

NEBRASKA SUPREME COURT

Vasquez v. CHI Properties, LLC

302 Neb. 742 (2019) · No. No. S-17-1287 · Decided April 5, 2019

SUMMARY

The Nebraska Supreme Court reviewed the dismissal of tenants' claims against their landlord under the Uniform Residential Landlord and Tenant Act. The court held that the tenants could not proceed under provisions governing a landlord's failure to deliver possession because they had accepted and occupied the premises, but that they plausibly alleged claims concerning habitability, wrongful ouster, retaliation, and return of their security deposit. The court affirmed in part and reversed in part.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Freudenberg, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	April 5, 2019
DOCKET	No. S-17-1287
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Tenants appealed the dismissal of their amended complaint under Neb. Ct. R. Pldg. § 6-1112(b)(6) for failure to state a claim under the Uniform Residential Landlord and Tenant Act.
STANDARD OF REVIEW	An order granting a motion to dismiss is reviewed de novo. The court accepts well-pleaded allegations as true and draws all reasonable inferences in favor of the nonmoving party, but does not accept legal conclusions as facts.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	Claudia Vasquez, Cesar Moreno Tinoco v. CHI Properties, LLC

TOPICS

[motions to dismiss](#)[landlord tenant](#)[pleadings](#)[statutory interpretation](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the tenants stated a claim under Neb. Rev. Stat. §§ 76-1418 and 76-1426 for failure to deliver possession when they accepted possession and lived on the property for several months before discovering its uninhabitable conditions.
2. Whether the tenants stated plausible claims under Neb. Rev. Stat. § 76-1419 for the landlord's failure to maintain fit and habitable premises.
3. Whether the tenants' alleged use of substitute housing and nonpayment of rent constituted an election of remedies that barred claims under Neb. Rev. Stat. §§ 76-1425 and 76-1427.
4. Whether a tenant must provide the 14/30-day termination notice described in § 76-1425(1) to seek damages or injunctive relief under § 76-1425(2).
5. Whether § 76-1425(2) requires a tenant to pursue both damages and injunctive relief in order to pursue either remedy.
6. Whether the tenants stated claims for retaliation under § 76-1439 and wrongful ouster under § 76-1430 without bringing a separate action to terminate the rental agreement.

HOLDINGS

1. A tenant who accepts possession and lives on the property for several months cannot state a claim under § 76-1418 or obtain the corresponding remedies under § 76-1426, because those provisions concern delivery of possession at the commencement of the lease term.
2. The tenants stated plausible claims under § 76-1419 for the landlord's failure to maintain the premises in a fit and habitable condition.
3. The doctrine of election of remedies did not warrant dismissal of the tenants' complaint under § 6-1112(b)(6). A plaintiff may plead mutually exclusive remedies and need elect only for purposes of recovery, so long as the plaintiff does not obtain double recovery for the same injury.
4. When a tenant has given notice required by § 76-1419, the tenant may seek damages or injunctive relief under § 76-1425(2) without sending the separate 14/30-day termination notice described in § 76-1425(1).
5. The conjunctive reference to damages and injunctive relief in § 76-1425(2) gives tenants two distinct options and does not require pursuit of both remedies in order to pursue either one.
6. A tenant need not bring a separate action for termination of a rental agreement to obtain relief under §§ 76-1430 and 76-1439; the tenants' allegations stated a plausible retaliation claim.
7. The tenants stated a plausible claim for wrongful ouster under § 76-1430 based on allegations that they were excluded from the premises and that essential water services were interrupted.

