STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0849
A24-1910

Kimberly Lowry, on behalf of herself and the Proposed Rule 23 Classes, et al.,
Respondents (A24-0849), Appellants (A24-1910),

vs.

City of Minneapolis,
Appellant (A24-0849), Defendant (A24-1910),

Minneapolis Public Housing Authority, in and for the City of Minneapolis, et al,
Defendants (A24-0849), Respondents (A24-1910).

Filed August 18, 2025
Affirmed in part, reversed in part, and remanded
Schmidt, Judge

Hennepin County District Court
File No. 27-CV-21-10928

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Considered and decided by Schmidt, Presiding Judge; Reyes, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

This matter involves two related appeals. In the first case, appellant City of Minneapolis challenges an order denying summary judgment, contending that respondent Kimberly Lowry's claims are barred by official and vicarious immunity. In the second case, appellant Lowry challenges an order granting respondent Minneapolis Public Housing Authority and Community Housing Resources' (MPHA) motion for summary judgment on immunity grounds. Because the district court did not err in denying the city's motion for summary judgment, we affirm in part. But because the district court erred in granting MPHA's motion for summary judgment, we reverse in part. And we remand all of Lowry's claims to the district court for further proceedings.

FACTS

Lowry sued the city and MPHA on behalf of herself and other Minneapolis public-housing tenants. Lowry alleges that "decades of discriminatory conduct by the [city] and systemic inaction by the [c]ity and [MPHA] [] have forced MPHA residents to live in substandard and dangerous conditions." Lowry alleges discrimination based on how the

Minneapolis Housing City Code[1] (the city code) is enforced for tenants in private rental residences as compared to tenants in public-rental residences. Lowry asserts that the city code requires all landlords, including MPHA, to obtain licenses from the city and that the city must enforce the city code and inspect properties for compliance. Lowry claims the city and MPHA are in violation of the city code because none of MPHA's public-housing complexes are licensed, and the city does not perform routine inspections of MPHA's units. Lowry alleges that the city-code violations leave public-housing residents "unprotected and forced to live in unsafe conditions." Lowry also claims that the city's failure to inspect MPHA properties "constitutes blatant discrimination in violation of the Minnesota Human Rights Act . . . , which prohibits discrimination on the basis of public assistance."

At the time of the summary judgment proceedings, Lowry's remaining claims against the city were denial of public services in violation of the Minnesota Human Rights Act and failure to enforce the city code. The city moved for summary judgment, arguing it is entitled to official and vicarious immunity. The district court denied the city's motion for summary judgment. The city appeals.

At the time of the summary judgment proceedings, Lowry's remaining claims against MPHA were breach of contract, violation of the city code, and breach of the statutory covenant of habitability. MPHA moved for summary judgment, arguing that it is entitled to statutory, official, and sovereign immunity. The district court granted MPHA's motion for summary judgment on all three counts. Lowry appeals.

[1] The relevant portions of the Minneapolis Code of Ordinances are in Title 12, Chapter 244. *See* Minneapolis, Minn., Code of Ordinances (MCO) §§ 244.10-244.2170 (2025).

DECISION

In an appeal from a summary judgment order, we review de novo whether the district court applied the law and whether a genuine issue of material fact exists. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). We view the evidence in the light most favorable to the nonmoving party. *Id.* at 76-77.

We first address the city's arguments that the district court improperly denied its motion for summary judgment. We then address Lowry's arguments that the district court improperly granted MPHA's motion for summary judgment.

I. The district court properly denied the city's motion for summary judgment.

The city argues that the district court erred in denying its motion for summary judgment, contending that the city's director of regulatory services is protected by official immunity and the city has vicarious official immunity as the director's employer.[2] When a district court "denies summary judgment based on statutory or official immunity[,]" the order is immediately appealable. *Curtis v. Klausler*, 802 N.W.2d 790, 793 (Minn. App. 2011) (quotation omitted), *rev. denied* (Minn. Oct. 18, 2011). We review de novo "[w]hether government entities and public officials are protected by statutory immunity [or] official immunity." *Johnson v. State*, 553 N.W.2d 40, 45 (Minn. 1996).

