STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1930

Maine Heights LLC,
Respondent,

vs.

Mohammed Hayat,
Appellant,

John Doe, et al.,
Defendants.

Filed December 14, 2020
Affirmed
Bryan, Judge

Olmsted County District Court
File No. 55-CV-19-7247

Melanie J. Leth, Timothy A. Woessner, Weber, Leth & Woessner, PLC, Dodge Center, Minnesota (for respondent)

Mohammed F. Hayat, Rochester, Minnesota (pro se appellant)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Bjorkman, Judge.

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

BRYAN, Judge

In this eviction action, appellant-tenant challenges the district court's entry of judgment in favor of respondent-landlord for several reasons. First, appellant argues that

the district court erred in denying his habitability defense. Because respondent attempted to cure the alleged defect within a reasonable time, and because this remedy was effective, we conclude that the district court properly denied appellant's habitability defense. Second, appellant argues that the district court erred in denying his retaliation defense under Minnesota Statutes sections 504B.441 (2018) and 504B.285, subdivision 2 (2018). Because appellant did not complain to any government entity and is not a tenant at will, we conclude that neither retaliation defense applies. We decline to address appellant's remaining theories for relief, concluding that appellant forfeited these arguments. We affirm the district court's judgment.

FACTS

On June 5, 2019, appellant Mohammed Hayat signed a one-year lease with respondent Maine Heights L.L.C. On October 17, 2019, Maine Heights filed an eviction complaint, alleging that Hayat violated the terms of the lease by failing to pay rent and that Hayat remained in possession of the premises despite notice to vacate. Hayat raised two defenses to the eviction action: (1) that Maine Heights violated the covenant of habitability by allowing excessive noise in common areas; and (2) that Maine Heights evicted him in retaliation for Hayat's decision to escrow rent.

The district court conducted an evidentiary hearing and received evidence establishing the following facts. Hayat signed a lease for the period of June 1, 2019, through May 31, 2020, and paid a portion of the $300 security deposit due upon signing. The lease required Hayat to pay $1,875 in rent due on the first of each month, a $150 late fee for rent not paid by the fifth of each month, and a $25 fee for each returned check or

rejected electronic payment. The lease also required Hayat to pay for electric, water, sewer, and trash. On June 29, 2019, Hayat emailed the property manager complaining about loud noise in the common area outside his bedroom window late at night. The manager informed Hayat that she would email all residents to remind them of the community rules, including quiet hours. The manager also informed Hayat that, if a noise disturbance is affecting his peace and he has asked the people making the noise to be quiet, he is free to contact law enforcement. On July 3, 2019, the manager emailed all residents addressing community rules, including quiet hours and local noise ordinances. Hayat made no other noise complaint and the parties had no further communication regarding noise issues until October 7, 2019.

From July through September, Hayat failed to pay timely rent and his utility fees. Maine Heights charged Hayat the $150 late fee each month and the $25 fee for a returned check in the month of July. By October, Hayat had paid his base $1,875 rent for each of the previous three months, but had not paid any of the fees, utilities, or the remainder of the security deposit. Hayat again failed to pay timely rent and utilities in October, and Maine Heights again charged Hayat the $150 late fee.

On October 7, 2019, at 1:46 a.m., Hayat emailed the property manager, complaining about a group of men in the common area outside his apartment who were being loud and woke him up. Hayat stated that if he did not hear from management within one day, then he would send "a letter of Default based upon Minnesota Habitability Laws and escrow this month's rent." The manager apologized, stated she would look into the complaint further, and reminded Hayat that he may ask residents to be quieter or contact law

enforcement.[1] Twenty minutes later, before the manager could look into the complaint further, Hayat emailed the manager a "notice of default."

