STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1684

Sunrise Estates, a MN Limited Partnership,
Respondent,

vs.

Reuben Avery,
Appellant.

Filed June 23, 2025
Affirmed
Larkin, Judge

Jackson County District Court
File No. 32-CV-24-123

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

Peter J. Hemberger, Sam Pilney, Southern Minnesota Regional Legal Services, Inc., Mankato, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Larson, Judge; and Smith, John P., Judge.[*]

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant-tenant challenges the district court's denial of his motion to dismiss respondent-landlord's eviction action. We affirm.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

FACTS

Appellant Reuben Avery was a tenant at a property controlled by respondent Sunrise Estates, a MN Limited Partnership. Because the property is federally subsidized, it is subject to regulations of the Department of Housing and Urban Development (HUD). The written lease agreement between the parties is based on the HUD model lease provided in *HUD Handbook 4350.3 REV-1: Occupancy Requirements of Subsidized Multifamily Housing Programs*, app. 4-A (2013) (HUD handbook).

The lease provides that grounds for termination of the tenancy include "material noncompliance" with the lease terms. "Material noncompliance" includes "one or more substantial violations of the lease" and "repeated minor violations of the lease that . . . adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment to the leased premises and related project facilities." The lease incorporates a resident handbook with a crime-free provision, which prohibits "acts of violence or threats of violence, including but not limited to the unlawful discharge of firearms, . . . intimidation, or any other breach of the lease or act that otherwise jeopardizes the health, safety, or welfare of the Owner/Owner's agents, Management, or other residents and their guests." According to the resident handbook, a single violation of the crime-free provision is a "material violation of the lease and a basis for *immediate lease termination and eviction*." (Emphasis added and omitted.)

On September 10, 2024, Avery went to his apartment building's management office to complain that his unit had been vandalized. During Avery's conversation with a management agent, he became frustrated and said to "go ahead and call the police" because

he "had a 9mm handgun with 17 rounds in [his] unit and anyone that comes to the door will be popped off." Other residents and children were in the management office and heard Avery's threat.

The next day, a notice of lease termination dated September 11, 2024, was posted on Avery's door. The notice stated that Avery's lease was being terminated as of that day "for material non-compliance" with the lease and because he violated the crime-free provision, citing the "threats of violence" Avery made in the management office. The notice advised that Avery had "10 days in which to discuss the termination of [his] lease with [Sunrise Estates]" (the ten-day discussion period) and that "[t]he 10-day period will begin on the earlier of the date this notice is delivered to your unit or the day after the date the notice is mailed to you." The notice provided persons of contact for "any response or . . . any grievance" about the notice and noted that management would meet with Avery if he requested a meeting. According to Avery, he did not request to meet with management about the termination of his lease.

Also on September 11, 2024, Sunrise Estates commenced an eviction action against Avery. After that date, Avery was served with the eviction complaint, summons, and termination notice. Avery filed an answer pro se, and he later obtained counsel. Avery then moved to dismiss the eviction action asserting, in part, that Sunrise Estates filed its complaint "prematurely," meaning "prior to the end of the 10-day period referenced in the Notice of Lease Termination," and thus failed to comply with "the lease, federal law, state law, and HUD regulations."

On October 14, 2024, the district court held an eviction hearing. On October 17,

the district court ordered entry of judgement for Sunrise Estates, as well as issuance of a writ of recovery of premises and order to vacate, which was served on Avery on October 27, 2024. In doing so, the district court concluded that Sunrise Estates properly complied with notice requirements when terminating Avery's lease. The district court reasoned, in part, that "[a]ccording to the lease agreement, the lease could be terminated immediately upon a material violation of the lease." The district court further reasoned that neither HUD regulations nor Minnesota Statutes require a landlord to wait ten days before initiating an eviction action after providing notice of lease termination. The district court ruled that because "there was no requirement that [Avery] be given 10 days before [Sunrise Estates] could file an eviction action and the lease specifically states that the lease is immediately terminated, Avery's motion to dismiss for failing to provide him 10 days is denied."

