IN THE COURT OF APPEALS OF IOWA

No. 0-237 / 09-0828
Filed June 16, 2010

THG/APARTMENTS NEAR CAMPUS,
Plaintiff-Appellee,

vs.

DEEANNA BLETTE,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Douglas S. Russell, Judge.

A tenant appeals from a judgment entered against her in a forcible entry and detainer action. **REVERSED.**

TGH/Apartments Near Campus, Iowa City, pro se.

DeeAnna Blette, Topanga, California, pro se.

Considered by Sackett, C.J., and Eisenhauer and Mansfield, JJ.

MANSFIELD, J.

This appeal arises from a landlord-tenant dispute. DeeAnna Blette, the tenant, appeals a district court ruling affirming a small claims forcible entry and detainer (FED) ordering her to vacate the apartment that she rented from THG/Apartments Near Campus (ANC). Blette argues that she was not in breach of her lease agreement because ANC entered into an accord and satisfaction when it accepted her check in full satisfaction of a disputed rental claim. In addition, Blette argues that her due process rights were violated because she was not actually served with a three-day notice of her right to cure nonpayment of rent or a notice for FED. Because we reverse on the first point, we do not address Blette's due process claims.

I. Background Facts and Prior Proceedings.

We set forth these facts from the written record. On May 23, 2008, Blette entered into a written lease for an apartment from ANC. The lease was to commence on August 1, 2008, and continue through July 29, 2009. The monthly rent was $605. Apparently, Blette had occupied and been paying rent on the same apartment since August 2006.

In December 2008, Blette started to contact ANC with a series of complaints regarding the apartment. Blette's main concerns included ANC's ongoing interference with the premises while it renovated her kitchen, a maintenance truck parked in front of her living room window, a lack of snow removal and sand/salt in the parking lot, and a lack of garbage removal.

On February 28, 2009, Blette wrote a letter to ANC accusing it of "negligence," "breach of contract," and "blatant disregard for your tenant's rights."

The letter included a detailed list of grievances and associated charges/fees. Blette claimed that as a result of her damages, she was entitled to offsets totaling $1062.46. Blette then proposed to pay $752.54, which represented the rent she would owe for the next three months ($1815.00) minus her alleged damages of $1062.46. With the letter, Blette enclosed a check for $752.54 which stated on its subject line "March, April & May 09' Rent." The letter also stated in the second sentence, "By cashing the check you agree to my terms." Again at the end of her letter Blette stated, "[B]y signing this check along with this invoice you agree to all my reasonable demands happily." Blette also said that if ANC did not agree to her terms, she would seek the $1062.46 as damages as well as recovery of her security deposit and moving expenses.

On March 4, 2009, ANC cashed the check. At that time, ANC wrote to Blette stating that while it had cashed the check, her "requests and demands . . . are unreasonable and are not acceptable." ANC stated that "no compensation [would be] given" and that it would treat the $752.54 as a payment of March's rent and a partial credit toward April's rent. According to ANC's response:

> We have cashed the payment received from you, check #0152 in the amount of $752.54 on March 4, 2009 for payment due according to your lease. This payment posted as $582.01 toward March 2009 current rent balance due and $170.53 towards April 2009 as a rent credit. You will still owe [the remaining amounts due under your lease agreement].

On March 9, 2009, Blette wrote back that she was "glad that you chose to submit to my terms so quickly. I see that my bank paid you on 3.6.2009 and this [particular] matter is now closed." The following day, ANC confirmed with Blette that she had received its return letter denying her demands.

In April, Blette did not pay any additional rent. Therefore, on April 10, 2009, ANC sent by certified mail a notice of past due rent providing Blette three days' notice of her right to cure or else ANC would terminate the rental agreement. Blette claims never to have received this notice.

On April 29, 2009, ANC filed a small claims petition for FED and a separate small claims action for money judgment. Both actions were based on Blette's failure to pay her April 2009 rent. Later that same day, Blette was personally served. However, Blette contends she was only served notice of the action for money judgment and not the FED petition. The affidavits of service indicate both items were served personally.

On May 7, 2009, the small claims court held a hearing on the FED petition. Blette did not appear at the hearing. The small claims court received ANC's evidence and granted ANC's petition for FED. Blette appealed to the district court, which affirmed. On June 4, 2009, our supreme court granted Blette's application for stay and discretionary review and subsequently transferred the case to our court.

