

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1014**

Community Action Partnership of Scott, Carver & Dakota Counties,
Respondent,

vs.

Arlen Britton,
Appellant.

**Filed November 14, 2022
Motions denied
Segal, Chief Judge**

Scott County District Court
File No. 70-CV-22-6236

Robert A. Alsop, Kennedy & Graven, Chartered, Minneapolis, Minnesota (for respondent)

Arlen Britton, Northfield, Minnesota (pro se appellant)

Considered and decided by Segal, Chief Judge; Bjorkman, Judge; and Slieter, Judge.

SYLLABUS

When a tenant appeals a judgment in an eviction action against the tenant for holding over after the expiration or termination of a lease, a district court does not abuse its discretion by requiring the landlord to provide security in accordance with Minn. Stat. § 504B.371, subd. 7 (2020), before issuing a writ of recovery.

SPECIAL TERM OPINION

SEGAL, Chief Judge

In this appeal from a judgment of recovery in an eviction action, the parties moved this court for relief from a series of rulings related to requests by appellant-tenant for a stay

pending appeal and by respondent-landlord to lift the stay. The landlord also moved to dismiss this appeal. We filed an order denying all motions and noting that a special term opinion would follow. We now hold that, because this appeal by the tenant arises from “an action on a lease, against a tenant holding over” after expiration or termination of the lease, the district court did not abuse its discretion when it required the landlord to provide security in accordance with Minn. Stat. § 504B.371, subd. 7, before issuing a writ of recovery.

FACTS

Appellant Arlen Britton (tenant) leased a residential unit from respondent Community Action Partnership of Scott, Carver & Dakota Counties (landlord). According to the complaint, tenant’s one-year lease began May 1, 2021; landlord gave written notice on February 25, 2022, that it would not renew the lease; tenant failed to pay rent for March and April 2022; and tenant failed to vacate when the lease expired on April 30, 2022. Following an evidentiary hearing, the district court entered judgment for landlord on July 1, 2022, finding, “The term of [tenant’s] lease has ended and was not renewed. Proper notice was given. The term expired on April 30th. [Tenant] has not vacated the property and failed to pay rent for the months he has remained in the property past the term’s expiration.” When tenant informed the district court that he had appealed the judgment, the district court granted a temporary stay of the writ of recovery under Minn. Stat. § 504B.371, subd. 1 (2020).

A few weeks later, the district court filed an order extending the stay under Minn. Stat. § 504B.371, subd. 4 (2020), on the condition that tenant “provide a bond, cash deposit

into the Court registry, or other security approved by the Court in the amount of \$13,110, within ten (10) days of the date of this Order.” Tenant sought review in this court of the amount of security. *See* Minn. Stat. § 504B.371, subd. 3 (2020) (requiring an appealing tenant who remains in possession of the property to give specified security). Significantly, landlord did not challenge the grant of tenant’s request for a stay pending appeal, and we did not affirmatively question whether landlord was seeking to post a bond and regain possession under Minn. Stat. § 504B.371, subd. 7. We filed a special term order excluding pre-appeal rent from the amount of security set by the district court because that rent was not “rent . . . due . . . during the pendency of the appeal.” *Id.*, subd. 3(3). Tenant then filed motions in this court for reconsideration¹ and “clarification.”

Meanwhile, after tenant failed to provide the reduced amount of security, the district court filed an order on September 2 lifting the stay. Tenant filed a motion in this court for relief from that order. On that same day, the district court filed an order (1) vacating its September 2 order lifting the stay, and (2) requiring landlord to provide security as a condition of obtaining a writ. The district court concluded that, under Minn. Stat. § 504B.371, subd. 7, landlord was entitled to a writ of recovery, notwithstanding the appeal by tenant, if landlord provided security to cover all costs and damages in the event tenant prevailed on appeal. The district court established a briefing schedule for determination of the amount of security that landlord would be required to provide.

¹ We denied tenant’s motion for reconsideration. *See* Minn. R. Civ. App. P. 140.01 (“No petition for rehearing shall be allowed in the Court of Appeals.”).

Landlord filed a motion to dismiss this appeal on the ground that tenant failed to provide the security required by our order reducing the amount. Landlord argued in the alternative that the district court erred by requiring landlord to provide security before the writ of recovery will issue. We filed an order denying all motions. We now provide our analysis explaining why we rejected landlord's alternative argument.

ANALYSIS

“On a motion under Rule 127, the Court of Appeals may review the trial court's determinations as to whether a stay is appropriate, the terms of any stay, and the form and amount of security pending appeal.” Minn. R. Civ. App. P. 108.02, subd. 6. Appellate courts generally review a district court's decision on a motion for a stay pending appeal for an abuse of discretion. *See Webster v. Hennepin County*, 891 N.W.2d 290, 292 (Minn. 2017) (clarifying standard for granting stay pending appeal). A district court abuses its discretion by acting under a misapprehension of the law. *Gams v. Houghton*, 884 N.W.2d 611, 620 (Minn. 2016). We review questions of law, such as interpretation of the landlord-tenant statute, de novo. *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398, 402 (Minn. 2019).

“Except as otherwise provided by rule or statute,” an appeal does not stay enforcement of a judgment or order unless the trial court grants a stay pending appeal under rule 108.02. Minn. R. Civ. App. P. 108.01, subd. 1 (2020). Section 504B.371 of the Minnesota Statutes specifies the grounds and procedure for a stay pending appeal in an eviction action. Minn. Stat. § 504B.371 (2020).

