STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0244

Fairmont Housing and Redevelopment Authority,
Respondent,

vs.

Tom Winter, et al.,
Appellants.

Filed November 22, 2021
Affirmed
Jesson, Judge

Martin County District Court
File No. 46-CV-21-91

Keri J. Nelson, Abriter PLLC, Minneapolis, Minnesota (for respondent)

Peter J. Hemberger, KyLee Manthei, Southern Minnesota Regional Legal Services, Inc., Mankato, Minnesota (for appellants)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Bratvold, Judge.

SYLLABUS

The eviction moratorium phaseout, 2021 Minn. Laws 1st Spec. Sess. ch. 8, art. 5, at 1381, enacted to replace and phase out the suspension by emergency executive orders of lease terminations and eviction actions during the COVID-19 pandemic, terminated the executive orders but did not extinguish rights and defenses accrued under them.

OPINION

JESSON, Judge

After guests of appellants Thomas Winter and Jean Marti broke a lockbox that housed a master key to every unit in their apartment building, Winter and Marti failed to report the damage for over a month to respondent Fairmont Housing and Redevelopment Authority (the HRA). The HRA gave notice of termination of the lease, and when Winter and Marti failed to vacate after an extension, filed an eviction action. Winter and Marti defended by claiming that the action did not fit into the exceptions to the moratorium on evictions imposed during the COVID-19 pandemic by executive order. The district court ruled in favor of the HRA, and Winter and Marti appealed.

During the appeal process, the legislature passed a session law replacing and phasing out the protections of the executive order and declared the underlying executive orders "null and void" the day following final enactment. We conclude that Winter and Marti's rights and defenses under the applicable executive order were not extinguished by the "null and void" language in the session law. But because the district court properly interpreted the language of the executive order and concluded that Winter and Marti seriously violated a material term of their lease, authorizing its termination, we affirm.

FACTS

Winter and Marti rent an apartment at Friendship Village in Fairmont, which the HRA owns. Teenage guests of Winter and Marti were "goofing around" outside the apartment in October 2020 when they discovered they could open a lockbox that hung on the doorknob of the utility room, next door to Winter and Marti's apartment. The lockbox

held a master key that could gain access to any apartment. Only emergency dispatch had the code to open the lockbox. After the teenage guests left, the lockbox was broken and could no longer close, allowing anyone who looked within to have access to the master key.

A month after the lockbox was broken, Winter called the Fairmont police department and reported the damage. When maintenance came to fix the lockbox, Marti came out and mentioned that it had been broken for a month. The executive director of the HRA then called Winter and Marti and asked what happened.[1] In the call, Marti said that she not only knew the box had been open for a month, but also had personally used the master key to get into her apartment on one occasion. The broken lockbox was replaced with a functioning lockbox after roughly a week.

The HRA gave written notice of termination of Winter and Marti's lease for seriously endangering the health or safety of other residents.[2] After Winter and Marti refused to leave, the HRA filed an eviction action. Both the lockbox incident and subsequent eviction action occurred during a period of time when an executive order that suspended most lease terminations and eviction actions was in place to prevent homelessness during the COVID-19 pandemic. Emerg. Exec. Order No. 20-79, *Modifying the Suspension of Evictions and Writs of Recovery During the COVID-19 Peacetime*

[1] The conversation was recorded and later played at the eviction hearing.

[2] The lease prohibits residents from permitting family or guests "to undertake any hazardous acts or do anything that will damage the property" and requires residents to give the landlord prompt notice of defects in the building. The lease may be terminated for "[a]ctivity that threatens the health, safety, or rights to peaceful enjoyment of the premises by other residents or employees."

Emergency (July 14, 2020) (executive order 20-79). But executive order 20-79 did not completely suspend evictions—it contained limited exceptions, including when a tenant "seriously endangers the safety of other residents" or when a material breach of a lease endangers others on the premises. *Id.* In its notice of lease termination and eviction complaint, the HRA contended that Winter's and Marti's failures to contact management about the broken lockbox fell within these exceptions. Winter and Marti filed a motion to dismiss, arguing that executive order 20-79 precluded the eviction action because the lockbox was fixed and that there was no proof that they or their guests were the ones to damage the lockbox.