Official immunity protects individual government actors so that they may perform their duties "without fear of personal liability[.]" *Kariniemi v. City of Rockford*, 882 N.W.2d 593, 599-600 (Minn. 2016) (quotation omitted). Vicarious immunity is

[2] By ordinance, the city's director of regulatory services (or their designee) enforces the housing city code. MCO § 244.120.

generally afforded to government employers if the employee is entitled to official immunity. *Sletten v. Ramsey County*, 675 N.W.2d 291, 300 (Minn. 2004).

Official immunity's application is determined by: "(1) the conduct at issue; (2) whether the conduct is discretionary or ministerial and, if ministerial, whether any ministerial duties were violated; and (3) if discretionary, whether the conduct was willful or malicious." *Vassallo ex rel. Brown v. Majeski*, 842 N.W.2d 456, 462 (Minn. 2014). A ministerial act is "absolute, certain, and imperative, involving merely the execution of a specific duty arising from fixed and designated facts." *Thompson v. City of Minneapolis*, 707 N.W.2d 669, 673 (Minn. 2006) (quotations omitted). "A discretionary duty involves individual professional judgment that necessarily reflects the professional goal and factors of a situation." *Vassallo*, 842 N.W.2d at 462 (quotation omitted). But public officials "have a duty to adhere to ordinances and statutes." *Wiederholt v. City of Minneapolis*, 581 N.W.2d 312, 316 (Minn. 1998). "An official cannot convert a ministerial decision into a discretionary one by refusing to comply" with a city ordinance. *Id.*

We must first determine "the precise governmental conduct at issue." *Watson ex rel. Hanson v. Metro. Transit Comm'n*, 553 N.W.2d 406, 415 (Minn. 1996). The parties agree that Lowry's allegations are based on two specific acts: (1) the failure to inspect MPHA-owned or -managed properties; and (2) the failure to enforce the city code. The district court determined that these acts are ministerial and therefore denied the city's motion for summary judgment.[3] We agree.

[3] Lowry had also alleged claims based on the city's failure to license MPHA properties.

A. Performing inspections

The city argues that the director is entitled to official immunity because performing inspections is, in part, a discretionary function. The city concedes that state law imposes a ministerial duty to conduct an inspection if a tenant requests one under Minn. Stat. § 504B.185 (2024).[4] But the city argues that the duty to inspect MPHA properties proactively is discretionary because MPHA properties are unlicensed and no ordinance or state law "imposes a duty on the director of regulatory services to conduct 'routine inspections' of unlicensed rental dwellings." The city also argues that the requirement in the city code to "adopt a policy" renders the duty to inspect discretionary. We disagree.

The city code states that "the director of regulatory services *shall* make inspections to determine the condition of dwellings . . . for the purpose of enforcing the provisions of the housing maintenance code." MCO § 244.130 (emphasis added). The city code also states that "[t]he director of regulatory services *shall* adopt a policy for inspecting *all* rental dwellings which are required to be licensed under this article . . . . The policy *shall* contain

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The district court found that "[w]hether or not [the city] decides to issue a rental dwelling license after performing the inspection is a discretionary decision." Both parties agree the city's act of not issuing licenses to MPHA properties is not before us on appeal.

[4] The city began performing inspections when requested by tenants via the 311 hotline after we issued our decision in *Marable v. City of Minneapolis*, A19-1558, 2020 WL 2312940, at *8 (Minn. App. May 11, 2020) (holding that Minnesota Statutes section 504B.185, subdivision 1, requires cities to provide inspection services upon a tenant's request, and refusal to provide such services to public housing tenants may violate the Minnesota Human Rights Act). Before *Marable*, the city "refused to inspect MPHA properties and instead directed all complaints to the MPHA." *Id.*

objectives for the *systematic* inspection of *all* rental dwellings and priorities for the use of scarce inspection resources." MCO § 244.1890 (emphasis added).