Avery appeals.

DECISION

Avery contends that the district court erred by denying his motion to dismiss the eviction action. Specifically, he argues that the parties' lease agreement precluded Sunrise Estates from initiating an eviction action until expiration of the ten-day discussion period.[1]

"The application of statutes, administrative regulations, and local ordinances to undisputed facts is a legal conclusion and is reviewed de novo." *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008). The same de novo standard of review applies

[1] This is the only part of the district court's ruling that Avery challenges on appeal.

to the interpretation of federal regulations. *In re Ali*, 938 N.W.2d 835, 838 (Minn. 2020). In addition, "a lease is a form of contract" and "[u]nambiguous contract language must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh." *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999) (footnote omitted).

In arguing that Sunrise Estates had to wait ten days after providing notice of lease termination before initiating an eviction action, Avery primarily relies on the HUD handbook which contains the model lease. *See* HUD Handbook 4350.3 REV-1, app. 4-A. The HUD handbook clarifies that termination of a tenancy is "the first step in the eviction process," in which the landlord "gives the tenant notice to vacate the unit because of a lease violation(s)." HUD Handbook 4350.3 REV-1, § 8-1(B).

The HUD handbook provision at issue here states that when terminating a tenancy, the landlord must advise the tenant in writing "that he/she has 10 days within which to discuss termination of tenancy with the owner" and that the ten-day period "begins on the day that the notice is deemed effective." *Id.*, § 8-13(B)(2)(c)(4) (emphasis omitted). Avery contends that under that provision, a landlord may not initiate an eviction action during the ten-day discussion period. But the plain language of the provision says nothing about the timing of an eviction action in relation to the ten-day discussion period. On its face, the provision simply requires the landlord to provide the tenant with written notice that the tenant has ten days from the notice's effective date to discuss the termination with the landlord. *Id.* There is no dispute that the written notice of lease termination that was posted on Avery's door advised him that his lease was terminated effective September 11, 2024,

and that he had ten days from that date to discuss the termination with Sunrise Estates. That notice complied with the plain language of the relevant HUD handbook provision. There is also no dispute that Avery did not exercise his right to discuss the termination with Sunrise Estates during the ten-day discussion period.

Avery cites no precedential authority that prohibits the filing of an eviction action within the ten-day period, much less prohibits doing so under the circumstances here: when there is an immediate lease termination based on material noncompliance with a crime-free provision. This lack of authority stands in contrast to other federal and state laws that prohibit the immediate initiation of an eviction proceeding following termination based on non-payment of rent. For example, a HUD regulation expressly prohibits landlords from initiating eviction actions within 30 days of notice of termination for failure to pay rent. 24 C.F.R. § 884.216(d)-(e) (2025) (requiring landlords to "provide the tenant with a termination notice at least 30 days before a formal judicial eviction is filed"). Similarly, Minnesota law provides, "[b]efore bringing an eviction action alleging nonpayment of rent or other unpaid financial obligation in violation of the lease," a landlord must provide 14 days' notice to the residential tenant specifying the basis for future eviction action. Minn. Stat. § 504B.321, subd. 1a (2024) (referring to this period of prohibited filing as an "eviction notice period").

In *Manor v. Gales*, we noted that a HUD eviction regulation was "detailed and thorough," and we "assume[d] that HUD would have further defined [a statutory term] had it intended to impose" a more restrictive requirement through the use of that term. 649 N.W.2d 892, 895-96 (Minn. App. 2002). Likewise, in this case we assume that HUD

would have expressly prohibited immediate initiation of an eviction action if that was HUD's intent, just as it did in other contexts. *See Lor*, 591 N.W.2d at 704 ("In light of HUD's careful crafting of the [public housing authority's] role in eviction decisions, HUD would likely have spelled out any additional supervisory responsibilities it wished courts to take.").

