety and welfare of all citizens, and a cooperative distribution of enforcement and inspection resources. However, in the context of Marable's claim for a denial of equal protection, a valid delegation of this enforcement authority that satisfies the health and safety goals of the municipal housing-maintenance code must first exist before the rational basis of the decision can be assessed. Therefore, even if a valid delegation agreement may not violate equal protection, Marable's claims as to Minneapolis's failure to inspect Marable's property, or enforce the municipal housing-maintenance code thereupon, without a legally sufficient delegation agreement sufficiently state a claim for which relief can be granted.

We conclude that even if this record sufficiently demonstrates a reasonable connection between the differential treatment of MPHA tenants and the general enforcement goals of Minneapolis's housing-maintenance code to promote the public health, safety, and welfare of all residents when outlined under a valid delegation agreement, absent such an agreement delegating that responsibility to the MPHA, the differential treatment of MPHA and non-MPHA tenants under Minneapolis's implementation of Minn. Stat. § 504B.185, subd. 1, sufficiently states a claim for the denial of equal protection. Accordingly, the district court erred when it dismissed Marable's equal-protection claim for failure to state a claim.

IV. The district court did not err when it dismissed Marable's claim of a civil conspiracy between Minneapolis and the MPHA for failure to state a claim.

Next, Marable argues that the district court erred when it dismissed her claim for an "unlawful agreement" between the MPHA and Minneapolis for failure to state a claim upon which relief could be granted because "numerous independent statutory torts" were asserted in the complaint and therefore there was a sufficient underlying wrong on which a claim of civil conspiracy could be sustained. Minneapolis argues that the claim fails as a matter of law because Marable failed to plead the elements necessary for a civil conspiracy.

A civil conspiracy is defined as "a combination of persons to accomplish an unlawful purpose or a lawful purpose by unlawful means." *Lipka v. Minn. Sch. Emps. Ass'n, Local 1980*, 537 N.W.2d 624, 632 (Minn. App. 1995), *aff'd*, 550 N.W.2d 618 (Minn. 1996). A civil conspiracy cannot stand on its own and instead must be based on an

underlying crime or intentional tort. *Harding v. Ohio Cas. Ins. Co.*, 41 N.W.2d 818, 824 (Minn. 1950). Even if individuals are maliciously motivated, there can be no conspiracy if the individuals have a right to achieve the goal to which they "conspire." *Id.* at 825. Additionally, the alleged conspirators must have a meeting of the minds regarding "a plan or purpose of action to achieve the contemplated result." *Bukowski v. Juranek*, 35 N.W.2d 427, 429 (Minn. 1948).

The district court determined that Marable failed to state a claim as to the alleged agreement between Minneapolis and the MPHA regarding enforcement authority because even if the agreement is classified as part of a civil conspiracy to deprive MPHA tenants of equal protection and/or to violate Minn. Stat. § 363A.12, Marable has failed to plead the underlying tort or criminal action necessary to sustain a claim for a civil conspiracy.

On appeal, Marable argues that she pleaded "at least one viable underlying tort" (though not an intentional tort) so as to support her claim that the agreement between Minneapolis and the MPHA constituted a civil conspiracy. Although Marable cites to no caselaw to support the proposition that Minneapolis's alleged violation of a statutory duty constitutes an intentional tort for the purpose of sustaining a civil-conspiracy claim, she points to the statutory tort of the alleged violation of Minn. Stat. § 363A.12, subd. 1. Even if we determine that a civil conspiracy can be based on an alleged violation of Minn. Stat. § 363A.12, subd. 1, we hold that Marable has not pleaded the facts necessary to support a claim for civil conspiracy.

To support a claim for civil conspiracy, Marable need only show that there was a meeting of the minds to accomplish a lawful goal through unlawful means, or to

accomplish an unlawful goal. *Harding*, 41 N.W.2d at 824. Marable argues that the alleged existence of an agreement between the MPHA and Minneapolis to delegate inspection and enforcement authority to the MPHA allows us to reasonably infer that it was the intent of the parties to deprive tenants of their statutory right to requesting inspections and reporting violations of the municipal code.

But the complaint does not allege any facts that can lead to the reasonable inference that there was a meeting of the minds to intentionally deprive MPHA tenants of civil services, and not merely an intention to administer and enforce those services through a different agency—a delegation permitted under certain circumstances by municipal ordinance. As Marable has failed to plead facts that can support a reasonable inference that the MPHA and Minneapolis intentionally entered into an agreement to achieve a lawful goal through unlawful means, we hold that the district court did not err when it dismissed Marable's claim for civil conspiracy.

