
IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

September Term, 2003
No. 2354

ARTHUR HYDER, et al.,

Appellants

v.

MONTGOMERY COUNTY, MARYLAND, et al.,

Appellees

On Appeal from the Circuit Court for Montgomery County, Maryland
(Michael D. Mason, Judge)

**BRIEF OF APPELLEE,
MONTGOMERY COUNTY, MARYLAND**

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STATEMENT OF THE CASE

Andrew and Gayle Nadler (tenants) filed a complaint with the Office of Landlord-Tenant Affairs against their landlord, Arthur and Patricia Hyder, their landlord's agent, Marydale Realty Management, Inc., and Mary Vaarwerk, President of Marydale (collectively "landlord"). (E. 2) The tenants claimed that the landlord wrongfully withheld rent and late fees from their security deposit, even though they gave proper written notice of their intention to vacate the property before May 1. (E. 3) The landlord explained that the notice was untimely for purposes of terminating the lease by April 30, but served as effective notice to terminate by May 31, making rent due for May. (E. 3, 7)

The Office of Landlord-Tenant Affairs investigated the complaint, and the Director determined that the dispute was not susceptible to conciliation. The case was referred to the Commission on Landlord-Tenant Affairs, which voted to conduct a hearing on the matter. Following the evidentiary hearing, the Commission issued a written decision and order finding that the tenants had given proper notice of their intention to vacate before May 1, 2002, and concluding that the landlord wrongfully withheld rent for May 2002 from the tenants' security deposit. (E. 10-11)

The landlord filed a petition for judicial review to the circuit court challenging the Commission's ruling regarding the timeliness of the tenants' notice as an error of law. The County intervened to protect the Commission's interpretation of the notice provision as applied to this case. After reviewing legal memoranda and hearing oral argument, the circuit court affirmed the Commission's decision, and the landlord noted an appeal to this Court. (E. 41)

QUESTION PRESENTED

Did the notice given to the landlord on April 1 for termination on April 30 satisfy the lease requirement that the tenants give “thirty (30) days’ written notice prior to the Rent Due Date”?

STATUTES, ORDINANCES AND CONSTITUTIONAL PROVISIONS

The full text of all relevant statutes, ordinances and constitutional provisions appears in the appendix to this brief.

STATEMENT OF FACTS

The tenants entered into a one-year lease of residential property located in Bethesda, Maryland. (E. 2, 5) The rental began on July 1, 2000, and expired on June 30, 2001. (E.5) At the end of the year, the tenants signed a “Lease Extension Agreement” that continued the lease for another year on a month-to-month basis. (E. 7) The lease contained standard language for the method of termination:

Either Landlord/Agent or Tenant may terminate this Lease at the expiration of said Lease or any extension thereof by giving the other thirty (30) days’ written notice of termination prior to the Rent Due Date

(E. 49) The lease used “Rent Due Date” to refer to “the first day of each and every month” of the term. (E. 43)

The tenants hand-delivered written notice to the landlord on April 1, 2002, indicating that they would move by April 30. (E. 7) Although the landlord acknowledged receipt of the tenants’ notice to vacate, the confirmation letter advised them that the notice was late for an April 30 effective date. As a result, the tenants would be held responsible for the May rent, unless a new tenant took possession of the property during May. (E. 7) The landlord

proceeded according to a May 31 termination date and issued a statement showing itemized deductions from the tenants' security deposit dated May 30, 2002. (E. 8) The statement included \$2200 rent for the month of May, along with a \$110 late fee. (E. 8)

ARGUMENT

Judicial review of an administrative decision requires the court to determine whether “there was substantial evidence on the record as a whole to support the agency’s findings of fact and whether the agency’s conclusions of law were correct.” *Motor Vehicle Administration v. Atterbeary*, 368 Md. 480, 490-491, 796 A.2d 75, 81 (2002). The reviewing court will not substitute its judgment for the expertise of the agency or make its own findings of fact when the record contains substantial evidence to support the administrative decision. *Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 450-451, 800 A.2d 768, 774-775 (2002). The court may substitute its judgment only as to an error made on an issue of law. *Relay Improvement Association v. Sycamore Realty Co.*, 105 Md. App. 701, 714, 661 A.2d 182, 188 (1995), *aff’d*, 344 Md. 57, 684 A.2d 1331 (1996). Even for issues of law, the court extends a degree of deference to the agency and often gives considerable weight to the agency’s interpretation and application of the statute that the agency administers. *Annapolis Market Place, LLC v. Parker*, 369 Md. 689, 703, 802 A.2d 1029, 1038 (2002).

