STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1132

Kleinman Realty Company,
Appellant,

vs.

Cheryl Talbot,
Respondent.

Filed May 23, 2011
Reversed and remanded
Ross, Judge

Ramsey County District Court
File No. 62-HG-CV-10-762

Donna E. Hanbery, Douglass E. Turner, Hanbery & Carney, P.A., Minneapolis, Minnesota (for appellant)

Dudley R. Younkin, St. Paul, Minnesota (for respondent)

Considered and decided by Stoneburner, 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

ROSS, Judge

Appellant landlord Kleinman Realty Company challenges the dismissal with prejudice of its eviction action against apartment tenant respondent Cheryl Talbot. Kleinman argues that the district court had no basis to dismiss the action after it found

that Talbot was holding over following Kleinman's timely written notice to her to vacate; that Talbot had agreed in writing to consent to eviction on the occurrence of a condition that occurred; and that Talbot had violated implied covenants of safety and habitability. For the reasons discussed below, we reverse and remand to the district court for issuance of a writ of recovery to Kleinman.

FACTS

Kleinman manages an 11-unit apartment building in St. Paul where Talbot has occupied an apartment since 1984 as a month-to-month tenant under an oral lease. The City of St. Paul requires each apartment house to maintain a certificate of occupancy, issued by the fire marshal after periodic inspections, indicating that the building meets health and safety codes. St. Paul, Minn. Legislative Code § 40.01(a) (2010).

On January 14, 2010, the city notified Kleinman that it would conduct a safety inspection in early February. When the inspector arrived for a scheduled pre-inspection viewing of Talbot's unit on January 25, Talbot refused him entry. He testified that the excessive amount of clutter he saw inside the apartment even from outside the door was such that he believed the unit would fail the upcoming inspection.

After Talbot's refusal, on January 29 Kleinman gave Talbot a one-month notice of termination of lease, effective February 28. A letter accompanying the notice stated that the termination would not be "reconsidered or rescinded" if Talbot's unit failed the upcoming safety inspection because of "housekeeping" problems. Talbot's unit failed a February 2 inspection for several reasons associated with housekeeping, including unsanitary conditions, an excessive accumulation of combustible materials, and exit

obstruction due to excessive accumulated personal belongings. Despite the notice and the failed inspection, Talbot did not vacate the unit on February 28.

Talbot's unit also failed reinspections on February 22 and March 4, after which the fire inspector notified Kleinman that Talbot's repeated failure to correct the problems in her apartment could lead to a revocation of the building's certificate of occupancy.

On March 8, Kleinman gave an eviction notice to Talbot, noting that she was holding over after expiration of her lease on February 28 and that her unit had failed three fire safety inspections since early February. Talbot's counsel then wrote to Kleinman's counsel asserting that Talbot is disabled due to obsessive-compulsive disorder, depression, and fibromyalgia, and explaining that her disability causes her to accumulate possessions excessively and makes it difficult for her to timely prepare her unit for inspections. Talbot's counsel requested that Kleinman accommodate Talbot's disability by giving her until March 24 to clean her apartment.

Kleinman agreed to give Talbot another chance. On March 15, the parties signed a Reasonable Accommodation and Settlement Agreement in which Kleinman agreed not to file an eviction action to enforce its notice of termination until after a fourth inspection, which was scheduled for March 24. Kleinman also agreed to rescind the January 29 notice if Talbot's unit passed the March 24 inspection. And Talbot agreed to vacate the unit under the January 29 notice of termination if her apartment failed the March 24 inspection. Talbot's unit failed the March 24 inspection, but Talbot did not vacate. The city scheduled another reinspection for April 2.

On March 29, 2010, Kleinman commenced an eviction action premised on Talbot's holding over after written notice to vacate, her holding over in breach of the March 15 agreement to vacate, and her breach of her implied covenant to maintain her unit in a safe and sanitary condition.

Talbot's unit passed the April 2 reinspection after her attorney pitched in to help clean. She then served her answer to Kleinman's complaint, asserting that she is disabled, that her disability prevented her from timely complying with the March 15 agreement, and that she was entitled, under the Minnesota Human Rights Act, to "an additional reasonable accommodation of the [nine] days necessary to satisfactorily clean the apartment."

The district court conducted a hearing and then dismissed Kleinman's eviction complaint, reasoning that Talbot was entitled to the accommodation requested in her answer and that she had substantially complied with (and therefore performed under) the March 15 agreement by passing the April 2 inspection. Kleinman appeals.