Claims against the MPHA

V. The district court erred when it determined as a matter of law that Marable's claims against the MPHA are preempted by federal law.

Marable argues that the district court erred when it determined that Minn. Stat. § 504B.185, subd. 1, is preempted by federal law.[3]

The Supremacy Clause of the United States Constitution provides that federal law, and federal regulations that carry the force of law, preempts state law when Congress

[3] Although Marable's brief characterizes this issue as against both Minneapolis and the MPHA, the district court only determined that her claims against the MPHA, as the local authority charged with enforcing housing-maintenance codes, were preempted.

intends it to do so. *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 152-53, 102 S. Ct. 3014, 3022 (1982). Accordingly, the activities of federal entities are shielded from direct state regulation by the Supremacy Clause absent "clear and unambiguous" authorization for state regulation. *St. Paul*, 258 F.3d at 752 (quotation omitted).

Minn. Stat. § 504B.185, subd. 1, provides: "If requested by a residential tenant . . . an inspection shall be made by the local authority charged with enforcing a code claimed to be violated." Furthermore, Minnesota statutes acknowledge that public-housing tenants may be entitled to rights in addition to the rights that all tenants are afforded under state law. *See* Minn. Stat. § 504B.275 (directing the attorney general to inform public-housing tenants to "consult their leases for additional rights and obligations they may have under federal law"). Therefore, federal regulations offer additional, though not exclusive, rights to public-housing tenants.

Federal law also dictates that redevelopment authorities that administer federal programs are required to conduct yearly inspections of properties to determine whether the units are maintained in accordance with the standards prescribed under federal law. 42 U.S.C. § 1437d(f)(1)-(3). There are no statutes that directly address the manner by which a tenant may request an additional inspection of a property by a housing authority for violations of a municipal housing-maintenance code. *See generally* 42 U.S.C. §§ 1437 to 1437z-10 (2018). However, HUD has promulgated regulations related to the physical conditions of public housing and the inspection thereof. *See* 24 C.F.R. § 5.703 (establishing minimum standards for the physical conditions of HUD housing); 24 C.F.R.

§ 902.20 (2019) (providing for an assessment of the minimum physical conditions of HUD housing).

Importantly, 24 C.F.R. § 5.703(g) states: "The physical condition standards in this section do not supersede or preempt State and local codes for building and maintenance with which HUD housing *must* comply. HUD housing *must* continue to adhere to these codes." (Emphasis added.) As this regulation, which carries the force of law, unambiguously and explicitly states that the standards articulated therein do not preempt or supersede local building and maintenance codes, Minn. Stat. § 504B.185, subd. 1, is not preempted by federal law.

The district court relied on *United States v. City of St. Paul*, when it determined that Marable's claims against the MPHA were barred by federal conflict preemption. The district court reasoned that "[i]mposing a City-run inspection framework on federally-funded public housing would impermissibly interfere with federal public housing policy goals." As a state or local law "is preempted by means of conflict preemption if the . . . law is an obstacle to achieving the purpose of a federal law," and "[t]he relief sought by [Marable] that the City inspect and enforce the city code on MPHA properties would burden federal public housing with a comprehensive, highly duplicative inspection and enforcement regime," the district court determined that Minneapolis's inspection scheme was federally preempted. However, this reliance is misplaced, as *St. Paul* is easily distinguishable from the case at issue.

In *St. Paul*, the Eighth Circuit determined that a statutory provision authorizing HUD to foreclose on some federally owned properties, which stated in part, "any such

acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property," was not a clear and unambiguous declaration of the intent of Congress to allow a city to subject the property to the city's nuisance abatement code. 258 F.3d at 753-54. Instead, the purpose of the provision was nothing more than an attempt by Congress to prevent "certain federal property as acquired [from being considered] a 'federal enclave' so as to deprive the host state of all civil and criminal jurisdiction." *Id.* at 754. The Eighth Circuit concluded that the statute did not provide "clear and unambiguous authorization for St. Paul to apply its nuisance abatement ordinance to HUD" because the agency "cannot be subjected to a vast multitude of municipal ordinances throughout the United States which . . . require the federal government to spend federal funds." *Id.* at 753-54.

Unlike the statute at issue in *St. Paul*, which did not contain any language that explicitly stated that the provisions therein were not to preempt any state or local codes, 24 C.F.R. § 5.703(g) explicitly directs that the federal regulations do not preempt any state or local codes. This clear and unambiguous authorization to states and municipalities to continue to apply state and municipal codes alone is sufficient to suggest that Minn. Stat. § 504B.185, subd. 1, is not conflict preempted by federal law.