KEY QUOTATIONS

“A tenant who accepts possession and lives on the property for several months thereafter does not have a claim under § 76-1418, because the duties described in § 76-1418 pertain to the “commencement” of the lease term.” (302 Neb. at 753)

“The doctrine of election of remedies normally does not provide grounds for dismissing a complaint under § 6-1112(b)(6) for failure to state a claim.” (302 Neb. at 759)

“We hold that so long as a tenant has given notice when required by § 76-1419, a tenant can seek damages or injunctive relief under § 76-1425(2) without sending notice under § 76-1425(1) specifying that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice of the breach, if not remedied within 14 days.” (302 Neb. at 764)

“the conjunctive “and” in § 76-1425(2) “serves to vest a tenant with two distinct options for relief” and does not require that both be pursued in order to pursue either.” (302 Neb. at 764)

FACTUAL BACKGROUND

Claudia Vasquez and Cesar Moreno Tinoco rented a property from CHI Properties, LLC, beginning in May 2016. After they took possession, they discovered water leaks, mold, numerous housing-code violations, and serious electrical and plumbing hazards; the Housing Division eventually declared the property unsafe and ordered them to vacate. The landlord allegedly failed to make necessary repairs, demanded rent during periods when the tenants could not occupy the property, threatened them with abandonment consequences, and refused to return prepaid rent and the security deposit after the tenants terminated the lease.

PROCEDURAL HISTORY

The tenants' original complaint was dismissed, but they were granted leave to amend. The district court dismissed the amended complaint under § 6-1112(b)(6), concluding that the tenants could not proceed under the statutory provisions governing delivery of possession, habitability, damages, ouster, or retaliation. The tenants stood on the amended complaint, obtained a final judgment, and timely appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The dismissal was affirmed as to the first cause of action under §§ 76-1418 and 76-1426 and reversed as to the alleged claims under §§ 76-1419, 76-1430, and 76-1439. The opinion does not state additional specific remand instructions.

CASES CITED

- Eadie v. Leise Properties, 300 Neb. 141, 912 N.W.2d 715 (2018)
- Burklund v. Fuehrer, 299 Neb. 949, 911 N.W.2d 843 (2018)
- In re Interest of Noah B. et al., 295 Neb. 764, 891 N.W.2d 109 (2017)

- Pan v. IOC Realty Specialist, 301 Neb. 256, 918 N.W.2d 273 (2018)
- deNourie & Yost Homes v. Frost, 295 Neb. 912, 893 N.W.2d 669 (2017)
- Port v. Smith, 240 Neb. 928, 486 N.W.2d 846 (1992)
- Bryant Heating v. United States Nat. Bank, 216 Neb. 107, 342 N.W.2d 191 (1983)
- Genetti v. Caterpillar, Inc., 261 Neb. 98, 621 N.W.2d 529 (2001)
- In re 2007 Appropriations of Niobrara River Waters, 278 Neb. 137, 768 N.W.2d 420 (2009)
- Vowers & Sons, Inc. v. Strasheim, 254 Neb. 506, 576 N.W.2d 817 (1998)
- City of Alliance v. Cover-Jones Motor Co., 154 Neb. 900, 50 N.W.2d 349 (1951)
- Peterson v. Kings Gate Partners, 290 Neb. 658, 861 N.W.2d 444 (2015)
- Zawaideh v. Nebraska Dept. of Health & Human Servs., 285 Neb. 48, 825 N.W.2d 204 (2013)
- Platte Valley Fed. Sav. & Loan Assn. v. Gray, 226 Neb. 135, 409 N.W.2d 617 (1987)
- Southwest Trinity Constr. v. St. Paul Fire & Marine, 243 Neb. 55, 497 N.W.2d 366 (1993)
- Russo v. Williams, 160 Neb. 564, 71 N.W.2d 131 (1955)
- Bratt v. Wishart, 136 Neb. 899, 287 N.W. 769 (1939)
- In re Estate of Eickmeyer, 262 Neb. 17, 628 N.W.2d 246 (2001)
- Blankenau v. Landess, 261 Neb. 906, 626 N.W.2d 588 (2001)
- Pollock v. Whipple, 33 Neb. 752, 51 N.W. 130 (1892)
- Valentine Oil Co. v. Powers, 157 Neb. 71, 59 N.W.2d 150 (1953)
- Tadros v. City of Omaha, 273 Neb. 935, 735 N.W.2d 377 (2007)