STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2203

Erica Morford-Garcia,
Relator,

vs.

Metropolitan Council Housing and Redevelopment Authority,
Respondent.

Filed December 22, 2009
Affirmed
Kalitowski, Judge

Metropolitan Council Housing and Redevelopment Authority

Ron Michaelson, Southern Minnesota Regional Legal Services, Inc., 166 East Fourth Street, Suite 200, St. Paul, MN 55101 (for relator)

Mary G. Dobbins, Landrum Dobbins LLC, 7400 Metro Boulevard, Suite 100, Edina, MN 55439 (for respondent)

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

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

KALITOWSKI, Judge

Relator Erica Morford-Garcia challenges the determination of the hearing officer for Metropolitan Council Housing and Redevelopment Authority, upholding the termination of her housing assistance under the Section 8 program. Because we conclude

that the hearing officer's decision was supported by substantial evidence and was not arbitrary and capricious, we affirm.

D E C I S I O N

When a public-housing authority receives evidence, hears testimony, and makes a determination to deny an individual Section 8 benefits, it acts in a quasi-judicial capacity. *Carter v. Olmsted County Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). Agencies' quasi-judicial determinations should be upheld unless they are unconstitutional, outside agency jurisdiction, procedurally defective, based on erroneous legal theory, not supported by substantial evidence, or arbitrary and capricious. *Id.* This court examines the findings to determine whether they support the decision, but does not retry facts or challenge credibility determinations. *Senior v. City of Edina*, 547 N.W.2d 411, 416 (Minn. App. 1996).

I.

This court will not disturb an agency determination as long as it is supported by substantial evidence. *Carter*, 574 N.W.2d at 730. Substantial evidence is: "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Wilhite v. Scott County Hous. and Redev. Auth.*, 759 N.W.2d 252, 255 (Minn. App. 2009) (quotation omitted). On review we apply the abuse-of-discretion standard. *Carter*, 574 N.W.2d at 730.

Relator contends that the agency decision upholding the termination of her housing assistance was not supported by substantial evidence. We disagree.

Substantial evidence supports the conclusion that relator was evicted.

24 C.F.R. 982.552(b)(2) (2008) provides that a housing authority must terminate assistance if a recipient is evicted for serious lease violations. Relator first argues that the evidence on the record does not support the Metropolitan Council Housing and Redevelopment Authority (Metro HRA) hearing officer's determination because she was never evicted. Rather, she argues, a writ of recovery was issued, posted, and canceled before it was executed. Relator contends that this means the eviction itself was canceled. Relator cites the lack of evidence in the record of a court order or judgment of eviction, the sheriff's records that state "[e]viction cancelled," and the fact that she voluntarily vacated the premises as evidence that she was not in fact evicted, or dispossessed by process of law.

In an eviction action, the district court must order judgment for the landlord before a writ of recovery may be issued. Minn. Stat. § 504B.345 (2008). It is undisputed that here, the landlord initiated an eviction action when he filed an eviction complaint on June 9, 2008. The record further indicates that when the parties went to housing court on June 18, 2008, they entered into a settlement and agreed to a mutual termination of the lease. The settlement agreement stated that "[i]f Defendants fail to comply with any provision of this agreement, Plaintiff shall be entitled to an immediate writ of recovery." The parties agreed to stay the writ of recovery at that time. Relator cannot, and does not, challenge the validity of the writ at this time.

We conclude that there was evidence to support the hearing officer's conclusion that relator was evicted. The evidence presented included an eviction summons and

complaint, a mutual termination agreement between the parties that stated that if relator failed to comply with all the conditions of the agreement a writ would be issued, and a writ that was issued and posted, then canceled. Presented with this evidence, and with Minnesota law providing that a writ of recovery will not be issued unless a judgment has been entered in the landlord's favor, the hearing officer's decision that relator had been evicted, is supported by substantial evidence.

Substantial evidence supports the conclusion that relator was evicted for serious lease violations.

U.S. Department of Housing and Urban Development regulations provide that a housing authority must terminate assistance if a recipient is evicted from program-assisted housing for serious violations of the lease. 24 C.F.R. § 982.552(b)(2). This is a mandatory provision. *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 338 (Minn. App. 2004). Therefore, under the plain language of the rule, Metro HRA was required to terminate relator's housing assistance if she was evicted for serious lease violations.

Relator argues that the June 18, 2008 agreement settled all issues raised in the eviction action filed by her landlord and thus she could not have been evicted for those lease violations. We disagree.

