

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-997**

Housing and Redevelopment Authority of St. Cloud,
Respondent,

vs.

Dawit Tadese Tesfaye,
Appellant.

**Filed May 4, 2010
Affirmed
Lansing, Judge**

Stearns County District Court
File No. 73-CV-09-1962

Gerald W. Von Korff, Rinke Noonan, St. Cloud, Minnesota (for respondent)

Doug Clark, St. Cloud Area Legal Services, St. Cloud, Minnesota (for appellant)

Considered and decided by Lansing, Presiding Judge; Worke, Judge; and Crippen,
Judge.*

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

UNPUBLISHED OPINION

LANSING, Judge

In this appeal from a district court judgment of restitution in an eviction action brought by the Housing and Redevelopment Authority of St. Cloud, Dawit Tesfaye contends that a noise violation in his apartment did not constitute a serious violation or material breach of his lease and that the eviction proceedings failed to comply with federal regulations. Because the district court did not err in concluding that Tesfaye's violation of the lease was both serious and material and the proceedings complied with federal procedural regulations, we affirm.

FACTS

Dawit Tesfaye leased an apartment in Empire Apartments beginning May 1, 2007. Empire Apartments is a conventional public-housing building owned and operated by the Housing and Redevelopment Authority of St. Cloud (St. Cloud HRA). At about 3:45 a.m. on October 23, 2008, an occupant in apartment 905—three doors away from Tesfaye's apartment at 902—called the St. Cloud police to complain of noise coming from down the hall.

The police officer who responded to the call could hear music coming from one of the apartments when he got out of his car at the apartment building. As he stepped out of the elevator on the ninth floor, the police officer could hear music, clapping, and singing. He traced the noise to apartment 902, which the officer determined to be fifty-seven feet from the elevator. A St. Cloud ordinance prohibits noisy parties that can be heard more

than fifty feet down a hallway in an apartment building at night. St. Cloud, Minn., Code of Ordinances § 1050.05, subd. 16(b) (2010).

The city issued a citation for a noise violation and, following their internal procedure, notified the landlord of the property. In response to the notification, the St. Cloud HRA sent Tesfaye an eviction notice. The notice advised him that he could request an informal hearing. Tesfaye requested an informal hearing and met with the St. Cloud HRA's housing director. Tesfaye explained that on the night of the noise violation, four friends had come to his apartment to offer comfort and support for a family medical problem. Tesfaye had learned earlier in October that his sister had been diagnosed with a brain tumor. He was deeply upset by this development and was struggling to decide whether to return to his family home in Minneapolis or to accede to his family's wishes and continue attending classes at St. Cloud State University. Tesfaye explained that his friends came over to provide emotional support to get through this difficult situation. Following the informal hearing, the housing director decided to proceed with the eviction. The director sent Tesfaye a written decision stating that Tesfaye would have to vacate the premises and also informing him of his right to have a formal administrative hearing. Tesfaye requested a formal hearing.

At the formal administrative hearing, one of Tesfaye's professors served as Tesfaye's advocate. In testimony, Tesfaye again explained the events leading up to October 23. The hearing officer found that the noise citation constituted a material breach under the terms of the lease, and the breach was sufficient grounds for eviction.

Tesfaye did not vacate his apartment, and the St. Cloud HRA filed an eviction action in district court. In Tesfaye's testimony at the eviction proceedings, he said that after he learned of his sister's diagnosis, he missed several days of classes. While trying to get information on how to catch up on his class work, he told a classmate about his sister's medical condition. That classmate and three others came to his apartment to offer comfort and support. They arrived at about 10:00 p.m., talked about his sister, and then played music and a video game until the police responded to the neighbor's complaint.

Tesfaye's professor of human relations and multicultural education also testified at trial. He said that Tesfaye, who is Ethiopian, had talked to him shortly after he learned of his sister's diagnosis and was clearly upset. The professor, who is also Ethiopian, explained that it is customary in their culture for family members to drop whatever they are doing to be with a sick family member and that it is also customary for friends of those affected to show up and sit with the person to comfort them as long as necessary.

Tesfaye introduced evidence that the October 23 noise citation was the only citation he had received and that he had not been the cause of any other complaints within the building. The district court found the professor's testimony credible and also found that "but for the incident [Tesfaye] is a responsible tenant" and that "[i]t is unlikely [Tesfaye] would commit another noise violation." But the district court determined that the noise citation was a serious violation of a material term of the lease as defined by federal regulations and a material breach of the lease under the city ordinance. The district court also concluded that the St. Cloud HRA complied with federal procedural

regulations in conducting the administrative grievance procedure and there was no basis to dismiss the action.

