STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0312

Seward Towers Corporation,
Appellant,

vs.

Mebrat Ogbe,
Respondent.

Filed October 21, 2013
Reversed and remanded
Ross, Judge

Hennepin County District Court
File No. 27-CV-HC-13-204

Robin Ann Williams, Peter L. Gregory, Bassford Remele, Minneapolis, Minnesota (for appellant)

Samuel Glover, Minneapolis, Minnesota (for respondent)

Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

The manager of an apartment building sought to relocate a tenant receiving federal rent subsidies, seeking to move her from her two-bedroom unit to a smaller unit because the manager deemed the tenant ineligible for the subsidized two-bedroom unit. More

specifically, the manager of Seward Towers apartments told tenant Mebrat Ogbe that she must move to a one-bedroom unit or pay higher rent for her two-bedroom unit. Ogbe refused to move or pay the higher rent. Seward sought to evict her. The district court granted judgment to Ogbe. Because the district court's decision rests on a misinterpretation of the lease governing Ogbe's tenancy, we reverse and remand for the district court to enter judgment in Seward's favor.

FACTS

Appellant Seward Towers Corporation is a project-based Section 8 program in Minneapolis. "Section 8" refers to section 8 of the United States Housing Act of 1937, codified at 42 U.S.C. § 1437f (2006).

> Section 8 provides rental assistance that is "project-based" or "tenant-based." In project-based programs, rental assistance is available to tenants who live in specific housing developments or units. 42 U.S.C. § 1437f(f)(6) (Supp. V. 1999). With tenant-based assistance, the unit is selected by the tenant, who may rent anywhere a housing authority provides a certificate or voucher program. *Id.* (7) (Supp. V. 1999).

Occhino v. Grover, 640 N.W.2d 357, 359 (Minn. App. 2002), *review denied* (Minn. May 28, 2002). Subsidized housing units at Seward are in such high demand that even its waiting list is closed to families who qualify. Respondent Mebrat Ogbe qualifies for Section 8 assistance and has rented a two-bedroom unit from Seward for more than 13 years.

Regulations of the United States Department of Housing and Urban Development (HUD) govern Section 8 housing. *See* 24 C.F.R. §§ 5.100-.2011 (2013). HUD also issues

several handbooks, including HUD Handbook 4350.3: *Occupancy Requirements of Subsidized Multifamily Housing Programs*, defining its policies. Ogbe most recently entered a standard Section 8 lease for her two-bedroom apartment effective June 1, 2012, covering a one-year occupancy term and requiring monthly rent payments of $154. Section 8 rental rates may be adjusted during a lease term, and on June 4, 2012, Seward notified Ogbe that HUD had raised her share of the rent to $230, effective June 1, 2012. The HUD-approved market rental rate for Ogbe's apartment is $1,018, and, under Section 8, HUD pays the $788 difference between Ogbe's monthly rate and the approved market rate.

Despite living alone, Ogbe has occupied the two-bedroom unit since sometime in 2005. But a landlord ordinarily must assign a single person receiving Section 8 assistance to a one-bedroom unit unless her disability requires a larger unit. *See* 24 C.F.R. § 5.655(b)(5); HUD Handbook 4350.3 § 3-23(G)(2). Until about 2005, Ogbe shared her two-bedroom unit with her daughter. Even after her daughter moved out, however, Ogbe maintained the two-bedroom unit despite the regulation because she successfully asked permission from the apartment manager to do so. She based that request on a doctor's note that stated only, "This patient requires a home exercise regimen and space to put such equipment." The arrangement continued for quite some time, until Seward reviewed the basis for Ogbe's two-bedroom request. On that review, Seward determined that Ogbe was required to move to a one-bedroom unit or pay the HUD-approved market rate for her two-bedroom unit.

The review occurred in April 2012. Complying with HUD regulations, property manager LeAnn Love conducted an annual inspection of Ogbe's unit. Love noticed that Ogbe had no exercise equipment in her second bedroom, prompting her to question Ogbe's alleged medical need for a two-bedroom unit. Love sent a letter to Ogbe "requesting to reevaluate [Ogbe's] need for a reasonable accommodation." The letter directed Ogbe to fill out a new reasonable accommodation request, and it stated that if Seward did not receive a new application, the letter would serve as the required 30-day notice for Ogbe to move into a one-bedroom unit or pay the HUD-approved market rent of $1,018 to remain in the two-bedroom unit. Over the next months, Ogbe, Love, and other individuals at Seward exchanged letters about Ogbe's asserted need for the second bedroom on medical grounds. Ogbe also submitted notes allegedly from doctors and her physical therapist. But Ogbe's submissions did not convince Seward.