Additionally, in *St. Paul*, the Eighth Circuit noted a significant concern was subjecting the federal agency to a national patchwork of local code regulations absent specific congressional instruction. *Id.* at 754. However, in the case at issue, HUD has explicitly stated that properties like the ones owned by the MPHA remain subject to state and local housing-maintenance codes. *See also Hous. & Redevelopment Auth. of Duluth*

v. Lee, 852 N.W.2d 683, 687-88 (Minn. 2014) (holding that a provision of the federal public housing chapter did not preempt state law regarding late fees because the federal statute created a minimum standard).

Therefore, as 24 C.F.R. § 5.703 (establishing minimum standards for the physical conditions of HUD housing) contains specific provisions that clearly and unambiguously affirm that federal regulations are not preempted by state or local law, the district court erred when it determined that Minn. Stat. § 504B.185, subd. 1, is preempted by federal housing law.

VI. The district court did not err when it determined that Marable failed to state a claim for which relief could be granted for the MPHA's aiding and abetting of Minneapolis's alleged violation of Minn. Stat. § 363A.12, subd. 1.

Marable argues that the district court erred when it determined that she failed to state a claim that the MPHA aided and abetted Minneapolis in violating Minn. Stat. § 363A.12, subd. 1.

It is an unlawful and unfair discriminatory practice to "intentionally . . . aid, abet, incite, compel, or coerce a person" to violate the MHRA. Minn. Stat. § 363A.14(1) (2018). An individual or entity is liable for aiding and abetting a violation of the MHRA when that individual or entity: (1) gives substantial assistance or encouragement to another and (2) knows that the other's conduct constitutes a violation of the MHRA. *Matthews v. Eichorn Motors, Inc.*, 800 N.W.2d 823, 830 (Minn. App. 2011). However, "a viable discrimination claim is a prerequisite to a claim of aiding and abetting discrimination." *Id.*

The district court determined that Marable failed to state a claim upon which relief could be granted because: (1) Minneapolis did not violate Minn. Stat. § 363A.12, subd. 1;

(2) the MPHA lacks the authority to enforce municipal ordinances or determine city policy; and (3) Minneapolis and the MPHA did not enter into an unlawful agreement. Although we have concluded that Marable succeeded in stating a claim for Minneapolis's alleged violation of Minn. Stat. § 363A.12, subd. 1, Marable's complaint does not support a reasonable inference that the MPHA knew Minneapolis's conduct violated the MHRA. Additionally, we are not persuaded by Marable's argument that the existence of a legally permitted, though ultimately flawed, cooperation agreement between Minneapolis and the MPHA regarding enforcement demonstrates that the MPHA knew that the agreement was unlawful or that the MPHA knew that Minneapolis's failure to respond to MPHA tenants likely constituted a violation of the MHRA. As a successful aiding-and-abetting claim requires a showing of this specific knowledge, *id.*, the district court did not err when it determined that Marable had failed to state a claim for which relief could be granted.

VII. The district court erred when it determined that Marable failed to state a claim against the MPHA for failure to adhere to Minneapolis's housing-maintenance code.

Marable argues that the district court erred when it determined that she failed to state a claim for which relief could be granted because her claim that the MPHA failed to adhere to Minneapolis's housing-maintenance code was conflict preempted.

Any individual with standing "may seek enforcement thereof in any court of competent jurisdiction by any appropriate form of civil action and may seek enjoinment of any continued violation thereof and seek to compel obedience thereto by mandatory orders and writs." MCO § 244.80. However, a party abandons a claim when it fails to defend against it in a response to a dispositive motion. *See Soucek v. Banham*, 503 N.W.2d 153,

163 (Minn. App. 1993) (concluding that respondent abandoned a claim not addressed in a reply motion for summary judgment).

The MPHA claims that Marable has abandoned her claim for the enforcement of Minneapolis's housing-maintenance code by failing to defend the claim in Marable's response to the MPHA's motion to dismiss. Count seven of Marable's complaint seeks the enforcement of the Minneapolis housing-maintenance code as allowed under section 244.80 "as applied to the current MPHA dwelling" and "all other relief that this Court deems necessary and appropriate to ensure [that Marable has] safe, decent and sanitary, and up to code rental housing in the City of Minneapolis." Although in the MPHA's motion to dismiss for failure to state a claim, the MPHA correctly states that section 244.80 authorizes a party to seek enforcement of the municipal housing-maintenance code, but does not provide for monetary damages or attorney fees, the MPHA also acknowledged that Marable maintained a viable claim for enforcement under section 244.80. Accordingly, Marable was not required to defend her claim for enforcement under the ordinance in her response to the MPHA's motion to dismiss. Therefore, as a threshold matter, we conclude that Marable has not abandoned her claim.

