

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-118

Filed 05 September 2023

Bladen County, No. 22 CVD 60

ROSEWOOD ESTATES I, LP d/b/a ROSEWOOD ESTATES APTS, by and through its agent PENDERGRAPH MANAGEMENT, LLC, Plaintiff,

v.

WENDY DRUMMOND, Defendant.

Appeal by Defendant from Order entered 19 August 2022 by Judge Quintin McGee in Bladen County District Court. Heard in the Court of Appeals 7 June 2023.

Brownlee Whitlow & Praet, PLLC, by Sarah Reddy, for Plaintiff-Appellee.

Legal Aid of North Carolina, Inc., by Thomas Holderness, Adrian Frank, and Zach Tooman, for Defendant-Appellant.

HAMPSON, Judge.

Factual and Procedural Background

Wendy Drummond (Drummond) appeals from an Order entered 19 August 2022 awarding Rosewood Estates I, LP (Rosewood Estates) possession of a residential apartment (Premises) in an action for summary ejectment. The Record before us,

including the trial court's unchallenged Findings of Fact, tends to reflect the following:

On or about 7 June 2017, Rosewood Estates leased the Premises to Drummond, with the lease term beginning on 7 June 2017. The Lease Agreement (Lease) expressly provides "either party may terminate this lease prior to expiration by giving the other written notice at least 30 days prior to move-out or date of termination."

Regarding the notice required, the Lease provides:

1. LANDLORD must give the TENANT a written notice of any proposed termination of tenancy, stating the grounds for termination, allowing TENANT or his designee access to his file, giving a specific date of the termination and advising the TENANT of their right to defend himself if judicial action is needed. Excepted [sic] as may otherwise be stated, and in accordance with Agency regulations, state or local laws, the above notice shall give at least 10 days for nonpayment of rent, and 30 days in the case of material non compliance.
2. Proper notice shall be accomplished by LANDLORD mailing the notice by first class mail, properly stamped and addressed to the TENANT at his address at the complex, with a proper return address; and/or by hand delivering the same notice to any adult member of the household or if no adult responds, by placing notice under the door or inside the unit.
3. The date on which the notice shall be deemed to be received by the TENANT shall be on the date on which the first class letter is mailed, or the date on which the notice is hand delivered, whichever is later.

Drummond rented the Premises from Rosewood Estates through the U.S. Department of Agriculture's Rural Housing Program (Housing Program), and the Lease was renewable each year upon proper recertification through the Housing

Program.¹ On 20 May 2019, the parties executed a Lease Addendum, stating the Lease was subject to the provisions of the Violence Against Women and Justice Department Reauthorization Act of 2005 (VAWA). During Drummond's tenancy, Rosewood Estates received approximately ten to fifteen complaints regarding Drummond's behavior. Rosewood Estates issued multiple notices to Drummond regarding her improper conduct, including a notice to cure. On or about 29 November 2021, Rosewood Estates sent Drummond a letter, through counsel, entitled Notice of Termination (Notice). The Notice provided in relevant part:

Pursuant to [Rosewood Estates'] letter to you dated May 1, 2020, [Rosewood Estates] decided not to renew your lease and your lease terminated effective May 31, 2020. As of today's date, you are still in possession of the Premises and are a holdover tenant. [Rosewood Estates] has asked that I inform you of their intention to pursue summary ejectment if you do not vacate on or before the deadline provided below. Therefore, your Lease will terminate on December 31, 2021, and you must vacate the Premises.²

Drummond failed to vacate the Premises in accordance with the Notice. Drummond paid—and Rosewood Estates accepted—rental payments from May 2020 to December 2021.

On 12 January 2022, Rosewood Estates filed a Complaint in Summary Ejectment against Drummond in Bladen County Small Claims Court. The Complaint

¹ The Lease was executed on or about 7 June 2017 and was clearly renewed for a number of years, but the Record on Appeal does not include any evidence of renewal or recertification through the Housing Program. However, in its briefing to this Court, Rosewood Estates makes no argument regarding the renewal or recertification of the Lease.

² The May 2020 letter referenced in the Notice is not included in the Record on Appeal.

alleged: (1) the lease period ended on 31 December 2021, and Drummond is holding over after the end of the lease period; and (2) Drummond breached the condition of the Lease by disrupting “the livability of the project or the right of any tenant . . . to the quiet enjoyment of the premises and related project facilities.” On 25 January 2022, the magistrate judge entered a Judgment in Action for Summary Ejectment in favor of Rosewood Estates. On 3 February 2022, Drummond timely filed written notice of appeal to District Court. The matter was heard before the trial court on 3 August 2022. The trial court entered an Order Granting Judgment for Possession in favor of Rosewood Estates on 19 August 2022. In its Order, the trial court found, in relevant part:

6. The written notice alleges that [Drummond] remained in the property after the lease terminated but does not allege any breaches of the lease.

7. [Drummond] failed to vacate in accordance with the November 29, 2021 notice.

