STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0764

515 W. Lake LLC as successor in interest
to Michael Carlson and Jeanne Carlson,
Respondent,

vs.

Ikram Childcare Center LLC,
Appellant,

John Doe, et al.,
Defendants.

Filed March 31, 2025
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CV-23-18152

Erik F. Hansen, Kirk A. Tisher, Kiley L. Eichelberger, Burns & Hansen, P.A., Minneapolis, Minnesota (for respondent)

Kevin C. Beach, Tyler Adams, Markve & Zweifel, PLLC, Maple Grove, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Bratvold, Judge; and Reilly, Judge.*

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from a judgment of recovery in an eviction action, appellant-tenant argues that the district court erred because (1) respondent-landlord failed to present evidence of damages stemming from the breach of the parties' lease agreement and (2) the breach was not material. We affirm.

FACTS

In March 2023, appellant Ikram Childcare Center LLC (Ikram) entered into a ten-year commercial lease agreement for one-half of a commercial duplex with the then-owner of the property, Jeanne Carlson.[1] The lease agreement required that Ikram: (1) pay $2,900 in monthly rent, which was to increase by 3% each year of the lease agreement; (2) pay "2% of [the] total taxable amount"; (3) pay all utilities; and (4) insure the premises "for the benefit of the Tenant and the Landlord."[2] The lease agreement also included a nonwaiver

[1] Although Ikram and Jeanne Carlson signed an addendum to the lease, neither signed the actual lease agreement. The district court determined that, because the circumstances indicated that the parties intended to be bound by the written terms of the lease agreement and addendum, the lease agreement and addendum are a binding contract. Neither party challenges this determination on appeal. Accordingly, any discussion of the lease agreement in this opinion refers to both documents.

[2] The lease agreement contained two insurance provisions with the language "for the benefit of the Tenant and the Landlord." One provision required that Ikram insure "the Premises for damage or loss to the structure, mechanical or improvements to the Building on the Premises for the benefit of the Tenant and the Landlord." The second provision required that Ikram insure "the Premises for liability insurance for the benefit of the Tenant and the Landlord."

clause, which provided that the landlord's waiver of any failure by the tenant to comply with a lease provision does not operate as a waiver with respect to subsequent breaches.

Although Ikram timely delivered the $2,900 monthly base rent to Jeanne Carlson's son, Michael Carlson, Ikram did not provide payment for water utilities or the requisite portion of the "taxable amount." However, Michael Carlson did not request 2% of the taxable amount or water-utility payments from Ikram and there is no indication that Jeanne Carlson did so. Regarding the insurance provisions, Ikram did not obtain an insurance policy until October 30, 2023—nearly eight months after entering into the lease agreement.

On September 11, 2023, Jeanne Carlson sent Ikram a lease-termination notice, citing violations of lease-agreement provisions involving utility payments and general upkeep. Ikram continued to occupy the property. Counsel for Ikram sought additional clarification from Jeanne Carlson about the purported violations. In late September 2023, Jeanne Carlson sold the property to respondent 515 W. Lake LLC (the LLC). Ikram continued to timely send checks for the $2,900 base rent to the LLC, at least through January 2024. The LLC did not cash Ikram's rent checks.

In October 2023, Ikram obtained insurance, which identified Ikram as the insured party. The policy did not identify the LLC as an insured party.

On November 9, 2023, the LLC sent Ikram a lease-termination notice, citing as grounds Ikram's failure to tender payment for 2% of the taxable amount, its failure to acquire insurance for the benefit of the LLC, its failure to appropriately maintain the property, and the LLC's belief that Ikram may have allowed its daycare license to lapse. The letter stated that it expected the property to be vacated within seven days of the date

of the letter. The LLC filed the present eviction action on November 29, 2023, alleging that Ikram materially breached the lease agreement by failing to pay the required taxable amount, failing to pay water utilities, and failing to name the LLC as an additional insured under its insurance policy and that Ikram was holding over the property.

In January 2024, a referee held a trial on the eviction action. Following the trial, the district court filed a countersigned referee's order, finding that Ikram materially breached the lease agreement by failing to have an appropriate insurance policy, that Ikram did not timely cure this breach upon receipt of the November 9 notice, and that Ikram held over after the notice of lease-agreement termination. However, the district court found that the LLC as successor in interest to Jeanne Carlson waived enforcement of the provisions concerning payment of utilities and 2% of the taxable amount. The district court ordered entry of judgment of recovery of the premises.[3]

This appeal follows.[4]

DECISION

Minnesota Statutes chapter 504B (2024) governs eviction actions. *See SVAP III Riverdale Commons LLC v. Coon Rapids Gyms, LLC*, 967 N.W.2d 81, 85 (Minn. App. 2021) (applying an earlier version of chapter 504B to an eviction action). There is a basis for evicting a tenant if the tenant violates a material term of a lease agreement. *See* Minn. Stat. § 504B.285, subds. 1(a)(2), 4(a), 5. Put differently, "the general rule applicable to

[3] On May 7, 2024, one day before filing a notice of appeal in this case, Ikram appears to have added the LLC as an insured party on their liability-insurance policy.

