

Appellate Case No. A13-2177

OFFICE OF
APPELLATE COURTS

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STATE OF MINNESOTA
COURT OF APPEALS

FILED

Yolanda Bass,

Respondent

vs.

Equity Residential Holdings, LLC,

Appellant.

RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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STATEMENT OF THE CASE

This is a landlord-tenant case in which a landlord engaged in self-help to unlawfully evict a tenant and her family by changing the locks on her doors when she left for work for the day, and then destroyed all of her and her young daughters' personal property (including medical equipment, clothes, and furniture) by throwing it into rain-soaked dumpsters.

Appellant-landlord Equity Residential Holdings, LLC (“Equity”) appeals from the Honorable District Court Judge Elizabeth V. Cutter’s November 6, 2013 Findings of Fact, Conclusions of Law, [and] Order (“Nov. 6, 2013 Order”) (App’x 1), which itself reviewed and affirmed an August 7, 2013 Order of the Honorable District Court Referee JaPaul J. Harris (“August 7, 2013 Order”) (Respondent’s Appendix (“R. App’x”) 1).¹ The November 6, 2013 Order from which this appeal is taken affirmed judgment for Respondent-tenant Yolanda Bass in the amount of \$10,386.97 and awarded Ms. Bass post-judgment interest, attorneys’ fees, and costs for Equity’s bad-faith violations of Minn. Stat. §§ 504B.231, 504B.271, and 504B.375. (Nov. 6, 2013 Order, ¶¶ 3-4, 14-18, App’x 9, 3.) Those statutes each provide remedies—including actual, trebled, and punitive damages—for a landlord’s unlawful exclusion of a tenant from the rented property and unlawful disposition of the tenant’s personal property. The November 6, 2013 Order should be affirmed.

¹ Equity included a copy of the August 7, 2013 Order in its Appendix, but it obscured certain passages of text. (See App’x 13, 14.) An unmarked copy is included in Respondent’s Appendix. (R. App’x 1.)

STATEMENT OF FACTS

This dispute began when Equity filed an action to evict Ms. Bass from her apartment at Minneapolis, Minnesota. On April 5, 2013, the District Court Referee ruled that, Ms. Bass having failed to deposit the disputed rent with the Court pursuant to Housing Court Rule of Practice 608, the trial scheduled in the eviction matter was cancelled. (April 5, 2013 Decision and Order, R. App'x 14.) The Referee also held that Equity was entitled to a judgment for recovery of the property, which could be executed by Equity obtaining the necessary Writ of Recovery of Premises and Order to Vacate upon its request and payment of a fee. (*Id.*; *see also* Aug. 7, 2013 Order, ¶¶ 9-11, R. App'x 2.) Without a Writ of Recovery, however, Equity had no legal right to evict Ms. Bass from the property. (*Id.*) Among other things, a Writ of Recovery gives a tenant 24 hours' notice that they must vacate the premises. *See* Minn. Stat. 504B.365.

On April 10, 2013, at approximately 8:15 a.m., Ms. Bass left her apartment to go to work. (August 7, 2013 Order ¶ 13, R. App'x 2.) When she returned at approximately 2:45 p.m., the locks on her apartment had been suddenly changed, with no posted explanation or Writ of Recovery having been obtained. (*Id.* at ¶ 14.) After calling the police and Equity's management, Ms. Bass learned from Equity that it had had locked her out of her apartment, and that all of her personal property had been deposited in numerous dumpsters behind the premises. (*Id.* at ¶ 65-66, R. App'x 10; Nov. 6, 2013 Order ¶ 12, App'x 3.) Not only were her belongings in dumpsters, but "they were water soaked due to rain." (Aug. 7, 2013 Order ¶ 66, R. App'x 10.)

On April 11, 2013, Ms. Bass sent Equity a letter demanding the return of her property pursuant to Minn. Stat. § 504B.271 subd.2. (Nov. 6, 2013 Order ¶ 13, App'x 3; Exhibit 2, R. App'x 14-15.) Ms. Bass also sued Equity by filing a Lockout Petition pursuant to Minn. Stat. § 504B.375, seeking a remedy for Equity's unlawful eviction and destruction of her personal property. (Nov. 6, 2013 Order ¶ 14, App'x 3; Apr. 15, 2013 Amended Verified Petition, R. App'x 16-18.) Ms. Bass' personal property was never returned to her.