The ordinance's requirement that the director of regulatory services must "adopt a policy" creates room for discretion within the policy. *Id.* The director has discretion over the language in the policy, such as how often to perform systematic inspections. Those discretionary decisions would be documented in the director's policy. But the ordinance is clear that the director must adopt a policy, which must include "objectives for the systematic inspection of all rental dwellings." *Id.*

The city conceded at oral argument that it does not have a documented policy for the systematic inspection of MPHA rental dwellings. The city also conceded that it has not performed systematic inspections on MPHA rental units. Instead, the city performs inspections on MPHA rental dwellings only when requested by a tenant. Although the precise language in the policy may be discretionary, the requirement to have a policy—that includes the systematic inspection of all rental dwellings—is ministerial. The city cannot convert a ministerial duty to adopt a policy for the systematic inspections of all rental dwellings, including MPHA dwellings, into a discretionary one by refusing to comply with its own ordinance. *Wiederholt*, 581 N.W.2d at 316. The duty to adopt a policy that includes the systematic inspections of all rental dwellings is a ministerial one that the director of regulatory services has violated, and therefore he is not entitled to official immunity. *Vassallo*, 842 N.W.2d at 462.

B. Enforcement

The city argues the district court erred when it determined that the ordinance created a ministerial duty to enforce the city code because "the contours of the duty imposed . . . are not easily determined." The city also contends that the district court "failed to appreciate that the director's enforcement powers with respect to rental dwellings are tied to the licensing power, which the court ruled was discretionary." We disagree.

The city code provides that "[t]he director of regulatory services or director's designee shall enforce the provisions of the housing maintenance code." MCO § 244.120. The code also requires the director to make inspections "for the purpose of enforcing the provisions of the housing maintenance code." MCO § 244.130.

The city argues that enforcement of the city code is discretionary. But the code mandates the director to adopt a policy to inspect and notes that the purpose for inspections is to enforce the code. MCO §§ 244.130, .1890. We recognize that the precise enforcement of the code will require the director to take discretionary actions, but the director lacks discretion to refuse to enforce the city code.

The city also asserts that the enforcement provisions of the city code do not apply to MPHA dwellings because the code "presumes the existence of a rental license." The city further argues that it has no enforcement power "to suspend, revoke, or otherwise terminate a rental license [that] does not exist with respect to a property owner who does not obtain a rental license to begin with." But the city conceded that it would shut down any other rental dwelling that did not meet the city's licensing requirements. The code requires ("shall") the director to adopt a policy to inspect "all rental dwellings" that are

"required to be licensed." MCO § 244.1890. The code does not exempt the MPHA's rental dwellings from the licensing requirement. *See* MCO §§ 244.1810-.1820. The director of regulatory services is not entitled to official immunity for refusing to enforce the city code on behalf of MPHA tenants. *Vassallo*, 842 N.W.2d at 462.

Weighing the city's arguments against the plain language of the code, the city effectively asks us to create an exception in the code where one does not exist. This we cannot do. We agree that the city has presented legitimate policy concerns, including how to begin enforcing the ordinance after 33 years of failing to do so without displacing MPHA's 26,000 residents from over 6,000 rental units.[5] That said, these policy questions are the purview of the city council, the legislature, or the supreme court, but not this court. *See State v. Khalil*, 956 N.W.2d 627, 642 (Minn. 2021) (noting it is within the "Legislature's prerogative to reexamine the . . . statute and amend it accordingly") (quotations omitted); *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *rev. denied* (Minn. Dec. 18, 1987).

The district court properly denied the city's motion for summary judgment because the director is not entitled to official immunity on Lowry's claims.

[5] Besides the plain language of the ordinance, our decision in *Marable* put the city on notice that it must perform inspections and enforce the city code on behalf of MPHA tenants as it does for private tenants. *See* 2020 WL 2312940, at *8. Beyond inspecting when an MPHA-resident requests one, the city has not adjusted its inspection conduct related to MPHA rental dwellings, nor is there any evidence that the city sought to amend the code in the five years since we decided *Marable*.

II. The district court erred in granting MPHA summary judgment.

Lowry challenges the district court's determination that MPHA is entitled to statutory and official immunity for its decision not to obtain rental licenses, that MPHA is entitled to sovereign immunity from the statutory covenant of habitability, and that Lowry's claims are not actionable. We address Lowry's challenge to each ruling in turn.