[4] The district court stayed the writ of recovery during the pendency of this appeal.

contracts is that rescission of a contract is justified only by a material breach or substantial failure in performance." *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49 (Minn. App. 1998). For the landlord to have present possessory rights in a property based on the tenant's breach of a lease agreement, it must be determined whether "the allegations, if found to be true, demonstrated a material breach of the lease." *Id.*

Ikram advances two main arguments in challenging the district court's judgment. First, Ikram argues the LLC's failure to allege or present evidence of damages from Ikram's failure to provide insurance in compliance with the lease-agreement provisions is fatal to the LLC's claim for breach of the lease agreement. Second, Ikram argues that, because the insurance provisions do not go to the heart of the lease agreement, any breach of the insurance provisions was not a material breach warranting eviction. The LLC refutes both arguments and, in addition, argues that the district court's judgment may be affirmed on the alternative ground that Ikram materially breached the lease agreement by failing to pay taxes and utilities—an obligation that the LLC contends it did not waive. Because this case is resolved by addressing only Ikram's arguments, our analysis begins and ends there. We turn to Ikram's arguments.

A. Ikram forfeited its argument regarding damages, but, in any event, the argument fails on the merits.

Ikram contends that, because a lease agreement is a contract and a breach-of-contract claim requires proof of damages, the LLC's eviction action based on breach of the lease agreement for not maintaining the required insurance fails because the LLC did not prove damages.

As an initial matter, we address whether Ikram forfeited this argument on appellate review. We generally do not review issues raised for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." (quotation omitted)). Similarly, a party may not "obtain review by raising the same general issue litigated below but under a different theory." *Id.*

Ikram contends that it raised this issue in the district court by (1) arguing in a motion to dismiss that the LLC failed state a claim upon which relief could be granted; (2) arguing that the issue of alleged breach based on failure to satisfy the insurance requirements was moot because the acquisition of insurance cured any alleged default; (3) questioning the parties about any damages that could be related to the insurance issue; and (4) stating in its closing argument that a material breach is a substantial breach excusing further performance, allowing the nonbreaching party to sue for damages.

We are not persuaded that the issue is preserved for appellate review. Ikram's first argument fails because, in its motion to dismiss, Ikram argued that dismissal was appropriate because the insurance issue was moot (because Ikram had remedied it) and the LLC waived enforcement of the tax and utility provisions. At no point in the motion did Ikram argue that an eviction cannot proceed without proof of damages. Ikram's second argument again deals with alleged mootness, not damages, and is again unpersuasive for this reason. Ikram's third argument fails because, while Ikram questioned the parties regarding damages related to insurance provisions, it presented no argument that an eviction cannot proceed without monetary damages. Ikram's fourth argument for

preservation of the issue also fails; although Ikram stated in its closing argument that a material breach allows the nonbreaching party to sue for damages, it made no argument that eviction requires proof of monetary damages. Because Ikram failed to properly present its argument regarding damages to the district court, it forfeited our review of this argument on appeal. *See id.*

Even if it were not forfeited, Ikram's argument regarding damages would also fail on the merits. Ikram cites *Jensen v. Duluth Area YMCA*, 688 N.W.2d 574, 579 (Minn. App. 2004), for the proposition that a breach-of-contract claim fails in the absence of proof of damages. Ikram then argues that, because lease agreements are contracts under *RAM Mutual Insurance Co. v. Rhode*, 820 N.W.2d 1, 14 (Minn. 2012), an eviction action based on breach of a lease agreement fails without proof of damages.

Ikram's argument is misguided. *Jensen* addressed a claim for damages based on breach of contract. 688 N.W.2d at 579. We upheld summary judgment against the plaintiff, observing that "[t]here can be no recovery for damages which are remote, conjectural, or speculative." *Id.* (quotation omitted). We did not speak to what is required in an eviction action based on breach of a lease agreement. *See id.* at 574-79. And *Rhode* merely held that rules of contract construction apply to lease agreements; it did not hold that an eviction cannot proceed without monetary damages. 820 N.W.2d at 14.

In fact, we find no requirement of proof of damages in the relevant statutory law. "Eviction is defined as 'a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property by the process of law set out in [Minnesota Statutes chapter 504B].'" *NY Props., LLC v. Schuette*, 977 N.W.2d 862, 865 (Minn. App.