On April 17, 2013, the District Court Referee held a hearing on Ms. Bass' Amended Petition. (Nov. 6, 2013 Order ¶ 15, App'x 3.) Ms. Bass appeared *pro se*, while Equity failed to appear. (*Id.*) The District Court Referee heard evidence and, in an April 18, 2013 Order, held that Equity had unlawfully excluded Ms. Bass from her apartment by changing her locks, and that Equity had no basis to believe that Ms. Bass had abandoned her apartment. (*Id.*; *see also* Apr. 18, 2013 Order ¶¶ 6, 13-17, 26-32, R. App'x 19-20, 22.) The District Court Referee also held that Equity had acted in bad faith and that Ms. Bass had suffered damages, and set a second hearing, on May 10, 2013, solely to consider the amount of damages Equity would pay Ms. Bass. (Nov. 6, 2013 Order ¶¶ 15-17, App'x 3-4; Apr. 18, 2013 Order ¶¶ 32-35, R. App'x 22.) Significantly, Equity did not appeal the April 18, 2013 Order establishing its liability and finding that Equity had acted in bad faith. (Nov. 6, 2013 Order ¶ 16, App'x 4; April 18, 2013 Order ¶¶ 31-33, R. App'x 22.)

At the May 10, 2013 hearing, Ms. Bass again appeared *pro se*, while Equity was represented by counsel. Ms. Bass and Equity's agent, Steve Frenz, testified, and

Ms. Bass offered into evidence pictures of her property in dumpsters and a list of her belongings that had been destroyed. (Nov. 6, 2013 Order ¶ 17, App'x 4; Exhibits 1-2, R. App'x 14-15, 24; Aug. 7, 2013 Order ¶ 65, R. App'x 10.) The District Court Referee found Ms. Bass' testimony regarding Equity's conduct and the value of her belongings to be credible, and Equity's testimony to be not credible with the exception of three points: Mr. Frenz changed the locks on Ms. Bass' apartment; he put her property in the garbage; and he refused to help her retrieve her property. (Aug. 7, 2013 Order ¶¶ 55-57, R. App'x 8.)

In its August 7, 2013 Order, the District Court Referee awarded Ms. Bass \$10,386.97 in damages, consisting of \$3,128.99 in actual damages trebled to \$9,386.97 for violation of Minn. Stat. § 504B.231, and \$1,000 in punitive damages for Equity's bad-faith violation of Minn. Stat. § 504B.271. (Nov. 6, 2013 Order ¶ 18, App'x 4.) The Order required Equity to pay Ms. Bass within 60 days from the date of the order. (*Id.*)

Equity moved for District Court Judge review of the August 7, 2013 Order pursuant to Housing Court Rule of Practice 611. The District Court Referee granted that review on the condition that Equity post a bond or make a payment to the Court in lieu of a bond. (Nov. 6, 2013 Order ¶ 21, App'x 4.) Equity requested reconsideration of the bond or payment requirement, and in a September 30, 2013 Order, the District Court Referee held that Equity was not required to request a stay of judgment with the attendant requirement of a bond or payment into the Court, but also confirmed that the judgment would not be stayed pending review. (*Id.* at ¶ 22, App'x 5.) Equity failed to pay

Ms. Bass within 60 days of the August 7, 2013 Order and never requested a stay of the judgment.

The review hearing was held on October 10, 2013, and on November 6, 2013, the District Court issued an Order affirming the Referee's August 7, 2013 Order in all respects, and awarding Ms. Bass post-judgment interest and attorneys' fees and costs. (Nov. 6, 2013 Order, App'x 1.) This appeal followed.

ARGUMENT

I. THE REVIEWING COURT PROPERLY HELD THAT IT LACKED JURISDICTION DUE TO EQUITY'S DEFAULT OF THE REFEREE'S ORDER.

This Court need not reach the merits of the appeal because the District Court Judge correctly held that, as a matter of law,² Equity was not entitled to the review hearing that resulted in the Order from which the appeal is taken. (Nov. 6, 2013 Order ¶¶ 1-5, App'x 5-7.) The District Court Referee's August 7, 2013 Order under review required Equity to "pay Plaintiff Yolanda Bass no later than 60 days from the date of this order, the amount of \$10,386.97." (Aug. 7, 2013 Order, Order ¶ 1, R. App'x 13.) Prior to the October 10, 2013 review hearing that resulted in this appeal, Ms. Bass' attorney submitted an Affidavit attesting that as of October 8, 2013—more than 60 days from the date of the August 7, 2013 Order—Equity had not paid Ms. Bass. (Aff. of Matthew Kilby With Exs. A-D in Support of Plaintiff's Prehearing Br. Regarding the October 10, 2013 District Judge Review, ¶ 3.) As the District Court Judge found, this meant Equity

² Questions of law are reviewed *de novo*. *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 836 (Minn. 2012).

had defaulted on the August 7, 2013 Order prior to the October 10, 2013 review hearing. (Nov. 6, 2013 Order ¶ 4, App'x 6.) Hennepin Housing Court Rule of Practice 611(a), however, provides that only “a party not in default may seek judge review of a decision . . . recommended by the referee.” Having defaulted, Equity had no right to a review hearing. (Nov. 6, 2013 Order ¶¶ 1-5, App'x 5-7). The District Court Judge should be affirmed on this point, rendering the rest of the arguments raised by Equity on appeal moot.

