

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0692**

ACC OP (University Commons), LLC,
Appellant,

vs.

Jose Rodriguez,
Respondent

**Filed December 18, 2017
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CV-HC-17-1569

Natalie R. Walz, Chestnut Cambronne PA, Minneapolis, Minnesota (for appellant)

Luke Grundman, Georgina P. Santos, Mid-Minnesota Legal Aid, Minneapolis, Minnesota
(for respondent)

Considered and decided by Worke, Presiding Judge; Rodenberg, Judge; and Reilly,
Judge.

S Y L L A B U S

Under Minn. Stat. § 504B.291, subd. 1(a) (2016), a landlord may not bring an action to evict based on failure to pay attorney fees in excess of five dollars incurred in a previous eviction action for nonpayment of rent.

O P I N I O N

WORKE, Judge

Appellant landlord argues that the district court erred by determining that appellant could not evict respondent tenant for failure to pay attorney fees in excess of five dollars

arising out of a previous eviction action against respondent for nonpayment of rent. We affirm.

FACTS

Appellant ACC OP (University Commons) LLC leased a room for one year to respondent Jose Rodriguez for \$549 per month. The lease contained a provision stating that if Rodriguez violated the terms of the lease, University Commons could recover all reasonable costs and expenses it incurred enforcing its rights and remedies under the lease.

The lease also provided:

At [University Commons's] option and without notice to [Rodriguez], any payment that [University Commons] receive[s] may be applied first to [Rodriguez's] obligations which do not constitute Rent and then to Rent (with any past due Rent being paid first), regardless of whether or not [Rodriguez has] made notations on checks or money orders and regardless of when or how the obligation came about.

In January 2017, University Commons commenced an eviction action against Rodriguez for nonpayment of rent. The district court found in favor of University Commons and ordered that Rodriguez could redeem the tenancy by paying University Commons \$1,387.99 by February 17, 2017. Although Rodriguez's payment was \$2.99 short of the total amount ordered by the district court, the parties treated it as a redemption. In pursuing the eviction action, University Commons incurred \$3,090 in attorney fees.

On February 27, 2017, Rodriguez paid University Commons \$1,000. University Commons applied \$997.01 of this payment to the attorney fees it incurred, and the remaining \$2.99 to satisfy the outstanding amount Rodriguez was ordered to pay by the district court.

On two occasions in March 2017, University Commons notified Rodriguez that he had an outstanding rent balance of \$2,771.26 and that if payment was not received, University Commons would proceed with an eviction action. This “balance” was the result of University Commons applying payments received to claimed attorney fees, rather than to rent as it became due.

In late March, University Commons proceeded with an eviction action against Rodriguez for nonpayment of rent under Minn. Stat. § 504B.291 (2016). University Commons did not include its outstanding attorney fees as a basis for the eviction action.

In April 2017, the eviction action came before Hennepin County district court. The housing-court referee recommended that judgment be entered in favor of Rodriguez, and the district court adopted the recommendation. The district court concluded that University Commons was limited to recovering five dollars in attorney fees, as permitted by statute. Consequently, the district court concluded that Rodriguez was not in arrears at the time University Commons initiated the eviction action. This appeal followed.

ISSUE

May a landlord evict a tenant under Minn. Stat. § 504B.291 for failure to pay attorney fees charged in excess of the five-dollar statutory requirement for redemption in an eviction action based on nonpayment of rent?

ANALYSIS

University Commons argues that the district court erred in finding that University Commons failed to establish nonpayment of rent and in granting judgment for Rodriguez. The interpretation of a statute is a question of law that appellate courts review de novo.

Cocchiarella v. Driggs, 884 N.W.2d 621, 624 (Minn. 2016). The object of statutory interpretation is to ascertain and effectuate the intention of the legislature. *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012).

The Minnesota eviction statute grants landlords the right to bring an eviction action for nonpayment of rent. *See* Minn. Stat. § 504B.291. The statute also provides:

[T]he tenant may, at any time before possession has been delivered, redeem the tenancy and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, costs of the action, and an attorney's fee not to exceed \$5, and by performing any other covenants of the lease.

Id., subd. 1(a).

University Commons admits that it was entitled to only five dollars in attorney fees in order for Rodriguez to redeem his tenancy. University Commons argues, however, that it may still seek additional attorney fees in excess of five dollars because the lease requires Rodriguez to pay its reasonable attorney fees incurred in enforcing the lease.

In *Cheyenne Land Co. v. Wilde*, 463 N.W.2d 539 (Minn. App. 1990), this court considered an argument similar to the one advanced by University Commons. We framed the issue as follows: “Did the [district] court abuse its discretion by ruling that [the unlawful detainer statute] limits attorneys’ fees to \$5 even if the lease provides that the lessee will pay the lessors reasonable attorneys’ fees in case of default?” *Cheyenne*, 463 N.W.2d at 540. We held that because the lessees cured the alleged defaults, under the unlawful-detainer statute, “attorneys’ fees are thus limited to \$5.” *Id.* We acknowledged, but rejected, the lessors’ argument that the lease required the lessee to pay the lessors’ attorney

fees in an award beyond the statutory limit. *Id.* We also recognized the potential for abuse of this statute by lessees who take advantage of the fee limit by repeatedly withholding rent. *Id.* at 540-41. Nonetheless, this court held that the unlawful-detainer statute limited attorney fees to only five dollars for purposes of redemption.¹ *Id.* at 541. Our holding in *Cheyenne* remains binding authority. *See Doe v. Lutheran High Sch. of Greater Minneapolis*, 702 N.W.2d 322, 330 (Minn. App. 2005) (“[A]ppellate courts are bound by the doctrine of stare decisis, which directs that we adhere to former decisions in order that there might be stability in the law.” (quotation omitted)), *review denied* (Minn. Oct. 26, 2005).

University Commons distinguishes the five-dollar attorney fees, which a tenant must pay in order to redeem possession, from its additional attorney fees, which it claims Rodriguez is not required to pay in order to redeem but is instead contractually obligated to pay. We need not address whether a landlord could pursue its attorney-fees claim in a separate proceeding. The question before us is whether a landlord may base an eviction action under Minn. Stat. § 504B.291 on nonpayment of attorney fees from a previous eviction action. The plain language of section 504B.291 and this court’s previous interpretation in *Cheyenne* require the conclusion that an eviction for nonpayment of rent may not be based on nonpayment of attorney fees. Furthermore, permitting landlords to

¹ The current statutes providing for eviction actions replaced those that previously authorized unlawful-detainer actions. *See Fraser v. Fraser*, 642 N.W.2d 34, 40 (Minn. App. 2002). The scope of an eviction action is comparable to the former unlawful-detainer proceedings. *Id.* (noting that both are summary proceedings with limited scope solely for the purpose of determining the right to present possession).

evict tenants for nonpayment of attorney fees incurred in a previous eviction action would plunge tenants into a potentially endless eviction loop in which timely rent payments could still lead to eviction proceedings, which would in turn generate additional attorney fees. This result would also conflict with the judiciary's longstanding "abhorrence of forfeitures." *See 614 Co. v. D.H. Overmyer Co.*, 297 Minn. 395, 398, 211 N.W.2d 891, 894 (1973).

D E C I S I O N

Because a landlord may not bring an eviction action under Minn. Stat. § 504B.291 based on failure to pay attorney fees in excess of the five-dollar statutory requirement for redemption in an eviction action based on nonpayment of rent, the district court did not err by concluding that University Commons was not entitled to possession of the premises.

Affirmed.