8. No evidence was provided that the November 29, 2021 notice included a Notice of Occupancy Rights or a HUD-approved self-certification form under the Violence Against Women Act.

9. [Drummond] paid and [Rosewood Estates] accepted rental payments from the months of May 2020 through December 2021.

10. [Drummond]’s behavior violated the right to quiet enjoyment of their leased property of at least four other Rosewood Estates Apartments residents.

Based upon the evidence and testimony presented to the [c]ourt herein, the [c]ourt finds that [Drummond] breached her lease by and through her action or conduct which disrupts the livability of

the project or the right of any tenant pursuant to the Lease, and that [Rosewood Estates] is entitled to a judgment for possession[.]

The trial court ordered Drummond to vacate the Premises on or before 11:59 p.m. on 5 September 2021. On 2 September 2022, Drummond timely filed written Notice of Appeal to this Court.

Issue

The sole issue on appeal is whether the trial court erred in awarding possession of the Premises to Rosewood Estates because Rosewood Estates' Notice was ineffective to terminate the Lease.

Analysis

In summary ejectment actions, “[a] trial court’s findings of fact are binding on appeal if supported by competent evidence. Unchallenged findings of fact are also binding on appeal. However, we review questions of law *de novo*.” *Durham Hosiery Mill Ltd. v. Morris*, 217 N.C. App. 590, 592, 720 S.E.2d 426, 427 (2011) (citation omitted). Here, Drummond does not challenge any of the trial court’s Findings of Fact. As such, these Findings are binding on appeal.

Drummond contends “the trial court erred as a matter of law in awarding possession to [Rosewood Estates] because the November 2021 Notice was legally deficient.” We agree.

N.C. Gen. Stat. § 42-26 allows an action for summary ejectment:

(1) When a tenant in possession of real estate holds over after his term has expired.

(2) When the tenant or lessee, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

(3) When any tenant or lessee of lands or tenements, who is in arrear for rent or has agreed to cultivate the demised premises and to pay a part of the crop to be made thereon as rent, or who has given to the lessor a lien on such crop as a security for the rent, deserts the demised premises, and leaves them unoccupied and uncultivated.

N.C. Gen. Stat. § 42-26(a) (2021).

Rosewood Estates' initial Complaint alleged Drummond was holding over after the expiration of her lease term; however, there is no evidence in the Record to support that assertion. The trial court did not base its ruling on whether Drummond was a hold-over tenant. Indeed, the trial court expressly found Drummond paid and Rosewood Estates accepted rental payments from May 2020 through December 2021. Rosewood Estates makes no argument on appeal Drummond is a hold-over tenant.³ Further, as there is no contention the lease at issue here is an agricultural lease, subsection (3) of N.C. Gen. Stat. § 42-26(a) is inapplicable.

Rather, the sole basis for the trial court's Order granting possession to Rosewood Estates was Drummond's alleged breach of the Lease pursuant to subsection (2) of Section 42-26(a). Under the terms of the Lease, prior to terminating the Lease for breach, Rosewood was required to provide notice of the alleged breach.

³ Indeed, in its briefing to this Court, Rosewood Estates makes largely irrelevant arguments that do not address Drummond's arguments on appeal.

Here, the trial court expressly found there was no breach alleged in the Notice provided to Drummond: “The written notice alleges that [Drummond] remained in the property after the lease terminated but does not allege any breaches of the lease.” “When termination of a lease depends upon notice, the notice must be given in strict compliance with the contract as to both time and contents.” *Stanley v. Harvey*, 90 N.C. App. 535, 539, 369 S.E.2d 382, 385 (1988) (citation omitted). As such, because Rosewood Estates failed to state the ground for termination—as required by the Lease, the Notice was ineffective to terminate Drummond’s Lease.

Moreover, the trial court also expressly found: “No evidence was provided that the November 29, 2021 notice included a Notice of Occupancy Rights or a HUD-approved self-certification form under the Violence Against Women Act.” This Finding establishes the Notice was fatally deficient under the VAWA. As such, the trial court erroneously granted Rosewood Estates possession of the Premises. *See* 34 U.S.C. § 12491(d)(2)(C) (2021) (requiring a lessor to provide both Notice of Occupancy Rights and a certification form with a notice of termination).

Thus, the fatally defective Notice provided by Rosewood Estates was ineffective to terminate the lease agreement with Drummond. Therefore, Rosewood Estates did not have authority under the Lease to proceed with this summary ejectment action. *See Stanley*, 90 N.C. App. at 539, 369 S.E.2d at 385 (concluding a lessor did not have the authority to proceed with a summary ejectment action because the lessor failed to effectively terminate the lease, as required by the agreement, prior to commencing

the action). Consequently, the trial court erred in granted summary ejectment in favor of Rosewood Estates.

Conclusion

Accordingly, for the foregoing reasons, we reverse the trial court's Order Granting Judgment for Possession to Rosewood Estates.

REVERSED.

Judges DILLON and COLLINS concur.

Report per Rule 30(e).