

SUPREME COURT OF NORTH DAKOTA

IRET Properties v. Lee

IRET Properties, 2018 ND 116 (N.D. 2018) · No. 20170451 · Decided May 8, 2018

SUMMARY

The North Dakota Supreme Court affirmed an eviction judgment against Stephanie Lee for failure to timely pay rent. The court held that IRET Properties satisfied the notice and procedural prerequisites under N.D.C.C. chapter 47-32, and that payment within the notice period did not remedy the default under the lease terms. The court also concluded the district court’s findings were sufficient and upheld the award of attorney’s fees and costs.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle, Chief Justice; Jon J. Jensen; Lisa Fair McEvers; Daniel J. Crothers; Jerod E. Tufte
JURISDICTION	North Dakota
DECIDED	May 8, 2018
DOCKET	20170451
DISPOSITION	affirmed
PROCEDURAL POSTURE	Stephanie Lee appealed from a district court judgment evicting her and other occupants from leased premises and awarding IRET Properties \$880.00 in attorney's fees and costs.
STANDARD OF REVIEW	The Supreme Court reviewed the district court's factual findings under the clearly erroneous standard under N.D.R.Civ.P. 52(a). Because Lee failed to provide a transcript of the evidentiary hearing, the Court reviewed only the record available on appeal.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential
PARTIES	Stephanie Lee v. IRET Properties

TOPICS

- eviction
- landlord tenant
- appellate procedure
- standard of review
- waiver

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether IRET Properties complied with the prerequisites and notice requirements under N.D.C.C. ch. 47-32 to initiate an eviction action for nonpayment of rent.
2. Whether the district court made sufficient factual findings to support its determination that Lee was in default under the lease.
3. Whether Lee's payment of the rent and other amounts demanded within the three-day notice remedied the breach or waived IRET's right to recover possession.
4. Whether the district court properly awarded IRET attorney's fees and costs.

HOLDINGS

1. IRET properly brought the eviction action and complied with the notice and appearance requirements of N.D.C.C. ch. 47-32.
2. The district court's findings were sufficient to support the judgment, and its finding that Lee was in default for failure to pay rent was not clearly erroneous.
3. Lee's payment of the amounts due within the three-day notice did not remedy the breach or waive IRET's contractual right to recover possession.

KEY QUOTATIONS

"The proceeding is limited to a speedy determination of the right to possession of the property, without bringing in extraneous matters." (¶ 6)

"The appellant assumes the consequences and risk of failing to file, and failure to provide a transcript may prevent a party from succeeding on appeal." (¶ 7)

"General findings are insufficient and a district court errs as a matter of law when it does not make findings adequate to understand the basis of its decision." (¶ 15)

FACTUAL BACKGROUND

IRET Properties leased a Williston apartment to Stephanie Lee in July 2017, with monthly rent and additional charges for trash and utilities. Lee was cited for several lease infractions and failed to pay October's rent on time. IRET served a three-day notice to pay rent or vacate and a summons and complaint on October 9, 2017; Lee paid the amount demanded within three days, but the lease provided that accepting rent did not waive IRET's right to recover possession. The district court entered an eviction judgment and awarded IRET \$880.00 in filing, service, and attorney's fees, after applying Lee's security deposit.

PROCEDURAL HISTORY

IRET Properties brought an eviction action after Lee failed to timely pay October 2017 rent. Following an October 18, 2017 hearing, the District Court of Williams County entered an eviction judgment on October 23,

2017. Lee appealed, challenging compliance with the statutory eviction prerequisites, the sufficiency of the district court's findings regarding default, and the award of attorney's fees and costs.

DISPOSITION

affirmed

CASES CITED

- Schmitt v. Schmitt, 2014 ND 225, ¶ 5, 857 N.W.2d 362
- Sorenson v. Slater, 2010 ND 146, ¶ 10, 786 N.W.2d 739
- Nelson v. Johnson, 2010 ND 23, ¶ 31, 778 N.W.2d 773
- Abelmann v. SmartLease USA, L.L.C., 2014 ND 227, ¶ 18, 856 N.W.2d 747

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