A. Statutory immunity

Lowry argues that MPHA's failure to obtain rental licenses is not shielded by statutory immunity. "[U]nder the doctrine of statutory immunity . . . municipalities are immune from liability for claims based upon the performance or the failure to exercise or perform a discretionary function or duty[.]" *Conlin v. City of Saint Paul*, 605 N.W.2d 396, 400 (Minn. 2000) (quotation omitted); *see also* Minn. Stat. § 466.03, subd. 6 (2024) (setting forth discretionary function exception to municipalities' general liability for tort claims). "The discretionary function exception is interpreted narrowly." *Conlin*, 605 N.W.2d at 400. "Planning level" decisions are protected by statutory immunity. *Id.* "Planning level decisions are those involving questions of public policy . . . such as the financial, political, economic, and social effects of a given plan or policy." *Id.* (quotation omitted). But even for planning, level decisions, "municipalities do not have discretion to engage in policy-making conduct that is patently unlawful." *Blaine v. City of Sartell*, 865 N.W.2d 723, 731 (Minn. App. 2015). On the other hand, "operational level" decisions are not protected by statutory immunity. *Conlin*, 605 N.W.2d at 400. "Operational level decisions . . . involve decisions relating to the ordinary day-to-day operations of the government." *Id.* (quotation omitted).

The city code states that "[n]o person shall allow any dwelling unit to be occupied, or let or offer to let to another any dwelling unit for occupancy, or charge, accept or retain rent for any dwelling unit unless the owner has a valid license." MCO § 244.1810(a). The city has made it a crime to operate a rental dwelling without a license. *See* MCO § 244.1980 ("Operations of [a] rental dwelling without [a] license [is] a misdemeanor.").

MPHA has cited nothing in the city ordinance that exempts MPHA from obtaining a license for the rental dwellings that it operates. MPHA cannot claim to engage in a "planning level" decision for purposes of statutory immunity when its conduct is unlawful. *Blaine*, 865 N.W.2d at 731. Unless something saves MPHA from its violation of the unambiguous city ordinance language, MPHA's conduct is unlawful.

MPHA asserts that its decision not to obtain rental licenses was lawful for two reasons. First, MPHA claims that the licensing "fee" is a "tax," which MPHA is exempt from paying. Second, MPHA cites a letter from the United States Department of Housing and Urban Development (HUD) and contends that paying the fee and obtaining a license would violate federal law. We are not persuaded by either argument.

1. The license fee is not a "tax."[6]

The MPHA argues that it cannot legally obtain a license because the licensing fee is a "tax." Because MPHA is exempt from paying taxes, Minn. Stat. § 469.040, subd. 1 (2024), MPHA asserts that its decision to not obtain a license was lawful. We disagree.

[6] The district court did not reach this question in the summary judgment order. But as MPHA correctly notes, we can affirm a summary judgment order on alternative grounds. *Northway v. Whiting*, 436 N.W.2d 796, 798 (Minn. App. 1989).

First, MPHA has not demonstrated that the licensing fee is, as a matter of law, a tax. A "fee" is not considered a "tax" unless it is "manifestly unreasonable[] in view of its purpose as a regulation." *Minneapolis St. Ry. Co. v. City of Minneapolis*, 52 N.W.2d 120, 125 (Minn. 1952) (quotation omitted). The Minnesota Supreme Court has distinguished between a "tax" and a "fee," and has upheld a city's imposition of reasonable fees to recover the costs of a regulation. *See First Baptist Church of St. Paul v. City of St. Paul*, 884 N.W.2d 355, 359-62 (Minn. 2016) (concluding that "a revenue measure, benefiting the public in general" constitutes a tax rather than a "license fee") (quotation omitted); *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681, 686-87 (Minn. 1997) ("When it has been apparent that a city's true motivation was to raise revenue—and not merely to recover the costs of regulation—we have disregarded the fee label attached by a municipality and held that the charge in question was in fact a tax."); *Lyons v. City of Minneapolis*, 63 N.W.2d 585, 588-89 (Minn. 1954) (holding that a license fee that so far exceeds the reasonable expenses incurred is invalid because it is "a revenue measure in disguise").

MPHA has neither demonstrated, nor attempted to demonstrate, that the license fee is manifestly unreasonable or otherwise an improper revenue measure to benefit the public such that it should be classified as a "tax." Instead, the licensing fee is imposed by the city's code-enforcement office to defray costs of enforcing the city code. MPHA has produced no evidence that the city imposed the fee to generate revenue. To the contrary, the evidence shows that the cost of inspections to the city outweighs any money collected by rental license fees. MPHA has failed to produce evidence—or argument—that the license fee is a revenue measure in disguise such that it must be classified as a tax.

