

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A21-1062**

Kera Quinn,  
Respondent,

vs.

LMC NE Minneapolis Holdings, LLC, et al.,  
Appellants.

**Filed April 4, 2022  
Affirmed  
Segal, Chief Judge**

Hennepin County District Court  
File No. 27-CV-HC-21-227

Mary Kaczorek, Mid-Minnesota Legal Aid, Minneapolis, Minnesota (for respondent)

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

Ann McFarland, Bethany Assell, St. Paul, Minnesota (for amici curiae Standpoint and  
Violence Free Minnesota)

Samuel Spaid, Bloomington, Minnesota (for amicus curiae HOME Line)

James W. Poradek, St. Paul, Minnesota (for amicus curiae Housing Justice Center)

Considered and decided by Segal, Chief Judge; Reilly, Judge; and Smith, Tracy M.,  
Judge.

**SYLLABUS**

A person residing with a party to a residential lease can be an “other regular  
occupant,” and thus a “residential tenant” under Minn. Stat. § 504B.001, subd. 12 (2020),  
eligible to petition to recover possession of the dwelling unit under Minn. Stat. § 504B.375

(2020). The determination of whether a person is an “other regular occupant” depends on the totality of the circumstances of the person’s occupancy, including but not limited to such factors as the duration, continuity, and nature of the occupancy, the existence and terms of a lease or any other agreement related to the occupancy, and whether the landlord knew of or reasonably should have known of the person’s occupancy.

## **OPINION**

**SEGAL**, Chief Judge

In this appeal, appellant-landlords LMC NE Minneapolis Holdings, LLC and LMC Living, LLC (collectively, LMC) challenge the district court’s order granting the petition of respondent Kera Quinn, brought under Minn. Stat. § 504B.375, for recovery of possession of an apartment. An action for recovery of possession under Minn. Stat. § 504B.375 offers a “summary remedy for residential tenants unlawfully excluded or removed from rental property.” Minn. Stat. § 504B.375, subd. 5. “Residential tenant” in the landlord-tenant statute, Minn. Stat. §§ 504B.001-.471 (2020), is defined to include not only a person who occupies a dwelling under a lease or contract, but “all other regular occupants of that dwelling unit.” Minn. Stat. § 504B.001, subd. 12.

LMC argues that Quinn, who was not listed on the lease, was not an “other regular occupant” and had no right to seek recovery of possession of the apartment. LMC also challenges a number of the district court’s findings of fact. We affirm the district court’s decision because we discern no clear error in the findings of fact and, based on the totality of the circumstances, the district court did not err in determining that Quinn was an “other regular occupant” and therefore a “residential tenant” under the landlord-tenant statute.

## FACTS

LMC owns and operates the 280-unit Minneapolis apartment building called Nordhaus. Sometime in 2018, Quinn moved into a Nordhaus apartment leased by J.S., her partner. Shortly after Quinn moved in, her romantic relationship with J.S. ended, but they continued to live together in the apartment as roommates. J.S.'s lease with LMC provided: "No one else may occupy the apartment. Persons not listed [on the lease] must not stay in the apartment for more than 14 consecutive days without [LMC's] prior written consent, and no more than twice that many days in any one month." Quinn was not listed on the lease and never obtained written consent from LMC to stay in the apartment. She also never made any payments directly to LMC. Quinn testified that she paid \$400 per month to J.S. as rent under an oral agreement between the two of them.

The apartment was Quinn's sole residence. While living at the building, Quinn walked regularly past the concierge desk staffed by an LMC employee, interacted with that employee, and used the common workspace in the building to work and meet with clients. She also received mail and packages in her name, which she retrieved from the building's common areas. J.S. and Quinn shared a single key fob. Quinn used the fob regularly to come and go from the apartment and she listed the building address as her residence on her driver's license.

J.S.'s lease was set to expire on April 7, 2021. In late 2020, J.S. began moving her things out of the apartment and spending less time there. LMC's community manager testified that, on December 11, 2020, she sent J.S. an email stating: "We were . . . notified of another person staying at the home, who appears to still be here and utilizing your key

fob.” The community manager also testified that she spoke with J.S. by phone and that J.S. told her that Quinn had been staying with J.S. The community manager testified that she then sent a rental application for Quinn to complete. While it is not clear whether Quinn was aware of management’s request, it is undisputed that no application was submitted.