At the eviction hearing, the HRA executive director, Winter, and Marti testified about the lockbox. The executive director said that she was unaware of any thefts that occurred during the month the lockbox was broken. Winter explained that their guests did not enter any code into the lockbox before it popped open. Winter said that he contacted the police because he was afraid he would be blamed for the damage to the lockbox. Despite not notifying the HRA or maintenance, Winter did warn several neighbors that the lockbox was open because he was concerned about safety. Both Winter and Marti testified that they were scared and uncomfortable that the lockbox was broken due to the possibility of open access to apartments, so they used their chain lock at night.

The district court entered judgment in favor of the HRA, finding that Winter and Marti seriously endangered the safety of others (noting their own admitted fear), that they materially violated the lease by failing to report the broken lockbox, and that they failed to vacate after termination of the lease.

Winter and Marti appeal.[3] After the filing of this appeal, the legislature passed a session law replacing and phasing out the protections of executive order 20-79 at the end of the June special session. 2021 Minn. Laws 1st Spec. Sess. ch. 8, art. 5, at 1381 (moratorium phaseout). The moratorium phaseout begins by declaring "Notwithstanding Minnesota Statutes, chapter 12, or any other law to the contrary, Executive Orders 20-14, 20-73, and 20-79 are null and void." *Id.*, § 1, at 1381. The legislature also terminated the peacetime emergency in the special session. 2021 Minn. Laws 1st Spec. Sess. ch. 12, art. 2, § 23; *see also* Minn. Stat. § 12.31, subd. 2(b) (2020) (explaining the legislature's power to terminate a peacetime emergency). We requested supplemental briefing, which the parties provided, to address three issues: the effect on this appeal of legislation declaring executive order 20-79 "null and void," the applicability of Minnesota Statutes section 645.35 (2020), and the mootness doctrine.[4]

ISSUES

I. What is the effect on this appeal of legislation declaring executive order 20-79 null and void as of June 30, 2021?

II. Did the district court err in interpreting executive order 20-79?

III. Did the district court fail to conclude that Winter and Marti "seriously" violated a material term of their lease?

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[3] The district court granted Winter and Marti a stay pending appeal. *See* Minn. Stat. § 504B.371, subd. 5 (2020) (stating that, if a party appeals, the district court shall grant a stay at appealing party's request).

[4] While we asked these three questions for supplemental briefing, we do not need to reach the mootness-doctrine issue.

ANALYSIS

We begin by addressing the history and language of the executive orders suspending eviction actions and the subsequent moratorium phaseout. The first executive order suspending most eviction actions and lease terminations was signed in March 2020, days after COVID-19 was known to be in Minnesota. Emerg. Exec. Order No. 20-14, *Suspending Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency* (Mar. 23, 2020) (executive order 20-14). This first eviction-related executive order suspended eviction actions and lease terminations except when a tenant seriously endangers the safety of other residents or violates Minnesota Statutes section 504B.171, subdivision 1 (2020).[5] *Id.* In June, the governor signed a new executive order that amended executive order 20-14. Emerg. Exec. Order No. 20-73, *Clarifying Executive Order 20-14 Suspending Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency* (June 5, 2020). The "clarification" added an exception allowing termination or eviction actions "where the tenant seriously endangers the safety of others on the premises, including the common area and the curtilage of the premises, if the serious endangerment of others who are not residents is a material violation of the lease." *Id.* A month later, the governor signed a third eviction-related executive order, executive order 20-79, that in part stated:

> The ability of property owners, mortgage holders, or other persons entitled to recover residential premises to file an

[5] This subdivision provides that, as part of every residential lease, a landlord and tenant agree to not unlawfully allow controlled substances, prostitution, the unlawful use or possession of a firearm, or stolen property in the premises or common areas of a rented building. Minn. Stat. § 508B.171, subd. 1.

> eviction action on the grounds that a residential tenant remains in the property after a notice of termination of lease, after a notice of nonrenewal of a lease, after a material violation of a lease . . . is suspended . . . . This suspension does not include eviction actions where the tenant:
>
> a. *Seriously endangers the safety of other residents*; . . . [or]
>
> d. Materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises:
>
> i. *Seriously endangers the safety of others*; or
>
> ii. Significantly damages property.

(Emphasis added.)