This result is both equitable and required by the relevant statute and Rule of Practice. Minn. Stat. § 484.70, subd. 7(e)(1) provides that once a District Court Referee's order is countersigned by a District Court Judge (and the August 7, 2013 Order was countersigned), it remains “effective during the pendency of a review . . . unless a judge: (1) expressly stays the effect of the order.” Housing Court Rule of Practice 611(b) provides the mechanism for parties desiring judge review to obtain that review without either paying a judgment or defaulting. Pursuant to Rule 611(b), entry of judgment is stayed pending the outcome of the review hearing where “the petitioner requests and the referee orders a bond, payment(s) in lieu of a bond, or waiver of a bond and payment(s).”

Equity never requested a bond, payment, or waiver of a bond. To the contrary, it submitted a letter brief protesting an initial order requiring it to post a bond in the amount of the judgment or make payment into the Court in lieu of a bond in order to obtain a review hearing. (See Sept. 13, 2013 Order for Review ¶ 5, R. App'x 26; Sept. 18, 2013 Correspondence from Kenneth Hertz, R. App'x 27.) In that letter brief, Equity's counsel wrote that Equity “fully understands that if it does not post a bond that that judgment

against it will not be stayed.” (Sept. 18, 2013 Correspondence from Kenneth Hertz, R. App’x 27.) Equity’s unusual request resulted in a September 30, 2013 Housing Court order clarifying that Equity was not required to post a bond and obtain a stay, but also that its failure to do so was at its own peril, as Ms. Bass could then docket and collect her judgment. (Sept. 30, 2013 Decision and Order, Order ¶ 2, R. App’x 29.)

Notwithstanding Equity’s representation that it did not need a stay of judgment, Equity still failed to pay Ms. Bass within 60 days as required by the August 7, 2013 Order. Having rejected the invitation to post a bond or seek a stay, Equity defaulted on that Order.

In sum, Equity was given every opportunity to avoid default and obtain a District Judge review. It could have (1) requested a stay by posting bond; (2) requested a stay and paid the judgment into the Court; (3) requested a stay and waiver of bond and payment to the Court; or (4) complied with the Order and paid Ms. Bass. Equity did none of these things, and therefore defaulted on the August 7, 2013 Order.

Equity argues that the Court should interpret the term “default” in Housing Court Rule of Practice 611(a) to exclude a party’s violation of a court order. (App. Br. 7-8.) But non-compliance with a legal obligation—such as a court order requiring payment or other action—is a central meaning of “default,” and Equity offers no argument as to why the meaning of “default” should be altered from its common meaning in the context of Rule 611. *See, e.g.*, Nov. 6, 2013 Order ¶ 1 & n.1, App’x 5 (citing Black’s Law Dictionary 480 (9th ed. 2009) and The American Heritage Dictionary of the English Language 488 (3d ed. 1992), and concluding that “default results by a party’s failure to

perform a legal duty within the time specified”); *State v. Fidelity & Deposit Co.*, 155 Minn. 493, 493-94 (Minn. 1923) (party had defaulted on order and bond requiring support payments); *Woolley v. Woolley*, 2006 Minn. App. Unpub. LEXIS 1246, at *8 (Minn. Ct. App. Nov. 14, 2006) (party in default where he failed to comply with a pretrial order); *State by Humphrey v. Ri-Mel, Inc.*, 417 N.W.2d 102, 108-109 (Minn. Ct. App. 1987) (“A court is vested with authority to render a judgment by default against a disobedient party who fails to comply or respond to discovery orders or requests.”).

Nor, contrary to Equity’s argument (App. Br. 8), does this yield an inconsistent result as between landlords and tenants. A tenant’s violation of a Housing Court order requiring payment of rent owed would, in the absence of a stay, also result in default under Rule 611. Moreover, the Housing Court Rules of Practice also provide that a tenant faced with an eviction action who fails to pay rent owed into the Housing Court is not entitled even to an *initial* hearing as to certain defenses, much less a review hearing. Housing Court Gen. R. Prac. 608.

The District Court’s holding that Equity was in default at the time of the review hearing should be affirmed.

II. THE DISTRICT COURT JUDGE CORRECTLY HELD THAT THE DISTRICT COURT REFEREE HAD JURISDICTION TO ENTER A MONETARY JUDGMENT.