In February 2021, J.S. gave LMC notice of her intent to vacate the apartment when the lease expired. Quinn continued to live at, and some of J.S.’s possessions remained in, the apartment. Quinn testified that she was unaware that J.S. had notified LMC that J.S. was going to move out and not renew the lease.

A member of the building’s maintenance staff came to the apartment shortly after the lease expired and found Quinn living there. The maintenance person advised Quinn that the lease had expired. LMC then deactivated the electronic key fob to the apartment. Without a functioning key fob, Quinn stayed inside the apartment to avoid being locked out.

On April 19, 2021, Quinn petitioned for emergency relief under Minn. Stat. § 504B.375. LMC responded to the petition asserting eviction as a counterclaim. After trial, a housing-court referee recommended that the district court conclude that Quinn was an “other regular occupant” of the apartment, and thus a “residential tenant” entitled to relief under Minn. Stat. § 504B.375. The referee further recommended ordering LMC to reactivate the key fob and to pay reasonable attorney fees and a \$500 penalty. The district court confirmed the referee’s recommendation.

LMC requested review by a district court judge under Minn. Stat. § 484.70, subd. 7(d) (2020), and Minn. R. Gen. Prac. 611. The district court judge affirmed the determination that Quinn was a “residential tenant” but reversed the penalty and award of attorney fees. LMC appeals.

### **ISSUE**

Did the district court err by concluding that Quinn was a “residential tenant” entitled to relief under Minn. Stat. § 504B.375?

### **ANALYSIS**

On appeal, LMC argues that the district court erred in concluding that Quinn qualified as an “other regular occupant” under Minn. Stat. § 504B.001, subd. 12, entitled to relief as a “residential tenant” under Minn. Stat. § 504B.375. LMC maintains that Quinn was a trespasser, not a residential tenant, because LMC’s lease was with J.S. only, the lease prohibited additional occupants without LMC’s prior written consent, and Quinn never sought or obtained consent from LMC to occupy the apartment. LMC also argues that a number of the district court’s findings of fact were not supported by the record.

The meaning of the term “other regular occupant” involves a question of statutory interpretation that we review de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). “The first step in interpreting a statute is to examine the language to determine whether it is clear and unambiguous. A statute is ambiguous if it is susceptible to more than one reasonable interpretation.” *HNA Props. v. Moore*, 848 N.W.2d 238, 241 (Minn. App. 2014) (quotation and citations omitted).

To succeed in its challenge to the district court’s findings of fact, LMC must demonstrate clear error. *Bass v. Equity Residential Holdings, LLC*, 849 N.W.2d 87, 91 (Minn. App. 2014). We review findings of fact “in the light most favorable to the district court’s decision and defer to the district court’s credibility determinations.” *Id.*

In our analysis, we first address whether a person not listed on a residential lease, but residing with a party to a lease, can be an “other regular occupant” under our caselaw. Second, we articulate the standards for assessing whether a person qualifies as an “other regular occupant.” We address, third, LMC’s challenge to the district court’s findings of fact. As the fourth and final step, we review the district court’s decision under the standards we have articulated.

## I.

A “residential tenant” may bring an “action for recovery of possession,” commonly known as a lockout petition, when a “residential tenant” claims to have been unlawfully removed or excluded from their dwelling. Minn. Stat. § 504B.375, subd. 1(a). “Residential tenant” is a defined term in the landlord-tenant statute:

“Residential tenant” means a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, all other regular occupants of that dwelling unit, or a resident of a manufactured home park.

Minn. Stat. § 504B.001, subd. 12. Quinn does not have a lease or contract with LMC. This appeal thus turns on whether Quinn qualifies as an “other regular occupant” of the apartment.<sup>1</sup>

LMC maintains that our holding in *Broszko v. Principal Mutual Life Insurance Co.*, 533 N.W.2d 656 (Minn. App. 1995), *rev. denied* (Minn. Sept. 19, 1995), is controlling and that, under that holding, Quinn cannot be deemed an “other regular occupant.”