That same day, Maine Heights posted a termination-of-lease notice on Hayat's door. The reason for termination included nonpayment of rent, constituting material noncompliance with the terms of the lease. The notice stated that Hayat's lease would terminate in three days unless he redeemed his tenancy by paying the amount due. The notice also informed Hayat that if he did not vacate the premises or redeem his tenancy, Maine Heights would bring an eviction action against him. Hayat then mailed a "notice of default" to the corporate offices, alleging that the continued noise issues violated the covenant of habitability under Minnesota Statutes section 504B.161 (2018) and the covenant of quiet enjoyment.

Following the evidentiary hearing, the district court found that Hayat's outstanding balance included October rent, four late fees, the returned-check fee, and the utility fees.[2] The district court also found that Maine Heights acted to remedy the noise issue by emailing all residents to address the community rules regarding noise ordinances and suggesting that Hayat ask the resident to be quiet and contact law enforcement if necessary. The district court denied Hayat's habitability defense, concluding that the covenant of habitability does not impose liability when the landlord cures or attempts to cure a defect within a reasonable period of time. The district court also denied Hayat's retaliation

[1] There is nothing in the record to show that Hayat ever attempted either of these remedies.
[2] Hayat's balance also included a fee for removal of moldy furniture from the garage. This fee is not an issue on appeal.

defense, concluding that Hayat did not prove the defense by a preponderance of the evidence. The district court entered judgment in favor of Maine Heights and stayed the writ of recovery and notice to vacate for six days. This appeal followed.

D E C I S I O N

I. Covenant of Habitability

Hayat first argues that the district court erred when it denied his habitability defense. Because Maine Heights attempted to cure the alleged defect within a reasonable time by using an effective method, we conclude that the district court did not clearly err in its findings and properly denied Hayat's habitability defense.

Section 504B.161, subdivision 1(a), "establishes several covenants, known as the covenants of habitability, which are implied in every residential lease." *Wise v. Stonebridge Cmtys., LLC*, 927 N.W.2d 772, 775 (Minn. App. 2019). "The covenants provide, in relevant part, that the landlord promises that the common areas will be fit for the tenant's intended use, to keep the premises in reasonable repair during the term of the lease, and to maintain the premises in compliance with applicable health and safety laws." *Id.* at 776 (citing Minn. Stat. § 504B.161, subd. 1(a)(1)-(2), (4)). "The tenant may assert breach of the covenants as a defense to the landlord's unlawful detainer action for nonpayment of rent." *Id.* (quoting *Fritz v. Warthen*, 213 N.W.2d 339, 341 (Minn. 1973)).

This court previously examined the requirement in section 504B.161, subdivision 1(a)(1), that landlords ensure the premises are "fit for the use intended by the parties." *Rush v. Westwood Vill. P'ship*, 887 N.W.2d 701, 708-09 (Minn. App. 2016), *review denied* (Minn. Mar. 14, 2017). We recognized that when a landlord had notice, but took no action,

the tenant can assert that the landlord breached the covenant of habitability as a defense in an eviction action. *Id.* at 709 (citing *Fritz*, 213 N.W.2d at 340; *Delamater v. Foreman*, 239 N.W. 148, 148-49 (Minn. 1931)). We concluded that section 504B.161, subdivision 1(a)(1), does not impose strict liability on landlords and imposes no liability on landlords who cure or attempt to cure a defect within a reasonable time using an effective method:

> The protections in section 504B.161 were devised to "assure adequate and tenantable housing within the state." *Meyer v. Parkin*, 350 N.W.2d 435, 438 (Minn. App. 1984) (quotation omitted), *review denied* (Minn. Sept. 12, 1984). However, the landlord's covenants to keep leased premises in reasonable repair and fit for intended use do not impose strict liability upon a landlord or expand the landlord's liability beyond that previously articulated in caselaw. *Id.* The district court correctly concluded that Minn. Stat. § 504B.161, subd. 1(a)(1), does not impose liability where the landlord cures or attempts to cure a defect within a reasonable time using an effective method of repair, even when the tenant prefers a different repair method or is inconvenienced by the chosen method.

Rush, 887 N.W.2d at 709.