In support of its argument that the licensing fee constitutes a tax, MPHA quotes the supreme court's opinion in *Phone Recovery Servs., LLC v. Qwest Corp.*, which noted a "tax" is "any fee, charge, exaction, or assessment imposed by a governmental entity on an individual, person, entity, transaction, good, service, or other thing." 919 N.W.2d 315, 323 (Minn. 2018) (quotation omitted). But the supreme court in *Phone Recovery Servs.* addressed a statute that expressly created a tax and concluded that the statute "necessarily" pertained or referred "to the assessment of taxes." *Id.* at 324. In so concluding, the supreme court noted that it "need not address the parties' arguments regarding common law factors for identifying a tax as opposed to a fee." *Id.* at n.7. In addition, the court rejected the argument that the statutory definition of a "tax" in section 645.44 converts all fees to taxes. *Id.* at 324-25.[7] Thus, we reject MPHA's assertion that the license fee is a tax.

Second, MPHA's argument is reductive because it treats the decision not to pay licensing fees as equivalent to the decision not to obtain rental licenses at all. The two actions are not interchangeable. The process to obtain a rental license requires more than paying a fee. In fact, payment of the licensing fee is only one of 26 enumerated requirements in the city code that must be met before a rental dwelling is granted a license. *See* MCO § 244.1910(1)-(26). Issuing rental licenses is a process that serves purposes beyond collecting a fee from rental property owners; it is a process that exists for many

[7] The statutory language cited by the supreme court in *Phone Recovery Servs.* specifically allows for "validly imposed fees." *See* Minn. Stat. § 645.44, subd. 19(b) (2024) ("The provisions of this subdivision do not exempt a person, corporation, organization, or entity from payment of a validly imposed fee, charge, exaction, or assessment, nor preempt or supersede limitations under law that apply to fees, charges, or assessments.").

purposes, including, among other things: ensuring compliance with zoning regulations, avoiding nuisances, ensuring compliance with maintenance and fire code, allowing inspections by the city, ensuring payment of property taxes, forbidding property managers who have committed certain code violations from obtaining new rental licenses, protecting tenants from unnoticed foreclosure, and protecting tenants from unsafe living conditions. *Id.* Deciding to not obtain a rental license because MPHA refuses to meet one of 26 requirements (payment of the licensing fee) has allowed MPHA to avoid the other 25 requirements that must be met to obtain a rental license.

MPHA asserts that the "cooperation agreement"[8] between MPHA and the city exempts MPHA dwellings "from real and personal property taxes." If the cooperation agreement truly exempts MPHA from paying the licensing fee—as MPHA asserts—then there is no reason that MPHA could not obtain licenses from the city without paying the fee. Thus, even if the licensing fee were to be deemed a "tax"—that the cooperation agreement exempts MPHA from paying—MPHA simply would not need to pay for a license. But nothing in the cooperation agreement or the city code exempts MPHA from obtaining a license. And the record includes no evidence that MPHA has ever sought to obtain a license from the city (after meeting all 25 other licensing requirements) without paying a fee.

[8] The cooperation agreement is lawful under federal and state law. *See* 42 U.S.C. § 1437c(e)(2) (2018) (requiring public housing authorities to enter into a cooperation agreement with local authorities); Minn. Stat. § 469.012, subd. 1k (2024) (providing that "[i]n the case of low-rent public housing . . . an authority may make an agreement with the governing body . . . to provide exemption from all real and personal property taxes levied or imposed by the . . . city").

2. The HUD letter does not have the effect or force of law.

MPHA next argues that obtaining rental licenses would be "in defiance" of a 1992 "directive" from HUD, which could "affect MPHA's standing with HUD, subject it to penalties, and potentially result in the loss of funding." MPHA cites a letter written by HUD in 1992 informing it that payment of licensing fees "would not be acceptable to HUD." Given HUD's letter, MPHA asserts that it "implemented a policy of not obtaining licenses."