Under section 504B.371, after an appeal is taken, a tenant is generally entitled to a stay pending appeal, which allows the tenant to remain in the property. *Id.*, subds. 1, 4-5. A tenant who “remains in possession” while appealing “must give a bond.” *Id.*, subd. 3. The tenant’s bond secures future payment of costs of the appeal, compliance with the court order, payment of rent accruing, and other damages, if any, arising from landlord’s exclusion from the property while the appeal is pending. *Id.* When a tenant informs the district court of an intent to appeal, the district court “shall” grant a temporary stay, “except as provided in subdivision 7.” *Id.*, subd. 1. After the appeal is perfected, “all further proceedings in the case are stayed, except as provided in subdivision 7.” *Id.*, subd. 4. If the appeal is taken following issuance of the writ of recovery, the district court “shall” stay execution of the writ, “[e]xcept as provided in subdivision 7.” *Id.*, subd. 5.

As noted in subdivisions 1, 4, and 5, subdivision 7 provides an exception to the general rule that a tenant is entitled to remain in the property while appealing the eviction judgment. Subdivision 7 applies in an eviction action against a tenant holding over after the expiration or termination of a lease. The subdivision provides that, even though a tenant has appealed the eviction judgment, a district court may nevertheless issue a writ of recovery in a holdover action, *if* the landlord provides “a bond conditioned to pay all costs and damages” in the event the judgment is reversed on appeal. *Id.*, subd. 7.

Subdivision 7 provides in full:

Subdivisions 1, 4, and 6^[2] *do not apply* in an action on a lease, *against a tenant holding over after the expiration of the term of the lease, or a termination of the lease by a notice to quit*, if the plaintiff[-landlord] gives a bond conditioned to pay all costs and damages if on the appeal the judgment of restitution is reversed and a new trial ordered. In such a case, the court shall issue a writ for recovery of premises and order to vacate notwithstanding the notice of appeal, as if no appeal had been taken, and the appellate court shall issue all needful writs and processes to carry out any judgment which may be rendered in the court.

Id. (emphasis added). Subdivision 7 establishes that, when the action is against a holdover tenant and the landlord posts a bond, then subdivisions 1 and 4—the subdivisions providing for a stay of a writ of recovery and other proceedings in the case—do not apply. And, in that circumstance, “the court shall issue a writ for recovery of premises and order to vacate notwithstanding” an appeal by the tenant of the eviction judgment. *Id.*

In short, under Minn. Stat. § 504B.371, the question of whether a stay should be issued, and who is required to provide security during the pendency of a tenant’s appeal, depends on whether the action is “against a tenant holding over” after expiration or termination of a lease. *Id.* When the action is against a tenant holding over, and the

² We note that subdivision 7 identifies subdivision 6 as inapplicable in an action against a tenant holding over. In context, it is clear that this reference should be to subdivision 5, not subdivision 6. Subdivision 6 provides guidance to appellate courts with regard to dismissals, amendments, and returns of an appeal. It does not relate to any of the content of subdivision 7. Subdivision 5, on the other hand, expressly provides that it applies “[e]xcept as provided in subdivision 7.” *Id.*, subd. 5. Although it does not affect our analysis, we note that the reference to subdivision 6 appears to be a scrivener’s error. *See Back v. State*, 902 N.W.2d 23, 32 (Minn. 2017) (recognizing that “[a] true drafting error, often called a scrivener’s error, is defined as a technical error, such as transposing characters or omitting an obviously needed word that can be rectified without serious doubt about the correct reading” (quotations omitted)); *see also State ex rel. Robertson v. Lane*, 147 N.W. 951, 953 (Minn. 1914) (stating that “the word ‘now’ [was] a misprint for ‘not’”).

landlord “gives a bond conditioned to pay all costs and damages” in the event that tenant prevails on appeal, the district court “shall issue a writ for recovery of premises and order to vacate . . . as if no appeal had been taken.” *Id.* But when the action is not against a tenant holding over, the district court “shall” grant a temporary stay upon notice that the tenant intends to appeal, and “all further proceedings in the case are stayed” once the appeal is perfected, subject to the tenant’s security obligation. *Id.*, subds. 1, 3-4. Thus, an appealing tenant who provides appropriate security is entitled to a stay when the eviction action is based on grounds such as breach of lease or nonpayment of rent but, when the action is against a tenant holding over, a prevailing landlord who provides the requisite security is entitled to regain possession immediately. This distinction is the expression of a public-policy decision made by the legislature, not open to modification by this court. *See State ex rel. Meehan v. Empie*, 204 N.W. 572, 573-74 (Minn. 1925) (“Courts do not determine public policy when the Legislature speaks.”).

Here, the complaint alleged nonpayment of rent after notice of nonrenewal and failure to vacate after proper notice. The district court found that tenant failed to vacate when the lease expired at the end of April 2022, failed to pay rent after notice of nonrenewal was given, and breached the lease by failing to vacate. It may be that the parties assumed a stay was available under section 504B.371, subdivisions 1 and 4, because of other grounds cited in the allegations and findings. But the thrust of the eviction action here is that the lease expired and tenant failed to vacate. Under these circumstances, the district court properly determined that subdivision 7 governs entitlement to possession. And, under subdivision 7, if the landlord “gives a bond conditioned to pay all costs and damages

if on the appeal the judgment of restitution is reversed and a new trial ordered,” the district court shall issue the writ. Minn. Stat. § 504B.371, subd. 7.

We therefore conclude that, notwithstanding the district court’s initial application of subdivisions 1 and 4 in this case, the district court did not err in ultimately applying subdivision 7 and allowing landlord to recover possession of the premises during the pendency of the appeal, conditioned on landlord providing security in accordance with that subdivision.

Motions denied.