In sum, Avery has not provided authority to support his position that an eviction action based on a violation other than nonpayment of rent—including a material violation of a crime-free provision—cannot be initiated immediately after providing notice of lease termination.

Moreover, Avery does not cite precedential caselaw indicating that an eviction action cannot be initiated before expiration of the ten-day discussion period mandated by the HUD handbook. The single binding Minnesota case that Avery cites simply states that landlords must comply with federal requirements when initiating an eviction. *Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889, 895-96 (Minn. App. 1986) (holding that federal regulations governing notice of termination requirements supersede state law and that the regulations "must be complied with before [a landlord] can terminate a tenancy"). In *Kleinschmidt*, the landlord failed to give the tenants *any* written notice of termination; we did not address the ten-day discussion period at issue here.[2] *Id.* at 891.

[2] Although Avery cites Minnesota district court cases to support his argument that an eviction action may not be initiated during the ten-day discussion period, rulings of the district court are not binding on this court. *See Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003) (noting that this court is bound by decisions of the Minnesota Supreme Court and the United States Supreme Court).

The federal caselaw that Avery cites is not binding on this court. *See Citizens for a Balanced City*, 672 N.W.2d at 20. "Although not binding, . . . other federal court opinions are persuasive" when interpreting federal law "and should be afforded due deference." *Id.* But the cases on which Avery relies are not on point. For example, *Staten v. Housing Authority of the City of Pittsburgh* addressed a two-notice system in which the landlord must first provide notice of a proposed termination of a tenancy before providing a subsequent notice to vacate premises 14 days later. 469 F. Supp. 1013, 1015-16 (W.D. Pa. 1979). That holding was limited to lease terminations based on nonpayment of rent, and the holding relied on a federal regulation that explicitly required a 14-day notice period "'in the case of failure to pay rent.'" *Id.* at 1016 (quoting 24 C.F.R. § 866.4(1) (1978)).

Another federal case on which Avery relies, *Linares v. Jackson*, dealt with an entirely different issue: whether HUD's "refusal . . . to provide notice and an opportunity to be heard before initiating eviction proceedings . . . against tenants in HUD-owned subsidized housing because HUD has determined that the premises are in need of substantial rehabilitation violates procedural due process." 531 F. Supp. 2d 460, 461 (E.D.N.Y. 2008). Avery does not claim a due process-violation in this case.

Despite the unambiguous language of the relevant HUD handbook provision—which does not restrict when an eviction action may be initiated—and the lack of any precedential authority supporting his position, Avery argues that we should construe the HUD handbook provision as prohibiting initiation of an eviction action before expiration of the ten-day discussion period because doing so would be "in line with Minnesota's push to make evictions harder and expungements easier."

Avery's argument sounds in public policy, and we are not a policy-making court. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) ("The function of the court of appeals is limited to identifying errors and then correcting them."); *LaChapelle v. Mitten*, 607 N.W.2d 151, 159 (Minn. App. 2000) ("Because this court is limited in its function to correcting errors it cannot create public policy."), *rev. denied* (Minn. May 16, 2000). Moreover, "the Minnesota Supreme Court has rejected our prior attempt to read equitable standards into HUD regulations when the regulation is carefully crafted and addresses all the concerns intended." *Gales*, 649 N.W.2d at 895. Whether the initiation of an eviction action should be delayed after providing notice of lease termination based on conduct that threatens the safety of others is not a decision for an error-correcting court. In sum, we cannot rely on a policy basis to construe the relevant HUD handbook provision as prohibiting initiation of an eviction action before expiration of the ten-day discussion period.

We conclude that Sunrise Estates was allowed to initiate its eviction action immediately as provided in the parties' lease agreement. It was not required to wait until the expiration of the ten-day discussion period. The district court therefore did not err by refusing to dismiss the eviction action on that ground.

Affirmed.