

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

HERMINIA RODRIGUEZ,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
LYNNE K. SIMONS, DISTRICT JUDGE,
Respondents,

and

A/E-GOLDEN ASSOCIATES, L.P.,
D/B/A GOLDEN APARTMENTS,
Real Party in Interest.

No. 81219-COA

FILED

AUG 12 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

In this original petition for a writ of certiorari or mandamus, petitioner Herminia Rodriguez challenges a May 5, 2020, district court order affirming a justice court's summary eviction.

In the petition, Rodriguez asserts that the district court exceeded its jurisdiction or arbitrarily or capriciously exercised its discretion in affirming the summary eviction order because she did not receive proper notice that her subsidy and tenancy were being terminated per 24 C.F.R. § 247.4 and the lease and because she raised legal defenses to the eviction based thereon, including that she owed no rent, such that the justice court lacked jurisdiction to proceed with a summary eviction. Real party in interest Golden Apartments has timely filed an answer, as directed, disputing that writ relief is warranted to remedy a jurisdictional excess or abuse of discretion, and Rodriguez has filed a reply.

Background

Golden Apartments participates in HUD's Section 8 housing assistance program. Under that program, Rodriguez has qualified for and received housing assistance for her unit at Golden Apartments since 2012 in the form of a full rent subsidy. Based on program guidelines, Rodriguez must recertify for the subsidy each year by July 1. And as part of the annual recertification process, Golden Apartments and Rodriguez must complete a series of steps leading to submittal of the recertification within 15 months of the previous year's anniversary date, including providing notices, holding a recertification interview where Rodriguez provides requisite income and family composition information, verifying that information, calculating the new rent and assistance payment and so informing Rodriguez, and obtaining Rodriguez's signature on form HUD-50059. See HUD Multifamily Occupancy Handbook 7-6 and 7-7, Figure 7-3.

In providing the requisite pre-interview notices under this process for Rodriguez's 2019 recertification, Golden Apartments sent Rodriguez a second reminder notice on April 1, 2019. The April 1 reminder notice informed Rodriguez that her recertification interview requirement could be met at an upcoming April 5 meeting, and it also warned her that failure to comply with the interview or sign the required consent forms by May 10 would result in the waiver of her right to 30-days' notice of any rent increase; if she failed to comply by July 1, her subsidy could be terminated altogether. It is undisputed that Rodriguez attended the April 5 meeting and timely signed the required consent forms, such that Golden Apartments began the recertification process. Nevertheless, Golden Apartments sent Rodriguez a third notice on May 1 indicating that she had not set up her

interview and reiterating the deadlines set forth in the April 1 notice. Neither notice mentions form HUD-50059.

As of July 1, Golden Apartments was still waiting for a verification form from Rodriguez's mother. Upon receiving the verification form soon thereafter, Golden Apartments processed the information and determined that Rodriguez's rent would remain fully subsidized. Around July 15 and 29, Golden Apartments left notices on Rodriguez's door asking her to immediately arrange to come in and sign recertification paperwork; the second notice stated that assistance would be terminated if Rodriguez failed to sign but did not include any deadline to do so. Rodriguez asserted that she did not receive those notices. On August 8, Golden Apartments' representative knocked on Rodriguez's door and, when she failed to answer, left a sticky note asking her to make an appointment to sign the recertification paperwork and giving her a deadline of 1 day. Rodriguez asserts that she went to the office to sign that same day but was asked to come back later. The next day, Golden Apartments terminated Rodriguez's subsidy, effective July 1, 2019, for her failure to recertify/sign form HUD-50059.¹ When Rodriguez failed to pay rent, Golden Apartments issued a 10-day notice to pay rent or quit on September 9. 1 PA 2.

