How to be the Smartest Renter on Your Block

A Minnesota tenants' rights guide

HOME Line

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Minneapolis, Minnesota
www.homelinemn.org

"In this book, HOME Line condensed decades of collective experience helping more than a hundred thousand tenants into an easy-to-read handbook. It will make you a smarter renter, and it will probably save you a lot more money than it costs! Buy this book if you are a renter, if you love a renter, or even if you just kind of like one!"

—Sam Glover, Minnesota consumer rights blogger and attorney

"My career in housing started over 30 years ago as a volunteer phone counselor with the Minnesota Tenants Union. I realized then as I know today that it is hard for tenants to find out their rights. To help tenants and people who advise them, HOME Line's *How to be the Smartest Renter on Your Block* provides a fresh look at landlord-tenant law. But this book is much more than a restatement of the law; it provides tenants viable options for handling the variety of difficult rental situations they might run into. Tenants and those who provide advice on renting are very fortunate to have this thorough guide."

—Chip Halbach, executive director, Minnesota Housing Partnership

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"The help offered by HOME Line has proven invaluable to our rental community. With knowledgeable staff and personal service, renters have someone they can trust for accurate information and resources."

—Diana Jones, code enforcement officer, city of Champlin, Minnesota

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"Whether you are a first time or a lifelong renter in Minnesota, this is a book you will want to own. It is brimming with practical, current and reliable information about your legal rights and responsibilities as a tenant; the folks at HOME Line have been helping tenants secure their rights for almost two decades, and they know their stuff. Reading this book will not only make you the smartest renter on your block, but I guarantee it will save you money and headaches!"

—Joan Pearson, former director, St. Paul Tenants Union

"Stable housing is essential to the wellbeing of families, and arming people with information that is clear and concise that helps to ensure stability is priceless. Well done!"

—Beth Reetz, director, Housing and Livable Communities, Metropolitan Council

How to be the Smartest Renter on Your Block

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Preface

HOME Line provides free legal, organizing, education, and advocacy services so tenants throughout Minnesota can solve their own rental housing issues. Since 1992, we have saved Minnesota tenants an estimated $16.5 million in returned security deposits and rent abatements as well as prevented an estimated 9,240 evictions. In 2010, more than 11,500 callers received free legal advice from our staff and volunteers.

HOME Line wrote *How to Be the Smartest Renter on Your Block* to help renters through the process of finding, getting, and maintaining rental housing. Reflecting upon the real-life concerns we hear through thousands of questions on our tenant hotline, this book gives advice on the best ways to handle and avoid the most common rental problems.

This book follows the rental process from beginning to end with several additional chapters on unique rental housing situations. The book begins with advice regarding finding and applying for an apartment and moves on to understanding the terms of a lease. Next, some of the most common issues renters run into once they've moved in are covered—getting repairs made, dealing with neighbors, right to privacy, and more. Later, the book addresses what to expect when a renter intends to move out of an apartment and how to make sure a security deposit is returned. Furthermore, several immediate emerging issues in the rental market are covered: What does a renter do when a landlord is in foreclosure? Who is responsible for paying when an apartment becomes infested with bedbugs? Lastly, we take a detailed look at community organizing and how tenants can work collectively to hold their landlords and elected officials accountable. *How to Be the Smartest Renter on Your Block* answers these questions and more.

Acknowledgments

Writing this book was a true team effort. Everyone on HOME Line's staff—our lawyers, hotline staff, organizers, policy advocates, and office administration—lent their expertise to make the information both legally accurate and publicly accessible. HOME Line's staff of 10 people brings more than 80 years of experience in helping tenants serve as their own advocates; specifically, our attorneys have more than 30 years of combined experience on Minnesota tenant-landlord law.

In addition to staff, this book would never have happened without the support of a number of community volunteers, interns, and supporters as well as our board of directors.

HOME Line is especially grateful for the work of our policy interns: Chris Doege, Eddie Glenn, Emma Phillips, and Justin Schmidt. Chris and Justin's research greatly enhanced Chapter 7, Repairs. Eddie's contributions are seen throughout the book

through the legal citations and specifically through his drafting of Chapter 19, Renters Credit. Lastly, Emma helped us understand how Minnesota's tenant-landlord law compares to other states through her extensive research on the matter last year.

Joan Pearson, former executive director of the St. Paul Tenants Union, provided valuable information about writing and printing this book based on the union's experience writing a tenants' rights book in 1995. We are thankful for her thoughtful advice. Dave Anderson, executive director of All Parks Alliance for Change, reviewed the chapter on manufactured homes. HOME Line would also like to thank James E. "Jay" Wilkinson, an attorney with the Legal Aid Society of Minneapolis, for his considerable help in writing Chapter 3, Discrimination, and for his help editing the book in general.

As experts on tenant-landlord law, it is easy to rely on shorthand of terminology and acronyms that make no sense to regular renters. We made sure each chapter was reviewed by people outside our office to address this concern. Rebecca Rassier, Skyler Larrimore and Karin Todd deserve thanks here. Karin merits special mention for reading each chapter, flagging concepts that needed more attention, and drawing out text that should be highlighted.

Lastly, HOME Line is indebted to Lisa Bain for turning what started as a number of unrelated documents into this book. Copy editing, designing the cover, laying out and formatting the chapters, working with the printer, and countless other aspects of technical assistance: Lisa did it all, and she is now an honorary member of HOME Line's ice cream sandwich club.

About HOME Line

HOME Line was established in 1992 at Community Action for Suburban Hennepin, the antipoverty agency serving Minneapolis' suburbs. In May of 1999, HOME Line became an independent nonprofit corporation and started expanding its services statewide in 2001. In January 2006, it began its St. Paul expansion of the tenant hotline services. HOME Line now serves the entire state of Minnesota, except for Minneapolis, which has its own city-funded tenant service.

If you are a tenant in Minnesota and you are interested in your renter rights, you can receive free legal advice by calling our free tenant hotline at 612-728-5767 or calling us toll free from Greater Minnesota at 866-866-3546. Minneapolis renters affected by a landlord foreclosure can call our hotline; all other Minneapolis callers can call 612-673-3003 for the city's rental hotline. Tenants can also e-mail our attorney via our website at: www.homelinemn.org.

HOME Line's major programs are the tenant hotline, tenant organizing, and public policy advocacy.

Tenant Hotline

The hotline is a free service that provides renters throughout Minnesota legal information regarding their rights as tenants. Lawyers, law students, and community volunteers respond to renter inquiries, providing follow-up support and draft letters when necessary. The hotline has

received more than 130,000 calls since 1992 and currently averages nearly 1,000 calls a month. Our tenant advocates and attorneys have also spoken to hundreds of groups including high schools, social workers, landlords, and local governments informing the public about Minnesota tenant-landlord laws. Since opening in 1992, the tenant hotline has:

- Prevented an estimated 9,240 evictions
- Assisted more than 4,452 renter families affected by landlord foreclosure
- Helped tenants save or recover an estimated $16.5 million through several means: wrongfully withheld security deposits, rent abatements, negotiated lease endings, etc.
- Spoken to more than 29,000 students on their renter rights and responsibilities

Tenant Organizing

Organizing helps tenants come together and work toward solving common issues. HOME Line's program focuses on preserving federally subsidized apartments and developing tenant leadership to empower those affected to become spokespeople for themselves and their neighbors. Since 1997, HOME Line has helped preserve more than 8,000 units of affordable housing. HOME Line has also adapted its organizing to work with renters to prevent the loss of affordable market-rate housing and to respond to emergency and ongoing repair and substandard housing situations.

Via our tenant organizing program, HOME Line has:

- Organized tenants in a variety of low-income and subsidized apartment complexes across the state, developed leadership to preserve affordable housing, get repairs made, and stop bad management practices. Thousands of Section 8 and Rural Development affordable rental units have been kept affordable for low-income Minnesotans as a result of tenants speaking up.
- Created an inventory of all the federally assisted privately owned housing in Minnesota and identified properties at risk for loss of affordability.
- Door-knocked thousands of apartment units to inform tenants of their rights and engage them in public policy issues relating to their housing.
- Conducted an annual Section 8 survey 16 years in a row to determine landlord acceptance of Section 8 vouchers in the marketplace.

Public Policy Advocacy

Through this program, HOME Line builds tenant leadership into local, state, and federal efforts focused on affordable housing policies.

On the state level, HOME Line has influenced a variety of legislation:

- Provisions in the 2010 Tenant Bill of Rights make Minnesota law more tenant-friendly and save tenants millions of dollars through revisions to policies on tenant screening fees, late fees, attorney's fees, and security deposits. (Those recent law changes are included in this book.)

- Enact the Tenant Impact Statement, a one-year notice before owners terminate federal subsidies, along with an annual appropriation of $10 million to preserve affordable housing.
- Enact the Tenant's Right to Privacy, establishing legal standards for landlords entering an apartment as well as other laws strengthening tenant screening protections.
- Organize to preserve and protect the Renters Credit property tax refund, a program to keep Minnesota's tax system balanced.

On the federal level we helped influence important laws and programs:

- Enact legislation that created the National Housing Trust Fund, a tool to develop and preserve thousands of units of affordable housing nationwide.
- Advocate for full funding of public housing, voucher and project-based Section 8 programs, and rural rental housing.
- Work on a grassroots level to involve low-income tenants in discussions with the Department of Housing and Urban Development on recent proposals to overhaul all major federal rental housing subsidy programs.

HOME Line Staff
2011

Introduction

About This Book

Do any of the following describe you?

- You are about to enter the rental market. You are about to graduate and will soon be moving out of your parents' home or a dorm. You are a senior citizen about to downsize from the home you have owned for years into a rental apartment.
- You are already a tenant and a dispute with your landlord has you thinking about your rights and responsibilities. You would like to prevent this from happening again, and if it does, you want to be prepared.
- You are not a renter, but someone important to you is. Do you provide important social services in your community and want to help the people you serve find and maintain a better place to live?

If so, you want to be the smartest renter on your block.

How to be the Smartest Renter on Your Block was written with one goal in mind: to give Minnesota tenants the information they need to assert their rights.

Since 1992, HOME Line has provided free legal, organizing, education, and advocacy services so that tenants throughout Minnesota can solve their own rental housing problems. HOME Line's tenant hotline receives more than 11,000 calls each year from renters asking about their rights. We know the questions renters have, and we know how to answer them. We know what tenants need to know to be successful renters.

Here are the top 10 reasons renters currently call HOME Line:

1. Repairs
2. Evictions
3. Security deposits
4. Landlord foreclosures
5. Breaking a lease
6. Notice to vacate
7. Lease questions
8. Infestation (usually bedbugs)
9. Privacy/intrusion
10. Fees

This book covers these topics and more while answering the most common questions about tenant-landlord disputes. The book covers the law as well as practical steps tenants can take to solve their own rental problems. In order to understand how rental housing works, tenants should have a basic understanding of the rules that regulate tenant-landlord situations.

How Leases, Laws, and Courts Work

Tenants should understand how laws and leases can impact their homes. Federal, state, and local laws provide the framework for how tenants can resolve rental housing problems. State law outlines the majority of tenants' rights and responsibilities. Cities can pass additional protections for renters, hire housing inspectors, and require landlords to be licensed. In addition to the law, rental agreements (leases) are the contracts that specify rules for renting a space for a certain amount of time.