Equity contends that the District Court Referee entered a “monetary judgment without express [statutory] authorization to do so.” (App. Br. 11.)³ Both the District

³ The District Court’s statutory interpretation is a question of law reviewed *de novo*. *Caldas*, 820 N.W.2d at 836.

Court Referee and the District Court Judge considered and rejected this argument. Unfortunately, Equity ignores the reasoning of both courts and the statutes cited in their decisions, the plain language of which grant jurisdiction to the District Court Referee to award damages. (See Aug. 7, 2013 Order ¶¶ 27-33, R. App’x 4-5 (considering and rejecting Equity’s jurisdictional argument; Nov. 6, 2013 Order ¶¶ 8-11, App’x 7-8 (same).) Equity fails even to cite the controlling statute—Minn. Stat. 484.013 subd. 2 — and instead makes general complaints about the alleged “practices” of Housing Court Referees. But that “practice” is neither part of the record on appeal, nor reflected in any rule or statute, nor even an accurate characterization of Housing Court procedures. There is no reason to rewrite Minn. Stat. 484.013 subd. 2 and Housing Court General Rule of Practice 602 as Equity requests.

A. The District Court Referee Had Jurisdiction To Award Plaintiff Damages.

The District Court Referee had jurisdiction pursuant to Minn. Stat. § 484.013 to award Ms. Bass damages. Minn. Stat. § 484.013 establishes the housing calendar program in the Fourth District, and in Subdivision 2, titled “**Jurisdiction**,” grants the housing calendar jurisdiction to:

consolidate the hearing and determination of all proceedings under chapter 504B; criminal and civil proceedings related to violations of any state, county or city . . . housing . . . or housing maintenance code; escrow of rent proceedings; and actions for rent abatement. . .

The program must provide for the consolidation of landlord-tenant damage actions and actions for rent at the request of either party.

(Emphasis added.) Section 484.013 also permits the appointment of a referee. Minn. Stat. 484.013 subd. 3. Referees make only recommended findings and orders, and “all

recommended orders and findings of the referee are subject to confirmation by a judge.”
Minn. Stat. 484.013 subd. 4. All of the orders relevant here were confirmed by signature
of a District Judge, including the August 7, 2013 Order. (R. App’x 13.)

General Rule of Practice 602 delegates the jurisdiction granted by Minn. Stat
§ 484.013 to the District Court Referee, stating that the “housing court referee may
preside over all actions brought under Minnesota Statutes, chapter 504B . . . [and]
landlord and tenant damage actions . . . unless the matter has been removed for hearing
before a judge.” (Emphasis added). Thus, pursuant to statute and Rule of Practice,
District Court Referees have jurisdiction to award damages under Chapter 504B, which is
precisely what the Referee did here in an order confirmed by a District Court Judge and
then affirmed by yet another District Court Judge upon review.⁴

Ms. Bass properly brought her Petition for violation of certain sections of Chapter
504B in the Housing Court. Ms. Bass’ Amended Verified Petition alleged that an agent
of the Defendant, Stephen Frenz, improperly entered Ms. Bass’s apartment without prior
notice, changed the locks on Ms. Bass’ apartment, removed her personal property, threw
her belongings into a dumpster, and destroyed her personal property. (Apr. 15, 2013
Amended Verified Petition, R. App’x 16-18.) Ms. Bass requested an order requiring

⁴ Notably, Equity ignores the fact that Rule 602 gave it the right to “request that a judge
hear a case by filing such request in writing with the court administrator at least 1 day
prior to the scheduled hearing date.” *C.f. Seward Towers Corp. v. Ogbe*, 2013 Minn.
App. Unpub. LEXIS 957, at *6 (Minn. Ct. App. Oct. 21, 2013) (observing that defendant
had “requested that a district court judge be assigned (rather than a housing court
referee), and demanded a jury trial”). Equity made no such request here, and waived its
right to have a District Court Judge hear the case in the first instance.

Equity to cease its unlawful conduct and “[o]ther relief that is deemed just and proper by the court.” (*Id.*) The Amended Verified Petition also stated a claim under Minn. Stat. § 504B.375, which gives tenants the right to recover possession of property from which they have been unlawfully removed. (*Id.*)

The District Court Referee’s April 13, 2013 Order advised Equity that Ms. Bass “may be entitled” to a monetary judgment under Minn. Stat. 504B.231 and 504B.271, including treble damages and attorneys’ fees. (Apr. 13, 2013 Decision and Order, FoF CoL. ¶ 6, R. App’x 30-31.) An April 15, 2013 Amended Decision and Order repeated this information (Apr. 15, 2013 Amended Decision and Order, FoF CoL. ¶ 6, R. App’x 32-33), as did the April 18, 2013 Order finding Equity liable for unlawfully and in bad faith excluding Ms. Bass from her apartment and destroying all of her personal property (Apr. 18, 2013 Order ¶¶ 31-36, R. App’x 22).