Decisions of agencies are entitled to great weight and a presumption of validity, viewing the decision in the light most favorable to the agency. *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 68-69, 729 A.2d 376, 381 (1999). Substantial evidence has been described as “more than a ‘scintilla of evidence,’ such that a reasonable person could

come to more than one conclusion.” *Relay Improvement Association*, 105 Md. App. at 714, 661 A.2d at 188. Moreover, the agency resolves any conflicting evidence, as well as any inconsistent inferences from the evidence. *Gigeous v. Eastern Correctional Institution*, 363 Md. 481, 497, 769 A.2d 912, 922 (2001).

The notice given to the landlord on April 1 for termination on April 30 satisfied the lease requirement that the tenants give “thirty (30) days’ written notice prior to the Rent Due Date.”

This case involves the interpretation of a lease to determine when the tenants had to serve notice to terminate the lease by April 30. The landlord reads the language of the lease as meaning that a tenant must give at least 30 days’ notice prior to the rent due date of the last month of the tenancy (i.e., on or before March 31 to terminate on April 30). Applicable legal principles do not require this limited construction. Instead, the plain language of the lease permits the calculation used by the Commission in finding that the tenants provided timely notice.

***The lease did not identify which rent due date
governed the 30-day notice calculation.***

The rules of contract interpretation apply to leases in Maryland. *See Sy-Lene of Washington, Inc. v. Starwood Urban Retail II, LLC*, 376 Md. 157, 166, 829 A.2d 540, 546 (2003); *Middlebrook Tech, LLC v. Moore*, 2004 Md. App. LEXIS 82, *36 (May 7, 2004). Similarly to statutory construction, the court will seek to effectuate the intent of the parties, as evidenced by the language in the contract. *Sy-Lene*, 376 Md. at 166, 829 A.2d at 546; *Middlebrook Tech*, 2004 Md. App. LEXIS at *36-37. To discern the meaning of the contract, the terms are considered in context and based on their ordinary meanings. *Middlebrook Tech*, 2004 Md. App. LEXIS at *37. And the court will avoid an absurd or unreasonable outcome. *Id.*

In this case, the lease identifies the rent due date as the first of each month, but for purposes of notice, it does not indicate which month governs.¹ Absent a specific reference to which rent due date the notice of termination must precede, the language permits the interpretation used by the Commission as well as the interpretation used by the landlord. Both May 1 and April 1 were rent due dates based on the “definition” contained in the lease. A tenant would comply with the lease by giving notice on March 31 to terminate the lease on April 30. But the language in the lease also lends itself to an interpretation that notice

¹The initial lease was for a one-year period, so arguably, the term referred to each and every month of the year. (E. 5, 43)

given on April 1 satisfies the “prior to the rent due date” requirement, because it occurs prior to May 1—the rent due date for May.

Applying standard contract principles of interpretation, the Commission reasonably determined that the notice given prior to May 1 constituted notice prior to the rent due date. When combined with the principles for calculating the number of days, it becomes clear that the Commission made no error in its interpretation that notice was given timely.

The notice given on April 1 satisfied the 30-day requirement.

State law specifies the notice required from a landlord to a tenant to terminate a tenancy,² and allows the lease to control the notice required from a tenant to a landlord.³ But the law does not describe the appropriate method for calculating the notice period. To determine the deadline for giving notice under a lease agreement, the Court of Appeals referred to the method described in the Maryland Rules. *Beckenheimer’s Inc. v. Alameda Associates Limited Partnership*, 327 Md. 536, 541, 611 A.2d 105, 107 (1992). The Rules

²To terminate a holdover tenancy, a landlord must give the tenant a written notice to quit one month before the term expires. Md. Code Ann., Real Prop. § 8-402(b)(1)(i)(2003). For multi-family dwellings in Montgomery County, the notice period is two months. Real Prop. § 8-402(b)(3)(iii). For breach of lease, the landlord must give the tenant 30 days’ written notice that the tenant has violated the lease and that the landlord wants to repossess the premises. *See* Real Prop. § 8-402.1(a)(1).

³State law notes that a landlord cannot require the tenant to give a longer notice period to terminate the tenancy than the landlord must give to the tenant to terminate the tenancy, and otherwise remains silent regarding the amount of notice required from a tenant. Real Prop. § 8-501.

articulate a formula for calculating the time before an event, which commentators have simplified:

Whenever these rules require action within a certain time period before an act or event, such as giving 10 days' notice before the day of a deposition . . . or filing a pleading within a certain time period before trial . . . , [c]ounting on the calendar is done backwards from the date of the event. . . . The date or event from which the counting is done is excluded, and the final date of the period (counting backwards) is included. For example, if a pleading must be filed fifteen days before trial and the trial date is April 21, counting backwards on the calendar, day one of the fifteen-day counting period is April 20. The fifteenth day falls on April 6, and the pleader has until the end of that day to file the paper. If April 6 turns out to be a Saturday, Sunday, or legal holiday, the next preceding day that is not a Saturday, Sunday, or legal holiday is the date for filing. . . .