On appeal from an eviction judgment, we determine whether the evidence sustains the findings of fact and whether the findings support the legal conclusions. *Minneapolis Pub. Hous. Auth. v. Greene*, 463 N.W.2d 558, 560 (Minn. App. 1990). "We review the district court's factual findings for clear error." *Rolling Meadows Coop., Inc. v. MacAtee*, 904 N.W.2d 920, 924 (Minn. App. 2017). We review a district court's decision on a purely legal issue de novo. *Rush*, 887 N.W.2d at 706.

In this case, Hayat does not contest the district court's findings that Maine Heights attempted to remedy the noise complaint within a reasonable time. Instead, Hayat argues

that the district court erred because it did not require Maine Heights to take additional actions to remedy the initial noise complaint in June 2019, such as relocating Hayat to a different apartment, posting notices in the common area outside his bedroom, and restricting access to the common area. We are not persuaded for two reasons. First, we disagree that the law obligates Maine Heights to accept and initiate Hayat's preferred remedies. This court has previously acknowledged that there could be more than one method to cure a defect. *Rush*, 887 N.W.2d at 709. A landlord avoids liability by attempting to cure the defect using any effective method, "even when the tenant prefers a different repair method or is inconvenienced by the chosen method." *Id.* Here, Hayat argues that Maine Heights should have accepted his preferred methods of addressing the loud noise, including relocating him to a different apartment and restricting access to the common areas. While these actions might also have been effective, we do not consider them. *Id.* Instead, we consider whether Maine Heights chose an effective response and whether those actions occurred within a reasonable time of the initial complaint. *Id.*

Second, the evidence supports the district court's findings that Maine Heights responded within a reasonable time and used an effective method. Within just a few days of receiving the initial complaint on June 29, 2019, Maine Heights emailed all residents on July 3, 2019, reminding them of the applicable community rules regarding noise. In addition, the record—including Hayat's own testimony—established that Hayat made no further communication to Maine Heights regarding noise levels after Maine Heights sent

the communication to all tenants.[3] We conclude that the district court did not clearly err in finding that the chosen method of response was both effective and timely. While the remedial method Maine Heights chose to use was not Hayat's preferred method, it was sufficient to preclude Hayat's habitability defense.

II. Retaliation

Hayat argues that the district court erred in denying his retaliation defense under Minnesota Statutes sections 504B.441 and 504B.285, subdivision 2. Because Hayat did not complain to any government entity and is not a tenant at will, we conclude that neither retaliation defense applies.

Minnesota statutes establish two retaliation defenses in eviction actions.[4] First, section 504B.441 "prohibits retaliation for a residential tenant's complaint of a violation to a government entity, such as a housing inspector, or commencement of a formal legal proceeding. But it does not provide a defense to retaliation based on an expression of

[3] On October 7, 2019, Hayat made a second noise complaint. Before Maine Heights could take any further action, Hayat emailed a "notice of default" to Maine Heights and Maine Heights terminated Hayat's lease for nonpayment of rent. We do not know whether or how Maine Heights might have responded to the October 7, 2019, email. In addition, more than three months had lapsed since the June 29, 2019, noise complaint. Therefore, we conclude that despite the loud noise reported by Hayat on October 7, 2019, the district court did not clearly err in finding that Maine Heights responded effectively to Hayat's initial complaint.

[4] The supreme court has recognized that "tenants have a common-law defense to landlord evictions in retaliation for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease." *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398, 409 (Minn. 2019). In his reply brief, Hayat argues for the first time that this common-law defense applies. We decline to address this argument because issues not raised or argued in an appellant's principal brief cannot be raised in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010); *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990).

dissatisfaction to the landlord." *Cent. Hous. Assocs.*, 929 N.W.2d at 408. "Section 504B.285, subdivision 2, makes a retaliation defense available 'following the alleged termination of a tenancy by *notice to quit*' if the tenant, in good faith, has sought to secure or enforce the tenant's rights or if the tenant has made a good faith report to a government authority." *Id.* at 402. "We do not defer to the district court's decision on a purely legal issue, and we review the construction of a statute de novo." *Rush*, 887 N.W.2d at 706 (citations omitted).