It is this third and final eviction-related order—executive order 20-79—that is central here. The moratorium phaseout begins by stating that executive orders 20-14, 20-73, and 20-79, notwithstanding any other law to the contrary, are "null and void." 2021 Minn. Laws 1st Spec. Sess. ch. 8, art. 5, § 1, at 1381. The effective date of section 1 is June 30, 2021—the day following final enactment. The moratorium phaseout then addresses two circumstances implicated by executive order 20-79: termination or nonrenewal of residential leases and filing of eviction actions. With regard to eviction actions, the moratorium phaseout prohibits them except:

1) "Where the tenant seriously endangers the safety of others or significantly damages property";
2) For violations of Minnesota Statutes section 504B.171, subdivision 1;
3) Beginning 15 days after enactment, for material lease violations *other than* the nonpayment of rent; and

4) Beginning 75 days after enactment, for those with outstanding rent who are ineligible for emergency rental assistance.[6]

Id. The protections in the moratorium phaseout end 105 days after enactment, except for those tenants with pending applications for rent relief. *Id.*, § 2(e), at 1383. All lease termination and eviction protections are lifted as of June 1, 2022. *Id.*, § 4, at 1383.

With this backdrop in mind, we turn to the issues in this case, whether: the "null and void" language extinguishes rights accrued under executive order 20-79, the exceptions under executive order 20-79 require a current endangerment, and the district court properly concluded that Winter and Marti seriously violated a material term of their lease.

I. The language "null and void" of the moratorium phaseout does not eviscerate rights accrued under executive order 20-79.

First, we consider whether the language "null and void" in the moratorium phaseout impacts Winter and Marti's eviction appeal challenging the district court's interpretation and application of executive order 20-79.

We review questions of statutory interpretation de novo. *Roberts v. State*, 945 N.W.2d 850, 853 (Minn. 2020). The goal of statutory interpretation is to effectuate the intent of the legislature. *Id.* The first step in statutory interpretation is to determine whether the statute's language, on its face, is ambiguous. *Id.* A statute is ambiguous only if it is subject to "more than one reasonable interpretation." *Id.* In interpreting statutes, we

[6] Emergency rental assistance programs have household size and other financial limitations for eligibility. *See* RentHelpMN, Overview of RentHelpMN Program https://renthelpmn.org (detailing the COVID-19 emergency rental-assistance program guide) (last visited Oct. 18, 2021). Leases of those who are ineligible for emergency rental assistance may be terminated 45 days after enactment. *Id.*

examine words in light of their context. *Tapia v. Leslie*, 950 N.W.2d 59, 62 (Minn. 2020). We may also apply the canons of statutory construction to resolve an ambiguity. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). And we may look to legislative history to determine the meaning of an ambiguous statute. Minn. Stat. § 645.16 (2020). But legislative history is relevant only if the statute is ambiguous. *State v. Kirby*, 899 N.W.2d 485, 492 (Minn. 2017).

We begin by analyzing whether the "null and void" language in the moratorium phaseout is ambiguous. Winter and Marti argue that "null and void" means that the eviction moratorium executive orders are only voided *as of the effective date*. This would mean that the moratorium phaseout would not affect lease terminations or eviction proceedings started before June 30. The HRA interprets "null and void" to mean that the eviction-related executive orders are an *absolute nullity*. This interpretation likens the executive orders to a legal instrument which is void ab initio and cannot be enforced. Both parties assert that their respective interpretations are based on the plain language of the statute.

There is a long history of caselaw involving contracts, marriages, and other agreements being held "null and void," in which courts have determined the legal instrument was unenforceable. *See, e.g.*, *Dodge v. Hollinshead*, 6 Minn. 25, 39, 6 Gil. 1, 12-13 (1861) (concluding that a mortgage was null and void without legal effect); *see also Rochon Corp. v. City of St. Paul*, 814 N.W.2d 365, 369 (Minn. 2012) (concluding that construction contract was null and void). But none of these cases address the circumstance here—legislation declaring an executive order passed under emergency powers "null and

void."[7] Because the parties' interpretations of the phrase "null and void" in the limited context of the moratorium phaseout are reasonable, we conclude that the phrase is ambiguous.[8] Adding to the ambiguity is the fact that the eviction-related executive orders are the only ones ended explicitly by the legislature. The other COVID-19 executive orders implicitly ended when the legislature passed, and the governor signed, the act ending the peacetime emergency.[9] 2021 Minn. Laws 1st Spec. Sess. ch. 12, art. 2, § 23, at 1651.