These laws, contracts, and rules are in place to assist both tenants and landlords in creating beneficial housing interactions. Contracts and laws can be enforced by a tenant or a landlord when they understand their rights and communicate effectively. Therefore, in many situations, tenant-landlord relationships continue without problems. Unfortunately, conflicts can and do occur, and the law can provide formal ways to address these conflicts.

Laws and contracts can be enforced by a court. There are numerous types of court systems covered in the chapters ahead. When all else has failed, even by using practical advice in this book, tenants may have to go to court to assert their tenant rights. Some areas of tenant-landlord law trump whatever a lease may say. This occurs because landlords almost always write their leases, and lawmakers are aware that this can create an unfair relationship. This book offers practical steps tenants can take to enforce their rights both within and outside of the court system.

What is Rental Housing?

Rental housing is any dwelling that is provided for a person to live in for some type of compensation. There are many different types of rental housing. Apartment complexes are the most common, but single-family homes, duplexes, condominiums, and townhouses can be rentals as well. Chapter 16 is devoted to manufactured homes, where the tenant usually rents the lot but owns the home. Subsidized housing is governed by federal laws and is covered in Chapter 17.

Other types of housing are more difficult to classify. Assisted living facilities, nursing homes, cooperative housing, "sober houses," dormitories, homeless shelter providers, and transitional housing providers may be covered by state tenant-landlord law depending on the situation. These types of housing are not discussed in this book.

Who is a Tenant?

A tenant is anyone occupying a living space as a result of an agreement where he or she pays or exchanges services for the space. Usually this agreement takes the form of a written or verbal lease between the tenant and a formal landlord (an apartment business or developer), but informal agreements to stay with family and friends may create tenant-landlord situations as well.

Who is a Landlord?

Throughout this book,"landlord" appears frequently in reference to someone who owns or runs rental housing. Under most laws and in the context of the book, the term landlord can include numerous people or businesses that are in direct or indirect control of the housing. In most cases, there is only one individual property owner or "ownership entity" (like a corporation of investors) that owns the property. Usually, they are the people who make the final decision on how to run the property and deal with legal disputes.

When the term landlord is used in this book, it can mean any of the following groups that are representing the owner of rental housing:

- A single property owner: John Smith.
- A group of investors organized as a company: John & Cathy's Apartments.
- A business or corporation that owns the property: Creekview Apartments, LLC.
- An agent hired by the landlord. Note: while these people may interact with renters on a day-to-day basis, they are usually not in charge of legal decisions and disputes. Tenants can list such people on court papers, but they might not be the best target. Tenants should review who is listed on their lease and consider checking property records to identify the actual owner of a property.
  Agents can include:
  - A management company: Apartments & More Management Co. Property owners frequently hire management companies to do most of the day-to-day work and interaction with residents. Many times the management company has no direct tie to the owner of the property.
  - An individual person such as a property manager, caretaker, maintenance worker, building superintendent or leasing agent. These people may work for a management company or may work individually for the property owner.
  - Another contracted agent such as a plumber, a mechanic or other outside company hired to perform work on rental housing.

The Real World: Rental Housing is a Business

When a prospective renter is considering a new home, there is much more than just the law, rules, and leases that affect the renter's choices. Choosing a home means entering the rental market to pick from a fixed number of housing choices to find what best suits a person's wants, needs, and budget. In the end, rental housing is provided as a business. This can be good and bad for tenants.

Rental housing provides people with a home. Often, it delivers a "maintenance-free" life for renters—no worries of having to fix a broken furnace or shovel the driveway. Landlords compete to offer better rental locations, quality of housing, and amenities. Rent levels can be competitive and affordable when the rental market favors tenants. Renting means tenants can have more freedom to move when they need to for life's common interruptions; they're not tied down to a 30-year mortgage on a home. It allows people to gain a rental, financial, and credit record for their future.

On the other hand, rental housing is a business or asset used to generate a profit for the owner. There is a limited supply of quality rental housing. Vacancy rates affect the amount of rent landlords expect tenants to pay as well as the ease with which people with flawed rental records can find quality rental housing. When there are few units available, landlords can increase rent beyond reasonable levels. There is an extreme lack of decent, safe affordable rental housing for people on fixed or limited incomes. This causes tight rental markets and homelessness. As a result, disreputable landlords push run-down housing at a discount, trapping tenants who have fewer options into troublesome leases and poor living environments. It can be expensive to move from such situations, a factor that will often ensure tenants remain in sub-standard housing.

The amount of power a landlord has over a tenant's life can, at times, seem insurmountable—the landlord takes the tenant's money every month, has a key to the private apartment, is often responsible for writing the legal lease terms, and may even be a well-known, well-connected business person in the community. The law attempts to help even out the playing field in these situations.

It is time to get ready to educate yourself. Know your responsibilities. Know your rights. Know how the rental market impacts you.

Tenants are responsible for their own housing situations—if they are better informed of their rights, they will end up with better housing options.

Disclaimer

No information you obtain from this book is legal advice, nor is it intended to be. You should consult an attorney for individualized advice regarding your own situation. No attorney-client relationship is formed by purchasing or reading this book.

1 Shopping for an Apartment

Spending ample time finding and researching apartments is an essential first step to any successful tenancy. Prospective renters should take into account the many factors that influence the quality of rental housing and how their budgets and background (or lack of a rental history) may affect where they can rent (Chapter 2, Applying for an Apartment, includes tips on imperfect rental and credit histories). Most prospective tenants begin the shopping process by focusing on four key points: location, size of the apartment, cost, and amenities (extra services and conveniences included with the apartment). While these are all very important in finding a quality home, prospective renters should research not just the apartment unit, but the actual landlord, with as much detail as possible. Shopping for an apartment is also shopping for a landlord, and tenants can have a better picture of who they'll be renting from after following several tips in this chapter.

WHAT YOU'LL LEARN:

- What to look for and expect when shopping for an apartment.
- What characteristics influence the quality and cost of an apartment.
- How to research the background of a landlord.
- What details to notice when visiting an apartment for a showing.
- How to choose an apartment that best suits you.

Key Apartment Characteristics

Location

The physical location of the rental unit is often the most important characteristic. Prospective renters want to live in a place that is convenient. Factors that renters should consider when shopping based on location include:

- How close it is to a workplace or school?
- Adequate parking or proximity to public transportation.
- Proximity to grocery stores, pharmacies, doctors and other essential services.
- Proximity to parks and schools for those with children.
- Location of entertainment opportunities nearby, such as theaters, bars, and restaurants.
- Quality of life in city/neighborhood: crime statistics, school quality, demographics, etc. This information is accessible on many real estate websites by searching for "city/neighborhood profiles." For example: www.homefair.com/real-estate/city-profile.

All of these location factors can influence the other main characteristics in this chapter—size, cost, and amenities. Tenants should carefully consider the costs and benefits of a particular location before making a final decision.

Size

The size of the apartment, as well as the type of unit (whether it is an apartment, a condo, a townhouse, a duplex or a single-family home) can influence the decisions of prospective renters. Are there enough bedrooms and overall space for all members of the household? Will everyone's personal possessions fit comfortably in the apartment? Some apartment complexes offer garages or storage spaces for an additional monthly payment. These may require that the tenant put down an additional damage deposit. Many first-time prospective renters intend to rent with a roommate to cut costs. A tenant should factor this plan into the decision-making process if it is the only way to afford an apartment—additional bedrooms can increase rent and deposit costs dramatically, and it can be very awkward if there is only one bedroom and one roommate is expected to sleep in the living room each night.

Tenants should carefully consider the costs and benefits of a particular location before making a final decision.

Cost

Determining the total cost of renting an apartment unit is fairly straightforward. Based on the length of the lease, the tenant adds up all the monthly rental payments, any security/pet/damage deposits, utility payments the tenant is responsible for, and moving costs. Other factors that can influence the cost may be less direct: increased transportation costs to work/school, miscellaneous household costs associated with a new home (cleaning supplies, furniture, etc.), and any fees for changing addresses (drivers license, bank records, credit cards, magazines, utility installation charges, etc.).

Because of the climate in Minnesota, utilities can be a large expense. Utilities can include bill payments for natural gas (heating, hot water, using the stove), water, electricity, garbage/recycling service, and other forms of service as needed. Prospective renters should clarify who is responsible for utilities before agreeing to a lease. Although not always the case, in larger apartment buildings the heat and sewer/garbage/water are typically included in the rent. Tenants in other types of housing units such as duplexes and single-family houses will probably be responsible for most, if not all, of the utilities.

Determining how much a tenant can afford, or more importantly how much he or she is willing to spend, may not be as clear. Although there is no rule on how much a tenant can spend, a general guideline suggests renters should not spend more than 30 percent of their gross income on their housing. For example, for a tenant making $8 an hour and working full time, here is how to calculate roughly the most he or she should spend on rent:

$8 hourly wage
x 40 hours worked per week
$320
x 4.33 average number of weeks per month
$1,385.60 monthly gross salary
x .3 (30%)
$415.68 upper limit for rent each month

A prospective renter in this financial situation might need to consider sharing expenses with a roommate (or two), or may need to locate more affordable housing. For first-time renters, choosing a roommate may be one of the most important decisions. In most leases, the roommates all sign one contract together. In those cases, the legal concept of joint and several liability applies. This is a legal phrase that essentially means that each roommate is responsible for the other roommates. If one roommate has a wild party and is evicted for it, the landlord can evict the roommates. If one of the roommates does not pay his or her portion of the rent, the

landlord can go after the remaining roommates for all of the rent. In effect, roommates co-sign leases with one another.

Amenities

Amenities and extra services are another factor for which tenants shop when looking for an apartment. For many people, a garage is a necessity for Minnesota winters. Some landlords might include a garage in rent, while others charge extra for any available garage spaces. Dishwashers, air conditioners, washers and dryers (in the unit or not) can be considered amenities that might be included in the basic rent. Pools and exercise rooms might be available as well. If there is not an extra fee for use of these amenities, consider that the base rent level may be higher as a result. If it is not clear what amenities are included in the base rent, tenants should ask the landlord *before* signing the lease.

If it is not clear what amenities are included in the base rent, tenants should ask the landlord before signing the lease.

