This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0884

Little Earth of United Tribes Housing Corp,
Respondent,

vs.

Bonita LittleGhost,
Appellant.

Filed March 14, 2022
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-CV-HC-19-5884

Douglass E. Turner, Christopher T. Kalla, Hanbery & Turner P.A., Minneapolis, Minnesota (for respondent)

Elizabeth F. Sauer, Central Minnesota Legal Services, Minneapolis, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Smith, Tracy M., Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant-tenant challenges the district court's order and judgment evicting her from her apartment. Tenant argues that respondent-landlord's acceptance of rent legally waives past lease breaches and the district court erred in amending the complaint to conform to the evidence presented at trial. Because the district court's finding that the

landlord did not intend to waive tenant's lease breaches by accepting rent was not clearly erroneous, and the district court was within its discretion to amend the complaint to conform to the evidence presented at trial, we affirm.

FACTS

Appellant-tenant Bonita LittleGhost leased an apartment from respondent-landlord Little Earth of United Tribes Housing Corp. On December 18, 2019, Little Earth gave LittleGhost written notice that it would terminate her lease on December 28 for (1) allowing her guests to "engage in illegal activity, including drug related activity, on or near the said premises," and (2) "repeated minor violations of the lease that . . . adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment to the leased premises and related project facilities." Little Earth supplemented this notice of lease termination on December 26, advising LittleGhost that "[a]cceptance of any payment from you or submitted by someone else on your behalf will not waive the right to evict you for past or existing violations of any term of the lease or other document governing your lease or tenancy." The supplemental notice of lease termination incorporated notices of lease violations that LittleGhost had received over the previous two years.

Little Earth filed an eviction complaint on December 30, 2019, and on January 3, 2020, served process on LittleGhost. LittleGhost submitted a $190 payment on December 31, 2019, which Little Earth accepted.

A referee conducted a trial on three days in late January and early February 2020. On March 2, 2020, the referee issued a recommended order evicting LittleGhost, which was accepted by the district court. Following LittleGhost's request and pursuant to

general-practice rule 611, a district court judge reviewed the order and issued findings of fact and conclusions of law affirming the district court's March 2 order and judgment.[1] This appeal follows.

DECISION

I. The district court's finding that Little Earth did not, by accepting rent payment, waive past breaches of the lease is not clearly erroneous.

In an appeal from an eviction action, "generally, the only issue for determination is whether the facts alleged in the complaint are true. Therefore, our standard of review is whether the district court's findings of fact are clearly erroneous." *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003) (citation omitted). "Waiver generally is a question of fact, and it is rarely to be inferred as a matter of law." *Valspar Refinish, Inc. v. Gaylord's Inc.*, 764 N.W.2d 359, 367 (Minn. 2009) (quoting *Farnum v. Peterson-Biddick Co.*, 234 N.W. 646, 647 (Minn. 1931); *see also Pollard v. Southdale Gardens of Edina Condo. Ass'n*, 698 N.W.2d 449, 453 (Minn. App. 2005) ("Waiver is ordinarily a question of fact for a jury, unless only one inference may be drawn from the facts."). "The acceptance of rent alone does not necessarily manifest any intent to waive the notice of termination." *Minneapolis Cmty. Dev. Agency v. Powell*, 352 N.W.2d 532, 534 (Minn. App. 1984).

The district court recognized that acceptance of rent generally acts as a waiver of past breaches but that, as stated in *Powell*, acceptance of rent does not constitute waiver

[1] The district court's order affirming the March 2, 2020, order was issued on June 29, 2021. LittleGhost timely appealed, and the reason for the delay between the referee's order and district court affirmance is not clear in this record.

"when a landlord's conduct has not manifested an intent to waive the notice of eviction." It found that "the express repudiation of waiver in the Supplemental Notice clearly manifests [Little Earth]'s intent not to waive the termination notice by accepting rent."

LittleGhost argues, based upon the "general principle" pronounced in *Kenny v. Seu Si Lun*, 112 N.W. 220, 221 (Minn. 1907), that the district court erred by considering whether Little Earth intended to waive known breaches. *Kenny* announced that "money tendered by the tenant and received by the landlord as rent is paid as rent and operates to bar the landlord from asserting against the tenant past causes of forfeiture under the terms of the lease which were known to him at the time of such payment." *Id.* For the reasons explained below, we are not persuaded.

