



IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBAN LEBOT,
Appellant,
vs.
LENA KOUROGHLIAN, AN
INDIVIDUAL, AND COMPASS REALTY
AND MANAGEMENT LLC, A NEVADA
LIMITED LIABILITY COMPANY,
Respondents.

No. 91432

*ORDER AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING*

This pro se appeal challenges a district court order granting a motion to dismiss an amended complaint in a landlord-tenant dispute. Eighth Judicial District Court, Clark County; Crystal Eller, Judge.

Appellant Alban Lebot rented a residence owned by respondent Lena Kouroghlian and managed by respondent Compass Realty and Management LLC (Compass). Lebot alleged that the residence contained numerous habitability defects, that respondents failed to repair those defects or reimburse his repair expenses, and that respondents wrongfully retained his security deposit. Lebot's amended complaint asserted claims for breach of contract, constructive eviction, breach of the implied warranty of habitability, intentional infliction of emotional distress (IIED), and violation of NRS 118A.242 against both respondents and claims for fraudulent misrepresentation and negligence against Kouroghlian. The district court dismissed all claims with prejudice, except the NRS 118A.242 claim against Kouroghlian, which it remanded to the justice court after concluding that the amount in controversy no longer supported district court jurisdiction. This appeal followed.

We rigorously review a district court order granting an NRCP 12(b)(5) motion to dismiss, accepting the plaintiff's factual allegations as true and drawing every reasonable inference in the plaintiff's favor to determine whether the allegations are sufficient to state a claim for relief. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A complaint should be dismissed for failure to state a claim “only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.” *Id.* at 228, 181 P.3d at 672.

We conclude that the district court properly dismissed with prejudice Lebot's claims for breach-of-contract, constructive eviction, and breach of the implied warranty of habitability. To the extent Lebot challenges the district court's conclusion that NRS Chapter 645 preempted the common law claims against Compass, we need not decide that issue because the amended complaint independently failed to state a viable claim for relief.

Lebot argues that he adequately pleaded exceptions to NRS Chapter 118A's written notice requirements. Lebot's breach-of-contract claim nonetheless fails because the amended complaint alleged the existence of a lease agreement but did not identify any contractual provisions respondents breached or facts showing how they breached it. *See Johnson as Tr. of Nina J. Cummings Revocable Living Tr. v. Wells Fargo Bank, N.A.*, No. 2:22-cv-00196-JCM-EJY, 2022 WL 2124392, at *7 (D. Nev. May 20, 2022), *report and recommendation adopted*, 2022 WL 2119073 (D. Nev. June 13, 2022) (dismissing breach-of-contract claim where the complaint generally alleged the existence of a contract but failed to identify the contractual provisions allegedly breached or facts showing how each party breached that provision). Thus, the district court did not err in dismissing that claim.

Lebot's constructive-eviction and implied-warranty-of-habitability claims likewise fail because both are predicated on respondents' alleged failure to remedy defects in the residence, yet the amended complaint did not adequately allege compliance with NRS Chapter 118A's written-notice requirements or their exceptions. *See* NRS 118A.350, NRS 118A.355, NRS 118A.380; *Redevelopment Agency of City of Sparks v. Nev. Lab. Comm'r*, 140 Nev., Adv. Op. 44, 551 P.3d 303, 309 (2024) ("[A]bsent ambiguity, a statute's plain text controls its interpretation." (citation omitted)); *Mason-McDuffie Real Est., Inc. v. Villa Fiore Dev., LLC*, 130 Nev. 834, 841, 335 P.3d 211, 216 (2014) (recognizing that a constructive eviction claim requires notice and reasonable opportunity to cure). Lebot's allegation that he provided oral notice of the defects to Kouroghlian does not satisfy those statutory notice requirements or their exceptions. *See* NRS 118A.350, NRS 118A.355, NRS 118A.380. Accordingly, the district court properly dismissed those claims.

Lebot contends that his amended negligence claim was not time-barred. But Lebot's amended negligence claim against Kouroghlian fares no better because it remained predicated on Kouroghlian's alleged failure to repair and maintain the property without alleging compliance with NRS 118A.355's written-notice requirement or its exceptions or identifying any contractual duty requiring Kouroghlian to make the requested repairs. *See, e.g., Miller v. A & R Joint Venture*, 97 Nev. 580, 582, 636 P.2d 277, 278 (1981) (affirming summary judgment on negligence claims where the tenant failed to provide the written notice required to trigger the landlord's contractual duty to repair). Thus, the district court properly dismissed the negligence claim against Kouroghlian.

Lebot argues he sufficiently pleaded the elements for fraudulent misrepresentation. The district court properly dismissed that claim against

Kouroghlian because the amended complaint failed to plead fraud with the particularity required by NRC 9(b). *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981) (explaining that fraud claims must be pleaded with particularity under NRC 9(b) as to “the time, the place, the identity of the parties involved, and the nature of the fraud” to avoid dismissal for failure to state a claim). Although Lebot alleged that Kouroghlian made false statements “in person and by phone,” Lebot did not identify the time, place, or circumstances of the alleged misrepresentations. *See Larson v. Homecomings Fin., LLC*, 680 F. Supp. 2d 1230, 1235 (D. Nev. 2009) (dismissing intentional misrepresentation claim for the plaintiff’s failure to state the time or place of the alleged misrepresentations).

Lebot further argues he sufficiently pleaded IIED. The amended complaint did not state a viable IIED claim against respondents. The amended complaint failed to allege facts showing that respondents intended to cause Lebot emotional distress. *See Jordan v. State ex rel. Dep’t of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75-76, 110 P.3d 30, 52 (2005) (affirming dismissal of IIED claim because the complaint failed to specifically allege intent), *overruled on other grounds by Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 n.6, 181 P.3d 670, 672 n.6 (2008). The district court therefore properly dismissed that claim. *See Munoz v. Branch Banking*, 131 Nev. 185, 188, 348 P.3d 689, 691 (2015) (recognizing that this court will affirm if the district court reached the correct result, albeit for different reasons).

We reach a different conclusion regarding Lebot’s NRS 118A.242 security-deposit claim: the district court erred in dismissing that claim against Compass and in remanding the claim against Kouroghlian to the justice court. Under NRS 118A.260(3)(b), a party that enters into a rental agreement on behalf of a landlord is considered the landlord’s agent for purposes of

performing that landlord's obligations. *See also* NRS 118A.244(1)(b) (requiring the landlord or the landlord's agent to return the remaining security deposit within a reasonable time after making authorized deductions under NRS 118A.242). Thus, Lebot's allegation that Compass managed the property was sufficient to state a claim against Compass as Kouroghlian's agent.

The district court also erred by remanding the NRS 118A.242 claim against Kouroghlian to the justice court. Lebot's complaint satisfied the district court's jurisdictional threshold when filed, and the later dismissal of other claims did not divest the district court of jurisdiction over that remaining claim. *See, e.g., Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018) (explaining that a partial dismissal that decreases the amount in controversy below the jurisdictional threshold does not divest a court of subject matter jurisdiction once jurisdiction had initially attached). Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.



Herndon, C.J.



Bell, J.



Stiglich, J.

cc: Hon. Crystal Eller, District Judge
Semenza Rickard Law
Alban Lebot
Estate of Lena Kouroghlian
Eighth District Court Clerk