Essential Tips before Making a Final Decision:

Background Check on the Landlord

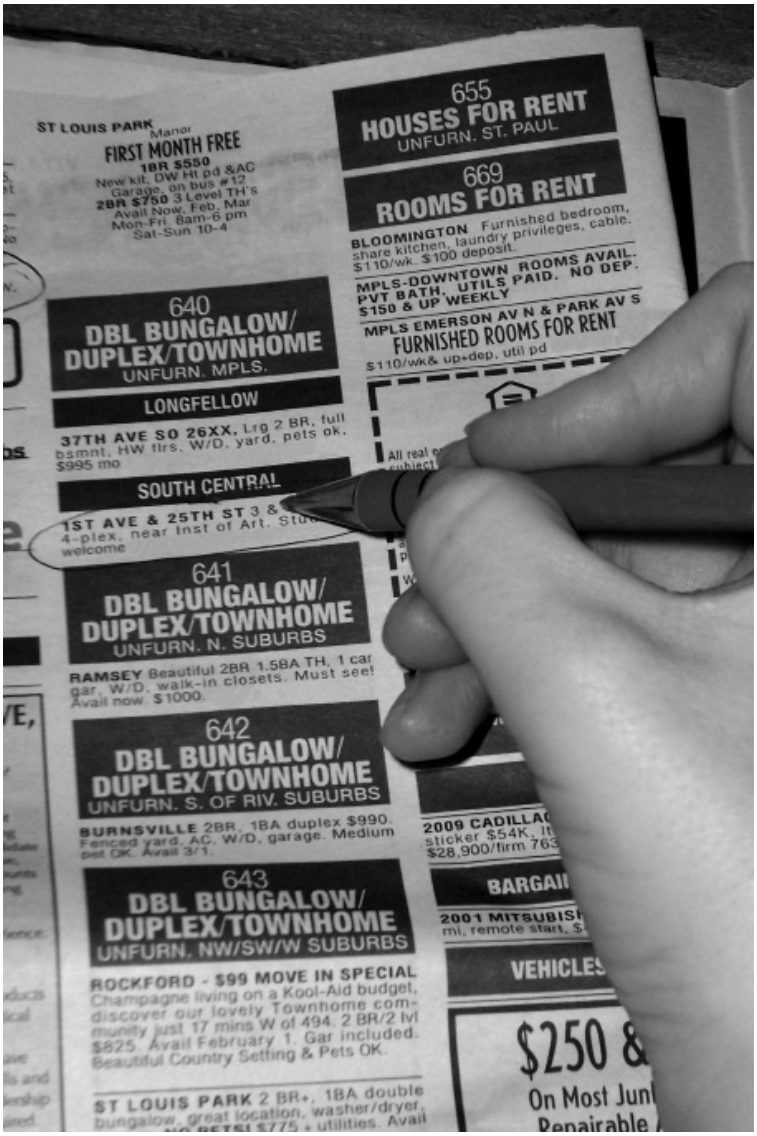
Most landlords run background checks on tenants before agreeing to rent to them. A tenant should also do a background check on a potential landlord. There are several approaches to performing a background check on a landlord, all of which are easier with access to the Internet. Again, as discussed in the Introduction, a landlord may be one of several people or businesses. Depending on the circumstances, there can be any or all of the following:

- The actual owner of the property. This can be an individual or a corporation (a formally registered business entity). If it is a corporation, there may be several investors (owners).
- An individual manager or leasing agent who is the tenant's primary contact.
- A corporation that is considered the management company.
- Any number of on- or off-site staff who may be employed by a single owner or a corporation.

A prospective renter should try to include all of these individuals or businesses in research if he or she is aware of them. For example, research the individual or business to whom rent is paid, and/or who is listed as the "Agent for Service of Process."

Checking out a landlord online can lead to interesting discoveries. Tenants can do an Internet search for the landlord's name, the name of the management company, the address of the apartment, and/or the name of the apartment complex. This search may discover any number of helpful resources: formal or informal apartment reviews, newspaper or other news media reports about the landlord or building, social media comments or discussion about the landlord, and public records from governments (local, county, state, etc.) regarding the landlord.

There are a number of online apartment rating websites that allow the public to rate and review individual apartments. Know that these websites allow comments from anyone, so the tone of the comments may reflect a broad range of renting experiences: tenants who had terrible problems, tenants who had great experiences, or even representatives of management responding to or refuting comments. Prospective renters should use these as a resource but not necessarily as the only deciding factor. One such website is www.apartmentratings.com/rate/MN.html.



Tracey Goodrich

Additionally, HOME Line collects media stories about Minnesota landlords that can be found at www.homelinemn.org/landlord-blog.

Tenants should check court records to get a sense of how frequently the landlord takes legal action as well as if previous tenants have sued the landlord. These pub-

licly available records are kept by each county, and a basic outline of cases is usually accessible online. The most valuable use of court records for a tenant would be to establish how many times the landlord has been named as a defendant in court cases. If a landlord is named as a defendant in a civil court action, it often means the landlord was sued in Rent Escrow cases where tenants were unhappy with the quality of the apartment and the landlord failed to act. If a landlord is named as a defendant in a Conciliation Court case it means the landlord was likely involved in a dispute about a security deposit; frequent withholding of security deposits is a fairly good indication of how landlords treat tenants. Tenants can use the online court case search tool Minnesota Court Information System by:

- Visiting www.pa.courts.state.mn.us/default.aspx.
    - Choosing "Civil, Family & Probate Case Records" (All of tenant-landlord law is considered civil law.)
    - Searching by party.

- Tenants can also look up criminal records by:
    - Choosing "Criminal/Traffic/Petty Case Records"
    - Searching by party.

It can occasionally be difficult to identify what name to search for, as discussed earlier. Therefore, prospective tenants should search for every individual name and business name they are aware is involved in the operation of the apartment.

Many Minnesota cities require that landlords obtain a rental license before operating a rental unit. This is public information and is an important way to tell if a landlord is legitimate. If the city employs inspectors to assess the health and safety quality of apartments, a prospective tenant may be able to ask the inspector about a particular apartment. HOME Line's website has a list of some cities that require rental licensing and inspections.

See the Actual Apartment…Several Times

Never apply for or sign a lease for an apartment without seeing the actual apartment unit. In large apartment complexes, landlords will frequently show a model apartment to prospective tenants. It is fine to look at the model, but tenants should insist on seeing the actual apartment unit they will be renting before signing anything or offering any money. Landlords use model apartments as advertising—they have nice, new appliances and carpet, and there is usually a good view and no unpleasant odor. The apartment that a tenant is actually considering may not look the same—and may currently be occupied. A landlord has a duty to give a current tenant advance notice to enter

and show the apartment to prospective renters. If a landlord is reluctant to do so, it should be warning to prospective tenants. Even if it means taking a second trip to look at the apartment unit, prospective renters should never agree to a specific apartment unit unless they have seen it.

Prospective renters should never agree to a specific apartment unit unless they have seen it.

Prospective renters should consider visiting the apartment at least twice—once during normal business hours and once later in the evening. If a tenant meets with the landlord to see an apartment at 11 a.m. on a Tuesday, there will likely be plenty of parking and the place may be relatively quiet because residents are at work. If a tenant were to stop by again at 6:30 p.m. he or she would get a much better sense of the parking opportunities and whether the apartment remains quiet during the evenings. This often will give prospective renters more opportunities to talk to current tenants about the apartments.

Talk to Current Tenants

As long as a prospective renter is visiting the property several times—to see the apartment, to apply, and possibly again to take photos, fill out a move-in checklist, and arrange for moving day—the prospective renter should make an attempt to speak with current tenants. Current tenants can be an extremely useful resource since they can share their experiences regarding the apartment and the landlord. Obviously they may have opinions one way or the other regarding the apartment—prospective renters should try to talk to several tenants to obtain a wide variety of viewpoints. Information to try to gain from current tenants includes:

- Quality and overall atmosphere of the apartments
- If there are problem neighbors or concerns with management
- Responsiveness of the landlord to requests for repairs or other services
- Knowledge of whether security deposits are returned promptly
- If the apartment is worth the current rent advertised
- Any tips for move in or for a tenancy

Review the Lease

Often the landlord will arrange a date for lease signing and payment of the security deposit and first month's rent. Tenants should always take time to review a lease before signing it. If a landlord is reluctant to provide the lease in advance, it should be a warning sign for the prospective tenant. As discussed earlier in this chapter, tenants need to negotiate and include amenities in the lease if they wish to have access to them. See Chapter 4, Leases, for additional advice about the content of leases.

Conclusion

Most tenants will live in an apartment for at least a year and invest a considerable amount of money in their home. Prospective renters should shop around to find a properly sized, reasonably priced apartment in the neighborhood of their choice. It is up to prospective tenants to check out the apartment, the landlord, and the neighborhood in advance to make sure they will feel comfortable in their new home. **Most importantly, tenants should make sure that they are happy with the landlord and that the apartment has the features they need before signing a lease.**

2 Applying for an Apartment

After locating an affordable, decent, and safe apartment, the next step for securing a home is to apply for the apartment. Most Minnesota landlords have an application process that can involve application fees, general tenant screening, criminal background checks, credit history scoring, and information about finances and familial situation. Prospective tenants must be informed about the application process and how they can prepare to navigate the process successfully.

WHAT YOU'LL LEARN:

- How to be prepared to be the best applicant possible for the apartment you seek.
- What constitutes tenant screening and how tenants can learn what screening companies report to landlords.
- What the law requires of landlords who charge application fees and how to enforce these rights.
- How to approach a landlord proactively when you know your rental history is not ideal.

Tenant Screening and Application Fees

It is difficult to overstate the impact tenant screening companies have on tenant-landlord relations. Twenty years ago, if a prospective tenant wanted to rent an apartment, the landlord would call the tenant's last known landlord and ask a few questions. Today, HOME Line estimates that more than 80 percent of Minnesota landlords use more formal and comprehensive methods of screening potential tenants, such as retrieving personal, financial, and historical information from a tenant screening company. In most cases, the landlord will charge a tenant for this screening.

There are, in effect, two sets of rules for how landlords can screen potential tenants. If the landlord does not charge an application fee for doing a background check, the rules are very relaxed (although the landlord is still bound to some federal regulations on credit checks).

Most landlords charge tenants for the cost of a background check (usually somewhere between $25 and $75 per adult). If the landlord charges a fee to run the background check, he or she must:[1]

- Have a clearly written set of criteria for what circumstances will cause an application to be denied.
- Return the application fee and notify the applicant if the landlord denies the applicant for something not written in the criteria.
- Process applications in order of receiving them. This means if 10 people apply for a single apartment unit, a landlord cannot pick his or her favorite of the 10 after running the background checks on all of them. Instead, the landlord must check the background of the first applicant and if approved, return the application fees to the remaining nine people. If the first applicant is denied, the landlord can move on to the second, process it as the first was, and continue as appropriate for each approval or denial in order.

Obviously, a tenant should never lie on an application. If the applicant lies on the application, the landlord can sue the applicant for $500 in court.[2] This can also be considered fraud, which is a criminal act that can rise to a felony level.[3]

Landlords do not always rely solely on the background check. The applicant typically fills out a form answering multiple questions that go beyond basic contact information while also authorizing the landlord's screening company to do a background check. The landlord has the right to ask for a significant amount of personal information from each person who will reside in the apartment, including: name, places of employment, all sources of income, Social Security number and date of birth.

It is important to read an application carefully and answer the questions as cor-

rectly and clearly as possible. One common question that can sometimes confuse tenants is, "Have you ever been evicted?" The term "eviction" is actually defined in Minnesota law, which can complicate the question in some cases. It could mean "Has a landlord ever filed and won an eviction against you?" Or it could mean, "Has a landlord ever asked you to vacate?" In most cases the question means the former (a previous landlord won an eviction case against you), but tenants should be aware and prepared to respond to landlords questioning about any evictions filed on their record, even if they were dismissed or the tenant won. If a tenant is not sure if a landlord has filed an eviction against him or her, the records are public so the tenant can check with the court in the county where he or she lived to be certain.[4] The most important thing to remember is that the tenant does not want to answer the landlord's questions incorrectly, especially when the answer hurts their chances of getting an apartment.