2022) (quoting Minn. Stat. § 504B.001, subd. 4 (2020)).[5] The purpose of an eviction action is "to adjudicate only the limited question of present possessory rights to the property." *Fed. Home Loan Mortg. Corp. v. Mitchell*, 862 N.W.2d 67, 72 (Minn. App. 2015) (quotation omitted), *rev. denied* (Minn. June 30, 2015). Chapter 504B provides that a tenant materially breaching a lease agreement is a basis for eviction; it does not separately require that the landlord be damaged by the breach. *See* Minn. Stat. § 504B.285, subds. 4(a), 5. We decline to add such a requirement here.

B. The district court did not clearly err by determining that Ikram materially breached the lease agreement by failing to timely acquire required insurance.

Ikram additionally argues that the district court erred by determining that Ikram materially breached the lease agreement by failing to timely obtain insurance that complied with the lease-agreement provisions.

A breach is material when it "is significant enough to permit the aggrieved party to elect to treat the breach as total (rather than partial), thus excusing that party from further performance and affording it the right to sue for damages." *BOB Acres, LLC v. Schumacher Farms, LLC*, 797 N.W.2d 723, 728 (Minn. App. 2011) (quotation omitted), *rev. granted* (Minn. June 14, 2011) *and appeal dismissed* (Minn. Aug. 12, 2011). "A material breach goes to the root or essence of the contract." *Id.* (quotation omitted). A landlord must establish grounds for eviction by a preponderance of the evidence. *Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 908 (Minn. App. 2018), *rev. denied* (Minn. Mar. 28, 2018).

[5] Minn. Stat. § 504B.001, subd. 4 (2024), uses an identical definition of "eviction."

Whether a party materially breached a lease agreement is a question of fact that we review for clear error. *See Cloverdale Foods*, 580 N.W.2d at 49-50 (treating a material breach of a lease agreement as a fact question); Minn. R. Civ. P. 52.01 (providing that appellate courts review findings of fact for clear error). A factual finding is clearly erroneous if appellate courts are "left with the definite and firm conviction that a mistake has been made." *Rogers v. Moore*, 603 N.W.2d. 650, 656 (Minn. 1999) (quotation omitted).

As noted above, two provisions in the lease agreement required Ikram to obtain certain insurance "for the benefit of the Tenant and the Landlord." The district court found that Ikram materially breached the lease agreement by not providing that insurance for nearly the first eight months of the lease agreement. The district court added that Ikram's breach was ongoing because, when Ikram ultimately purchased the insurance policy, it did not list the landlord as an additional insured. Although it is unclear which insurance provision the district court found that Ikram violated, its reasoning necessarily implicates both insurance provisions because the district court found that Ikram outright failed to obtain insurance for a significant amount of time.

We conclude that the district court did not clearly err by determining that Ikram materially breached the lease agreement by failing to acquire the required insurance. Although there is not substantial caselaw outlining when a breach related to insurance is material, a nonprecedential opinion offers guidance.[6] In *Las Americas, Inc. v. American Indian Neighborhood Development Corp.*, we concluded that, based on the undisputed

[6] This decision is cited for its persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

facts in that case, "as a matter of law the [tenant's] failure to provide proof of insurance was a material breach of the lease." No. A04-0505, 2004 WL 2710061, *5 (Minn. App. Nov. 30, 2004). Like the instant case, *Las Americas*'s breach of the insurance provision did not result in damages. *See id.* at *2, *5.[7]

Because the district court's decision is consistent with our persuasive caselaw that comes to the same conclusion, we cannot say that the district court clearly erred by finding that Ikram materially breached the lease agreement by failing to comply with the insurance provisions. We therefore affirm the district court's judgment of recovery of the premises.

Affirmed.

[7] Ikram relies on the district court case *Kollmann v. Garding*, in which the district court found that failing to name a party on an insurance policy is not a material breach because the insurance provision did not go to the root of the contract and no damages stemmed from the breach. No. 73-CV-20-8402, 2022 WL 21729849, at *1, *9 (Minn. Dist. Ct. Nov. 9, 2022), *aff'd*, No. A22-1843, 2023 WL 5006246 (Minn. App. Aug. 7, 2023), *rev. denied* (Minn. Nov. 14, 2023). Assuming that Minn. R. Civ. App. P. 136.01 does not preclude Ikram from relying on a district court case as persuasive authority, we conclude that the district court's decision in *Kollmann* is inapposite because the case involved a lease agreement and contract for deed designed to transfer the property between the parties, not a temporary lease agreement resulting in eviction proceedings. *Id.* at * 7. And our opinion in *Kollmann* did not address the materiality question. *See* 2023 WL 5006246.