Because the language "null and void" is ambiguous, we turn to reviewing the context of the legislation, canons of statutory construction, and the legislative history to discern the meaning of the phrase.

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[7] The parties did not raise, so we do not address, whether the legislative branch has the authority to declare laws "void." We observe the Minnesota Emergency Management Act of 1996 (the act) describes a way to end a peacetime emergency. Minn. Stat. §§ 12.01-.61 (2020). The act states that "[b]y majority vote of each house of the legislature, the legislature may terminate a peacetime emergency extending beyond 30 days." Minn. Stat. § 12.31, subd. 2(b). The executive council, which may renew an emergency declaration by order every 30 days, can also expressly terminate an emergency declaration or let it lapse by not continuing it after 30 days. Minn. Stat. § 12.31, subd. 2(a).

[8] While the HRA's reference to a legal nullity is the basis of a reasonable interpretation—negating a phrase that can be construed according to its plain language—legislation declaring an executive order null and void is not the same as a court declaring an ordinance or a contract null and void. And the HRA points to no other executive order or law which has been declared null and void by the legislature. The only time of which we are aware that the legislature came close to doing so was in in *Fleck v. Spanis*, a case in which the Minnesota Supreme Court was asked if the legislature deeming a state law null and void "render[ed] any pending matters totally without effect." 251 N.W.2d 334, 340 (Minn. 1977). But *Fleck* is factually distinct, as it involved the state legislature passing a law that explained the principles of its anticipated preemption by pending federal legislation—not like here, where state legislation declared an order by a different branch of state government void. As a result, while other usages of the phrase "null and void" create an ambiguity, they do not—in and of themselves—provide a plain-language definition in this context.

[9] We are not reviewing the applicability or legal force of any other executive order enacted under the governor's peacetime emergency authority.

Rather than a myopic focus on the three words "null and void," we look to the overall context of the moratorium phaseout to inform our interpretation. *See Roberts*, 945 N.W.2d at 850 (explaining that we look to statutes as a whole). While eventually the moratorium phaseout will be complete, there are tenant protections matching those in the eviction-related executive orders that last for weeks and in some cases months from the date of enactment. 2021 Minn. Laws 1st Spec. Sess. ch. 8, art. 5, § 2(b)(2), at 1382. The first phase of the moratorium phaseout, for example, includes nearly identical protections, rights, and exceptions to those set forth in executive order 20-79. Those rights then, over time, scale back as federal programs for rental assistance become available and housing law practices return to pre-pandemic status. In short, executive order 20-79 is the starting line for the moratorium phaseout. Given this context, it is difficult to read the phrase "null and void" to mean that executive order 20-79's protections are an absolute nullity.

With this context in mind, we turn to the rules of statutory construction. One such rule is the general savings clause. *State v. Chicago Great W. Ry.*, 25 N.W.2d 294, 297 (Minn. 1946). The savings clause statute states, in part, that "[t]he repeal of any law *shall not affect any right accrued*, any duty imposed, any penalty incurred, or any proceeding commenced, under or by virtue of the law repealed." Minn. Stat. § 645.35 (emphasis added).[10] When applying the general savings clause as a rule of statutory construction to a new law replacing another, the supreme court explained that "unless a contrary legislative

[10] Executive orders have the "full force and effect of law," and we have concluded that they are subject to the principles of statutory interpretation. Minn. Stat. § 12.32; *In re Murack*, 957 N.W.2d 124, 127–28 (Minn. App. 2021).

intent plainly appears from the repealing statute or amendment," the rights retained under the repealed law remain. *Chicago Great W. Ry.*, 25 N.W.2d at 297 (quotation omitted). And as we concluded above, the phrase "null and void" is ambiguous. It does not plainly present a contrary legislative intent to the rule of construction "saving" accrued rights. Thus, despite certain protections in the moratorium phaseout only lasting for the first 15 days, this portion of the session law is indistinguishable from executive order 20-79, meaning the legislature could not have intended for the rights under that order to be extinguished immediately.[11]