The most influential information the screening checks retrieve includes rental and credit history and criminal records.

While answering these questions truthfully is important, applicants must keep in mind that the results of a tenant screening background check are critical to securing an apartment. Most landlords trust the information they get from these background checks much more than what the tenant writes down. The most influential information retrieved by the screening checks includes rental history, credit history, and criminal records.

Common Screening Criteria

Rental History

Landlords carefully scrutinize a person's rental history in deciding if they want to rent to them. How the applicant treated any past landlord or how well they took care of past apartment units is seen as an indication of how the tenant will act in the future. Landlords are primarily looking for whether any evictions (also known as UD's or unlawful detainers) have been filed against the tenant in the past. Most landlords do not care if the tenant was not actually evicted; rather, the mere fact that a case was filed against the tenant can result in the rejection of an application.

Information about past rental history such as evictions is typically available in county court records, depending on the state where the eviction was filed. In most cases, evidence that a case was filed is kept in some form indefinitely. The companies that landlords hire to do these background checks are governed by federal law that states they can only report evictions from the previous seven years.[5]

Although background checks can include information like past landlord referrals and some comments on character, most landlords rely on evidence of past evictions, credit history, and criminal records when deciding whether to rent to a tenant.

Credit History

Virtually every adult citizen in the United States has a credit rating, which is a score that measures financial stability. This is a number somewhere between 300 (worst) and 850 (best). In simple terms, credit ratings try to answer one key question about every adult: "Does he or she pay the bills on time?" Paying bills in full and on time is the best way to establish good credit. Late bill payment or failure to pay bills is the simplest way to get a bad credit score. Several other factors can decrease the score: large amounts of money owed on loans or mortgages, unstable employment, and monetary judgments or liens from being sued in court.

Tracey Goodrich

This information is collected and generated by national credit reporting agencies. The tenant screening companies landlords hire then pass on the name of the applicant and retrieve the credit report from these national companies.

Criminal Record

Landlords also want to know about the applicant's criminal past. These checks vary greatly in their depth. Some

landlords will only do a check for evidence of criminal background within the state they are located, or perhaps the neighboring states. Occasionally a landlord will target the search to include all of the states in which the applicant reported he or she previously resided. Some landlords may perform a nationwide criminal check.

Criminal checks vary in terms of the depth of information they can obtain. Landlords will have different standards by which they want to screen a tenant. In any case, prospective tenants should be aware that criminal checks can identify anything from simple arrest records (even if the person was not found guilty), to misdemeanors, all the way up to felonies. Landlords may choose to deny applicants for having an arrest record, regardless of the outcome of the case (guilty or innocent). Make sure to identify, based on the application criteria, what criminal level a landlord will use to deny an applicant.

Approaching a Landlord with an Imperfect Background

Prospective renters who may have past problems with their rental history, credit score, or criminal background can benefit from being prepared in their application process. Here are a couple of tips on trying to get an apartment with a less-than-perfect record:

First, apply at places where a landlord is more likely to give an applicant a second chance. In general, the bigger the apartment building, the less likely it is that the applicant will be talking to the person who ultimately makes the final decision to rent to the applicant or not. Ideally, an applicant wants to be able to look the decision-maker in the eye to plead his or her case and realistically figure out the chance of getting the apartment.

The applicant should be upfront about their past and tell the landlord exactly what will be found when doing the background check. Landlords are reluctant to rent to tenants when they are surprised by what is in the background check. If the tenant tells the landlord in advance about what will be in the background check, then the landlord will not be surprised. This gives the tenant a chance (probably the only real chance, because once the answer is no, the landlord almost never changes his or her mind) to offer a brief explanation of what the landlord will find. Here are a few examples of what a tenant might say to explain the past:

Previous Eviction

> "I know you will find an eviction on my record from three years ago. My husband had just walked out on me and the two kids and I couldn't afford much of anything. Since then, I've landed on my feet and have steady income now. I have even started trying to pay the old landlord back. It's not a lot, but I'm giving him $20 a month, because I want to pay my debts until I'm caught up."

Poor Credit

> "You are going to see that I have terrible credit. I got a pricey cell phone three years ago when I was 18 with one of those expensive plans. It was a terrible deal, but I signed it. Since then, I'm paying the company back a little each month. You will notice that I have rented other apartments for three years and have not missed any payments. I have always put the landlord first."

Criminal Background

> "You are going to find that I was convicted of stealing a car when I was 19. I'm 36 now, and I have a family. I am a different person now. I have had no other criminal issues come up since then, and I have had multiple jobs and apartments without problems."

In all of these cases, the applicant is explaining that past mistakes do not define the tenant in the present. An applicant should not give a long *excuse* for what happened and how they were innocent; instead, a quick and sensible *explanation* of what happened and how things are different now should be offered. If it becomes clear that the landlord is not being swayed by such an explanation, or if the landlord outright says the application will be turned down, the applicant should keep the application money to apply at another rental unit. What the tenant wants to hear from the landlord is, "If that's all I find, then the place will be yours." With a less-than-perfect past, an applicant cannot always get an absolute answer before the process, but it is better to be proactive about sharing the background issues before spending money on an application fee.

How to Dispute a Tenant Screening Report

If the information on a tenant screening background report is wrong, applicants have several options to dispute the report.[6] First, the applicant should ask the landlord who turned down the application which screening company was used. If the tenant was denied an apartment within the last 60 days, any screening company that was used must provide the applicant a complete copy of the report for free. If 60 days have elapsed since the application denial, tenant screening companies still must provide the report but can charge the applicant a fee. It is a good idea for applicants to take this step, especially if they have a common last name and have already been turned down. Results in tenant screening checks can be misreported, causing an innocent applicant a lot of trouble. If an applicant believes the report is incorrect, the applicant can write a letter to the screening company (see Appendix 3), include a copy of the incorrect report, state why it is incorrect, and provide any evidence available to refute the report. The letter should demand that the agency discontinue reporting the inaccurate information until it is reinvestigated.

The law also allows applicants to submit 100-word explanations to tenant screening companies disputing results they disagree with or offering an explanation for results

that may affect an applicant's chances of securing an apartment. While a tenant has a legal right to do this, it may not change the landlord's mind.

Pre-Lease Deposits (or Deposits to Hold)

Occasionally, during the application process, a landlord will ask an applicant to make a payment in order to hold or reserve a rental property while the landlord performs a background check. The landlord agrees to pull the apartment off of the market, effectively "holding" the unit for the applicant during the background check. Such payments are called "deposits to hold" or "pre-lease deposits."

Occasionally, an applicant who has paid such a deposit decides that he or she no longer wants the place and would rather live somewhere else. In such cases, the applicant may or may not be able to have the deposit returned, depending on the situation. In the most ideal situation, there would be a written agreement defining the terms before an applicant pays any money.

A payment is legally considered a "deposit to hold" if it is paid before entering into a rental agreement (lease) and is not an application fee, a rent payment, or a security deposit. A landlord may charge a deposit to hold, and in some cases keep the deposit, by following several detailed rules. Most importantly, any deposit to hold must be accompanied by a written agreement between the landlord and applicant. That written agreement must contain a few key clauses:[7]

- The agreement must allow for the return of the deposit to the tenant and explain the conditions when it would be returned (usually it is returned if the landlord does not approve the applicant).
- The agreement must state that the deposit will be returned within seven days of those conditions being satisfied.
- If the tenant is accepted, the landlord must apply any deposit to hold to either the security deposit or the first month's rent.

If these requirements are not followed, the landlord must return the deposit to hold. If the money is not returned, the applicant may sue the landlord for one and a half times the value of the deposit.[8] For example, if an applicant gave a deposit to hold of $300 and the landlord violated the statute, the applicant could sue for $450.

HOME Line has observed that many landlords fail to follow the strict requirements of the statute. If a deposit to hold has been paid, the applicant must keep in mind the above requirements. If an applicant wants out of the lease, he or she may have the right to get the deposit back if the landlord did not follow the strict written guidelines.

Conclusion

Prospective tenants should be aware that if a landlord is charging a fee, there are strict rules in place for the application process. The applicant has a right to: know the landlord's criteria in advance, see a copy of the report if denied, and get the application fee returned if the landlord denied the tenant for something not in the criteria or if the landlord rented to someone earlier in line. In addition, applicants should understand the extent to which tenant screening companies can report about rental history, credit scores, and criminal background. There are a number of ways applicants can influence these reports and present information to landlords.

Applicants will often need to discuss aspects of their background that may influence the landlord's decision. Being prepared to explain past problems can help an applicant obtain an apartment.

Notes

1. Minn. Stat. § 504B.173
2. Minn. Stat. § 504B.173
3. Minn. Stat. § 609.52, Subd. 2 (3)
4. Some records are available on the Internet at www.mncourts.gov/publicaccess.
5. Fair Credit Reporting Act, Section 605 (2), 15 U.S.C. § 1681c
6. Fair Credit Reporting Act, Section 609-615, 15 U.S.C. § 1681g-1681i
7. Minn. Stat. § 504B.175
8. Minn. Stat. § 504B.175, Subd. 4

3 Housing Discrimination

Discrimination in rental housing is when a landlord treats a tenant differently based on a specific characteristic or trait. While under federal, state, and local laws only certain forms of discrimination may be considered illegal, any type of discrimination can make a renter's home feel unwelcoming. This chapter helps renters recognize illegal discrimination practices, respond to them effectively, and understand when other forms of discrimination may require other responses.

The laws have specific standards for what constitutes illegal discrimination. There are some types of discrimination that the law permits. Tenants should understand the differences and be alert to the most common rental housing situations in which illegal discrimination occurs.

Approach of Chapter

There are many forms of discrimination that are not covered in depth in this chapter. This book provides information about basic rights and attempts to highlight more common issues about which renters contact HOME Line most frequently. Tenants can review the next section to understand prohibited forms of discrimination, as well as types of treatment that might be considered discriminatory. Later in this chapter, as well as in Appendix 4, we include numerous resources—both government agencies and legal service providers— that can be helpful for tenants who are experiencing discrimination.

WHAT YOU'LL LEARN:

- To identify personal characteristics covered by discrimination laws as "protected classes."
- Exceptions to the protected class rules.
- To be aware of situations where discrimination frequently occurs in rental housing, including the most common: rental application process discrimination.
- How to take steps to address discrimination you are experiencing.

Legally Protected Classes

Discrimination laws have been created by the federal government,[1] Minnesota's state government, and some cities. For the most part, Minnesota's discrimination laws build upon what the federal law covers. Tenants in the cities of Minneapolis and Saint Paul have some broader protections that can be understood by calling the city, HOME Line, or the local Legal Aid office.