On appeal, Tesfaye argues that the noise citation is not a serious violation under federal law or a material breach of the lease under state law. He also argues that the hearing officer's written decision failed to comply with federal regulations and applied the wrong standard of law and, therefore, the district court should have dismissed the eviction action.

D E C I S I O N

I

Empire Apartments, the building in which Tesfaye has leased an apartment since May 1, 2007, is classified as conventional public housing and Tesfaye's lease and the termination procedure for the lease are governed by federal statutes and federal regulations. *See* 42 U.S.C. § 1437d(f), (l) (2006) (establishing public-housing standards and lease requirements); 24 C.F.R. § 966.4 (2009) (defining lease requirements and grievance procedure).

A lease for public housing may only be terminated by the landlord for “[s]erious or repeated violation of material terms of the lease,” exceeding income requirements, or other good cause. 24 C.F.R. § 966.4(l)(2). The federal regulation provides two examples of a serious and repeated violation of a material term of the lease: “[f]ailure to make payments due under the lease; [and] [f]ailure to fulfill household obligations, as described in paragraph (f) of this section.” 24 C.F.R. § 966.4(l)(2)(i)(A), (B). Paragraph (f) lists

the tenant's obligations that shall be contained in the lease. 24 C.F.R. § 966.4(f). In relevant part, the federal regulations state that the tenant shall be obligated:

(4) To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease;

(5) To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

. . . [and]

(11) To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe[,] and sanitary condition[.]

Id.

A landlord may recover possession of a property by an eviction action when a tenant "holds over . . . contrary to the conditions or covenants of the lease." Minn. Stat. § 504B.285, subd. 1(2) (Supp. 2009). A landlord's right to evict "is complete upon a tenant's violation of a lease condition." *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 556 (Minn. App. 1985), *review denied* (Minn. Feb. 19, 1986); *see also* Minn. Stat. § 504B.355 (2008) (limiting verdict form or decision of court to finding that facts alleged in complaint are true or untrue).

We defer to the district court's findings of fact and credibility determinations when reviewing a district court judgment in an eviction action, and the findings will be upheld unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *Cimarron Village v. Washington*, 659 N.W.2d 811, 817 (stating standard of review in eviction action). But statutory and regulatory construction present questions of law, which we review *de novo*.

Hibbing Educ. Ass'n v. Pub. Employment Relations Bd., 369 N.W.2d 527, 529 (Minn. 1985). In reviewing eviction actions, courts cannot consider matters other than whether the tenant materially breached the lease. *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 702-03 (Minn. 1999) (construing 24 C.F.R. § 966.4(1)(5)(i) (1998) modified and recodified at 24 C.F.R. § 966.4(1)(5)(vii) (2009)).

Tesfaye's lease obligated him to abide by rules promulgated for the well-being of the housing project, to comply with building and housing codes affecting health and safety, and as outlined in the federal regulations, not to disturb the peaceful enjoyment of other residents. The district court found that Tesfaye violated all three of these provisions and the findings are supported by the record. Tesfaye's neighbor's complaint to the St. Cloud police at 3:45 a.m. indicates that Tesfaye disturbed other residents' peaceful enjoyment of their homes. He also violated the city noise ordinance, which provides a remedy for residents who are subjected to disturbances to avoid potentially volatile confrontations. Finally, Tesfaye broke the lease's rules of occupancy that include guidelines to promote the enjoyment of the residents and the well-being of the apartment building. In violating these lease provisions, Tesfaye failed to fulfill the household obligations listed in paragraph (f) of the federal regulation.

The district court's factual findings include the time of the noise complaint and the distance from which noise could be heard, indicating a serious violation. The record demonstrates that the gathering at Tesfaye's apartment lasted for over five hours, could be heard nine stories down, and disturbed a resident several units away. The district court also found that the nature of the city ordinance indicates that receiving a citation is

a serious violation of the lease. The city ordinance includes graduated penalties for landlords who rent to repeat violators, including reporting requirements, fines, and even eventual loss of a rental license. St. Cloud, Minn., Code of Ordinances § 1051.00, subds. 3-6 (2010) (recodifying section 1050:10, subds. 3-5). Because of the potential impact of the violation on the St. Cloud HRA, a violation of the ordinance is more serious than other noise complaints. Determining that Tesfaye's violation was not serious would preclude the St. Cloud HRA from taking action to protect itself until it experienced direct sanctions. We conclude that the district court's factual findings were not clearly erroneous.