The District Court Referee ultimately awarded Ms. Bass damages under Minn. Stat. §§ 504B.231 and 504B.271. (Aug. 7, 2013 Order ¶¶ 59-80, R. App’x 8-12.) Section 504B.231 is titled “DAMAGES FOR OUSTER,” and provides that where a landlord or its agent “unlawfully and in bad faith removes, excludes, or forcibly keeps out a tenant from residential premises, the tenant may recover from the landlord treble damages or \$500, whichever is greater, and reasonable attorney’s fees.” Monetary judgment is plainly authorized by Section 504B.231.

Section 504B.271 subd. 2 provides that where a landlord or its agent does not allow a tenant to retake possession of her personal property following a demand, “the tenant shall recover from the landlord punitive damages in an amount not to exceed twice

the actual damages or \$1,000, whichever is greater, in addition to actual damages and reasonable attorney's fees." Thus, monetary judgment is plainly authorized by section 504B.271 as well.⁵

B. There Is No Sound Policy Reason To Rewrite Minn. Stat. § 484.013

Equity wants this Court to rewrite Section 484.013 to exclude certain causes of action—including those brought under at least Sections 504B.231 and 504B.271 and unspecified others—from its grant of jurisdiction to District Court Referees. But that is not the province of this Court. “When interpreting a statute, an appellate court first determines ‘whether the statute’s language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.’” *Kutscheid v. Emerald Square Props., Inc.*, 770 N.W.2d 529, 531 (Minn. Ct. App. 2009) (quoting *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000)). Where a statute is not ambiguous, “‘statutory construction is neither necessary nor permitted,’ and an appellate court will apply the plain meaning of the statute.” *Id.* (quoting *Am. Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001)).

Equity does not even attempt to identify any ambiguity in Minn. Stat. § 484.013’s grant of jurisdiction for the housing court calendar to hear “all proceedings under chapter

⁵ Equity’s argument that the District Court Referee “may not enter monetary judgment” unless “expressly authorized by statute” (App. Br. 9) is a *non sequitur*. As shown *supra*, the monetary judgment entered and confirmed (twice) here was expressly authorized by Minn. Stat. §§ 484.013 subd.2, 504B.231 and 504B.271 , and Rule 602. None of the cases Equity cites concerns damages awarded under Sections 504B.231 or 504B.271. (App. Br. 9.)

504B.” Instead, Equity argues that this Court should disregard the plain meaning of the statute and read it exclude damages actions in a tenant’s favor under Sections 504B.231 and 504B.271 because Equity believes that a landlord is required to “bring his claim for monetary damages” for unpaid rent in conciliation court. (App. Br. 12.) This argument fails for two reasons.

First, it compares apples and oranges, *i.e.*, a landlord’s contract-based action for unpaid rent on the one hand, with statutory actions for violation of housing laws (which may be brought by landlords or tenants) on the other hand. As for the latter, landlords have the same right to pursue damages remedies for violations of Chapter 504B as do tenants. Indeed, Section 504B.271, under which Ms. Bass was awarded damages, also permits landlords to bring a damages action against tenants who abandon their property “for reasonable costs and expenses incurred in removing the tenant’s property and in storing and caring for the property.”

Equity’s non-substantiated claims regarding “practice” in Housing Courts notwithstanding, damages actions for violations of Chapter 504B are commonplace in the housing court calendar program, and District Court Referee’s routinely enter damages awards, including for unlawful eviction, as well as rent abatement damages for violations of housing code or lease covenants. *See, e.g. Dean v. Paul*, 2013 Minn. App. Unpub. LEXIS 620, at *3-4 (Minn. Ct. App. July 8, 2013) (affirming referee’s order awarding tenant damages under Minn. Stat. 504B.385 for failure to remedy habitability issues and housing code violations); *Kutscheid v. Emerald Square Props., Inc.*, 770 N.W.2d 529, 533 (Minn. Ct. App. 2009) (noting that tenant action for damages for violation of Minn.

Stat. 504B.215 was tried to referee and remanding for determination of damages due to tenant); *Lindner v. Foy*, 2005 Minn. App. Unpub. LEXIS 35 (Minn. Ct. App. June 28, 2005) (affirming award of damages under Section 504B.375).

Second, Equity's entire premise that it could not have sued Ms. Bass for unpaid rent in the action decided by the District Court Referee is incorrect. (App. Br. 12-13.) Minn. Stat. § 484.013 subd. 2 states that the housing court program "must provide for the consolidation of landlord-tenant damage actions and actions for rent at the request of either party." *Equity made no such request here.* Having failed to request that Ms. Bass's unlawful eviction action be consolidated with its rent action before the District Court Referee, Equity cannot now protest the fact that it instead was required to bring its own suit in Conciliation Court.