Minnesota law protects renters from many forms of discrimination in housing. The law identifies a specific set of characteristics or traits, sometimes referred to as "protected classes." A landlord cannot discriminate based on the following traits (with some exceptions covered later):[2]

- Skin color
- Creed
- Disability
- Familial status (whether someone has minor children in the household)
- Marital status
- National origin
- Race
- Receipt of public assistance (receiving financial aid such as MFIP, GA, SSI, etc.)
- Religion
- Sex (gender or pregnancy)
- Sexual or affectional orientation
- Ancestry (only in the cities of Saint Paul and Minneapolis)[3]
- Age (only in the city of Saint Paul)[4]

A tenant does not have to be of a protected class to claim legal protection. Anyone harmed by discrimination—even if the prejudice is aimed at others—may present a claim. For example, if apartment managers bar African-American visitors, a Caucasian tenant whose African-American sister-in-law is kept from coming for holiday celebrations could bring a discrimination case against the manager. Actions by a landlord that constitute discrimination are discussed below. Tenants who believe they are being treated differently because of their status in one of the above protected classes may be able to claim illegal discrimination.

Common Examples of Illegal Discrimination

Different treatment during a tenancy

The key to recognizing discrimination is whether the tenant is treated differently from others in the apartment complex because of any of the differences associated

with the protected classes. Examples of discriminatory behavior that HOME Line has observed in Minnesota include:

- The landlord charges a higher damage deposit to someone who uses a wheelchair.
- Managers make repairs for white tenants faster than for tenants of color.
- The landlord requires families with children to live on the first floor while other renters are allowed to live on any floor.

Application Process

Discrimination most commonly arises during the application process. Landlords may refuse to rent to an applicant because of a characteristic or trait rather than let the applicant move in. A landlord (or caretaker, maintenance person, or leasing agent) cannot illegally discriminate against renters or prospective renters applying to live in the apartment building.

When tenants know the standards, they may have a better chance of recognizing discrimination.

HOME Line recently helped to pass a new law that assists rental applicants to uncover whether the landlord may be illegally discriminating. In the past, it was difficult for applicants to know exactly what standards landlords used to screen prospective renters. When tenants know the standards, they may have a better chance of recognizing discrimination when they suspect different treatment than other applicants.[5]

When a landlord accepts an application fee from an applicant, the law requires the landlord:

- To provide in writing the name, address, and phone number of any tenant screening companies used
- To provide the criteria or rental standards that the landlord uses in deciding whether to rent to someone
- To tell the applicant that he or she has been denied and what the reasons were within 14 days of rejecting the application

While some landlords still discriminate illegally, when tenants have this information it can help to flag (or even discourage) possible discrimination. Explanations for application denials make it more difficult for landlords to discriminate, and make it easier for tenants to spot possible discrimination. Renters should use application criteria laws to protect themselves in situations such as these:

- A leasing agent tells someone receiving Supplemental Security Income (SSI or "disability") that he or she needs an income that is at least three times the rent, but that requirement is not on the list of criteria given to the applicant.
- An application is never processed, or the applicant does not hear back from the manager about the results.
- An application for a unit in a general-occupancy apartment building larger than four units is denied because there are children in the household.
- A landlord turns down an applicant for having a service animal that helps manage a disability.

Prior to the Application Process

Even before the application process, landlords may try to exclude certain tenants or treat them differently from others. For example, if a prospective tenant is of a different race a manager may only show that person apartments in a certain area, while excluding him or her from rental opportunities in other locations. This is known as steering and is a form of illegal discrimination. Some apartment shoppers may be told there are vacancies until they show up in person, at which point the landlord sees that the renter is of a certain ethnicity or has a disability and tells him or her that there are no vacancies. This is illegal discrimination and can be challenged in ways discussed later in this chapter.

What Tenants with Disabilities Should Know

The law defines a disability as a physical or mental impairment that limits one or more of a person's major life activities. In addition, people who have a record of a past disability, or who are perceived by others to have a disability, are protected by the law.[6] An owner cannot evict, refuse to rent to, or impose higher rent on a person as a result of his or her disability.

An owner cannot evict, refuse to rent to, or impose higher rent on a person as a result of his or her disability.

In most cases a landlord cannot ask a tenant or prospective tenant about his or her disability. A landlord may only ask a prospective renter about a disability when the housing is designated for people with certain types of disabilities (some forms of assisted living, public or subsidized housing, etc.) because the landlord needs to be able to verify the applicant's eligibility to live there.

If a landlord or leasing agent includes as part of their eligibility criteria that an individual or household must be able to meet the requirements of the lease and asks this question of all prospective tenants, the landlord may ask this of someone who has a disability. Furthermore, the landlord may

turn down an application if he or she cannot show ability to follow the basic rules of the tenancy. However, it is illegal to assume that a person with a disability will violate the lease or to insist that he or she show the ability to "live independently."

Reasonable Accommodations for People with a Disability

A disabled tenant has the right to request a reasonable accommodation or change in the rules or policies.[7] For example, if the tenant can show the landlord that bad rental history was caused by the disability, and the tenant has since received help to be a better tenant, the landlord cannot legally turn that applicant down.

Reasonable accommodations are changes in housing policies, practices, or services that will allow tenants with disabilities an equal opportunity to use and enjoy the apartment and the common areas. Owners and managers must make the changes if necessary and reasonable or they violate the law.

A tenant must establish three things when making a request for a reasonable accommodation:[8]

1. Show that he or she has a disability.
2. Ask for a specific change in a rule.
3. Explain how the change is necessary to accommodate the disability in order to make the housing accessible, to fully use it as a home, or to reduce the negative effects of the disability.

The landlord must allow the change in a rule unless it causes an undue hardship, either financially and administratively by requiring the landlord to fundamentally alter the business.

A reasonable modification is similar to a reasonable accommodation but is a change to a physical structure rather than a rule, such as moving light switches within reach of a wheelchair user or adding a ramp or railing.[9] While landlords are required to allow these types of changes, tenants are usually responsible for paying for them and can legally be required to return them to their original condition at the end of tenancy. If the tenant is living in subsidized or publicly funded housing in many cases the tenant is not obligated to pay for such changes and the landlord or housing authority must provide them.

Landlords who refuse to make reasonable accommodations or modifications can be sued in federal or state District Court depending on the circumstances; in most situations a tenant should have an attorney for such a court action. Tenants may also file civil rights complaints with the federal, state and local governments. Tenants should call HOME Line or their local Legal Aid office for advice.

Accessibility for People with a Disability

Many multi-family apartment buildings that opened after 1990 are required to have a number of basic design and construction features that make apartments more accessible to people with mobility and other limitations. Curb cuts, entries without steps, doors wide enough for wheelchairs, switches and controls not too high up on walls and other basic factors are supposed to be built into covered buildings.[10]

Limitations to Civil Rights Coverage

Sometimes landlords are not covered by portions of housing discrimination law because of unique circumstances. For example, owner-occupied buildings with four units or less are exempted from some federal and state coverage. Properly established and managed senior housing can discriminate against families with children (but on no other basis). An owner who lives in a rooming house can discriminate on the basis of sexual orientation in that dwelling.[11] Even owners who are not covered by some affirmative protections can lose their exemption if they advertise their discrimination. Because this can be complicated, it is best to seek expert advice before concluding that anti-discrimination law does not cover a particular situation.

Familial Status and Size of Household

If the owner of rental unit is living in the building with four or fewer units, the owner can deny an applicant for having children. If the entire building is legally designated for renters who are 55 or older, applicants with children can be denied.[12]

If an infant or a new child begins living in the apartment, the landlord cannot immediately take action against the tenant for the addition of the child. Even if the tenant has a month-to-month lease, the landlord cannot evict the tenant or give a notice to vacate until the minor has been in the home for one year (unless there is a lease violation such as loud noise or nonpayment of rent).[13] The new child can be the result of a birth, an adoption, or even a note from the child's parent or guardian stating the child will live with the tenant. The landlord is required to give a six-month notice to vacate if that is the reason for the notice. For example:

> If the tenant has a baby on January 1st and the landlord wants the tenant out as soon as legally allowed, the landlord must give a notice on or before July 31st that the tenant must vacate by January 31st of the next year as he or she is now "over-occupancy" because of the addition of the child. The tenant basically gets a one-year grace period.

A landlord often relies on over-occupancy as a reason to turn down an applicant, and it can be a form of illegal discrimination depending on the circumstances. If a landlord has already denied an applicant the right to live in the rental unit, the ten-

ant should ask why the landlord is turning him or her down. If the landlord states that, "there is a law that says no more than two people per bedroom," the tenant should ask, "What law?" **There is no federal, state, or county law that limits the number of occupants (except in subsidized housing; see Chapter 17), but there may be a city law or ordinance.**

City over-occupancy ordinances are usually one of two types. The first type limits the number of unrelated adults. In simpler terms, these ordinances basically stop people from creating a "frat house." The city of Saint Cloud has one of these ordinances that restricts rental housing to allow four or fewer unrelated people in a dwelling unit.[14]

The other type of over-occupancy ordinance is based on square footage and basically intends to keep renters safe from crowded housing situations. The city of Grand Rapids has such an ordinance that requires a bedroom to contain 70 square feet for the first occupant and 50 square feet for each additional occupant.[15] This type of ordinance requires a simple measurement of the size of the bedroom to figure out how many people may legally live there.

Receipt of Public Assistance

In most cases, a landlord may not turn down an applicant based on the fact that he or she receives government assistance. As long as a rental applicant has a good rental history, the source of income cannot be factored in to whether the landlord chooses to rent to that applicant. (For detailed information on the application process, read Chapter 2, Applying for an Apartment.) Most landlords have the right not to participate in the Section 8 voucher program and can therefore insist that the rent be paid without this form of public assistance.[16] Section 8 vouchers are covered in more depth in Chapter 17, Subsidized Housing. Some landlords who receive tax credits or other public subsidies may be required to take vouchers.

It is currently legal to discriminate on the basis of having a Section 8 voucher.

HOME Line conducts an annual survey of landlord participation in the Section 8 voucher program within the Twin Cities metropolitan area.[17] Often, landlords who say they accept vouchers either have rents that are too high to allow voucher usage, or they tell prospective renters that they must have an income that equals three or more times the total rent to be eligible to apply—effectively excluding them from applying. While this type of discrimination prevents many renters from accessing affordable housing in areas of opportunity and reinforces concentrations of poverty, it is currently legal to discriminate on the basis of having a Section 8 voucher.

Age

Age is not a protected class from discrimination in state law. This means that landlords can deny an applicant under the age of 18, 21 or any age they do not prefer. The city of Saint Paul is an exception.[18] In Saint Paul, age is a protected class, meaning that a landlord cannot refuse to rent to someone in Saint Paul based on age. Apartment buildings that are legally designated and operated for the elderly (including some forms of public and subsidized housing) are exempt from this requirement.

How to Respond to Illegal Discrimination

If a tenant believes that a landlord has illegally discriminated against him or her, there are a few things the tenant can do. Tenants should be vigilant by obtaining records from rejected rental applications and writing down who, what, when and where regarding any discrimination they believe occured. Tenants should get contact information from witnesses and get help from friends, neighbors or agencies to test whether they have been treated discriminatorily. First, a tenant should try to solve the problem with the landlord if at all possible. Some landlords make honest mistakes and will correct them when approached properly. If the landlord does not correct the problem or the tenant cannot solve the problem by talking to the landlord, the tenant has other options. If the tenant is aware of discriminatory behavior that is also affecting neighbors, they might want to consider tenant organizing to respond to the landlord. Working collectively with neighbors who are experiencing discrimination may lead to more accountability over the landlord and can strengthen potential lawsuits if necessary. See Chapter 20, Tenant Organizing, for more information.