MPHA argues that it is forced to ignore the city ordinance given HUD's directive because "[c]ity ordinances that conflict with either state or federal law cannot be enforced." There is caselaw that supports MPHA's assertion in part. *See Thul v. State*, 657 N.W.2d 611, 619 (Minn. App. 2003), *rev. denied* (Minn. May 28, 2003); *see also Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312 (Minn. 2017) (stating that city ordinances that conflict with state law are invalid). But MPHA cites no authority stating a letter from a federal employee constitutes federal law. Additionally, MPHA's argument overemphasizes the contents of the 1992 HUD letter. The letter states, in part:

> This office has reviewed the City's new landlord licensing ordinance. HUD concurs that the MPHA could pay the licensing fee where an actual inspection of the property is made by the City. Since the [M]PHA is required by HUD to make annual inspections of all public housing units, the inspections by the City, to the extent that they meet or exceed the inspection standards required by HUD of the [M]PHA, could be used by the [M]PHA in lieu of inspections by their own staff. The most advantageous arrangement to the [M]PHA would be to enter into a separate contract with the City to perform the HUD required inspections.
>
> . . . .

> It is our understanding that the Inspections Department is unable to provide an annual inspection as required and it is contemplated that such inspection will occur only once every three to five years. If this is correct, payment of an annual registration/inspection fee for something that does not occur annually would not be acceptable to HUD.
>
> I hope this clarifies our position on payment of licensing fees on [M]PHA properties. As stated earlier, where there is direct and measurable benefit to the [M]PHA, the charge may be considered. That does not appear to be the case with the current licensing ordinance and consequently the fees may not be paid by the [M]PHA.

The letter indicates that HUD did not want MPHA to pay annual fees for inspections that happened on a less-than-annual basis. But HUD had no issue with MPHA paying the licensing fees—and thereby obtaining a rental license—if the city did, in fact, perform annual inspections. There is nothing in the HUD letter that forced MPHA to sidestep the licensing process altogether. And the letter—which, at best, offers advice to MPHA—is not a federal law such that MPHA is prevented from complying with the city code. *Thul*, 657 N.W.2d at 619; *Bicking*, 891 N.W.2d at 312.

In sum, the city code obligated MPHA to obtain licenses. The code contains no exemption for MPHA to operate rental dwellings without a license. And MPHA has not offered any lawful reason to ignore the mandates of the city code. Even if MPHA had valid policy reasons for not obtaining licenses, the decision to violate the code was an unlawful one, which cannot be used to obtain immunity. *Blaine*, 865 N.W.2d at 731. We acknowledge MPHA's legitimate policy concerns, but policymaking is not the role of this court. *Tereault*, 413 N.W.2d at 286.

B. Official immunity

Lowry argues that MPHA's failure to obtain rental licenses is not shielded by official immunity for the same reasons that it is not shielded by statutory immunity. Focusing on the 1992 directive from HUD, the district court found that MPHA's decision not to obtain rental licenses was discretionary. For the same reasons discussed above, the HUD letter does not conflict with the requirement that MPHA obtain a license. Framing an unlawful decision to violate a city ordinance as a discretionary decision does not entitle MPHA to official immunity. *Wiederholt*, 581 N.W.2d at 316.

C. Sovereign immunity

Lowry argues the district court erred in dismissing her allegations that MPHA violated the implied covenants of habitability under Minnesota Statutes section 504B.161 (2024) (Chapter 504B) on sovereign-immunity grounds. The district court determined that MPHA was entitled to sovereign immunity because the sovereign immunity for housing authorities "is removed only for certain claims—and thus necessarily must remain in place for others not enumerated."

A claim for breach of the implied covenant of habitability is a contract claim. *See, e.g.*, *Ghebrehiwet v. Ghneim*, No. A15-0397, 2016 WL 102510, at *3 (Minn. App. Jan. 11, 2016) ("A tenant's claim for damages based on a breach of the statutory covenants of habitability therefore sounds in contract law.").[9] A contract claim is generally not subject to an immunity defense. *City of Minneapolis v. Ames & Fischer Co. II*, 724 N.W.2d 749,

[9] We cite this case for its persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

756 (Minn. App. 2006) ("[A] municipality is never entitled to the defense of immunity on a pure contract action[.]"). Thus, the premise of MPHA's immunity defense against Lowry's implied covenant of habitability falls short.[10]

Even if sovereign immunity could apply to a contract claim, the statutory regime shows that the legislature intended to abolish sovereign immunity for city-run public-housing authorities. First, the legislature defined "landlord" in Chapter 504B to include all housing authorities. Minn. Stat. § 504B.001, subd. 7 (2024) ("'Landlord' means an owner of real property, . . . lessee, agent, or other person directly or indirectly in control of rental property."). Second, section 504B.275 expressly references public-housing tenants:

> The attorney general shall prepare and make available to the public a statement which summarizes the significant legal rights and obligations of landlords and residential tenants of rental dwelling units. The statement shall include descriptions of the significant provisions of this chapter. The statement shall notify residential *tenants in public housing* to consult their leases for additional rights and obligations they may have under federal law.