III. THE DISTRICT COURT JUDGE CORRECTLY CALCULATED MS. BASS' DAMAGES FOR EQUITY'S BAD FAITH DESTRUCTION OF HER PERSONAL PROPERTY.

Equity makes a series of arguments regarding the District Court Judge and District Court Referee's calculation of damages. All have been thoroughly considered by those Courts, and none has any merit. A trial court's damages award is given great deference: "The district court has broad discretion in determining damages and will not be reversed except for a clear abuse of discretion. . . . We will not set aside a damage award unless it is manifestly and palpably contrary to the evidence." *W. St. Paul Fed'n of Teachers v. Indep. Sch. Dist. No. 197*, 713 N.W.2d 366, 378 (Minn. Ct. App. 2006) (quotation omitted).

A. Equity Waived Any Argument Based On Ms. Bass' Proof Of The Value Of The Items Equity Destroyed.

Equity argues in passing that Ms. Bass failed adequately to prove her damages and claims, erroneously, that it was “not able to have proper discovery on the actual items and their value.” (App. Br. 13-14.) But as the District Court Judge held, Equity has waived any argument based on valuation of the property it destroyed because it “did not challenge those values at the May 10, 2013, hearing at which the damages were requested.” (Nov. 6, 2013 Order ¶ 12, App’x 8). Ms. Bass offered into evidence at that hearing an itemized list of her personal property destroyed by Equity, including her valuation of that property. (May 10, 2013 Tr. 12:22-14:17; Exhibit 2, R. App’x 14-15.) Equity objected only to the exhibit’s relevance (an objection not pressed on appeal), not its foundation. (May 10, 2013 Tr. 12:22-14:17.) Objections not made at trial are waived. *See Lake Superior Ctr. Auth. v. Hammel, Green & Abrahamson, Inc.*, 715 N.W.2d 458, 481 (Minn. Ct. App. 2006) (“[W]hen a party fails to object to evidence at trial, that party has generally waived any objection.”); Minn. R. Evid. 103(a)(1) (requiring “a timely objection or motion to strike” to challenge admission of evidence as erroneous).

Moreover, the Referee found that Ms. Bass “provided credible evidence on how she assessed the value of her discarded property by researching the values,” and that testimony offered by Equity that the destroyed items “consisted of trash and debris” were “not credible.” (Aug. 7, 2013 Order ¶¶ 63-69, R. App’x 9-10; *see also id.* at ¶¶ 54-57, R. App’x 8.) These findings were affirmed by the District Court. (Nov. 6, 2013 Order ¶¶ 12-13, App’x 8.) The District Court’s credibility determinations are entitled to

considerable deference, and its ultimate findings of fact may be not be set aside unless “clearly erroneous.” Minn. R. Civ. P. 52.01; *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996) (“[W]e have traditionally accorded great deference to a trial court’s findings of fact because it has the advantage of hearing the testimony, assessing relative credibility of witnesses and acquiring a thorough understanding of the circumstances unique to the matter before it.”). Equity does not point to any contrary evidence not considered by the Referee or District Court Judge that would justify reversing their credibility determinations and factual findings.

Finally, Equity could have requested discovery prior to the hearing (*see* Housing Court General Rule of Practice 612), but it did not do so. Equity having failed to object to Ms. Bass’s evidence or to offer any contrary evidence regarding the value of Ms. Bass’s property, there is no basis to disturb the District Court Judge’s finding as to the value of the property destroyed.

B. The District Court Judge Properly Held That Ms. Bass Had No Duty To Mitigate Her Damages By Retrieving Her Destroyed Belongings From Rain-Soaked Dumpsters.

Equity claims the District Court Referee erred in holding that Ms. Bass “was under no duty to mitigate her damages.” (App. Br. 14; *see also id.* at iii.) This incorrectly states the Referee’s holding. The actual holding was that:

Without making a finding as it relates to whether there is a duty to mitigate the Court finds that requiring Tenant to mitigate by “dumpster diving” to retrieve her rain soaked belongings is outrageous, and is beyond reasonable diligence to mitigate damages.