Filing a complaint with the government or filing a lawsuit are the primary formal methods for responding to illegal discrimination. With both of these approaches, renters must understand that evidence is critical in preparing a proper complaint or legal claim. Tenants should keep any written documentation they receive, keep a journal of experiences, and consider asking a friend, family member, or neighbor to witness or "test" for discrimination.

Testing

One of the most effective ways to prove that a landlord is discriminating against a certain class of people is to use "testers." Based on complaints about a certain building or landlord, there are agencies that send out "tenants" who wish to apply for an apartment. For example, the agency will send out a prospective renter who fits a certain race, income, and job history at 10:00 a.m. At 11:00 a.m., the agency will send out a different prospective renter with a very similar history but of a different

race, and see if that renter is treated differently. If one of the testers is treated differently, this can help build a solid discrimination case against the landlord. Agencies may perform testing if a tenant has a complaint and evidence of discrimination; there is a list of such agencies in Appendix 4, Additional Resources. Interested in being a "secret housing shopper" volunteer? Contact Legal Aid at 612-334-5970. Tenants may even consider performing their own testing by asking a friend or family member to apply at the same location.

File a Complaint

Tenants can file a complaint with the city department of human rights (if there is one), the Minnesota Department of Human Rights, or with the United States Department of Housing and Urban Development. Contact information for these agencies is below. **There is a "statute of limitations," or a limited period of time that a complaint can legally be filed for discrimination, so it is important for tenants to act promptly, because some claims have a one-year deadline.** These agencies have investigators who perform testing and other methods of detecting discrimination. Landlords who are found to be illegally discriminating may lose their rental license, face large fines, receive criminal complaints, and can be subject to individual lawsuits from tenants. Tenants also might receive some form of "relief" if a landlord is found to have discriminated. Relief can include monetary damages due to the tenant.

File a Lawsuit

Tenants can contact their local Legal Aid office or HOME Line to see if their case has legal merit. If the tenant believes the case is strong, he or she may hire a private attorney. Some successful discrimination lawsuits have forced landlords to pay large sums of monetary damages to tenants and their attorneys (depending on the arrangement between the lawyer and the tenant). Judges have discretion to order many penalties, including forcing the landlord to stop discriminatory behavior, change rental policies, take fair housing classes or impose other remedies that the judge believes to be fit.

In most cases tenants will need further legal advice and possible legal representation to take legal action. Any tenant can call HOME Line for legal advice:

HOME Line 612-728-5767 or toll-free from outside the metropolitan area 866-866-3546.

A tenant with a low income can call:

Housing Discrimination Law Project 612-334-5970 or

Housing Equality Law Project 651-222-4731

Where to File a Complaint

The federal government, state government, and some city governments investigate housing discrimination and enforce fair housing laws. Depending on the location of the housing and type of discrimination, tenants should file at one of the below agencies. Protected classes in bold mean they are additional classes beyond federal law; underlined are additional beyond state law.

The United States Department of Housing and Urban Development (HUD)
77 West Jackson Boulevard, Chicago, Illinois 60604
Toll-free phone: 800-669-9777 TTY: 800-927-9275
http://portal.hud.gov/hudportal/HUD?src=/topics/housing_discrimination/
Investigates these types of complaints: race, sex, religion, familial status, disability, national origin, color.
This agency only investigates housing discrimination, whereas the two agencies below investigate other forms of discrimination beyond just housing.

Minnesota Department of Human Rights
190 East Fifth Street Suite 700, St. Paul, Minnesota 55101
Toll-free phone: 800-657-3704 Metropolitan area phone: 651-296-5663
TTY: 651-296-1283
www.humanrights.state.mn.us/
Investigates these types of complaints: race, sex, religion, familial status, disability, national origin, color, **creed, sexual orientation, marital status, and public assistance.**

Minneapolis Department of Civil Rights
239 City Hall, Minneapolis, Minnesota 55415
Phone/TTY: 612-673-3012
www.ci.minneapolis.mn.us/civil-rights/
Investigates these types of complaints **if the discrimination takes place in Minneapolis**: race, sex, religion, familial status, disability, national origin, color, **creed, sexual orientation, marital status, public assistance, and ancestry.**

St. Paul Department of Human Rights
15 West Kellogg Boulevard, City Hall 240
St. Paul, Minnesota 55102-1681
Phone: 651-266-8966 TTY: 651-266-8977
www.stpaul.gov/index.aspx?NID=2403
Investigates these types of complaints **if the discrimination takes place in Saint Paul**: race, sex, religion, familial status, disability, national origin, color, **creed, sexual orientation, marital status, public assistance, ancestry, and age.**

Conclusion

Renters can recognize whether a rental-housing situation is discriminatory if the behavior they are observing pertains to a protected class and they are being treated differently from others. While there are a few legal exceptions to these laws, tenants should be vigilant by obtaining records from rejected rental applications, journal behavior that is discriminatory, and get help from friends, neighbors or agencies to test whether they have been treated discriminatorily. Tenants can put landlords on notice that they have observed illegal behavior and that it should stop; tenants can file a complaint with appropriate government agencies, or they can contact an attorney to see if a lawsuit is feasible.

Notes

1. 42 U.S.C. § 3601
2. Minn. Stat. § 363A.09
3. St. Paul Code of Ordinances Part II Title XVIII § 183.01 & Minneapolis Ordinances Section 139.40(e)
4. St. Paul Code of Ordinances Part II Title XVIII § 183.01
5. Minn. Stat. § 504B.173
6. Minn. Stat. § 363A.03, Subd. 12
7. 24 U.S.C. § 100.204
8. 42 U.S.C. § 3604(f)(3)(B)
9. 24 U.S.C. § 100.203
10. 42 U.S.C. § 3604(f)(3)
11. Minn. Stat. § 363A.21, Subd. 1 (2)
12. Minn. Stat. § 363A.22
13. Minn. Stat. § 504B.315
14. St. Cloud Land Development Code, Article 14.3 (H) (2)
15. Grand Rapids Ordinance Sec. 30-147, adopting the 2003 IPMC § 404.4.1
16. *Edwards v. Hopkins Plaza LP,* 783 N.W.2d 171 (Minn. Ct. App. 2010).
17. HOME Line's Annual Section 8 Report, accessible here: www.homelinemn.org/publications/section-8-report/.
18. Saint Paul Code of Ordinances Part II Title XVIII § 183.01

4 Leases

A lease is any rental agreement between a landlord and a tenant.[1] A lease can be written or verbal and can be either for a specified period of time or renewable every rental period (month-to-month). All rental situations in Minnesota are covered by a lease as well state laws governing rental housing. Leases even cover "barter" agreements where a tenant is allowed to stay in a home in return for providing services or trading goods. All renters must understand common lease terms and provisions while also recognizing the rights and responsibilities a lease puts in place.

WHAT YOU'LL LEARN:

- The differences between fixed-term, periodic, verbal, and written leases.
- Several important rules that specify how leases work and can be enforced.
- Common rental terms and issues that leases may govern, including:
  - change of ownership
  - fees and deposits
  - guests
  - parking and towing
  - pets
  - shared utility meters
  - snow removal and lawn mowing
- How to prepare to negotiate the terms of a lease.

Fixed-Term versus Periodic Leases

All leases must identify the length of the tenancy. While some leases specify an end date, others are month-to-month until the parties agree to end it. For most month-to-month leases, length of the lease determines the notice period for altering or ending the lease. Fixed-term leases usually cannot be changed during the term, and usually specify a notice period for ending the lease.

Fixed-Term Leases

A fixed-term lease means the length of the lease is for a set amount of time. The most common fixed-term is one year, although leases can be longer or shorter. For example, nine-month leases are usually available in college towns.

Even though fixed-term leases state an end date, most do not actually end on that day. Instead, the lease usually requires the tenant or landlord to provide notice before the lease end date. Some leases require as much as two month's notice before the end of the term to properly end the lease. If no end notice is provided and the lease has the proper terms to allow renewal, the lease may become month-to-month, or some other form of periodic lease, depending on the lease language. Keep in mind that the landlord needs to follow the requirements of the Automatic Renewal Statute if he or she wants the lease to continue beyond the end date. Chapter 9, Ending a Lease, provides more information on these requirements and the overall process for ending a lease.

In a fixed-term lease, all of the lease requirements and responsibilities remain the same throughout the lease. This means, in the example of a year-long lease, that the landlord cannot increase the rent, change the amenities, or include additional responsibilities for the tenant until the end of the year lease. The tenant owes a full year of rent if he or she tries to break the lease early. Occasionally landlords will include lease terms stating that they can change the terms mid-lease. In most cases these provisions are not legal and cannot be enforced.

Periodic Leases

Most periodic leases are month-to-month, meaning the tenancy continues from one month to another until either the landlord or tenant provides proper notice (again, covered in Chapter 9). There are various places around the state that rent week-to-week or other regular periods, but month-to-month is by far the most common. In most of these cases, the rent is due on the first of the month and proper notice to vacate is usually a "full rental period's notice," covered in Chapter 9.

Because the lease term and notice period are not usually more than a full rental period (a month), this means the landlord can make changes to the terms or requirements of the lease by providing proper notice (usually the same notice period as is required for ending the lease).

Oral Versus Written Leases

When a landlord rents space to a tenant in Minnesota, there is either an oral (a verbal agreement) or written lease. Any basic agreement allowing a tenant to reside somewhere is considered a lease and can be enforced by the landlord or the tenant in court under Minnesota laws. Even the most basic verbal agreement incorporates additional rights, responsibilities, and protections under law regardless of if the tenant and landlord discussed these rights.

Oral

Based on the calls we receive, HOME Line estimates that 10 percent to 15 percent of the leases in Minnesota are simple oral leases, or "verbal agreements," where the landlord states how much the rent is, the tenant accepts the keys, moves in, and begins paying rent. Oral leases are legal in most situations. However, if the apartment has 12 or more units or the lease will last longer than a year, the lease must be in writing or the landlord is guilty of a petty misdemeanor.[2]

There may or may not be an agreed-upon length for the tenancy with an oral lease—so it could be fixed-term or periodic depending on the situation. If there was no discussion about the length, the lease is a "tenancy at will," meaning the law requires a notice period of at least as long as the time between rental payments. In most cases this means a month's notice, because rent is usually due on the first of every month. See Chapter 9 for more information on notice periods.

The problem with an oral lease is that if there is a conflict, it is difficult to prove exactly what was included in the agreement that the parties made. Oral leases almost always favor tenants, because they provide the bare minimum requirements under law and do not specify any additional obligations for the tenant. For example, landlords cannot charge a late fee if the lease is verbal. Written leases are usually drafted by landlords, meaning they tend to favor the landlord in many disputes. As a result, most landlords use written leases.