Niemeyer, Schuett, Lynch, Bourne, *Maryland Rules Commentary* at 21 (Third Ed. 2003) (discussing Md. Rule 1-203(b)).

Using this approach in *Beckenheimer's*, the Court of Appeals counted the days backwards and included the final day of the period in the computation. By doing so, the Court determined that the 120-day notice required of a lessee for a sublease that extended through August 31, 1989, had to be delivered on or before May 4, 1989, i.e., counting backwards from September 1, the 1st day counted was August 31, 1989, and the 120th day was May 4, 1989. 327 Md. at 541, 611 A.2d at 107.

In the present case, the lease provided that notice had to be given 30 days *before* the rent due date. Absent language to restrict the rent due date beyond the first of each and every month, the tenants used May 1 as the date before which they had to give notice. Using the formula in the Rules, the tenants counted backwards from May 1 and excluded it from the count, making the 30th day April 1. Hand-delivery of the notice on April 1, therefore,

satisfied the requirement of giving notice 30 days before the rent due date. The Commission reasonably interpreted the lease in this manner and found that the notice given by the tenants was timely.

The landlord's analysis distorts the plain meaning of the lease.

In an effort to make the notice untimely for an April 30 termination date, the landlord reads language into the lease and refers to general guidelines to alter the plain meaning of the lease. Neither the distorted reading of the lease, nor the publications giving guidance on certain leasing issues alter the reasonableness of the Commission's interpretation of the notice requirement in this case.

The landlord reads the notice provision as requiring notice to be given 30 days before the end of the lease term and before the last rent due date. Using this formula, the landlord contends that the notice was due on March 31. Claiming that it has always interpreted the lease in this manner, the landlord refuses to accept that April 1 complies with the requirement as well. Even if the landlord were correct, and the notice had to be served literally 30 days before the rent due date for the last month of the tenancy, the provision would end up requiring 60 days' notice—30 days before the last rental payment would be March 1.⁴ To require a tenant to give notice on March 1 of an intent to vacate by April 30, the lease must plainly state the requirement.

⁴The amicus curiae encourages this interpretation in its brief. *See* Amicus brief at p. 15.

Nor does the example in the Department of Housing and Community Affairs' Landlord-Tenant Handbook provide any greater solace. The example refers to a 2-month notice to vacate, rather than a 30- or 60-day notice requirement.⁵ (E. 60) The method of computing time differs for the calculation of time by month as opposed to by days.⁶ While one or two-month's notice requires that notice be given one or two complete rent-payment cycles in advance, 30-days' notice requires a counting of actual days, beginning with the last day.

The landlord views the examples as the sole means of providing adequate notice, but nothing in the lease or in the law imposes this limitation. Moreover, it makes sense that a month-to-month tenant would give notice of termination along with the final rent payment—on the first day of the month. The Commission used a reasonable approach to calculate the timeliness of the tenants' notice in this instance, and this Court should affirm that calculation.

⁵The information contained in the City of Takoma Park handbook uses the same calculation method for an example of one month's notice. (E. 64)

⁶The law originally required "1 month's written notice" in breach of lease cases, but the General Assembly amended the law in 2001 to require "30 days written notice." Real Prop. § 8-402.1.

CONCLUSION

Based on the language in the lease, the tenants had to give notice of their intention to terminate the lease by the end of April 2002—thirty days before May 1, 2002, the rent due date for the beginning of the next rental cycle. In computing the time before an event, the Commission properly excluded May 1 and counted backward 30 days, starting with April 30 and ending on April 1. Inasmuch as the tenants' notice was timely, the landlord should not have withheld May rent and a late fee from the tenants' security deposit. This Court should affirm the decision and order of the Commission.

Respectfully submitted,

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Statement pursuant to Maryland Rule 8-504(a)(8): This brief was prepared with proportionally spaced type, using Times New Roman font and 13pt type size.

APPENDIX

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Real Property Article

§ 8-402. Holding over.