The record indicates that (1) the City of New Brighton cited relator and her family multiple times for failure to provide garbage services at their home, and for having a dog at the premises that attacked a neighbor; and (2) relator had an overdue utility bill in the amount of $761.29. The record contains a copy of relator's signed Section 8 "Statement of Responsibilities" that explains "[e]xamples of lease violations include: . . . disturbance

to neighbors; failure to pay rent or other landlord charges . . . ." In this case, the hearing officer found, based on city inspection reports and copies of unpaid bills, that relator had unauthorized dogs and failed to pay utility bills in contravention of the lease. We conclude that substantial evidence showed that these violations occurred.

Relator argues that these violations were never proven in court, and were dismissed pursuant to the settlement agreement between relator and her landlord. But the settlement agreement did not dismiss these issues. Rather, the agreement states: "If Defendants comply with the terms of this agreement, this matter shall be dismissed and expunged by filing an affidavit . . . ." Thus, the issues for which the landlord brought the eviction action were reserved, and would be dismissed only if relator complied with the agreement and properly vacated by July 31, 2008. We therefore conclude that the hearing officer did not abuse her discretion in finding that relator was evicted for these lease violations.

Relator disputes whether these lease violations were serious. What constitutes serious lease violation is not defined in 24 C.F.R. § 982.552(b)(2) (2008). Serious is defined as "important" or "weighty." *Black's Law Dictionary* 1490 (9th ed. 2009). Elsewhere, the rules provide that serious violations include but are not limited to a failure to pay rent or other amounts due under the lease. 24 C.F.R. § 982.310(a)(1) (2008).

In *Wilhite*, this court, in dicta, expounded on the definition of serious in this context:

> [W]e believe that the seriousness of the violation becomes apparent when compared with what we consider to be minor violations of a lease--late payment of rent, improperly

> boarding a pet, or ignoring homeowner-association rules, for example. In the case of minor violations, the landlord may suffer minor economic harms or inconvenience, but neither the landlord's property nor economic interest is significantly affected. In the case of serious violations, the landlord is deprived of either a tangible property interest or a real, significant, economic benefit.

759 N.W.2d at 256. Based on this reasoning, we conclude that relator's failure to pay utilities and provide garbage services are serious violations of her lease.

When a tenant fails to keep up with utilities and waste, the landlord's property can be "significantly affected." *See id.* Here, the New Brighton city inspection reports state that relator failed to provide garbage services from March until July 2008, a significant period of time that allowed a considerable amount of waste to pile up on the premises. Additionally, the letter that Metro HRA mailed to relator on July 21, 2008, states that relator's failure to pay water and garbage services constituted "a serious breach of your lease and could lead to termination of your Section 8 Housing Choice Voucher and rent assistance." Thus, there is substantial evidence to support the conclusion that at least one lease violation alleged in the landlord's eviction action and supported by city reports is a serious lease violation. We therefore conclude that the hearing officer did not abuse her discretion in finding that relator was evicted for serious lease violations.

Substantial evidence supports the conclusion that relator failed to vacate the premises by July 31, 2008.

The Metro HRA hearing officer found that relator failed to vacate the premises by July 31, 2008, as required by the settlement agreement. Relator claims that she substantially complied with the terms of the settlement agreement, and that the hearing

officer was not presented with substantial evidence indicating otherwise. Because substantial evidence supports the conclusion that relator did not properly vacate by July 31, we disagree.

The settlement agreement that relator and her landlord signed contained a stipulation that the issues would be dismissed if relator vacated the premises on or before July 31, 2008. The hearing officer was presented with evidence that although relator and her family were no longer residing there after July 31, relator failed to remove all her personal property from the premises by that date. Caselaw in Minnesota has not specifically defined whether vacating the premises requires the removal of all personal belongings. But cases have suggested that removing property is implicit in properly vacating. *See Provident Mut. Life Ins. Co. v. Tachtonic Instruments, Inc.*, 394 N.W.2d 161, 164 (Minn. App. 1986) (stating that a tenant had complied with an order to vacate the premises by leaving the property clean and free of all personal property).

Relator admitted at the hearing that there were "maybe a couple of dressers" still on the property on August 5, 2008, and that she and her family removed "everything we could get out of the place" by July 31. But a city inspection report, and accompanying photographs from August 5, indicated that there was "furniture, garbage, junk, children's toys, bricks, glass in front and back yard" of relator's premises.