Minn. Stat. § 504B.275 (2024) (emphasis added). The reference to "additional rights" in section 504B.275 implies that all rights under Chapter 504B apply to public-housing tenants. The language in Chapter 504B shows that the legislature intended the implied

[10] Lowry argues that MPHA does not receive sovereign immunity because the supreme court declared that sovereign immunity does not apply to "counties, cities, or other forms of government." *Nichols v. State*, 858 N.W.2d 773, 776 n.5 (Minn. 2015). This is a misreading of *Nichols*. The supreme court was discussing Minnesota Statute section 645.27 (2024), which abrogates the state's sovereign immunity for certain statutory claims. *Id.* at 776. The language Lowry cites is dicta that states the statute's abrogation applies only to the state's immunity, not the immunity smaller governmental units. *Id.* at 776 n.5. This specific holding in *Nichols* does not abrogate MPHA's immunity.

covenant of habitability to apply to city-run public-housing dwellings. Thus, we conclude the district court erred in determining MPHA is entitled to sovereign immunity based on its interpretation of Chapter 504B.

D. Actionable claims

Lowry argues the district court erred when it determined, as a matter of law, that her claims are not actionable. The district court determined that speculation that "MPHA might have done a better job of maintaining its properties is insufficient as a matter of law to establish that damages are attributable to whether [petitioners'] units were licensed."[11]

The city code empowers "any person with standing to sue [to] seek enforcement . . . by any appropriate form of civil action and may seek enjoinment of any continued violation." MCO § 244.80(a). The city code also provides that a landlord who fails to secure a rental license is prohibited from: leasing, charging rent, accepting rent, or retaining rents paid. MCO § 244.1810(a).

Lowry argues that she has the right to seek enforcement through a civil action—the MPHA's violation of the prohibitions set forth in Section 244.1810—and asserts she is entitled "to all available injunctive relief." Lowry also argues that the district court's causation ruling is a question of fact that is reserved for a jury. *Dickhoff ex rel. Dickhoff v. Green*, 811 N.W.2d 109, 113 (Minn. App. 2012), *aff'd*, 836 N.W.2d 321 (Minn.

[11] The district court cited cases holding that failure to hold a driver's license is not negligence per se, *see Mahowald v. Beckrich*, 2 N.W.2d 569, 572 (Minn. 1942); *Hagel v. Schoenbauer*, 532 N.W.2d 255, 257-58 (Minn. App. 1995), and that bank employee's unauthorized practice of law without a license did not proximately cause the plaintiff's alleged injury, *Kronzer v. First Nat'l Bank of Minneapolis*, 235 N.W.2d 187, 194 (Minn. 1975). These cases are not on point because the issue here is not negligence per se.

2013). Lowry's arguments are persuasive. Beyond any claim Lowry may have for monetary damages, the city's ordinance grants Lowry an express cause of action to seek injunctive relief. MCO § 244.80(a). Thus, the district court erred in narrowly focusing on damages without regard to Lowry's ability to seek injunctive relief.

In addition, there are questions of material fact as to whether enforcement of the licensing requirements—which requires an inspection to determine code compliance before the director of regulatory services will grant a license—would have prevented petitioners' alleged injuries by denying the license in the first place. MCO § 244.1900 ("When, upon completion of an inspection of a building and rental dwellings therein, the director of regulatory services finds that the minimum standards for licensing set forth in this article have been met, a rental dwelling license may be issued."); *Dickhoff*, 811 N.W.2d at 113. The district court erred in granting MPHA summary judgment based on determinations that Lowry's claims are not actionable.

In sum, we affirm the district court's proper denial of the city's motion for summary judgment. We reverse the district court's erroneous ruling granting MPHA's motion for summary judgment. We remand for further proceedings.

Affirmed in part, reversed in part, and remanded.