D E C I S I O N

Kleinman contests the district court's dismissal of its eviction action. An eviction action is a summary proceeding to determine only the extant possessory rights to property. *See* Minn. Stat. § 504B.001, subd. 4 (2010). A landlord is entitled to recover possession by eviction when a tenant holds over "contrary to the conditions or covenants of the lease or agreement under which that person holds." Minn. Stat. § 504B.285, subd. 1(2) (2010). On review of a district court judgment in an eviction action, we defer to the district court's credibility determinations and rely on its factual findings unless they are

clearly erroneous. *See Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817–18 (Minn. App. 2003). In an eviction proceeding, "the only issue for determination is whether the facts alleged in the complaint are true." *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 555 (Minn. App. 1985), *review denied* (Minn. Feb. 19, 1986).

I

Kleinman argues that the district court erred by concluding that passing the April 2 inspection satisfied Talbot's obligations under the March 15 agreement on two grounds—first, that Kleinman was required to reasonably accommodate Talbot's disability by giving her extra time to pass the March 24 inspection, and second, that Talbot substantially complied with the March 24 deadline when she passed the April 2 inspection. Having determined that Talbot performed under the March 15 agreement, the court concluded that the January 29 notice was effectively withdrawn and eviction was improper. We conclude that the district court exercised discretion in a compassionate manner that exceeded the restrictions of law.

The district court explicitly found true all of the facts alleged in the eviction complaint: Kleinman gave Talbot timely written notice on January 29, 2010, that her month-to-month oral lease would terminate on February 28. Once Talbot's unit failed the February 2 inspection, the notice was not subject to withdrawal or rescission, and as of March 1, Talbot was, as a matter of law, holding over. In the March 15 settlement agreement, Kleinman agreed to rescind the January 29 notice and to offer Talbot a month-to-month written lease, but this was expressly conditioned on Talbot's unit passing the March 24 inspection. Talbot's unit did not pass that inspection, so according

to the agreement, the January 29 notice remained in effect, and Talbot therefore continued to hold over after March 1. There is no room for a different reading of the terms of the parties' March 15 agreement; Kleinman had the right to evict Talbot, regardless of whether she passed the April 2 inspection. The district court also found that the excessive accumulation of belongings in her apartment over a lengthy period constituted a violation of implied covenants of habitability and safety, which provided a separate basis for eviction.

Having established that the facts alleged in the complaint were true, the district court turned to the issue raised by Talbot in her answer, which is whether Kleinman was required to reasonably accommodate her disability by allowing her extra time to make her apartment inspection-ready, such that her successful April 2 inspection should be deemed to relate back to March 24 and therefore satisfy the terms of the March 15 agreement, precluding eviction. The district court erred by doing so.

Given the summary nature of eviction proceedings, the statutory limitations on the form of the verdict in eviction actions, and the limited defenses available in these actions, the district court lacked the legal grounds to treat Talbot's reasonable-accommodation argument as a valid affirmative defense to the eviction action. Minnesota statutes and caselaw have recognized a limited number of defenses to an eviction action. *See* Minn. Stat. § 504B.285, subd. 2 (2010) (providing retaliation as a defense to an eviction action); Minn. Stat. § 504B.315 (prohibiting eviction or non-renewal on the basis of familial status); *Fritz v. Warthen*, 298 Minn. 54, 61, 213 N.W.2d 339, 343 (1973) (holding that breach of the covenant of habitability may be asserted as a defense); *Priordale Mall*

Investors v. Farrington, 411 N.W.2d 582, 584 (Minn. App. 1987) (stating that landlord's waiver by acceptance of rent may be asserted as an affirmative defense).

But we are aware of, and Talbot has offered, no authority either recognizing disability-law "reasonable accommodation" as an affirmative defense to an eviction action or authorizing the district court to enlarge the scope of eviction proceedings to consider that defense. This court and the supreme court have repeatedly rejected similar attempts to expand the summary nature of eviction proceedings when, as in this case, the defenses can be raised in separate civil actions in which those defenses are relevant. For example, in *Amresco Residential Mortgage Corp. v. Stange*, we affirmed the district court's dismissal of the tenants' affirmative defenses on improper-forum grounds and observed that they could raise their counterclaims and equitable defenses directly in a separate district court proceeding in which they could also seek to enjoin prosecution of the eviction action. 631 N.W.2d 444, 446 (Minn. App. 2001). We reasoned that "there is no evident reason to interfere with the summary nature of eviction proceedings." *Id*. We added, "Using the alternate procedure instead of expanding the eviction proceeding accords with the appellate courts' prior determinations that the district court should uphold the summary nature of eviction proceedings." *Id*; *see also Eagan East Ltd. P'ship v. Powers Investigations, Inc*., 554 N.W.2d 621, 622 (Minn. App. 1996) (reversing decisions the district court made on issues outside the limited scope of the unlawful detainer, noting that the court "by doing so, undermined the essence of the proceeding").