* * *

(b) *Notice to quit.*

(1) (i) Where any tenancy is for any definite term or at will, and the landlord shall desire to repossess the property after the expiration of the term for which it was leased and shall give notice in writing one month before the expiration of the term or determination of the will to the tenant or to the person actually in possession of the property to remove from the property at the end of the term, and if the tenant or person in actual possession shall refuse to comply, the landlord may make complaint in writing to the District Court of the county where the property is located.

(ii) 1. The court shall issue a summons directed to any constable or sheriff of the county entitled to serve process, ordering the constable or sheriff to notify the tenant, assignee, or subtenant to appear on a day stated in the summons before the court to show cause why restitution should not be made to the landlord.

2. The constable or sheriff shall serve the summons on the tenant, assignee, or subtenant on the property, or on the known or authorized agent of the tenant, assignee, or subtenant.

3. If, for any reason those persons cannot be found, the constable or sheriff shall affix an attested copy of the summons conspicuously on the property.

4. After notice to the tenant, assignee, or subtenant by first-class mail, the affixing of the summons on the property shall be conclusively presumed to be a sufficient service to support restitution.

(iii) Upon the failure of either of the parties to appear before the court on the day stated in the summons, the court may continue the case to a day not less than six nor more than ten days after the day first stated and notify the parties of the continuance.

(2) (i) If upon hearing the parties, or in case the tenant or person in possession shall neglect to appear after the summons and continuance the court shall find that the landlord had been in possession of the leased property, that the said tenancy is fully ended and expired, that due notice to quit as aforesaid had been given to the tenant or person in possession and that the tenant or person in possession had refused so to do, the court shall thereupon give judgment for the restitution of the possession of said premises and shall forthwith issue its warrant to the sheriff or a constable in the respective counties commanding the tenant or person in possession forthwith to deliver to the landlord possession thereof in as full and ample manner as the landlord was possessed of the same at the time when the tenancy was made, and shall give judgment for costs against the tenant or person in possession so holding over.

(ii) Either party shall have the right to appeal therefrom to the circuit court for the county within ten days from the judgment.

(iii) If the tenant appeals and files with the District Court an affidavit that the appeal is not taken for delay, and also a good and sufficient bond with one or more securities conditioned that the tenant will prosecute the appeal with effect and well and truly pay all rent in arrears and all costs in the case before the District Court and in the appellate court and all loss or damage which the landlord may suffer by reason of the tenant's holding over, including the value of the premises during the time the tenant shall so hold over, then the tenant or person in possession of said premises may retain possession thereof until the determination of said appeal.

(iv) The appellate court shall, upon application of either party, set a day for the hearing of the appeal, not less than five nor more than 15 days after the application, and notice for the order for a hearing shall be served on the opposite party or that party's counsel at least 5 days before the hearing.

(v) If the judgment of the District Court shall be in favor of the landlord, a warrant shall be issued by the appellate court to the sheriff, who shall proceed forthwith to execute the warrant.

(3) (i) The provisions of this subsection shall apply to all cases of tenancies at the expiration of a stated term, tenancies from year to year, tenancies of the month and by the week. In case of tenancies from year to year (including tobacco farm tenancies), notice in writing shall be given three months before the expiration of the current year of the tenancy, except that in case of all other farm tenancies, the notice shall be given six months before the expiration of the current year of the tenancy; and in monthly or weekly tenancies, a notice in writing of one month or one week, as the case may be, shall be so given.

(ii) This paragraph (3), so far as it relates to notices, does not apply in Baltimore City.

(iii) In Montgomery County, except in the case of single family dwellings, the notice by the landlord shall be two months in the case of residential tenancies with a term of at least month to month but less than from year to year.

(4) When the tenant shall give notice by parol to the landlord or to the landlord's agent or representatives, at least one month before the expiration of the lease or tenancy in all cases except in cases of tenancies from year to year, and at least three months' notice in all cases of tenancy from year to year (except in all cases of farm tenancy, the notice shall be six months), of the intention of the tenant to remove at the end of that year and to surrender possession of the property at that time, and the landlord, the landlord's agent, or representative shall prove the notice from the tenant by competent testimony, it shall not be necessary for the landlord, the landlord's agent or representative to provide a written notice to the tenant, but the proof of such notice from the tenant as aforesaid shall entitle the landlord to recover possession of the property hereunder. This paragraph shall not apply in Baltimore City.

(5) Acceptance of any payment after notice but before eviction shall not operate as a waiver of any notice to quit, notice of intent to vacate or any judgment for possession unless the parties specifically otherwise agree in writing. Any payment accepted shall be first

applied to the rent or the equivalent of rent apportioned to the date that the landlord actually recovers possession of the premises, then to court costs, including court awarded damages and legal fees and then to any loss of rent caused by the holdover. Any payment which is accepted in excess of the foregoing shall not bear interest but will be returned to the tenant in the same manner as security deposits as defined under §§ 8-203 of this title but shall not be subject to the penalties of that section.