Relator argues that because she was "actively in the process of moving out of her rental unit on July 31st" she substantially complied with the settlement agreement and that "no evidence was introduced that would establish a holdover of more than a few days." But the settlement agreement does not provide for substantial compliance.

Moreover, when a landlord gives a tenant a chance to avoid eviction by signing a settlement agreement, strict compliance with the terms of the settlement agreement is not unreasonable.

Finally, relator argues that because the writ of recovery was ultimately issued pursuant to an alleged violation of the settlement agreement, this cannot constitute a serious violation of her lease. But as discussed above, we have concluded that the hearing officer did not abuse her discretion in finding that substantial evidence showed that relator was evicted for serious lease violations that were not dismissed as a result of the settlement agreement.

II.

Relator argues that the hearing officer's findings were arbitrary and capricious for failing to take into consideration mitigating factors, including the triviality of leaving a few personal belongings behind, the insignificance of relator's failure to notify the Metro HRA when her landlord filed the eviction, and the severe impact loss of rental assistance has on relator and her family. We disagree.

With regard to determinations of whether to terminate assistance due to actions of the family, Section 8 regulations provide:

> The [public housing agency] may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

24 C.F.R. § 982.552(c)(2). An agency ruling is arbitrary and capricious if the agency (a) relied on factors not intended by the legislature; (b) failed to consider an important aspect of the problem; (c) offered an explanation that runs counter to the evidence; or (d) made a decision so implausible that it could not be explained as a divergent view or due to agency expertise. *Citizens Advocating Responsible Dev. v. Kandiyohi County Bd. of Comm'rs*, 713 N.W.2d 817, 832 (Minn. 2006).

Relator was evicted from her rental unit for serious violations of her lease. Applicable federal guidelines provide that in this situation, the public housing agency *must* terminate her assistance. *See* 24 C.F.R. § 982.552(b)(2) (2008). Thus, relator's argument that she was evicted for trivial matters is without merit. In addition, because eviction for a serious violation is mandatory, the hearing officer was not permitted to consider relator's claimed hardship. *See Cole*, 686 N.W.2d at 338. We conclude that the decision to uphold the termination of relator's housing assistance was not arbitrary and capricious for failure to consider mitigating circumstances.

III.

Relator argues that the hearing officer's decision was arbitrary and capricious, because the officer failed to make independent findings of fact, explain why testimony was rejected, or make express credibility determinations about testimony presented at the informal hearing. We disagree.

Administrative agencies do not have unlimited discretion and must explain their decisions. *Carter*, 574 N.W.2d at 729. The agency must explain the evidentiary basis for its decision and how that evidence is rationally related to its action. *Hiawatha Aviation of*

Rochester, Inc. v. Minn. Dep't of Health, 375 N.W.2d 496, 501 (Minn. App. 1985), *aff'd*, 389 N.W.2d 507 (Minn. 1986). "[T]he [agency decision maker] . . . must demonstrate that all relevant evidence was considered and evaluated, and must detail the reasons for discrediting pertinent testimony." *Carter*, 574 N.W.2d at 729 (quotation omitted).

Here, the hearing officer summarized all of the evidence presented. And the hearing officer's decision included her relevant findings of fact and determinations. The hearing officer found that Metro HRA terminated relator's rental assistance for: (1) violating the "Metro HRA Statement of Responsibilities" that required relator to provide the Metro HRA with notice of any eviction complaint; and (2) for serious lease violations resulting in an eviction. The hearing officer's conclusion that relator had been evicted for serious lease violations was supported by evidence of relator's unpaid utility bills, unauthorized dogs, and damage to the property, coupled with her violation of the settlement agreement by failing to vacate by July 31, 2008. Relator argues that the hearing officer improperly disregarded the affidavit of a neighbor without explanation. We disagree. The neighbor's affidavit provides that

> [t]he Morford-Garcias were completely out of the house before midnite July 31 and they left their keys on the kitchen counter. They only returned the next day or two to remove the remaining stuff from the yards . . . . The only item I believe they left behind was bunk beds they couldn't get out.

From this information, the hearing officer did not conclude that relator and her neighbor were not credible, or reject their pertinent testimony; rather, she determined that this testimony did not prove that relator had vacated the property by July 31, 2008. We

conclude that the hearing officer made appropriate findings of fact and that her decision was supported by the evidence.

Affirmed.