We hold that the district court improperly went beyond deciding issues determinative of the present right to possession, and we therefore reverse its decision that

Talbot's failure to perform under the March 15 agreement was cured or rendered immaterial by Kleinman's obligation to reasonably accommodate Talbot's alleged disability.

Although it is unnecessary for us to review the district court's reasonable-accommodation analysis, we observe apparent factual and legal difficulties with it. Before Talbot raised the issue in her answer, Kleinman had already granted her request for an accommodation in the form of extra time to prepare her unit for a safety inspection, which she nonetheless failed. She did not make any other request of Kleinman, choosing instead to disregard the terms of the March 15 agreement and contend that her failure to perform should be excused. So it does not appear to us that she was ever denied an accommodation and it seems that she did not request another one even after she proved unable, despite reasonable accommodation, to correct the conditions that purportedly caused her lease violations and her failure to perform under the March 15 agreement. *See* Fair Housing Act, 42 U.S.C. § 3604(f)(3)(B) (2006) (declaring it unlawful for a landlord to refuse to make reasonable accommodations of rules when such accommodations are necessary for equal opportunity to use and enjoy the property). We also have significant doubts that an accommodation that in fact prolongs an unsafe condition and consequently endangers a tenant and her neighbors could be deemed "reasonable." We do not decide these questions; we raise them only to avoid our silence about them being mistaken for tacit acknowledgment of their viability.

II

Kleinman argues also the district court erred by determining that Talbot substantially complied with the March agreement when she cleaned the unit sufficiently to pass the April 2 inspection and that she therefore is not bound by the January 29 notice to vacate. The issue of whether a contract has been performed or whether there has been substantial performance is a question for the factfinder unless the evidence is conclusive. *Ylijarvi v. Brockphaler*, 213 Minn. 385, 392, 7 N.W.2d 314, 319 (1942). Given the limited scope of eviction actions, the district court should not have addressed Talbot's substantial compliance argument, raised as a defense to her failure to perform under the March 15 agreement. But the district court's substantive analysis also fails.

The substantial-compliance doctrine provides that the duty to fully perform under a contract may be satisfied when a party substantially complies with "all the essentials necessary to the full accomplishment of the purposes for which the thing contracted for has been constructed, except for some slight and unintentional defects which can be readily remedied." *Id*. at 389–90, 7 N.W.2d at 318. The doctrine typically arises in the construction context, where the nature of contracted work is such that a mostly-completed project has some value. *Id*. When it applies to other contracts, "[i]t is given a much more limited application . . . depending on the fact situation in each case." *State Bank of Monticello v. Lauterbach*, 198 Minn. 98, 108, 268 N.W. 918, 923 (1936).

Talbot undeniably failed to comply with her obligation under the March 15 agreement to have her apartment inspection-ready by March 24. Her counsel had negotiated the agreement and specifically requested that March 24 be the date by which

Talbot would clean the unit. The April 2 inspection did not cure the failure because a landlord's right to evict "is complete upon a tenant's violation of a lease condition" and "[s]ubsequent remedial action by a tenant cannot nullify a prior lease violation." *Smallwood*, 379 N.W.2d at 556. The district court therefore abused its discretion by determining that Talbot substantially complied with the terms of the settlement agreement. Her failure to timely perform was not an insignificant defect that can be remedied by later performance when the timeline was the essence of the agreement.

We are not unsympathetic to Talbot's circumstance after lengthy occupancy. And we recognize that the district court approached this case in a spirit of charity. It is awkward for us to describe the district court's abundance of compassion with the usual legal tags of "erroneous" or "abuse of discretion." But our mandate is to correct legal errors, and we are bound here to conclude that the district court made a decision more generous toward a tenant than the law allows. We reverse the district court's dismissal of Kleinman's action and remand for issuance of a writ of recovery.

Reversed and remanded.