In *Broszko*, the plaintiff (Broszko) claimed that her legal rights as a “tenant” were violated when she was evicted from a house after the redemption period expired following a foreclosure proceeding.<sup>2</sup> 533 N.W.2d at 657. Broszko never had any ownership interest in the house but had been told by the foreclosed homeowner that she and her children could move into the house and stay there during the redemption period. *Id.*

This court affirmed summary judgment in favor of the mortgage company, dismissing Broszko’s claim for damages. *Id.* at 659. That ruling was premised on the holding of a prior case of this court, *Federal Land Bank of St. Paul v. Obermoller*, 429 N.W.2d 251, 258 (Minn. App. 1988), *rev. denied* (Minn. Oct. 26, 1988). *Id.* at 658-59. In *Obermoller*, we held that a former owner who continued to occupy a home during the mortgage-foreclosure redemption period could not claim any rights as a tenant, “[a]bsent

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<sup>1</sup> Previously, Quinn also argued that she was a “residential tenant” under the first prong of the statute because she had an oral contract with J.S. that required the payment of money. Because Quinn did not advance her oral-contract argument as an alternative basis to affirm, we limit our review to whether Quinn was an “other regular occupant” of the apartment.

<sup>2</sup> The version of the landlord-tenant statute in effect at the time of the events giving rise to the litigation in *Broszko* used the term “tenant” instead of “residential tenant.” 533 N.W.2d at 658 (quoting Minn. Stat. § 566.18, subd. 2 (1992)).

an established landlord-tenant relationship” with the bank. 429 N.W.2d at 258. In other words, we concluded that no landlord-tenant relationship existed between the bank and the former owner and, consequently, the former owner in *Obermoller* did not meet the statutory definition of “tenant.” *Id.*

Applying the holding of *Obermoller*, we reasoned in *Broszko* that, because the foreclosed owner of the home could not claim any rights as a “tenant,” neither could Broszko. 533 N.W.2d at 659. We thus rejected the argument that Broszko was an “other regular occupant” of the foreclosed home because the foreclosed owner was never a “tenant” of the mortgage company. *Id.*

By contrast here, it is undisputed that J.S. was a “residential tenant” as defined in the landlord-tenant statute, Minn. Stat. § 504B.001, subd. 12, pursuant to a valid lease with LMC. And we stated in *Broszko* that tenant status can attach “to persons who live in a dwelling unit subject to a valid agreement, lease, or contract, *in addition to* the lessee or renter.” *Id.* In this case, because J.S. had a valid lease for the apartment, tenant status could attach to Quinn as a person living “in a dwelling unit subject to [J.S.’s] valid . . . lease.” *Id.* *Broszko* is thus distinguishable and does not preclude a determination that Quinn, who resided with a party to a lease for the dwelling unit, can be an “other regular occupant.”

## II.

We turn next to the task of interpreting the statutory language and articulating standards to assess whether a person qualifies as an “other regular occupant.” This requires us to distinguish between an irregular occupant, such as a short-term guest of the tenant,



and an “other regular occupant.” We note at the outset that neither party argues that the statutory language is ambiguous, and we agree that it is not. LMC argues instead that the plain language of the statute requires us to reverse the district court’s conclusion that Quinn was an “other regular occupant.”

The parties direct us to different dictionary definitions of the word “regular” in support of their competing interpretations of the phrase “other regular occupant.” *See Laymon v. Minn. Premier Props., LLC*, 913 N.W.2d 449, 453 (Minn. 2018) (stating that in the absence of a statutory definition of a term, “we may consider dictionary definitions to determine a word’s common usage”). Quinn points to a definition of “regular” as meaning something that is “recurring, attending, or functioning at fixed, uniform, or normal intervals . . . a regular income; a regular churchgoer.” *See Merriam-Webster Dictionary* 1048 (11th ed. 2014). LMC points to another definition of the word “regular” as meaning “[i]n conformity with a fixed procedure, principle, or discipline.” *See The American Heritage Dictionary of the English Language* 1480 (5th ed. 2018).

We note that the two dictionaries referenced by the parties each contain numerous alternate definitions of the word “regular.” The dictionary cited by LMC, for example, contains 16 alternatives, including as its first definition that the word “regular” means “customary, usual, or normal.” *Id.* The cited definitions help inform our understanding, but we are not persuaded that selecting a single definition of “regular,” in isolation, outside of the context of “occupancy,” is very useful.

