

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1557**

HTA Gallery Medical, LLC,  
a Delaware limited liability company,  
Respondent,

vs.

EyEs, Ltd.,  
Appellant.

**Filed March 17, 2014  
Affirmed  
Kirk, Judge**

Ramsey County District Court  
File No. 62-HG-CV-13-1935

John Michael Miller, Peterson, Fram & Bergman, P.A., St. Paul, Minnesota (for respondent)

Damon L. Ward, Ward Law Group, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Kirk, Judge.

**UNPUBLISHED OPINION**

**KIRK**, Judge

Appellant challenges the district court's order requiring it to deposit rent into the court pending the resolution of the unlawful detainer action. We affirm.

## DECISION

On review of a district court order in an eviction action, we review whether the district court's findings of fact are clearly erroneous. *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 555 (Minn. App. 1985), *review denied* (Minn. Feb. 19, 1986). But we do not defer to the district court on a purely legal issue. *Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984).

A landlord may commence an eviction action when a person unlawfully detains or retains possession of real property. Minn. Stat. § 504B.301 (2012). A landlord may also bring an eviction action for nonpayment of rent. Minn. Stat. § 504B.291 (2012). An eviction action is a summary proceeding to determine the present possessory rights to property. *See Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445-46 (Minn. App. 2001) (noting that an eviction action, formerly known as an unlawful-detainer action, is a summary proceeding).

In October 2011, appellant EyEs Ltd. entered into a ten-year lease with respondent HTA Gallery Medical, LLC, to rent a commercial office suite. In October 2012, the parties amended the lease when EyEs rented an additional office suite from HTA to accommodate its growing business, and HTA agreed to remodel the suite.

In July 2013, HTA filed an eviction complaint, alleging that EyEs was in possession of the property and had failed to pay \$133,481.98 in rent. In its answer and counterclaim, EyEs argued that under the terms of the lease, rent was due when HTA had substantially completed the remodel of the office suite, or the parties agreed on an estimated start date of the lease. Arguing that neither event had occurred, EyEs claimed that it did not owe rent.

At a preliminary hearing on July 30, the district court scheduled a jury trial in housing court on the issue of possession. The court:

1. ordered EyEs to deposit the August rent of \$17,947.88 with the court on or before August 1, and
2. indicated that a Writ of Recovery would issue on August 2 if the deposit was not made as ordered.

EyEs failed to pay the required deposit, HTA secured a Writ of Recovery, and judgment was entered against EyEs. The district court canceled the jury trial.<sup>1</sup>

EyEs argues on appeal that the district court erred when it ordered EyEs to deposit rent with the court pending trial because under the terms of the lease it did not owe rent. At the preliminary hearing, EyEs did not contest that it was occupying the suite, had signed a lease for the premises in question, and had not paid rent since January 2013. Here, EyEs was withholding rent in reliance on its claimed defense that the duty to pay had not yet commenced. However, Minn. R. Gen. Pract. 608 provides that a tenant shall deposit accruing rent with the district court as security for the landlord when the tenant claims to be withholding rent in reliance on a defense. The district court properly followed this rule in ordering EyEs to deposit rent with the court pending the outcome of the trial.

**Affirmed.**

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<sup>1</sup> The district court stayed execution of the writ and gave EyEs until August 22 to post the required security, but EyEs failed to comply.