In *Kenny*, the supreme court ruled that the landlord was "precluded from asserting his right to entry against his tenant" because the landlord's "own receipt shows that the amount paid was received . . . 'for rent of store.'" *Id.* at 222. The landlord had cancelled the lease and demanded that the tenant vacate the premises at the end of the month. *Id.* at 220. When the tenant did not vacate, the landlord "demanded and collected the monthly rent . . . and signed a receipt in that sum for rent of the premises." *Id.* The sole question for the court, therefore, was whether acceptance of rent, with no other indication of intent, waived past breaches.

Unlike in *Kenny*, Little Earth notified LittleGhost that acceptance of rent would not waive past breaches. Therefore, *Kenny* is not determinative. Because the record shows that Little Earth notified LittleGhost before the December 31 payment that "[a]cceptance of any payment from you or submitted by someone else on your behalf will not waive the

right to evict you for past or existing violations of any term of the lease or other document governing your lease or tenancy," the district court did not clearly err by finding that Little Earth did not intend to waive the breaches by accepting rent.

II. The district court acted within its discretion by amending the complaint to conform to the evidence presented during the trial.

"Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion." *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003). "Such amendment of the pleadings . . . may be necessary to cause them to conform to the evidence." Minn. R. Civ. P. 15.02. If a party objects to the evidence "at the trial on the ground that it is not within the issues raised by the pleadings," the district court should allow the pleadings to be amended only if "the objecting party fails to satisfy the court that admission of such evidence would prejudice maintenance of the action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence." *Id.*

On the first day of trial, Little Earth elicited testimony from the property manager that LittleGhost's son lived with her, which is a violation of the lease. During her testimony, LittleGhost denied that her son was living with her. In response to LittleGhost's denial, Little Earth sought to present rebuttal video evidence revealing that LittleGhost's son used keys to access her apartment without her present. LittleGhost objected that the evidence was not legally relevant. The district court continued the trial to allow her to view the videos and prepare a response.

Once the trial resumed, LittleGhost stipulated that the videos show that her son used a set of keys to enter her apartment multiple times in December 2019 and January 2020, and that her son did, in fact, use a set of keys to access her apartment on those occasions. However, LittleGhost maintained her relevance objection to the receipt of the evidence.

The district court, in its written order granting the eviction, concluded the video evidence was relevant to an ongoing lease violation by indicating LittleGhost allowed her son to reside in her apartment. The district court therefore deemed the pleadings amended to conform to the video evidence. Our review of the record informs us that this conclusion was properly within the district court's discretion.

LittleGhost was provided additional time to review the evidence and had the opportunity, if she had so desired, to respond to the objected-to evidence. Therefore, LittleGhost has not shown that she was prejudiced. The district court, therefore, was within its discretion to deem the complaint amended.

LittleGhost alternatively argues that rule 15.02 does not apply in housing-court matters because it conflicts with housing-court rules and statute and its application violated her due-process rights. We disagree.

The rules of civil procedure apply to eviction proceedings where not inconsistent with statute or housing-court rules. Minn. Stat. § 504B.335(c) (2020); Minn. R. Gen. Prac. 601. Minnesota statute and the rules for housing-court proceedings in Hennepin and Ramsey counties require an eviction complaint to state "the facts which authorize recovery," Minn. Stat. § 504B.321, subd. 1(a) (2020), Minn. R. Gen. Prac. 604(a)(4), and federal regulations require a notice of lease termination to state "the reasons for the

landlord's action with enough specificity so as to enable the tenant to prepare a defense." 24 C.F.R. § 247.4(a)(2) (2021); *see Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889, 895 (Minn. App. 1986) (applying federal regulations to eviction from federally subsidized housing project).

Due process in housing court requires "(1) adequate notice to the tenant; (2) the tenant's right to be represented by counsel; (3) an opportunity for the tenant to refute . . . evidence including the right to confront and cross-examine witnesses and the right to raise affirmative legal or equitable defenses; and (4) a decision on the merits." *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 703 (Minn. 1999). LittleGhost was represented by counsel at all relevant hearings, had notice of the videos, and had the opportunity to refute the evidence. Just as she was not prejudiced by amendment of the pleadings, LittleGhost's due-process rights were not violated by amendment of the pleadings. Amendment of the pleadings did not conflict with housing-court rules or statute and the district court acted within its discretion to amend the complaint pursuant to rule 15.02.

Affirmed.