Although the dispute remained unresolved, on June 6, 2012, Seward renewed Ogbe's lease for her two-bedroom unit anyway. According to Seward, "[s]ince it was not yet determined whether Ogbe medically qualified for a two-bedroom unit, the . . . rent calculations were performed based on her existing unit." But Seward very soon decided the issue; by letter dated June 19, Love notified Ogbe that her unit was "underutilized," that Seward had a one-bedroom unit available, and that Ogbe must either move to that unit or begin paying the HUD-approved market rent for her two-bedroom apartment. Ogbe attempted to pay only $230 as August rent for the two-bedroom apartment, but Seward demanded the full market rate. To avoid eviction, Ogbe paid her August,

September, and October rent at the market rate, but she paid no rent at all from November 2012 through February 2013.

Seward began eviction proceedings in district court in January 2013. Ogbe, represented by counsel, answered, requested that a district court judge be assigned (rather than a housing court referee), and demanded a jury trial. The district court scheduled an eviction hearing, and the parties filed cross-motions for summary judgment. Seward sought eviction for nonpayment of rent, and Ogbe sought the return of her allegedly excessive rent payments. Seward gave the district court Ogbe's doctors' notes to support its motion, but Seward specified that it provided the notes only to demonstrate Seward's good-faith efforts to accommodate any disability that Ogbe had alleged; Seward expressly objected to the use of the notes for the truth of the claims asserted in them because they constituted hearsay. It argued that Ogbe submitted no evidence tending to prove either that she has a disability or that, if she does, a second bedroom reasonably accommodates her for the disability.

The district court heard oral argument on the summary judgment motions and then directed the parties to proceed to trial. The transcript reflects that this was a surprise at least to Seward's counsel, who announced that she had "represented to Ms. Love that this would be a summary judgment motion so [she] did not actually prepare for [Love] to testify today." Seward's counsel nevertheless presented Love to testify. Ogbe's counsel cross-examined Love but called no witnesses, not even Ogbe. Ogbe's counsel confirmed that she did not intend to offer any evidence of a disability or of any need for an accommodation. She insisted that there were no disputed material facts and that Ogbe

would be "relying on the contract argument that the lease – that the rental [rate] could not be increased to the $1,018 under the plain terms of the lease."

Looking only to the lease, the district court agreed with Ogbe. It issued an order dismissing the eviction action and directing the entry of judgment against Seward for overpaid rent. It determined that the lease did not permit Seward to raise Ogbe's rent in August 2012 when she declined to move to a one-bedroom apartment because Ogbe's circumstances had not changed in the two months since the parties executed the June 2012 lease.

Seward appeals.

D E C I S I O N

Seward challenges the district court's entry of judgment in Ogbe's favor. It contends that the terms of Ogbe's lease entitle it to judgment as a matter of law. The district court's order does not say whether it granted summary judgment or judgment on the facts as decided after trial. But the record and the court's order inform us clearly that no material facts were in dispute. We therefore review the decision de novo. *See Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (stating that review is de novo "[w]hen summary judgment is granted based on application of the law to undisputed facts"); *In re Collier*, 726 N.W.2d 799, 803 (Minn. 2007) ("When the material facts are not in dispute, we review the lower court's application of the law de novo."); *see also Metro. Airports Comm'n v. Noble*, 763 N.W.2d 639, 643 (Minn. 2009) (stating that district court's interpretation of a lease is subject to de novo review).

The parties dispute whether Seward properly adjusted Ogbe's rental rate to the HUD-approved market rate of $1,018 after Ogbe refused to move to a one-bedroom unit. Given Ogbe's limited argument, the district court correctly focused on the parties' lease. Leases are contracts, and we interpret them under the general principles of contract construction. *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 14 (Minn. 2012). We give unambiguous contract language its plain and ordinary meaning. *Metro. Airports Comm'n*, 763 N.W.2d at 645. In plain language, Ogbe's lease announces that "HUD requires [Seward] to assign units in accordance with [its] written occupancy standards,"[1] which "include consideration of unit size, relationship of family members, age and sex of family members and family preference." The lease further directs what happens during the lease period if the tenant's circumstances lead to a change in unit size:

> If the Tenant is or becomes eligible for a different size unit, and the required size unit becomes available, the Tenant agrees to:
>
> a. move within 30 days after the Landlord notifies him/her that unit of the required size is available within the project; or
>
> b. remain in the same unit and pay the HUD-approved market rent.