(Aug. 7, 2013 Order ¶ 74, R. App’x 11.) The Referee correctly stated the law regarding mitigation: even where (unlike this case) a duty to mitigate exists, the plaintiff need only use “reasonable diligence” to mitigate damages. *See Deutz-Allis Credit Corp. v. Jensen*, 458 N.W.2d 163, 166 (Minn. Ct. App. 1990)). Significantly, it was *Equity’s* burden to prove that Ms. Bass could have mitigated her damages by reasonable diligence but failed to do so. *See Lanesboro Produce & Hatchery Co. v. Forthun*, 218 Minn. 377, 381 (Minn. 1944). In addition, where, as here, the extent of damage caused was in control of the defendant—Equity having damaged the property and placed it in dumpsters—it cannot prove failure of the plaintiff to mitigate. *See, e.g., Winthrop Res. Corp. v. B. Dalton Booksellers*, 2002 Minn. App. LEXIS 89, at *12 (Minn. Ct. App. Jan. 22, 2002).

The evidence is that Ms. Bass’ personal property had been tossed into dumpsters and exposed to water, various items had been physically broken, and some were missing. (Aug. 7, 2013 Order ¶¶ 61-67 R. App’x 9-10; May 10, 2013 Tr. 12:12-14; 21:6-23:25; 26:22-27:1; 29:17-30:4; May 10, 2013 Hearing Exs. 1-2, R. App’x 14-15, 24.) Equity had also changed the locks to Ms. Bass’s apartment, leaving Ms. Bass nowhere to store her destroyed property even if she had removed it from the dumpsters. (Nov. 6, 2013 Order, ¶¶ 11-12, App’x 3.) Nor could Ms. Bass take her destroyed property with her, as she was riding the bus, and the items destroyed were too large or heavy for her to move them. (May 10, 2013 Tr. 21:13-22:18.) Moreover, Equity’s agent, Steve Frenz, refused to assist Ms. Bass in removing her property from the dumpsters after he had placed it there. (Aug. 7, 2013 Order ¶ 56, R. App’x 8.) Equity failed to carry its burden of

proving how Ms. Bass could have mitigated her damages through reasonable efforts under the circumstances Equity created.⁶

In addition, the duty to mitigate does not attach to Ms. Bass's claims. The duty to mitigate arises from contract law (*Deutz-Allis Credit Corp.*, 458 N.W.2d at 166), but Ms. Bass did not file suit based on any contract. Her cause of action is purely statutory—she sued for violation of Minn. Stat. §§ 504B.375, 504B.231, and 504B.271. Those statutes do not impose any duty to mitigate, and Equity identifies no case law that would graft a common-law contractual duty to mitigate onto these statutory causes of action. (App. Br. 14-15.) None of the cases Equity cites involve statutory causes of action. (See App. Br. 15 (citing *Guthrie v. Hagen*, 203 N.W. 216, 217 (Minn. 1925) (addressing breach of contract claim) and *Albert Lea Art Center v. Crane*, 2012 WL 4328966, *4 (Minn. Ct. App. September 24, 2012) (same).) Indeed, as the District Court Referee observed, there are other circumstances in landlord-tenant law where the Minnesota Supreme Court has refused to impose a duty to mitigate. (Aug. 7, 2013 Order ¶¶ 73 & n.6 (citing *Gruman v. Investors Diversified Servs., Inc.*, 247 Minn. 502, 508-509 (Minn. 1956), which rejected the argument that “the rule applicable in ordinary breach of contract cases, requiring efforts to mitigate damages after breach, should be applied to

⁶ Equity erroneously claims that Ms. Bass had “removed her property from the dumpster” to take pictures of it. (App. Br. 15.) There is no citation to the record for this assertion, and the photographs and testimony in the record prove it false. The pictures taken were of the damaged property as it lay in the dumpsters (Exhibit 1, R. App'x 24), and Ms. Bass testified that she attempted to move bags of her waterlogged clothes but they were too heavy, as was her furniture. (May 10, 2013 Tr. 21:13-22:18.)

leases”).) The Court should not impose a common-law contractual duty to mitigate onto the housing statutes at issue here.

C. The Damages Award Was Supported By The Evidence And Statute.

Equity challenges the District Court’s award of \$3,128.99 in actual damages, which the District Court trebled to \$9,386.97 pursuant to Minn. Stat. 504B.231(a) for Equity’s bad faith conduct. (App. Br. 16-19; Nov. 6, 2013 Order ¶ 18, App’x 4.) Equity also challenges the District Court’s award of \$1,000 in punitive damages pursuant to Minn. Stat. § 504B.271 subd. 2. (*Id.*) Both elements of damages are supported by the record and statutes.

Equity first argues that damages relating to personal property cannot be awarded under Minn. Stat. § 504B.231. (App. Br. 16.) But Section 504B.231 has no exclusion for personal property damage. Instead, it provides that where a landlord “unlawfully and in bad faith removes, excludes, or forcibly keeps out a tenant from residential premises, the tenant may recover from the landlord treble damages or \$500, whichever is greater.”