Legislative history bolsters the view that the moratorium phaseout was meant to extend protections, not eviscerate them. Described as an "off-ramp" for the executive order's broad protections, the goal was to keep people housed during the global COVID-19 pandemic and to give tenants enough time to apply for rental assistance to prevent a future eviction. *See* Mike Cook, *Housing Panel Reviews Agreement on Ending State's Eviction Moratorium*, Session Daily (June 21, 2021), https://www.house.leg.state.mn.us/SessionDaily/Story/15986 (recounting statement by co-author State Representative Michael Howard that "Minnesotans who have fallen behind on

[11] The HRA argues that the general savings statute only applies to a law "repealed," not to those declared "null and void." But we do not need to reach this issue because we are only using the general savings statute as a tool of statutory construction, and not concluding that section 645.35 applies to executive orders. Usually when the legislature replaces a statute that action is described as a "repeal." Here, the legislature is effectively repealing a law it did not enact. But considering that the executive orders were replaced with equivalent language under legislative power instead of executive authority delegated by the legislature, termination is a more appropriate way to frame the moratorium phaseout's effect on executive order 20-79.

their rent during the pandemic through no fault of their own will have strong protections in law as we prevent evictions while ensuring rental assistance flows to landlords."); *see also* Minn. Senate Counsel, Research, and Fiscal Analysis, *S.F. No. 16–Housing Omnibus Budget Bill*, 1st Spec. Sess. (June 22, 2021), https://www.senate.mn/departments/scr/billsumm/2021-ss1/SF16.pdf) (describing the beginning of the moratorium phaseout as a "transition period" from the eviction-related executive orders).

Finally, when interpreting the phrase "null and void," we are mindful of the due-process concerns attendant to voiding all accrued rights under executive order 20-79. *In re Minn. Dep't of Com. for Comm'n Action Against AT & T*, 759 N.W.2d 242, 251 (Minn. App. 2009) (explaining the different due-process implications of a repealed law and an expired law), *rev. denied* (Minn. Apr. 21, 2009). The HRA argues that because there is an expiration date in the moratorium phaseout, tenants have sufficient notice and there are no due-process concerns with their interpretation. While it is true that there are no due-process concerns when a law "has expired by its own terms," executive order 20-79—the legal authority that Winter and Marti are in part relying on for a defense—does not have a built-in expiration date. *Id.* A party relying on the protections and exceptions in the eviction-related executive orders would not have proper notice that those protections were ending until the date of the enactment—and could thereby be denied one chief component of due process.

Being mindful of the due-process implications of voiding accrued rights, we reiterate that the language "null and void" is ambiguous. And considering the context of

the moratorium phaseout extending—not immediately ending—protections, the spirit of the general savings clause, and the legislative history referencing the moratorium phaseout as a "transition period," the legislative intent behind the moratorium phaseout was to temporarily extend the protections acquired under the eviction-related executive orders.

Still, the HRA contends that this interpretation is in error, because by interpreting the moratorium phaseout as extending the protections under the eviction-related executive orders, we are giving Winter and Marti perpetual rights. We are not. The lockbox incident, the eviction action, and the eviction judgment all occurred before the enactment of the moratorium phaseout. Our decision does not provide sweeping protection from all evictions for perpetuity—instead we are narrowly concluding that the rights accrued while executive order 20-79 was in effect did not evaporate when our state's legal mechanism for eviction protections transitioned from executive order 20-79 to the moratorium phaseout.

In sum, the phrase "null and void" in the context of the moratorium phaseout does not extinguish rights accrued by landlords or tenants from the eviction-related executive orders before the enactment date. Instead, the rights accrued by tenants and landlords before the executive orders were replaced remain.

II. Executive order 20-79 does not require a current endangerment.

Because we conclude that any rights accrued under executive order 20-79 were not extinguished by the moratorium phaseout, we turn to examine whether the district court erred in permitting the HRA's eviction action to proceed despite the executive order.

Winter and Marti contend that the executive order prohibits eviction proceedings where neither *current* endangerment nor another exception applies.