Furthermore, Marable's complaint details numerous instances of Minneapolis housing-maintenance code violations at her properties. While it acknowledges that the MPHA did send individuals to fix some problems, and that the MPHA inspected the property pursuant to a federally required annual inspection, Marable's complaint states that the MPHA inspector failed to identify and enter work orders for several violations. The complaint alleges that shortly after an inspection, Marable hired a private inspector who

found 15 Minneapolis housing-maintenance-code violations—only three of which were identified by the MPHA inspector.

Accepting the factual allegations within the complaint as true, we conclude that Marable, as a tenant, has standing to seek enforcement of unidentified and unrectified Minneapolis housing-maintenance-code violations against the MPHA. Regardless of whether Marable ultimately succeeds on her claim, her allegations listed in her complaint are sufficient to state a claim for relief.

VIII. The district court erred when it determined that Marable's claims against the MPHA were barred by official and discretionary immunity.

A. Discretionary Immunity

Marable argues that the district court erred when it determined that three of her claims were barred by discretionary immunity: (1) that the MPHA entered into an unlawful agreement with Minneapolis to deny services to MPHA tenants; (2) that the MPHA impermissibly took the place of Minneapolis in enforcing its housing-maintenance code; and (3) that the MPHA failed to adhere to Minneapolis's housing-maintenance code.

Minnesota statutes exempt public authorities from liability for claims based upon the performance of, or failure to perform, a discretionary function or duty. Minn. Stat. § 466.01, subd. 1 (2018) (defining a public authority as one subject to statutory immunities); Minn. Stat. § 466.03, subd. 6 (2018) (defining discretionary acts for which a public authority is immune). The application of discretionary immunity is a legal question reviewed de novo. *Snyder v. City of Minneapolis*, 441 N.W.2d 781, 786 (Minn. 1989).

When considering which decisions or acts made by a public authority are protected by discretionary immunity, we must determine whether a decision is operational or planning in nature. *Holmquist v. State*, 425 N.W.2d 230, 232 (Minn. 1988). A decision or act is operational in nature when it includes "professional or scientific" decisions that are in no way related to the "balancing of policy" considerations. *Nusbaum v. County of Blue Earth*, 422 N.W.2d 713, 720 (Minn. 1988). When a public authority makes an operational decision, such as "actions involving the ordinary, day-to-day operations of the government," the public authority receives no immunity. *Unzen v. City of Duluth*, 683 N.W.2d 875, 882 (Minn. App. 2004), *review denied* (Minn. Oct. 27, 2004). Conversely, a decision or act is planning in nature when it "require[s] evaluating such factors as the financial, political, economic, and social effects of a given plan." *Id.* Planning decisions are protected by immunity. *Id.*

An alleged agreement between Minneapolis and the MPHA regarding the coordination or delegation of inspection or enforcement services inherently implicates the planning of how code enforcement in Minneapolis should occur. This sort of intergovernmental relationship requires policy decisions that relate to the expenditure of resources, the relationship between state and federal jurisdictional authorities, and the political and social needs of the community. Accordingly, the claims that (1) the MPHA entered into an unlawful agreement with Minneapolis to deny services to MPHA tenants, and (2) the MPHA impermissibly took the place of Minneapolis in enforcing its housing-maintenance code, are purely matters of departmental planning and policy, and thus are protected by discretionary immunity.

However, unlike the decision to enter into and abide by an enforcement agreement, the MPHA is statutorily required by state and federal law to adhere to all of Minneapolis's housing-maintenance code. *See* Minn. Stat. § 469.012, subd. 4 ("All [housing and redevelopment authority] projects shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the project is situated."); 24 C.F.R. § 5.703(g) (providing that local authorities must "comply" and "adhere" to state and local housing-maintenance codes). Accordingly, as the MPHA has a nondiscretionary duty to adhere to Minneapolis's housing-maintenance code, its alleged failure to do so is not a matter of planning, but instead is a matter of day-to-day governmental operations and therefore does not receive discretionary immunity.

Thus, even though the district court did not err when it determined that the MPHA was protected by discretionary immunity as to its alleged participation in an agreement to take responsibility for the enforcement of Minneapolis's housing-maintenance code on MPHA properties, we conclude that the district court erred when it determined that the MPHA's alleged failure to adhere to Minneapolis's housing-maintenance code was also protected by discretionary immunity, as this decision was operational in nature and thus not protected by discretionary immunity.