In fashioning a standard for determining who qualifies as an “other regular occupant,” we find more helpful guidance in the reasoning of the supreme court in

*Asseltyne v. Fay Hotel*, 23 N.W.2d 357 (Minn. 1946), a case that addresses an analogous issue. In *Asseltyne*, the supreme court considered whether a teacher was a boarder or a hotel guest when she paid a monthly rate to live in a hotel room as her sole residence. The court identified several “material, but not necessarily controlling” factors to consider in making that determination, including “[t]he length of the stay, the existence of a special contract, the rate or method of payment, and the possession or nonexistence of a home or permanent residence elsewhere.” 23 N.W.2d at 362 (quotation omitted). The court explained that “[i]t is difficult, if not impossible, to define with precision who is a guest as distinguished from a boarder. It is rather a question of fact in each case to be ascertained by a consideration of all the circumstances thereof.” *Id.* (quotation omitted).

We are faced here with the same difficulties in defining who qualifies as an “other regular occupant” of a rental dwelling as opposed to a short-term guest or other irregular occupant. And like the supreme court in *Asseltyne*, we conclude that the question of who may qualify as an “other regular occupant” is “a question of fact in each case to be ascertained by a consideration of all the circumstances thereof.” *Id.* Logically, the relevant circumstances include but are not limited to the duration, continuity, and nature of the occupancy, the existence and terms of a lease or any other agreements related to the occupancy, and whether the landlord knew of or reasonably should have known of the person’s occupancy.

LMC places heavy emphasis on the fact that Quinn was not on the lease and that LMC’s written consent to Quinn’s occupancy was required by the lease but was never sought or obtained. LMC essentially argues that, because of the alleged lease violation,

Quinn had the legal status of a trespasser and that LMC thus had the right to resort to self-help eviction. This flies in the face, however, of the longstanding “policy of our law to discourage landlords from taking the law into their own hands, and [that court] decisions and statutory law have looked with disfavor upon any use of self-help to dispossess a tenant in circumstances which are likely to result in breaches of the peace.” *Berg v. Wiley*, 264 N.W.2d 145, 149-50 (Minn. 1978); *see* Minn. Stat. § 504B.281.<sup>3</sup> We also note that Minn. Stat. § 504B.375 provides a summary remedy for unlawful exclusions but does not in any way preclude a landlord from pursuing lawful means of removing a “residential tenant.”<sup>4</sup> We thus conclude that whether an occupancy violates a lease provision is a relevant factor, but is not by itself a dispositive factor.

To summarize, we hold that whether a person qualifies as an “other regular occupant” is a question of fact in each case to be ascertained by consideration of a totality of the relevant circumstances and that no single factor is necessarily dispositive.

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<sup>3</sup> Minn. Stat. § 504B.281 provides: “No person may occupy or take possession of real property except where occupancy or possession is allowed by law, and in such cases, the person may not enter by force, but only in a peaceable manner.”

<sup>4</sup> We recognize that a complicating factor in this case is that it occurred during the COVID-19 pandemic when a moratorium on most lease terminations and eviction actions was in effect. *See* Emerg. Exec. Ord. No. 20-79, *Modifying the Suspension of Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency* (July 14, 2020).

### III.

Before we review the district court's determination under the standards we have articulated, we must address LMC's challenges to the district court's findings of fact.<sup>5</sup> LMC asserts that many of the findings are "irrelevant," "incorrect," or are not supported by the record. These include the findings that (1) there was an oral agreement for Quinn to pay rent to J.S., (2) portions of the community manager's testimony lacked credibility, (3) LMC knew Quinn was occupying the apartment, and (4) Quinn was excluded from the apartment.<sup>6</sup>

LMC argues that these findings are erroneous because they are based on unpersuasive evidence, contradictory evidence, or the referee's incorrect credibility determinations. However, "clear-error review does not permit an appellate court to weigh the evidence as if trying the matter de novo." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). The standard of review requires us to

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<sup>5</sup> LMC's challenges to the findings of fact are in reference to the housing court referee's findings, not to the order of the reviewing district court judge. However, when a district court judge reviews a referee's decision under Minn. R. Gen. Prac. 611(a), its review "shall be based upon the record established before the referee." And "[t]he findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court." Minn. R. Civ. P. 52.01. Because the reviewing district court judge's order stated that "[a]ll prior and consistent orders shall remain in full force and effect," we construe LMC's challenges to the referee's findings as challenges to the district court judge's order and consider them here.