Written

There is no "standard" Minnesota lease. Both parties must agree upon written leases, usually by having both landlord and tenant sign and date the lease. Tenants should not just sign the lease the day they show up to move in. Written leases can have a major effect on a tenant's life if he or she does not understand the agreement. **There is no reasonable purpose for a landlord not to allow a tenant plenty of time to review the lease before signing it.**

A written lease usually includes all relevant terms, requirements, and obligations spelled out for the tenant. It may not be as clear about what rights the tenant has during the tenancy (hence the reason for this book). A lease can include any number of specific

provisions and might point to "addendums," which are additional documents stating requirements or disclosures of the tenant or landlord. Common addendums include those relating to a garage or storage rental, lead paint disclosure, crime-free programs outlining criminal offenses, etc. There may also be a community handbook or resident rules that the landlord provides (these are most likely in larger apartment complexes or where the owner has multiple properties). In order to be enforceable, the lease must include a written statement identifying the handbook. Whether the rules and/or obligations are in the lease itself or in a handbook of rules, as long as the lease specifies these additions, the tenant is stating he or she has read and understood the rules when signing the lease. Both the landlord and the tenant can be held accountable to the terms.

Lastly, there are some terms that landlords occasionally include in a lease that are either illegal or cannot be enforceable under law. An example is when a landlord charges a tenant $75 for "bouncing a check" (the law limits this to $30).[3] Leases also cannot remove a tenant's right to file court actions such as a Rent Escrow or tenant remedies action (covered in Chapter 7, Repairs).

Copy of the Lease

If there is a written lease, the landlord must provide a copy to the tenant. If the landlord fails to do so most of the lease is "unenforceable," meaning a judge or court referee cannot hold a tenant to it as long as the landlord cannot prove the tenant is actually aware of the lease terms. For example, a no pets requirement in the lease would be disregarded if it were found that the landlord failed to give the tenant a copy of the lease. There are some basic rules set out in Minnesota law that remain in effect even if the landlord failed to give a copy of the lease. The rent is still due, the tenant may not engage in prostitution, have illegal drugs, illegal weapons, or stolen property in the apartment,[4] and provisions regarding damage to property or disturbing the peace remain in effect.[5]

If a landlord fails to provide a copy of the lease, the tenant should write a letter requesting one. A sample letter is included in Appendix 2, Form Letters. By making a written request, the tenant is covering him or herself from legal action the landlord may take—if they end up in court, the tenant can prove that he or she was not aware of the lease terms because the lease copy was requested and not provided.

Understanding Key Lease Terms

HOME Line receives numerous calls from tenants who have questions about specific terms in their lease. Many lease terms follow common sense and are usually easy to understand. Tenants should be aware that Minnesota law can still trump certain lease terms that may not be valid. Review this section to learn about how some common—and some unique—lease terms can have different effects on a tenancy.

Cost

Affording rental housing means more than just paying rent. Before the tenant is prepared to sign the lease he or she should know exactly what the costs will be: rent, security deposits, fees, utilities, garage rent, laundry, etc. If the landlord has not identified all of the renter's actual costs yet, the tenant should request this before signing the contract.

Change in Lease Terms

As discussed earlier, some leases state that the landlord has the right to change lease terms at any point. In most cases this is illegal and cannot be enforced. A rare exception is an "escalator clause," which increases rent by some amount based on a factor such as the property tax assessment or other amount set out in the lease. For example, a landlord could include a provision that increases rent $10 per month if the average price of gasoline increases by 50 cents for more than a month.

Change of Ownership

Apartments, duplexes, condominiums, single-family rentals, manufactured homes, and other buildings that are frequently used as rental property are considered real estate like any other building. This means that they can be sold to different owners, even during a tenant's lease period. Tenants should understand the following:

- In most cases, rights remain secure.[6]
- A change in management may not signal a change in owner—it may only mean the current owner has made a business decision to change the manager.
- Landlord foreclosure almost always results in a change of ownership. Review Chapter 15, Landlord Foreclosures, to learn how this affects tenants.

Same shoes, same rules. Landlords almost always have the right to sell the rental unit (whether it is a house, condo, apartment, or something else). The important question is what happens to a tenant's lease if a sale takes place.

The phrase commonly used to answer this question is "the new owner steps into the shoes of the old owner." The lease remains essentially intact and is updated to reflect the new owner as the landlord (for purposes of paying rent, asking for repairs, etc.). In some infrequent cases, a lease can have clauses that specify something different that will happen to the tenant's rights when the property is sold, so tenants should always review the lease. **In most cases, even if a tenant has a very long lease (such as two years), and he or she is only one year into it, the new owner would be required to honor the remaining year and all of the terms specified within it.**[7]

When a new owner wants out of the lease. When a new owner takes possession of a large apartment building, it is rare that the landlord wants to remove all of the tenants. The new owner usually views the current tenants as an asset, because the property is more profitable with more tenants paying rent. There are cases where a new owner wants to fix up the entire place and may want the tenants out, but generally in larger complexes current rent-paying and lease-abiding tenants are encouraged to stay.

In single-family home rentals, the new owner often buys the property with the expectation of making it a future home. Again, unless the lease has very specific language, the new owner must honor the original lease. In these cases, the new owner will frequently negotiate with the tenant to convince him or her to move out, often by asking or paying them to leave before the lease expires. Tenants in these situations are under no obligation to accept such agreements; however, it may make financial sense to negotiate with the new owner.

Security deposits during a change of ownership. Another issue that frequently arises with a change of ownership is determining who is holding the tenant's security deposit. The old owner is required to do one of the following:

- Transfer whatever security deposit (plus interest) the tenant gave to the new owner and tell the tenant about it in writing.
- Return the deposit directly to the tenant within 60 days of selling the property.[8]

If the original owner fails to follow one of the above actions, the tenant can sue under the security deposit rules described in Chapter 13, Security Deposits. The tenant does not owe the new owner a new deposit if the original owner fails to transfer the original deposit. If a new landlord is demanding a deposit, the tenant can refuse and tell the new landlord the law (Minn. Stat. § 504B.178 Subd. 5-6.). If the tenant does not know what happened to the security deposit during a change of ownership, the tenant has a right to sue both the previous and current landlords. It is essential to name both of the landlords as defendants in the court case because the tenant cannot be sure who has the deposit. Only one of the landlords will end up owing the security deposit, but the judge or court referee will determine which landlord is liable.

Fees

Landlords occasionally charge fees for violations of rules or lease terms. Fees may be legal if the lease is specific enough. Many fees are not legal and can be ignored by tenants. Although they can attempt it, most landlords are reluctant to file nonpayment evictions only for fees. Instead, most landlords try to withhold the security deposit to cover unpaid fees. If the tenant disagrees, he or she can sue in Conciliation Court.

Late fees. Late fees are the most common among all additional charges that landlords impose. A recently passed law made changes to how late fees work depending on if the lease was signed or renewed after January 1, 2011.

Any lease signed or renewed after January 1, 2011 cannot include a late fee that exceeds 8 percent of the overdue rent. The landlord must specify in writing the amount of the fee and at what day of the month the late fees begin. A landlord can lawfully charge up to 8 percent of the rent for a late fee on the second of the month if the rent is due on the first and the lease states the fee begins on the second day. For example, if the rent is $500, the most the late fee can be is $40 per month. If the rent is $1,000, the most the late fee can be is $80 per month.[9]

For leases that began prior to January 1, 2011, landlords can only charge late fees that will be a "reasonable estimate of their costs."[10] The landlord cannot charge late fees to get rich or to penalize the tenant but must estimate what he or she is losing when the tenant is late with rent.

Under the new law, if a tenant has subsidized housing, any relevant federal law specifying a late fee requirement remains in effect. For many programs, this puts a smaller cap on the fee and provides a lengthier grace period before the fee is charged.

Nonsufficient funds/bank fees. If a tenant writes a check for rent and his or her checking account does not have enough money to cover it, the landlord may charge a fee. These fees are called "returned check," insufficient funds, or more commonly a "NSF charge." State law limits the amount the landlord can charge to $30 for each bounced check, regardless of what the lease might state.[11]

Attorney's fees. Many landlords include an "attorney's fees" clause in their lease, which makes the tenant liable for the landlord's attorney's fees if the landlord sues the tenant and wins. It is critical to read these clauses carefully, because many only apply if the landlord was the party that filed the original case (allowing the tenant to file cases and not be liable for fees).

A newly passed law makes changes for attorney's fees in leases that begin on or after August 1, 2011, or leases renewed on or after August 1, 2012. If a lease has an attorney's fees clause, then it automatically becomes "bilateral."[12] This means that if the lease allows the landlord to recover attorney's fees if the landlord wins a court case, then if the tenant wins a case, the tenant may recover attorney's fees.

Party fees. In several college towns in Minnesota, landlords penalize tenants for having parties. These penalties usually only occur when the police have been called or if a keg is discovered on the property. The lease must state this penalty for it to be legal. Also, the landlord must be able to show they are harmed because of the party occurring.[13] If the city has an ordinance that fines the landlord $200 because the police are

called out for a party, the landlord can pass that cost on to the tenant. Keep in mind that the landlord cannot profit from this type of fee (charging $1,000 for a $200 city fine, for example). Tenants may be risking eviction for loud parties if the lease states this as a violation.

Administrative fees. Administrative fees are typically taken out of the security deposit. For example, the landlord might claim they have a right to keep $100 of the security deposit to process the tenant's move out. The landlord probably cannot legally deduct this from a deposit unless he or she can somehow prove an actual $100 expense related to restoring the condition of the apartment because of the tenant's actions. This topic is covered fairly extensively in Chapter 13, Security Deposits.

Carpet cleaning fees. Carpet cleaning fees are usually taken from a security or damage deposit. The landlord will insist (verbally or even in a written lease term) that the tenant must pay for carpet cleaning automatically at the end of the tenancy. This is clearly contrary to state law. As mentioned above, this topic is covered in Chapter 13, Security Deposits.

Guests

Guests include any person not named on the lease: a neighbor, a friend, a pizza delivery person, etc. Most tenant-landlord issues relating to guests involve two main issues: how long a guest can stay without the landlord being upset, and what happens if a guest causes problems on the landlord's property.

How long can a guest stay? There is no state law that limits the amount of time a guest can stay in a tenant's home, but many written leases specify a set number of days a guest may stay. These limits vary, but the most common term states that a guest may not stay more than 72 consecutive hours or more than 14 nights in a year. If a lease specifies a reasonable requirement, it can be enforced by the landlord and could result in eviction depending on the lease language.

Eviction for a guest. Landlords file evictions for an unauthorized occupant more frequently than any other reason besides nonpayment of rent. These are actually very difficult cases for a landlord to win. Initially, the lease (or federal law in the case of subsidized housing) must prohibit guests, otherwise the tenant can have as many people as local occupancy ordinances will allow. Landlords must have evidence that someone who is not on the lease is living in the apartment. A landlord with a successful eviction case proving that there is an unauthorized occupant usually must include one or more pieces of evidence. The following reasons can be used in court (as long as the landlord has some type of solid evidence) to prove a guest has become an occupant:

- Mail: The mail carrier notices mail delivered to Jim when only Jennifer's name is on the mailbox. The mail carrier is not looking for trouble: He or she is merely trying to deliver mail to the proper address and might ask the landlord about it.
- Police calls: If the police are called to a residence for a disturbance of any type, they will ask everyone his or her name and the address of each adult. If the tenant's guest says he or she lives in the apartment, this will become part of the police report.
- Property: If someone is storing all of his or her belongings at someone else's apartment, it is an indication that he or she may be living there.
- Keys: If the tenant's guest has a copy of the key to the apartment, it suggests that the guest is living there.
- Bills: If the tenant's guest is paying utility bills for the apartment, it is a piece of evidence that indicates he or she is living there.
- State-issued identification: If the tenant's guest has a driver's license with the address of the apartment listed, this is an official declaration to the state that he or she resides at that address.