* * *

§ 8-402.1. Breach of lease.

(a) *Complaint to District Court; summons to appear; notice; continuance.*

(1) (i) Where an unexpired lease for a stated term provides that the landlord may repossess the premises prior to the expiration of the stated term if the tenant breaches the lease, the landlord may make complaint in writing to the District Court of the county where the premises is located if:

1. The tenant breaches the lease;

2. A. The landlord has given the tenant 30 days' written notice that the tenant is in violation of the lease and the landlord desires to repossess the leased premises; or

B. The breach of the lease involves behavior by a tenant or a person who is on the property with the tenant's consent, which demonstrates a clear and imminent danger of the tenant or person doing serious harm to themselves, other tenants, the landlord, the landlord's property or representatives, or any other person on the property and the landlord has given the tenant or person in possession 14 days' written notice that the tenant or person in possession is in violation of the lease and the landlord desires to repossess the leased premises; and

3. The tenant or person in actual possession of the premises refuses to comply.

(ii) The court shall summons immediately the tenant or person in possession to appear before the court on a day stated in the summons to show cause, if any, why restitution of the possession of the leased premises should not be made to the landlord.

(2) (i) If, for any reason, the tenant or person in actual possession cannot be found, the constable or sheriff shall affix an attested copy of the summons conspicuously on the property.

(ii) After notice is sent to the tenant or person in possession by first-class mail, the affixing of the summons on the property shall be conclusively presumed to be a sufficient service to support restitution.

(3) If either of the parties fails to appear before the court on the day stated in the summons, the court may continue the case for not less than six nor more than 10 days and notify the parties of the continuance.

(b) *Judgment of District Court; appeal.*

(1) If the court determines that the tenant breached the terms of the lease and that the breach was substantial and warrants an eviction, the court shall give judgment for the restitution of the possession of the premises and issue its warrant to the sheriff or a constable commanding the tenant to deliver possession to the landlord in as full and ample manner as the landlord was possessed of the same at the time when the lease was entered into. The court shall give judgment for costs against the tenant or person in possession.

(2) Either party may appeal to the circuit court for the county, within ten days from entry of the judgment. If the tenant (i) files with the District Court an affidavit that the appeal is not taken for delay; (ii) files sufficient bond with one or more securities conditioned upon diligent prosecution of the appeal; (iii) pays all rent in arrears, all court costs in the case; and (iv) pays all losses or damages which the landlord may suffer by reason of the tenant's holding over, the tenant or person in possession of the premises may retain possession until the determination of the appeal. Upon application of either party, the court shall set a day for the hearing of the appeal not less than five nor more than 15 days after the application, and notice of the order for a hearing shall be served on the other party or that party's counsel at least five days before the hearing. If the judgment of the District Court is in favor of the landlord, a warrant shall be issued by the court which hears the appeal to the sheriff, who shall execute the warrant.

(c) *Payments accepted after notice but before eviction.*

(1) Acceptance of any payment after notice but before eviction shall not operate as a waiver of any notice of breach of lease or any judgment for possession unless the parties specifically otherwise agree in writing.

(2) Any payment accepted shall be first applied to the rent or the equivalent of rent apportioned to the date that the landlord actually recovers possession of the premises, then to court costs, including court awarded damages and legal fees and then to any loss of rent caused by the breach of lease.

(3) Any payment which is accepted in excess of the rent referred to in paragraph (2) of this subsection shall not bear interest but will be returned to the tenant in the same manner as security deposits as defined under §§ 8-203 of this title but shall not be subject to the penalties of that section.

§ 8-501. Time of notice to terminate tenancy.

No written agreement between a landlord and tenant shall provide for a longer notice period to be furnished by the tenant to the landlord in order to terminate the tenancy than that required of the landlord to the tenant in order to terminate the tenancy.

Md. Rule 1-203. Time.

* * *

(b) *Computation of time before a day, act, or event.* In determining the latest day for performance of an act which is required by these rules, by rule or order of court, or by any applicable statute, to be performed a prescribed number of days before a certain day, act, or event, all days prior thereto, including intervening Saturdays, Sundays, and holidays, are counted in the number of days so prescribed. The latest day is included in the determination unless it is a Saturday, Sunday, or holiday, in which event the latest day is the first preceding day which is not a Saturday, Sunday, or holiday.

* * *