The parties agree that the lease also incorporates the provisions of HUD Handbook 4350.3, which address the circumstances in which a single tenant may occupy a two-bedroom unit. *See Chancellor Manor v. Thibodeaux*, 628 N.W.2d 193, 196 (Minn. App. 2001) (treating handbook provisions as part of Section 8 lease). The handbook provides

[1] Seward's occupancy standards are not part of the record in this case, but the parties agree that the resolution of this dispute depends on the language of the lease itself and the provisions of HUD Handbook 4350.3.

that a single tenant "must not be permitted to occupy a unit with two or more bedrooms," but it excepts "[a] person with a disability who needs the larger unit as a reasonable accommodation." HUD Handbook 4350.3 § 3-23(G)(2). It also explains the landlord's rights and restrictions if a tenant refuses to move during the lease to an appropriately sized unit:

> If a [tenant] refuses to move to the correct size unit, the family may stay in the current unit and pay the market rent. The owner must not evict the tenant for refusing to move but may evict the [tenant] if [she] fails to pay the market rent in accordance with the lease.

Id. § 3-23(G), (H).

Despite the controlling language of the lease and the handbook, the district court concluded that Seward could not increase Ogbe's rent in August 2012 because her circumstances had not changed in the two months after the parties entered into the June 2012 lease. Ogbe's counsel reasonably conceded during oral argument that the district court's judgment simply cannot be sustained on this analysis. The lease requires a tenant to move to a different unit or pay the HUD-approved market rent if she "*is* or *becomes* eligible for a different size unit." The district court concluded that Ogbe had not *become* eligible for a different size unit because her circumstances had not changed, but it did not consider the lease language requiring Ogbe to move if, at the time of the lease, she already *was* eligible. Without question, when Seward agreed to execute the June 2012 lease it had already challenged and was investigating Ogbe's assertion that she was eligible for a two-bedroom apartment as a reasonable accommodation for a disability. Seward ultimately determined that Ogbe was eligible only for a one-bedroom unit and

ineligible for the two-bedroom unit at the time she entered the lease. We therefore must reject the district court's conclusion that because Ogbe's circumstances had not changed after she signed the new lease she was entitled to judgment as a matter of law.

Seward argues that it was authorized—indeed compelled—under the plain terms of the lease and handbook to require Ogbe to move to a one-bedroom unit or pay market rent. The argument is unassailable. The lease and handbook expressly provide for a single tenant living in a two-bedroom unit to be transferred to an available one-bedroom unit or pay market rent. Ogbe now argues that she is entitled to remain in her two-bedroom unit because she is disabled and needs the two-bedroom unit as an accommodation for her disability. Our cursory review of this issue leaves us unconvinced, but we do not look into it deeply or decide the case on the basis of it. This is because Ogbe both failed to present any evidence of her disability to the district court and elected to rely solely on her assertion that, even if she is not disabled, the lease prohibits Seward from requiring her to move and from increasing her rent during the lease term. Although Seward introduced Ogbe's doctors' notes, it clarified that it offered them not for the truth of the matters asserted in them, and the district court decided that the content of the notes was inadmissible hearsay. No one appeals that decision. So even if Ogbe had asserted in the district court that she is entitled to the two-bedroom apartment on subsidized rent because the extra space reasonably accommodates her disability, the record contains no admissible evidence to support a finding either that Ogbe is disabled or that her disability requires a two-bedroom-unit accommodation.

The district court also reasoned that the lease could not be interpreted to authorize Seward to require transfer or a rate increase because no mechanism in the lease specifies how to resolve a dispute over Ogbe's eligibility for a two-bedroom unit. The rationale does not persuade us. If Ogbe had presented evidence that she really has a disability and that her two-bedroom unit is a reasonable accommodation for it, a trier of fact could have decided the disputed allegations. *Cf. Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 544 (Minn. 2001) (holding that appellant had established genuine issue of material fact regarding whether she was disabled within meaning of Minnesota Human Rights Act); *Cravens v. Blue Cross & Blue Shield of Kansas City*, 214 F.3d 1011, 1020 (8th Cir. 2000) (same for reasonable accommodation). We therefore cannot agree with the district court's statement that, because Ogbe's lease does not include a provision for resolving the parties' disagreement over the claimed disability, Seward could not raise the rent during the lease term.

Ogbe's lease and the handbook plainly authorized Seward to transfer Ogbe to a one-bedroom unit or to charge her market rent. Because Ogbe refused to move and failed to pay market rent, and she offered no evidence that she has a disability and that a two-bedroom unit is a reasonable accommodation, Seward is entitled to a judgment of eviction. We reverse the money judgment to Ogbe and remand for entry of judgment of eviction in Seward's favor. We therefore need not reach Seward's alternative argument that the district court exceeded the limited scope of the eviction proceedings by ordering Seward to refund rental payments made by Ogbe. *See Eagan E. Ltd. P'ship v. Powers*

Investigations, Inc., 554 N.W.2d 621, 621 (Minn. App. 1996) (noting that eviction proceedings are limited to determining present possessory rights).

Reversed and remanded.