In response to the 10-day notice to pay rent or quit, Rodriguez filed a tenant's affidavit acknowledging that she had yet to sign a paper needed to recertify for the housing subsidy and detailing her difficulty getting ahold of someone in the apartment complex to do so. She later filed

¹HUD-50059 is generated by the owner, i.e., Golden Apartments, after verifying the tenant's information and using that information to calculate the tenant's rent payment and HUD assistance amounts. Both the owner and the tenant must sign it to verify the information contained therein before the recertification is submitted to HUD.

an amended affidavit stating that she had been told in July that her subsidy remained at \$0, so she assumed that everything had been completed, until later the next month, when she was informed by the sticky note on her door that she had to sign the paperwork. She challenged the justice court's jurisdiction to proceed with a summary eviction based on lack of proper notice that her subsidy and tenancy were being terminated. These arguments were made more forcefully in Rodriguez's motion to dismiss, in which she claimed to never have received a notice to terminate her subsidy.

The justice court concluded that Rodriguez was out of compliance because her mother failed to return the verification form before July 1 and, thus, she owed rent as of July 1 under the section of the HUD Handbook governing instances when the tenant is out of compliance for failing to respond to the reminder notices before the anniversary date. See HUD Handbook 7-8(D)(3). In doing so, the justice court stated its belief that a tenant "response" encompasses not only the interview and signatures needed to initiate the recertification, but signing HUD-50059 as well. Since the justice court determined that Rodriguez had not established any material factual issue as to whether rent was due, among other things, the court concluded that summary eviction was proper. See *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 212, 215, 163 P.3d 405, 407 (2007) (likening determining whether a defense to summary eviction was raised to determining whether summary judgment is warranted). On appeal, the district court agreed that no genuine issue of material fact existed and affirmed the justice court's summary eviction. Rodriguez now seeks extraordinary relief, arguing that the district court exercised its discretion arbitrarily or capriciously when it affirmed the justice court decision entered in excess of its jurisdiction.

Discussion

A writ of mandamus is available to compel the performance of a legal duty or to control an arbitrary or capricious exercise of discretion. See NRS 34.160; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). A writ of certiorari is a proper remedy when an inferior officer, exercising judicial functions, has exceeded his or her jurisdiction. See NRS 34.020; *Nev. Public Access Land Coal, Inc. v. Humboldt Cty. Bd. of Cty. Comm'rs*, 111 Nev. 749, 751, 895 P.2d 640, 641 (1995). Generally, we do not entertain writ petitions challenging a decision of the district court acting in its appellate capacity, “unless the district court has improperly refused to exercise its jurisdiction, has exceeded its jurisdiction, or has exercised its discretion in an arbitrary or capricious manner.” *State v. Eighth Judicial Dist. Court*, 116 Nev. 127, 134, 994 P.2d 692, 696 (2000). However, extraordinary relief may issue when the justice court acts in excess of its jurisdiction. *Sellers v. Fourth Judicial Dist. Court*, 119 Nev. 256, 260, 71 P.3d 495, 498 (2003).

Under NRS 40.253(6), the justice court lacks jurisdiction to proceed with a summary eviction when the tenant asserts a viable legal defense to the alleged unlawful detainer. See also, e.g., *Riverview Towers Assocs. v. Jones*, 817 A.2d 324, 326 (N.J. App. Div. 2003) (“Based on the landlord’s failure to comply with the HUD lease termination notice requirements, the trial court lacked jurisdiction to enter the judgments of possession.”). Here, Rodriguez asserts, among other things, that she did not owe rent—and thus could not be evicted for failure to pay rent—because Golden Apartments failed to provide her with notice that her subsidy was being terminated.

HUD Handbook 8-6(A) recognizes that tenants are entitled to advance written notice that their subsidy may be terminated. The notice must provide the specific date of the subsidy's termination, the reason therefor, the amount of rent, and an opportunity to meet with the owner within 10 days of the notice. Further, the notice must be both mailed and delivered personally. *See also* 24 C.F.R. 247.4. As argued by Rodriguez and ostensibly not disputed by Golden Apartments, neither of the July notices nor the August 8 sticky note appears to meet these requirements.