This presents yet another issue of interpretation, but here one of interpretation of an executive order, rather than a session law. Our approach, however, remains the same. We apply principles of statutory interpretation to the interpretation of executive orders issued under the authority of the Minnesota Emergency Management Act of 1996. *Murack*, 957 N.W.2d at 128. And recall that when the language of a rule is clear, this court will enforce that plain language without looking further. *Engfer v. Gen. Dynamics Advanced Info. Sys., Inc.*, 869 N.W.2d 295, 300 (Minn. 2015); Minn. Stat. § 645.16. Words and phrases should be construed "according to rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08(1) (2020). Finally, we review these interpretation issues de novo. *Pepper v. State Farm Mut. Auto. Ins. Co.*, 813 N.W.2d 921, 925 (Minn. 2012).

With these standards in mind, we turn to the phrase in question. Executive order 20-79 states in relevant part that eviction actions are suspended unless a tenant "seriously endangers the safety of other residents." Winter and Marti argue that because "endangers" is present tense, we should read the executive order to require a *current* endangerment.[12] This interpretation would mean the endangerment to the other tenants was over once the lockbox was replaced, which preceded the filing of the complaint.[13] The HRA contends

[12] In grammatical terms, what Winter and Marti describe is the "progressive present tense." *See The Chicago Manual of Style* § 5.135 (Univ. of Chicago Press ed., 17th ed. 2017).

[13] To further this interpretation, Winter and Marti also cite to a special term order of this court that interpreted a phrase in the first eviction-related executive order, which was the

that "endangers" is in the present indefinite tense (also described as the simple present tense), which is a verb that does not require an ongoing act, meaning once the lockbox was damaged and Winter and Marti failed to report it, an eviction action was proper regardless of when or if it was fixed. *See The Chicago Manual of Style* § 5.129 (Univ. of Chicago Press ed., 17th ed. 2017).

Our precedent informs the answer to this grammatical issue. In cases involving the definition of tenses, we have explained that present-tense verbs in statutes do not require ongoing behavior.[14] *See, e.g.*, *In re Civil Commitment of Breault*, 942 N.W.2d 368, 377 (Minn. App. 2020) (rejecting the argument that the use of a present-tense verb in a statute requires current behavior). Moreover, despite being written in the present tense, executive order 20-79 does not use the words "current" or "currently" to modify the endangerment. Because executive order 20-79 omits those words, we will not read them into an unambiguous rule under the guise of interpretation. *See 328 Barry Ave., LLC v. Nolan Props. Grp., LLC*, 871 N.W.2d 745, 750 (Minn. 2015) (applying this principle to the

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same as in executive order 20-79. *See In re Olson Prop. Inv.*, No. A20-1073 (Minn. App. Sept. 1, 2020) (order). Specifically, Winter and Marti quote the phrase stating that "cases where the tenant seriously endangers the safety of other residents . . . [be construed] to contemplate circumstances in which physical safety *is at current risk*, warranting expedited processing." *Id.* But not only is this special-term order nonprecedential, our conclusion in that case that there was no "current risk" requiring mandamus relief for the landlord was based on the landlord's decision to await the natural expiration of the lease before seeking to evict based on serious endangerment. Here, in contrast, the HRA took immediate action to terminate the lease and evict when it learned that Winter and Marti had failed to report the broken lockbox, damage which allowed easy access to all units for an extended time.

[14] This is also in line with the general principle that a landlord's right to evict "is complete upon a tenant's violation of a lease condition." *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 556 (Minn. App. 1985), *rev. denied* (Minn. Feb. 19, 1986).

interpretation of statutes). Rather, reading the executive order through the lens of commonly accepted rules of grammar, the exception to the eviction moratorium was triggered when the serious endangerment occurred. Accordingly, the phrase "seriously endangers" is plain and does not require a current or ongoing endangerment.

Therefore, because Winter and Marti's interpretation of executive order 20-79 is unavailing and does not require that the lockbox still be inoperable at the time the eviction complaint was filed, the district court properly concluded that the exception from the executive order allowed for the HRA's eviction action to proceed.

