IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO

T & C MANAGEMENT,

Plaintiff-Appellee,

v. **No. A-1-CA-42025**

JERRY SMITH,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY
Lisa Chavez Ortega, District Court Judge

Vance Chavez & Associates, LLC
James A. Chavez
Albuquerque, NM

for Appellee

Jerry Smith
Rio Rancho, NM

Pro Se Appellant

MEMORANDUM OPINION

WRAY, Judge.

{1} Defendant appeals from the district court's judgment for restitution, which terminated Defendant's tenancy and restored the premises to Plaintiff. We issued a calendar notice proposing to affirm. Defendant has filed a memorandum in opposition and Plaintiff has filed a memorandum in support, both of which we have duly considered. Unpersuaded, we affirm.

{2} In his memorandum in opposition, Defendant continues to argue that the district court erred by entering a judgment for restitution because it ignored the Tenant-Based Rental Agreement (TBRA) and that his rental agreement should have been renewed for another year instead of month-to-month. [MIO 1] In our calendar notice, we proposed to affirm on the basis that the terms set forth in the rental agreement between Plaintiff and Defendant conformed with the TBRA contract. [CN 3-5] Defendant argued that the thirty-day no-cause notice was insufficient. This Court proposed, relying on *Carol Rickert & Assocs. v. Law*, 2002-NMCA-096, 132 N.M. 687, 54 P.3d 91, that because the initial term under the rental agreement had ended, he continued his tenancy on a month-to-month basis, and chose not to renew the lease after the expiration of his rental assistance subsidy, Plaintiff did not need to show good cause to terminate his lease. [CN 6]

{3} Defendant has attempted to distinguish *Law* by arguing that it "involved a private tenancy without subsidy-based regulatory obligations." [MIO 1] Defendant again points to the TBRA and the provision stating that "[l]eases may only be terminable for cause" and that "[t]his term supersedes any other written agreement between the landlord and the tenant." We are unpersuaded. [*Id.*]

{4} *Law* clearly states that the "appeal involves a federal government rent-subsidy assistance program commonly known as the Section 8 housing program." 2002-NMCA-096, ¶ 2. Because *Law* addressed an issue regarding a subsidy-based rental

agreement, we conclude that it is applicable to the facts of the instant appeal. As we explained in our calendar notice, Plaintiff did not seek to terminate the initial term set forth in the rental agreement and offered Defendant a chance to renew his application to continue residing at the property, which Defendant declined. [CN 6] Defendant again has not pointed to any authority to support his proposition that Plaintiff should have extended the rental agreement for an additional year, except to the TBRA. [MIO 1] *See Hennessy v. Duryea*, 1998-NMCA-036, ¶ 24, 124 N.M. 754, 955 P.2d 683 ("Our courts have repeatedly held that, in summary calendar cases, the burden is on the party opposing the proposed disposition to clearly point out errors in fact or law.").

{5} Finally, Defendant raises an issue that was not presented in the docketing statement, which we construe as a motion to amend the docketing statement. This Court will grant such a motion to include additional issues if the motion (1) is timely, (2) states all facts material to a consideration of the new issues sought to be raised, (3) explains how the issues were properly preserved or why they may be raised for the first time on appeal, (4) demonstrates just cause by explaining why the issues were not originally raised in the docketing statement, and (5) complies in other respects with the appellate rules. *See State v. Rael*, 1983-NMCA-081, ¶¶ 7-8, 10-11, 14-17, 100 N.M. 193, 668 P.2d 309.

{6} Defendant asserts that the "dwelling unit was deemed *substandard* by municipal Code Enforcement" due to the presence of mold. [MIO 1-2] This determination preceded the termination of Defendant's housing voucher and Plaintiff's notice to terminate the rental agreement, which raised a "legal question as to whether enforcement was pursued while statutory habitability remedies remained unresolved." [MIO 2] We understand Defendant to argue that Plaintiff's termination of the rental agreement was in retaliation for Defendant complaining about the conditions of the unit including the presence of mold. *See* NMSA 1978, § 47-8-39(A) (1999) (prohibiting a landlord from retaliating against a resident by bringing an action for possession because the resident has complained to a government agency about code violations within the previous six months).

{7} The record proper indicates that Defendant raised the issue before the district court that the implied warranty of habitability had been breached before Plaintiff initiated the termination proceedings. [RP 14-17, 64-67] Defendant argued that the "termination process was initiated by [the Supportive Housing Coalition of New Mexico] and [Plaintiff] following tenant complaints of an unsafe environment." [RP 64] The district court's order, however, found that "Defendant failed to prove by a preponderance of the evidence that Plaintiff's termination of the agreement was in retaliation for Defendant's complaints regarding the condition of the dwelling unit." [RP 122, ¶ 6] Defendant has not provided us with any additional facts, law, or

argument to demonstrate that the district court erred in its finding that Plaintiff's termination of the rental agreement was not retaliatory. *See Corona v. Corona*, 2014-NMCA-071, ¶ 28, 329 P.3d 701 ("This Court has no duty to review an argument that is not adequately developed."); *Muse v. Muse*, 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104 ("We will not search the record for facts, arguments, and rulings in order to support generalized arguments."). Accordingly, we deem this issue nonviable and deny Plaintiff's motion to amend. *See State v. Moore*, 1989-NMCA-073, ¶¶ 36-51, 109 N.M. 119, 782 P.2d 91 (stating that this Court will deny motions to amend that raise issues that are not viable), *superseded by rule on other grounds as recognized in State v. Salgado*, 1991-NMCA-044, ¶ 2, 112 N.M. 537, 817 P.2d 730.

{8} For the reasons stated in our notice of proposed disposition and herein, we affirm.

{9} **IT IS SO ORDERED.**

Katherine A. Wray

KATHERINE A. WRAY, Judge

WE CONCUR:

J. MILES HANISEE, Judge

ZACHARY A. IVES, Judge