B. Official Immunity

Marable argues that the district court erred when it determined that three of her claims were also barred by official immunity: (1) that the MPHA entered into an unlawful agreement with Minneapolis to deny services to MPHA tenants; (2) that the MPHA impermissibly took the place of Minneapolis in enforcing its code; and (3) that the MPHA

failed to adhere to Minneapolis's housing-maintenance code. As the MPHA's alleged decision to enter into an agreement with Minneapolis is protected by discretionary immunity, we will consider only whether the MPHA's alleged failure to adhere to Minneapolis's housing-maintenance code is protected by official immunity. Therefore, we must consider whether the actions of defendant Gregory Russ, the executive director of the MPHA, are protected by official immunity.

Official immunity is designed to protect officials from fear of personal liability that might deter independent action. *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599-600 (Minn. 2016). "The discretion involved in official immunity is different from the policymaking type of discretion involved in discretionary function immunity afforded governmental entities." *Pletan v. Gaines*, 494 N.W.2d 38, 40 (Minn. 1992). Instead, "[o]fficial immunity involves the kind of discretion which is exercised on an operational rather than a policymaking level," and therefore protects discretionary decisions made by an individual, but not "ministerial" duties. *Id.* A ministerial duty is a duty in which the individual has no discretion in implementing; instead, "it is absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts." *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 315 (Minn. 1998) (quotation omitted). Although official immunity protects the individual making the decision regarding her or her discretionary duties, vicarious official immunity protects a public employer from the nature of an employee's conduct. *Id.* at 316-17. The decision to grant official immunity generally "turns on: (1) the conduct at issue; (2) whether the conduct is discretionary or ministerial and, if ministerial, whether any ministerial duties were violated;

and (3) if discretionary, whether the conduct was willful or malicious." *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014).

In *Wiederholt v. City of Minneapolis*, the supreme court determined that the enforcement of a city ordinance by a sidewalk inspector that required the inspector to immediately repair broken sidewalk slabs was ministerial in nature and therefore was not subject to official immunity. 581 N.W.2d at 316. The supreme court reasoned that because the statute granted the sidewalk inspector no discretion to decide whether to enforce the provision, discretion was "foreclosed by law." *Id.*

Here, the district court determined that Marable's claims against Russ, including the claim regarding the MPHA's failure to adhere to Minneapolis's housing-maintenance code, were barred by official immunity. It stated that the "manner in which MPHA monitors its properties, coordinates with local officials, and manages its budget are protected discretionary activities that require it to make judgments about how best to allocate its resources." The district court held that because official immunity barred any action against Russ, the MPHA was also protected by official immunity. While it is true that the decision by Russ, or any one of his predecessors, to enter into an agreement to become an authorized representative of the department of regulatory services would be discretionary in nature, and thus protected by official immunity, official immunity does not protect Russ and the MPHA against their alleged failure to adhere to Minneapolis's housing-maintenance code.

State and federal statutes both impose a nondiscretionary duty on a landlord, including a public housing authority, to adhere to and comply with municipal codes. *See*

Minn. Stat. § 469.012, subd. 4 ("All [housing and redevelopment authority] projects shall be subject to the planning, zoning, sanitary, and building laws, ordinances, and regulations applicable to the locality in which the project is situated."); 24 C.F.R. § 5.703(g) (providing that local authorities must "comply" with and "adhere" to state and local housing-maintenance codes). Like the inspector in *Wiederholt*, this mandatory duty suggests that all discretion in adhering to the municipal housing-maintenance code is "foreclosed by law." As no discretion is present in this decision, it is a task that is ministerial in nature and therefore not protected by official immunity. As Russ is not protected by official immunity for his alleged failure to adhere to the municipal housing-maintenance code, the MPHA also is not vicariously protected from its alleged failure to adhere.

Therefore, the district court did not err when it determined that Marable's claims that (1) the MPHA entered into an unlawful agreement with Minneapolis to deny services to MPHA tenants, and (2) the MPHA impermissibly took the place of Minneapolis in enforcing its housing-maintenance code, were barred, as these acts are discretionary in nature and thus are protected by discretionary and official immunity. However, the district court erred when it determined that Marable's claim that the MPHA failed to adhere to Minneapolis's housing-maintenance code was also barred by discretionary and official immunity.

To conclude, the Minneapolis municipal housing-maintenance code applies to MPHA properties, and the City of Minneapolis is the local authority charged with enforcing this code against MPHA properties. At present, in light of the presumptions granted to the facts alleged in a complaint when assessing it in the context of an appeal

from a rule 12.02(e) dismissal, we find no cooperative agreement between Minneapolis and the MPHA that states otherwise. And therefore, the district court erred in dismissing the claims as outlined above for failure to state a claim under Minn. R. Civ. P. 12.02(e).

Affirmed in part, reversed in part, and remanded.