III. The district court properly concluded that Winter and Marti seriously violated a material term of their lease.

Having concluded that the district court properly allowed the eviction action to proceed, we next consider whether the district court properly ruled in favor of the HRA on the merits of its eviction complaint. The complaint alleged that Winter and Marti failed to vacate after termination of the lease. Winter and Marti defended on the ground that termination of the lease was unauthorized. On appeal, they argue that the district court failed to conclude that they seriously or repeatedly violated a material term of their lease. The parties agree that serious or repeated violation of a material term is the correct standard for termination, although Winter and Marti point to federal regulations to support their argument, while the HRA references termination provisions in the lease itself. Determining the proper standard to be applied is a question of law we review de novo. *Ayers v. Ayers*, 508 N.W.2d 515, 518 (Minn. 1993). Because Friendship Village is a public housing building, Winter and Marti rely on both federal housing law and their lease

provisions. Federal housing law provides that a public housing agency may not terminate a tenancy except for "serious or repeated violations of the terms or conditions of the lease or for other good cause" or "serious or repeated violations of material terms of the lease." 42 U.S.C. §§ 1437d(l)(5) (2018); 24 C.F.R. § 966.4(l)(2)(i) (2020). The HRA argues that Winter and Marti violated three provisions of the lease requiring that they (1) agree to give the landlord "prompt notice" of any defects; (2) abide by the "necessary and reasonable rules" for the benefit and well-being of other residents; and (3) refrain from "any activity that threatens the healthy, safety, or rights to peaceful enjoyment" by other residents.

Here, the district court concluded that "Winter and Marti seriously endangered the lives of themselves and other residents when they knew that their guests had tampered with the lockbox . . . and they failed to notify the landlord for a month." The district court subsequently said that "when Winter and Marti failed to notify Fairmont HRA of the broken lockbox, it was a material violation of the lease agreement that endangered the safety of the residents." Because the district court noted a serious violation of a material term of the lease, after concluding that a "serious endangerment" existed, we are satisfied that the district court concluded that Winter and Marti seriously violated a material term of their lease.

We are not persuaded otherwise by Winter and Marti's assertion that because the district court did not specifically conclude that there was a "serious or repeated violation of a material term of the lease," in the same phrase, the district court applied the wrong standard. This is not reflected in the record. While the district court did not use the precise language in the exact order as the federal housing regulations or the lease, it stated several

times that there was a "serious endangerment," that Winter and Marti "seriously endangered" their fellow residents, and that there was a "material violation of the lease agreement that endangered the safety of the residents." The language in the district court's conclusions, collectively, satisfies the standard for lease termination.[15]

While we acknowledge that reasonable minds might differ as to whether Winter and Marti's failure to notify their landlord was a serious violation of their lease, the district court did consider and rule based on the evidence presented and the language of the lease. And it was the district court that heard the witnesses, judged their credibility, and, in doing so, weighed the evidence. We will not reweigh that evidence here. *See Landmark Cmty. Bank v. Klingelhutz*, 927 N.W.2d 748, 755 (Minn. App. 2019) (stating that we defer to the district court's credibility determinations and do not reweigh evidence).

Accordingly, because the district court satisfied the correct standard in its decision, it properly concluded that Winter and Marti materially violated their lease by seriously endangering the other tenants in Friendship Village.

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[15] Winter and Marti also contend that they did not "seriously" violate their lease. They cite *Wilhite v. Scott Cnty. Hous. & Redevelopment Auth.* to contend that a serious violation is limited to a deprivation "of either a tangible property interest or a real, significant, economic benefit." 759 N.W.2d 252, 256 (Minn. App. 2009). But *Wilhite* involved the termination of program assistance and interpreted what a "serious violation" constituted in light of the requirement that a housing authority "must terminate . . . for a family evicted from housing assisted under the program for serious violation of the lease." *Id.* (interpreting 24 C.F.R. § 982.552(b)(2) (2020)). While here the eviction action was brought in part due to the failure to vacate the premises, the termination of the lease was due to the serious endangerment caused by not reporting the damaged lockbox. This is not a similar situation to *Wilhite*, and the narrow interpretation of "serious" from *Wilhite* should not be extended here.

DECISION

Winter and Marti's rights and defenses under executive order 20-79 were not eviscerated by the enactment of legislation replacing the executive order, but the district court properly interpreted the language of executive order 20-79 to allow the eviction action to proceed. The district court properly concluded that Winter and Marti seriously violated a material term of their lease, and therefore the HRA was authorized to terminate their lease. Because it is undisputed that Winter and Marti failed to vacate after termination of the lease, we affirm the eviction judgment.

Affirmed.