The federal regulation allows a public-housing agency to terminate the tenancy for a serious violation of a material term of the lease, including failure to fulfill household obligations as described in paragraph (f). 24 C.F.R. § 966.4(1)(2). Tesfaye violated several provisions of paragraph (f) replicated in his lease with the loud gathering lasting nearly five hours, and the violation was serious. We conclude that the district court did not err in deciding that Tesfaye committed a serious violation of a material term of his lease under federal law.

Minnesota's common law also applies to lease termination, and the breach of a lease must be material to support its termination. *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49 (Minn. App. 1998); *see also Cut Price Super Mkts. v. Kingpin Foods, Inc.*, 256 Minn. 339, 351, 98 N.W.2d 257, 266 (1959) (stating that material breach justifies rescission). The materiality of a breach is a question of fact. *Cloverdale Foods*, 580 N.W.2d at 49-50. A breach is material when "one of the primary

purposes” of a contract is violated. *Steller v. Thomas*, 232 Minn. 275, 282, 286-87, 45 N.W.2d 537, 542, 544 (1950); *see also* Samuel Williston & Richard A. Lord, *A Treatise on the Law of Contracts* § 44:55 (4th ed. 2000) (stating that material breach “goes to the root or essence of the contract”).

The city ordinance requires landlords to include a provision that informs tenants that a noise-ordinance violation is a material breach of the lease and grounds for termination. St. Cloud, Minn., Code of Ordinances § 1051.00, subd. 11 (2010) (recodifying section 1050:10, subd. 9 (2008)). The lease provision protects the functioning of the housing project because repeated violations would make the building unlivable and result in revocation of the St. Cloud’s HRA’s license to rent to other low-income individuals. One of the primary purposes of the lease is to bind tenants to rules of occupancy that create a safe and decent living space for all residents and preserve the ongoing availability of this housing support. Tesfaye’s noise-ordinance violation contravened this primary purpose of the lease. The district court did not err in finding that Tesfaye’s violation of the lease was also a material breach and concluding that the St. Cloud HRA proved the allegations in its eviction action.

II

Tesfaye argues that the district court erred in not dismissing the eviction action because the St. Cloud HRA failed to comply with federal regulations. Tesfaye argues that the St. Cloud HRA failed to in two ways: first, by not following past practice and federal regulations that allow consideration of mitigating factors; and, second, by

applying the incorrect legal standard of “material” rather than the federal regulations that require that the violation be “serious.”

Tesfaye does not challenge the district court’s determination that the federal regulations permit, but do not mandate, consideration of mitigating factors. But Tesfaye argues that the St. Cloud HRA had an informal policy and practice of considering these factors and the federal regulation requires it to be consistent. *See* 24 C.F.R. § 966.4(1)(5)(vii)(B) (stating public-housing authority can consider circumstances in eviction proceeding in “manner consistent with such policies, procedures, and practices”). If a public-housing authority does not follow federal procedural regulations, the district court should dismiss the eviction action. *Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889, 894-95 (Minn. App. 1986); *Hous. & Redevelopment Auth. of Waconia v. Chandler*, 403 N.W.2d 708, 712-13 (Minn. App. 1987).

The record shows that the housing director’s general practice is to investigate whether the violation might be due to a disability and that other factors may be taken into account. But the housing director testified that the St. Cloud HRA has never granted exemptions for mitigating circumstances in noise-ordinance violation cases. Consequently, the administrative hearing officer was not inconsistent in applying the St. Cloud HRA’s policies when he did not consider the circumstances of Tesfaye’s noise-ordinance violation. The district court therefore did not err in concluding that there was no violation of the federal procedural regulations that would require him to dismiss the eviction action.

Tesfaye's second argument asks us to review the substance of the hearing officer's decision notwithstanding the district court's de novo determination that Tesfaye's noise-ordinance violation was a sufficient basis for eviction under state and federal law. The federal regulations allow for a de novo trial in district court, 24 C.F.R. § 966.57(c) (2009), and for purposes of that proceeding, the hearing officer's decision is neither binding nor owed deference by the district court. The district court reviewed the St. Cloud HRA's compliance with federal procedural regulations throughout the grievance procedure. *See Chandler*, 403 N.W.2d at 712-13 (reversing judgment for landlord in eviction action because housing authority did not comply with federal regulations on grievance procedure). Because appeal was taken from the district court's judgment, we reviewed the district court's, not the hearing officer's, decision. Minn. R. Civ. App. P. 103.04 (stating scope of review for judgment appealed from). Our scope of review is limited to the district court's factual findings and conclusions of law from its de novo hearing and does not extend to the decision of the hearing officer. *Id.*

Affirmed.