Equity invents its own crabbed list of items that can be awarded under this statute (App. Br. 16), but the only authority it cites, *Linder v. Foy*, 2005 WL 1514461 at *2 (Minn. Ct. App. June 28, 2005) does not support its list.⁷

⁷ There was no claim in that case that the landlord damaged the tenant’s property in the course of the unlawful eviction. *Id.* Instead, the types of damages considered by the district court were rent paid for the period of exclusion (which it awarded), and the cost of a rental trailer that the tenant had intended to use to move his property (which was not awarded). The cost of the rental trailer was not awarded because the evidence was that the tenant planned to move in any event. *Id.* at 2 n.2. There is no evidence that Ms. Bass intended to destroy all of her and her children’s belongings.

To the extent Equity is arguing that the damage to Ms. Bass' property was not causally related to the unlawful eviction—*i.e.*, that Equity's destruction of her personal property on April 10, 2013 had nothing to do with the fact that it changed her locks on that same day to exclude her from her apartment—the evidence is directly contrary. Upon reviewing the record with respect to this issue, the District Court Judge held that “Referee Harris found that Bass's loss was a direct result of the unlawful ouster, a finding supported by the record. There is no basis to disturb Referee Harris' findings in that regard.” (Nov. 6, 2013 Order ¶ 11, App'x 8.) Equity still fails to identify any evidence in the record that would support its view that changing Ms. Bass' locks and removing her property were unrelated events, nor could it. Ms. Bass left her apartment for work at 8:15 a.m., with her property in place, and when she returned at 2:45 p.m., her locks had been changed and her property had been removed and discarded in dumpsters by Equity's agent, Steve Frenz. (Nov. 6, 2013 Order ¶¶ 10-12, App'x 3; Aug. 6, 2013 Order ¶¶ 13-14, 56, R. App'x 2,8.) That the removal of her property and the unlawful lockout happened on the same day, during the same time period, and were orchestrated by the same agent of Equity is powerful evidence that the property destruction was a direct result of the unlawful eviction.

Equity next argues that there was no violation of Minn. Stat. § 504B.271, subd. 2 because Equity “did not fail to allow the tenant to retake possession of the property after written demand,” as is required by that statute. (App. Br. 17.) This argument also is directly contrary to the evidence. As the District Court Referee found, on April 11, 2013, Ms. Bass sent Equity a letter demanding the return of her property, and even itemizing

that property, but Equity “failed to allow the Tenant to retake possession of the property within 24 hours after” receiving that demand. (Aug. 7, 2013 Order ¶¶ 61-64,77-78, R. App’x 9-11.) Equity identifies no contrary evidence. To the extent Equity is arguing that its destruction of the property in violation of Sections 504B.271 and 504B.365 prior to receiving the written demand somehow alleviated its statutory obligation, it identifies no authority for its position, and should not be able to benefit from its own malfeasance.

Finally, Equity argues against the award of trebled actual damages (under Minn. Stat. § 504B.231) and punitive damages (under Minn. Stat. § 504B.271) because, according to Equity, the Referee “held that Respondent was entitled to treble damages without ever making a finding of bad faith” (App. Br. 17-18), and awarded both trebled damages and punitive damages. Both arguments are baseless.

Equity’s assertion that the Referee made no bad-faith finding is an egregious misstatement of the record. The Referee made the following four findings of bad faith:

- “Landlord acted in bad faith.” (Aug. 7, 2013 Order ¶ 25, R. App’x 3.)
- “The landlord acted in bad faith in failing to allow the tenant to retake possession of the property.” (*Id.* at ¶ 79(d), R. App’x 12.)
- “Landlord acted in bad faith here.” (*Id.* at ¶ 89, R. App’x 13.)
- “Landlord acted in bad faith here.” (April 18, 2013 Order ¶ 32, R. App’x 21.)

Those findings were affirmed by the District Court Judge. (Nov. 6, 2013 Order ¶ 13, Order ¶ 1, App’x 8-9.) While Equity argues that it thought the property had been

abandoned, the District Court Referee found that testimony by Equity to be not credible in arriving at its finding of bad faith. (Aug. 7, 2013 Order ¶ 55, R. App'x 8.)

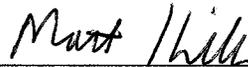
The District Court also had discretion to award both trebled damages and punitive damages. Both statutes at issue contain the following provision: "The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants." Minn. Stat. § 504B.231(b); Minn Stat. 504B.271 subd. 4. Because the District Court properly held that Equity had violated both statutes, it was within its discretion to award Ms. Bass the full remedies provided by those statutes.

CONCLUSION

For the foregoing reasons, the District Court's November 6, 2013 Order should be affirmed.

Dated: January 22, 2013

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