**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-1576**

Dennis Turtle,
Respondent,

vs.

Cassie Gimmer,
Appellant,

Dustin Pierson,
Defendant.

**Filed July 13, 2020**
**Reversed and remanded**
**Smith, John, Judge***

Blue Earth County District Court
File No. 07-CV-19-3440

Dennis Turtle, North Mankato, Minnesota (pro se respondent)

Peter J. Hemberger, Nicole M. Mourgos, Eric G. L'Abbe, Southern Minnesota Regional Legal Services, Inc., Mankato, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and Smith, John, 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

**SMITH, JOHN**, Judge

We reverse and remand the eviction judgment and related writ of recovery because Minn. Stat. §. 504B.385 (2018) does not abrogate the common-law habitability defense announced in *Fritz v. Warthen*, 213 N.W.2d 339 (Minn. 1973).

## FACTS

Respondent-landlord Dennis Turtle initiated an eviction proceeding against appellant-tenant Cassie Gimmer and defendant Dustin Pierson for nonpayment of rent. The district court determined that Gimmer and Pierson "failed and refused to pay rent for the months of June, July, August, and September 2019 in the amount of $750 per month . . . for a total due of $3000." The district court reduced this amount by $500 based on the agreement of the parties that Gimmer and Pierson completed approximately 50 hours of work at a rate of ten dollars per hour.

At the eviction hearing, Gimmer argued that a portion of the rent owed should be abated due to the apartment's living conditions and the significant repairs Turtle had not completed. Despite the allegation of substandard living conditions which included, among others, electrical and plumbing issues, no screens on the windows, and a leaking roof, the district court did not consider a habitability defense because Gimmer and Pierson "did not initiate a rent escrow action." The district court concluded that Gimmer's reliance on *Fritz* is misplaced because, "given the enactment of Minn. Stat § 504B.385 . . . there is now another alternative to the options contemplated by the *Fritz* court in the event the covenant of habitability was breached." *Fritz*, 213 N.W.2d at 339.

## D E C I S I O N

Gimmer argues that Minn. Stat. § 504B.385 does not abrogate the habitability defense available to tenants in eviction actions pursuant to *Fritz*. "The interpretation of a statute is a question of law that we review de novo." *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016).

The Minnesota Supreme Court has previously interpreted this statute:

> The presumption that the Legislature does not intend to abrogate the common law when it does not expressly do so, the plain language of the rent-escrow statute, and the rationale behind the decision of *Fritz v. Warthen* all support a conclusion that a tenant is not required to follow the procedures of the rent-escrow statute when asserting a common-law habitability defense in an eviction action.

*Ellis v. Doe*, 924 N.W.2d 258, 265 (Minn. 2019). Gimmer was not required to initiate a rent-escrow action to assert her common-law habitability defense in the eviction action.

**Reversed and remanded.**