II. Standard of Review.

In a discretionary review of a small claims decision, the nature of the case determines the standard of review. *GE Money Bank v. Morales*, 773 N.W.2d 533, 536 (Iowa 2009). Since an FED action is tried as an equitable action, *see* Iowa Code § 648.5 (2009), our standard of review is de novo. *Horizon Homes of Davenport v. Nunn*, 684 N.W.2d 221, 224 (Iowa 2004).

III. Analysis.

As we have noted, Blette raises two arguments on appeal, both of which she also advanced in the district court. Blette's pro se brief is not a model of clarity, but her two separate arguments are reasonably well delineated. ANC has not filed an appellee's brief.[1]

A. Notice Issue.

One contention Blette makes is that her eviction was invalid because she was not actually served with either the three-day notice of nonpayment of rent under Iowa Code section 562A.27 or the FED action and notice of hearing under chapter 648. In *War Eagle Village Apartments v. Plummer*, 775 N.W.2d 714, 720-22 (Iowa 2009), the supreme court held that sections 562A.8 and 562A.29A(2) violated the due process clause of the Iowa Constitution to the extent they allowed service of the FED notice by certified mail. The court reasoned that since the FED statutory notice scheme used limited time frames and deemed notice complete upon mailing, service by certified mail was "not reasonably calculated to give tenants adequate notice of hearings at which their continued occupancy of the premises will be determined." *War Eagle*, 775 N.W.2d at 720-22.

This case is somewhat different. There is an affidavit in the file showing that Blette was served personally with the FED notice. Although the three-day notice to cure nonpayment of rent was served by certified mail (without evidence that it was actually picked up by Blette), the *War Eagle* decision specifically

[1] Accordingly, we will not search the record for an alternative theory upon which to affirm the district court but will instead limit our consideration to the issues and arguments raised in Blette's brief. *Bosch v. Garcia,* 286 N.W.2d 26, 27 (Iowa 1979).

concerns "the FED statutory notice scheme." *Id*. at 722. As the court points out in *War Eagle*, the FED notice is supposed to notify the tenant of a hearing at which his or her continued right of occupancy of the premises will be decided. *Id*. at 720-21. The three-day notice of nonpayment, by contrast, is merely a prerequisite to filing an FED action. *See Symonds v. Green*, 493 N.W.2d 801, 802-03 (Iowa 1992) (holding a three-day notice to cure is a jurisdictional requirement that must be met prior to filing a FED action for nonpayment of rent). The three-day notice is not itself a notice of hearing and does not obviate the need for a hearing at which the tenant has an opportunity to appear and defend.

B. Accord and Satisfaction Issue.

We need not resolve whether *War Eagle* applies to three-day notices, however, because we agree with Blette's other argument. Blette maintains she should not have been evicted in that ANC accepted her settlement terms when it cashed her check.[2] Under the common law, it was well-established that when a check was expressly tendered in full payment of a disputed claim, and the recipient negotiated the check, the recipient was deemed to have accepted the check as a full satisfaction. A party cannot "eat his cake and keep it too." *Olson v. Wilson & Co.*, 244 Iowa 895, 907, 58 N.W.2d 381, 388 (1953).

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[2] We note that Blette did not appear at the original FED hearing in small claims court. If a default judgment had been entered, that might preclude her from arguing issues of fact on the appeal. *Rowan v. Everhard*, 554 N.W.2d 548, 550 (Iowa 1996). However, the record does not indicate to us that a default judgment was entered. Rather, based upon the FED fact sheet signed by the magistrate, it appears the small claims court decided this case on the merits. The district court also did not characterize the judgment appealed from as a default judgment. The documents that establish Blette's settlement with ANC were actually put into evidence by ANC at the FED hearing.

In any event, as we have already noted, ANC did not file an appellate brief, and it is not our duty to scour the record for grounds on which to affirm this appeal that do not appear in the district court's ruling.

> To constitute an accord and satisfaction, where there is a bona fide dispute, it is necessary that the money should be offered in satisfaction of the claim, and the offer accompanied with such acts and declarations as amount to the condition that, if the money is accepted, it is accepted in satisfaction, and such that the party to whom it is offered is bound to understand therefrom that, if he takes it, he takes it subject to such conditions. A party to whom an offer is thus made has no alternative but to refuse it or accept it upon such conditions, and if he takes it his claim is canceled.