<sup>6</sup> We note that on appeal LMC does not advance as a question of law the argument that deactivating the electronic key fob was not an exclusion or removal of Quinn from the apartment under Minn. Stat. § 504B.375. We therefore limit our review to whether there is evidence in the record to support, as a factual finding, that Quinn was excluded from the apartment.

defer to credibility determinations of the district court and does not allow “an appellate court [to] reconcile conflicting evidence.” *Id.* at 222-23 (quotation omitted).

Applying the clear-error standard of review, we conclude that the findings of fact are supported by evidence in the record. For example, LMC asserts that Quinn “provided no proof beyond her bare testimony (oddly confirmed by [the testimony of her friend]) that she paid [J.S.] anything” to live in the apartment. “Bare testimony” from a single witness is, however, sufficient to support a finding of fact, particularly where, as here, LMC points to no contradictory evidence in the record. *See State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted) (stating that a criminal conviction, which requires the much higher standard of proof beyond a reasonable doubt, “can rest on the uncorroborated testimony of a single credible witness”). This finding thus is not clearly erroneous.

LMC next asserts that the district court’s finding that portions of the community manager’s testimony were not credible was “based on an incomplete examination of the witness and ambiguous questions from Respondent’s attorney.” But, as already stated, we defer to credibility determinations of the district court. *LaPoint v. Fam. Orthodontics, P.A.*, 892 N.W.2d 506, 515 (Minn. 2017) (quotation omitted) (noting that the fact-finder “has the advantage of hearing the testimony, assessing relative credibility of witnesses and acquiring a thorough understanding of the circumstances unique to the matter before it”).

Finally, we discern no clear error in the district court’s findings that Quinn’s presence was known by LMC and that Quinn was excluded from the apartment. Both are supported by testimony in the record, including the testimony of LMC’s community

manager, and the evidence is undisputed that LMC deactivated the key fob that Quinn needed to enter the apartment.

#### IV.

We now turn to the final step in our analysis, determining whether the district court erred in its determination that Quinn was an “other regular occupant” of the apartment under the facts of this case. Here, looking first at the duration, continuity, and nature of Quinn’s occupancy, the record evidence, viewed in the light most favorable to the district court’s decision, shows that Quinn lived continuously in the apartment as her sole residence for more than two years. In addition, as noted by the district court, Quinn “used the facilities at Nordhaus, including the barbecue area” and she “received mail and visitors there, used the apartment’s key fob, and walked by the concierge daily.” She also regularly used the common workspace in the building to work and meet with clients. In short, Quinn lived in the building continuously for a significant period of time as a residential tenant customarily would—interacting with building staff and utilizing the building’s facilities.

Turning next to the existence and terms of the lease, J.S. had a written lease, but Quinn was not listed on it and LMC’s written consent was never sought or obtained as required by the lease. These are facts that weigh against a determination of “other regular occupant” status but, as we explain above, are not by themselves determinative.

On the question of whether LMC knew of or reasonably should have known of Quinn’s occupancy, the district court found that LMC was aware of the occupancy, and we have affirmed that finding. In support of this finding, the district court referenced the December 2020 email to J.S. from LMC’s community manager for the building, sent

approximately four months before the key fob was deactivated. According to the testimony of the community manager, the email stated that it appeared someone else was staying in the apartment and using the key fob. The district court also cited the community manager's testimony that J.S. told her in a phone call that Quinn had been staying with her and that the community manager sent a rental application for Quinn to complete.

In conclusion, based on the totality of the circumstances and our review of the record, we discern no error by the district court in its determination that Quinn qualified as an "other regular occupant" and thus a "residential tenant" entitled to relief under Minn. Stat. § 504B.375.<sup>7</sup>

### **DECISION**

Whether a person who occupies a rental dwelling is an "other regular occupant" and thus a "residential tenant" for the purposes of Minn. Stat. § 504B.375, depends on the totality of the circumstances relevant to the person's occupancy. Based on those circumstances, we affirm the district court's determination that Quinn was a "residential tenant" entitled under Minn. Stat. § 504B.375 to recover possession of the premises.

**Affirmed.**

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<sup>7</sup> As we note above, however, our conclusion does not preclude a landlord from pursuing lawful means of removing a "residential tenant."