Instead, Golden Apartments points out that the justice court concluded that the reminder notices, and the May 1 third reminder notice in particular, were sufficient. The second and third reminder notices indicated that Golden Apartments would not terminate Rodriguez's subsidy if she completed her interview and provided the required information and signatures on consent forms to allow for verification of income by May 10, which she undisputedly did. The justice court concluded otherwise on the mistaken belief that failure to obtain the verification from Rodriguez's mother by July 1 constituted failure to comply with the notices. But HUD Handbook 7-8(C) makes clear that if a tenant timely reports for her recertification interview and provides the required information, the tenant has met her obligation under the reminder notices and the owner must then provide advance notice before increasing rent. In other words, the reminder notices no longer sufficed as notice of increased rent (and, presumably, terminating a subsidy). The same result is to occur when the recertification is delayed, as here, by third-party action. HUD Handbook 7-8(D).² The

²*See also* HUD Handbook 8-5(B) (listing a tenant's failure to provide required information and failure to sign HUD-9887 and HUD-9887-A

justice court incorrectly attributed the third-party delay to Rodriguez and applied the section of the handbook dealing with the tenant being out of compliance.

Moreover, because Rodriguez responded to the second reminder notice, there was no need for Golden Apartments to send the third reminder notice, HUD Handbook 7-7(B)(4)(a), and neither reminder notice was effective to provide notice of termination of the subsidy for Rodriguez's failure to sign HUD-50059. *See Hidden Meadows Townhomes v. Ross*, 2012-Ohio-6017, 2012 WL 6674412 *6 (Ct. App. Dec. 21, 2012) (recognizing that reminder notices referencing an obligation to attend a recertification interview and sign consent forms could not serve to provide notice of a subsidy's termination to someone who fulfilled the obligations referenced in the reminder notices but then failed to timely sign HUD-50059). It was Golden Apartment's obligation to obtain Rodriguez's signature on HUD-50059, and it is not clear that its notices and sticky note met that obligation. *See id.* (holding that a tenant is entitled to proper notification that her signature is required on HUD-50059).³ Further, Rodriguez alleged that, when she went to the apartment office to sign the form after receiving the August 8 sticky note, she was refused an opportunity to do so.


consent and verification forms as constituting bases for termination of assistance, but not listing failure to sign HUD-50059 as a basis).

³Golden Apartments prepared a letter on August 8 advising Rodriguez that, based on its recent review of her income and family composition, her rent had been adjusted to \$0 and asking her to come in within 7 days to sign HUD-50059, but Golden Apartments circularly stated that it never sent Rodriguez that letter because she failed to come in and sign HUD-50059. Instead, when she failed to sign the form by August 8, it sent her the same form letter the next day increasing the rent.

Based on the above, Rodriguez raised a genuine issue of material fact regarding whether Golden Apartments properly terminated her subsidy, and thus whether rent was actually owed, such that the justice court lacked jurisdiction to proceed with a summary eviction and the district court acted contrary to the law in affirming the justice court's action. See *Brown v. Eighth Judicial Dist. Court*, 133 Nev. 916, 919, 415 P.3d 7, 10 (2017) (noting that a district court acts capriciously, so as to warrant mandamus relief, when it exercises its discretion contrary to the evidence or established legal rules). Accordingly, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF mandamus instructing the district court to remand this matter to the justice court for further proceedings to be conducted pursuant to NRS 40.290-.420, per NRS 40.253(6).⁴


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Lynne K. Simons, District Judge
Nevada Legal Services/Reno
Hoy Chrissinger Kimmel Vallas, P.C.
Washoe District Court Clerk

⁴In light of this order, we do not reach petitioner's other bases for relief, and her request for a writ of certiorari is denied as moot. Our June 15, 2020, stay of eviction is vacated upon the filing of the notice in lieu of remittitur.