Id. at 904, 58 N.W.2d at 387 (quoting *Beaver v. Porter*, 129 Iowa 41, 46, 105 N.W. 346, 348 (1905)).

Furthermore, the party who cashes the check cannot "avoid the legal consequences of his acceptance" by writing back to the sender that the sender's terms have not been accepted. *Id*. at 907, 58 N.W.2d at 388. Such declarations are "of no avail." *Id*. at 904-05, 58 N.W.2d at 387; *see also Minnesota & O.P. Co. v. Register & Tribune Co*., 205 Iowa 1223, 1232-33, 219 N.W. 321, 323 (1928) ("Under the rule in this state, it is established that, where there is a bona fide dispute between the parties regarding the amount due upon an unliquidated claim, and the debtor offers the creditor a check for a less amount than the creditor claims, conditioned that the acceptance of said check is to be in full satisfaction of the claim, and where the creditor accepts and cashes the check with knowledge that the debtor was tendering it in such full payment, it became an accord and satisfaction binding upon the parties.").

This common-law principle also has been codified in Iowa Code section 554.3311. This provision "follows the common law rule with some minor variations to reflect modern business conditions." *See* U.C.C. § 3-311 cmt. 3. Section 554.3311 provides in part:

> Accord and satisfaction by use of instrument.

> (1) If a person against whom a claim is asserted proves that (i) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim, (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply.
>
> (2) Unless subsection 3 applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

In this case, the FED record showed that the conditions for such an accord and satisfaction had been met. Blette wrote a letter on February 28, 2009, stating a detailed claim for relief against ANC. In large part, the concerns relate to substandard maintenance and inconveniences resulting from being unable to use her kitchen due to a renovation performed by ANC. Although one can certainly question specific offsets, we have no basis for concluding that this was not a "bona fide dispute." Iowa Code § 554.3311(1); *see also Messer v. Washington Nat'l Ins. Co.*, 233 Iowa 1372, 1380, 11 N.W.2d 727, 731 (1943) ("The settlement of a disputed or doubtful claim asserted in good faith is a sufficient consideration for a compromise, even though such claim proves to be without merit, and an action thereon not sustainable."). Blette simultaneously tendered $752.54 making it clear that the payment was in full satisfaction for the March, April, and May 2009 rent, and that if her check were cashed, her terms were being accepted. Blette's statements in her letter were "conspicuous"—and the check itself said it was for March, April, and May. There is no doubt that ANC understood the entirety of Blette's communication, since it wrote back on March 4 that it was cashing the check but that her "requests and demands . . . are not

acceptable." Blette promptly wrote back on March 9 that she was deeming ANC's cashing of the check an acceptance of her terms.

Under these circumstances, the courts below erred in ruling that Blette was in default for nonpayment of rent and that ANC was entitled to possession. ANC's cashing of the check was an acceptance of Blette's terms, and the declarations in ANC's response letter are "of no avail." *Olson*, 244 Iowa at 904-05, 58 N.W.2d at 387. When confronted with Blette's offer, ANC had "no alternative but to refuse it or accept it upon such conditions." *Id*., 244 Iowa at 904, 58 N.W.2d at 387. By cashing the check, ANC accepted Blette's claim and thereby its "claim is canceled." *Id*. ANC cannot "eat [its] cake and keep it too." *Id*., 244 Iowa at 907, 58 N.W.2d at 388.

As we have noted, Iowa courts have historically approved the tendering of checks in full payment of disputed claims as a settlement device. This practice actually promotes business efficiency. When the dollars in dispute are relatively small, it may be more efficient for a party to propose a resolution by means of such an offer to enter into a unilateral contract, which is deemed accepted when the other party cashes the check, than for the parties to engage in time-consuming negotiations and drafting of settlement agreements. ANC's actions, if allowed, would render this time-honored way of settling business disputes invalid and unavailable. *Messer*, 233 Iowa at 1380, 11 N.W.2d at 731-32 ("The law favors the amicable settlement of controversies, and it is the duty of the courts rather to encourage than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims.").

Accordingly, we reverse the judgment below because the FED petition should not have been granted. Costs are taxed to ANC.

REVERSED.