In this case, nothing in the record suggests that Hayat ever complained to a government entity. Thus, we conclude that section 504B.411 does not apply. As to section 504B.285, subdivision 2, this defense only applies to eviction actions under Minnesota Statutes section 504B.285, subdivision 1(a)(3) (2018), "which addresses the right to remove a 'tenant at will' who is holding over after the landlord issued a 'notice to quit' the tenancy." *Cent. Hous. Assocs., LP v. Olson*, 910 N.W.2d 485, 488-89 (Minn. App. 2018) (quoting Minn. Stat. § 504B.285, subd. 1(a)(3)), *aff'd in part, rev'd in part*, 929 N.W.2d 398 (Minn. 2019).[5] Maine Heights did not bring this eviction action under section 504B.285, subdivision 1(a)(3). In addition, Hayat signed a lease with a fixed ending date, so he is not a tenant at will, as defined by Minnesota Statutes section 504B.001, subdivision 13 (2018). Thus, we conclude that section 504B.285, subdivision 2, is also inapplicable. Because neither statutory defense is available to Hayat, we affirm the district court's denial of Hayat's retaliation defense.

[5] The supreme court did not review this aspect of the court of appeals decision because Olson did not appeal that determination. *See Cent. Hous. Assocs.*, 929 N.W.2d at 402.

III. Remaining Arguments

Hayat also makes four other arguments that were inadequately briefed and not raised before the district court. We decline to address the merits of these arguments.

First, Hayat challenges the validity of the complaint, arguing that his outstanding fees cannot be included in an eviction action. Hayat makes this argument for the first time on appeal. We decline to address this argument because "litigants are bound [on appeal] by the theory or theories, however erroneous or improvident, upon which the action was actually tried below[,]" *Annis v. Annis*, 84 N.W.2d 256, 261 (Minn. 1957), and an appellate court generally will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Second, Hayat argues the district court erred by refusing to allow him to redeem his tenancy. This argument is contrary to the district court's decision because the district court stayed the writ of recovery and permitted Hayat to "redeem his tenancy by paying his balance in full." We decline to consider this matter, however, because Hayat fails to explain how this decision was in error. *See State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address issue not adequately briefed); *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . . [T]he burden of showing error rests upon the one who relies upon it.").

Third, Hayat argues that the district court erred by failing to consider injunctive relief or rent abatement. Hayat cites no authority for this contention. "An assignment of error on mere assertion, unsupported by argument or authority, is forfeited and need not be

considered unless prejudicial error is obvious on mere inspection." *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (citation omitted), *review denied* (Minn. Apr. 26, 2017); *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (stating court of appeals declines to address allegations unsupported by legal analysis or citation). We decline to review this portion of the district court's decision.

Last, Hayat argues that the district court erred when it concluded that the covenant of quiet enjoyment is inapplicable and only pertains to title claims. Hayat fails to cite any binding legal authority to support this argument, fails to explain how the district court erred in this determination, and fails to assert any claim to title or ownership.[6] We decline to reach this issue in the absence of adequate briefing. *See State Dep't of Labor & Indus.*, 558 N.W.2d at 480; *Scheffler*, 890 N.W.2d at 451.

Affirmed.

[6] Hayat cites a series of Texas cases. But decisions from foreign jurisdictions are not binding authority. *Minneapolis Grand, LLC v. Galt Funding LLC*, 791 N.W.2d 549, 556 (Minn. App. 2010); *Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984). "Minnesota courts have discussed the covenant of quiet enjoyment, describing a breach of the covenant as 'when an outstanding superior title is asserted in hostility to the title of the covenantee.'" *Rasmussen v. Hous. & Redevelopment Auth.*, 712 N.W.2d 802, 805 (Minn. App. 2006) (quoting *Efta v. Swanson*, 132 N.W. 335, 336 (Minn. 1911), *review denied* (Minn. July 19, 2006). Hayat develops no argument for us to depart from this established precedent.