None of these pieces of evidence can alone automatically prove that a guest has moved in (except for a state-issued identification, which is a very good case for a landlord). Nonetheless, each of these pieces of evidence can help prove that the tenant's guest is actually living in the apartment while not named on the lease.

The most ideal way for a tenant to prove that a guest is not living in the apartment is to provide evidence showing that the guest lives somewhere else. A valid signed lease at a different address is usually enough evidence that most landlords will accept it as proof. A guest may be able to prove residence elsewhere if he or she has paycheck stubs that are sent to another address or even utility bills in his or her name at another address.

Renters might question why a landlord needs to know when a guest—such as a boyfriend or girlfriend—has become an occupant. The landlord has a right to know who is living in the rental property. If there is a new occupant, the landlord has not completed a credit, rental or criminal background check on the guest. The landlord has a right to require any new occupant to complete the normal application process. The landlord may need to charge additional rent for additional occupants in the apartment, especially if the landlord is paying any utility bills.

If a tenant wants to add a guest to the lease, the tenant should tell the landlord that he or she wants to add the person. The landlord may wish to do a background check, charge the standard background check fee, and decide if the applicant meets the criteria. The landlord has the right to deny an applicant if he or she does not meet the landlord's screening criteria. There is no law requiring a landlord to add a newly married

couple or a child's parent to a lease. If the landlord is denying an applicant for a reason not on his or her criteria, it may be discrimination (see Chapter 3, Discrimination).

Behavior of guests. While a tenant is generally allowed to have any guests he or she chooses, tenants must understand that responsibility for the guest and his or her behavior can have consequences for the tenant. If the guest commits a crime or violates the lease while on the property under most leases the tenant will be responsible for this behavior.

Tenants may be able to defend themselves from an eviction by stating that they had no idea that their guest would engage in that type of behavior. This is a fairly difficult eviction defense. The best approach for a tenant is to invite trustworthy guests and to inform any guest that appropriate behavior is expected during the visit. A friend who is visiting should understand such a request because his or her behavior can cause the tenant to be evicted.

Trespass notices for guests. Landlords and city police departments have recently begun giving "trespass notices" to tenants' invited guests. Trespass notices typically threaten criminal consequences if the guest returns to the property in the future. Trespass notices usually expire after one year; however, some may specify that they are indefinite. Tenants should understand that these notices are generally not legally enforceable, even if they came from the police.

Under Minnesota law, the tenant has the right to invite any guests he or she chooses, unless the lease specifically states that the landlord has control over every guest who is on the property. Except for some transitional housing or homeless shelter providers, most leases are not this strict. Besides apartments with these unique leases, guests have the right to enter the property without the landlord's permission or knowledge and go directly to the tenant's rental unit. If the guest is with the tenant, he or she can access other common areas (pool, laundry area, party room, etc.).[14]

In general, the tenant is the only person with the power to decide who guests will be and when they can visit. Despite their official appearance, trespass notices have very little legal effect under current law. Unless a guest previously committed and was convicted of a crime at the property, most trespass notices are not legally enforceable. A tenant could ignore the notice and be prepared to defend an eviction with evidence that there was no lease provision or criminal restraining order barring the guest from visiting.

Tenant organizers as guests. Federal law permits legal entry into most types of subsidized rental housing for specific guests who enter an apartment for the purpose of educating, informing, and organizing residents about their rights. In most cases, tenant organizers have the right to knock on each resident's door to discuss tenant rights and must leave an individual tenant alone if requested. Under state law, tenant organizers have the same rights as any other guest—as long as a single resident is interested in hearing what

an organizer has to say, neither the landlord nor the police can forcibly remove the organizer. These rights are important as they help all renters understand their tenant rights and organize to respond to poor rental conditions, improper management, and the loss of affordable housing. For more information about tenant organizing, see Chapter 20, Tenant Organizing.

Parking rules/towing

A landlord can only tow a tenant's car under certain circumstances. In order to be a legal tow, the landlord must have a legal right to tow a car (such as a lease provision that allows for towing). If a landlord includes a towing policy in the lease, it is usually based on a certain amount of snowfall or following a specific type of advance notice provided to all tenants before towing (either by posting something on a community board or sliding a note under each apartment door). In either case, a landlord cannot tow unless he or she follows the rules stated in the lease.

Pets

The topic of pets in rental units is a common reason for calls to HOME Line's tenant hotline. Landlords frequently file evictions for unauthorized pets in apartments because most written leases prohibit pets without the landlord's written permission. Tenants should be responsible renters and responsible pet owners by understanding what obligation they have under their lease.

Requesting permission for owning a pet. If at all possible, tenants should ask a landlord for permission to have a pet before they move in. Tips on negotiating lease terms are covered at the end of this chapter. Frequently the advertisements landlords post for their apartments will explain whether pets are acceptable. If the landlord's advertisement is not clear about pet policies, the tenant should ask before looking at the rental unit. The tenant should ask to read the landlord's lease in advance to understand any pet-related rules. Landlords can have different rules for different types of pets; for example, they might allow cats but not dogs or charge a higher deposit for larger animals. Occasionally, leases state that a tenant may have a small fish or a small bird without permission. When in doubt, a renter should tell the landlord about a pet before bringing the pet home.

Pet rent/deposits. There is no limit on how much a landlord can charge for pet rent or for a pet deposit. Most commonly, landlords charge a monthly pet rent around $25 per month for a cat and $50 per month for a dog. As long as the monthly pet rent is outlined in the lease, it is most likely legal. Tenants should be aware that a monthly pet rent outlined in a lease can be very different than a one-time pet deposit.

Pet deposits, which are similar to a security deposit, average $200 to $500. Many landlords state that pet deposits are nonrefundable. This is not legal, as the definition of a deposit implies

that the money is returned if the tenant meets certain rules. The same state law that covers security deposits also covers pet deposits, which may overrule the landlord's lease if he or she declares a deposit as nonrefundable. The legality of a pet deposit is dependent on the language the landlord uses in the lease, which can be difficult to confirm. Tenants facing this situation can call HOME Line for legal analysis. Lastly, if an animal is present due to a disability (a service or companion animal), a landlord cannot charge an additional pet deposit or pet rent.[15]

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Pets and service animals. Leases that prohibit pets are legal and enforceable. However, there are cases when a tenant may have a right to keep an animal if he or she can provide evidence of a medical necessity. These exceptions include the following:

- Tenants who live in public housing have a right to own a pet. The landlord can set reasonable rules about pets, including where the pet can go and how the tenant must clean up after it.[16]
- Tenants who live in some types of subsidized housing who also meet the definition of elderly or disabled have a right to own a pet. Federal rules regulate the pet deposit the landlord can charge.[17] Tenants who have a tenant-based Section 8 voucher are not covered by this requirement. A private landlord renting to a voucher holder can restrict pet ownership.
- Tenants who have a service animal. A service animal is specially trained to help with a disability: for example, a seeing-eye dog.[18]
- Tenants who have a disability may have the right to an animal if they can prove a need. The animal may not have to be specially trained. See below for the requirements.

"Disabled" means a tenant has a physical or mental condition that substantially limits a major life activity like working, walking, eating, or communicating.[19] If the tenant

is disabled he or she may ask a landlord to change the no pets rule by making a reasonable accommodation. Both federal housing laws and state civil rights laws require landlords to make reasonable accommodations. This is discussed more in Chapter 3, Housing Discrimination; below is a brief outline for pets.

A tenant must establish three things when making a request for a reasonable accommodation relating to pets:[20]

1. Show that he or she has a disability.
2. Request that the lease allow for pets.
3. Explain why allowing pets is a necessary and reasonable way to accommodate the disability.

The tenant must have evidence that shows that an animal is similar to a medical prescription; having the animal either cures a disability or alleviates its symptoms significantly. Ideally, a tenant should have a detailed letter from a doctor or other professional. The letter should state that the tenant has a disability and needs the animal in order to provide equal use and enjoyment of the housing. A reasonable accommodation depends on the facts of the situation.

The landlord must allow the change in rule unless it somehow causes an unfair hardship, either financially or administratively. In most cases a reasonable accommodation for a pet should not cost the landlord money nor cause problems for neighbors. The tenant must be able to care for the animal and make sure it does not disturb others. As mentioned earlier, if an animal is present due to a disability (a service or companion animal), the landlord probably cannot charge an additional pet deposit or pet rent.[21]

Rent Due

One lease term that almost no landlord forgets to include is a section specifying on which date of the month rent is due. If the lease states that rent is due on the first but the late fee does not begin until the fifth day of the month (very common in Minnesota leases), the landlord still has a right to file an eviction on the second day of the month. If a landlord has traditionally accepted late rent on the fifth day of the month, the landlord might have difficulty enforcing an eviction action if he or she suddenly decides to evict on the second day of the month. A tenant in this situation might have a defense of retaliation if he or she had recently invoked rights (asked for repairs, etc.). See Chapter 8, Retaliation, for more information about dealing with retaliation.

Prospective renters should be aware that if they regularly pay their rent late, their current landlord can inform any new landlords—who often will call in an attempt to screen the tenant's rental history—of their frequent late payments. Even though the landlord never filed an eviction, he or she can still tell others that the tenant was technically violating the lease.

Renter's Insurance

A landlord can legally require a tenant to purchase and maintain renter's insurance during tenancy. The lease must state whether it is a lease violation if the landlord wants to enforce such a requirement. Renter's insurance is a good investment in most cases because it is not very expensive and because the landlord is rarely liable to pay a tenant back for lost property as a result of a fire, burglary, or another problem. Tenants can sue their landlord in conciliation court for destroyed/stolen property if they believe the landlord was at fault, but it may be very difficult to succeed.

Shared Utility Meters:

State law requires landlords to follow certain guidelines in situations where a tenant is not in total control over the utility bill because the utility meter measures more than one unit.[22] The law actually refers to this situation as "single metered," but it is more commonly known as "shared meters." The law governs water, sewer, natural gas, and electricity charges. The law is enforced when a tenant lives in a multiunit building where at least one unit is residential and a single meter measures a utility service to the tenant's unit as well as another unit or a common area (hallway, pool room, parking lot, etc).

Effectively, the law requires the landlord to fairly divide a utility bill among all parties who use the service. Tenants who are in this situation may end up paying more for their utilities than they should legally. Renters may have to put some effort into identifying a shared meter and enforcing their right not to pay the entire bill. If renters are successful, a judge can award them monetary damages.

There is an exception to the shared utility law for electricity service where the sharing is limited to outside use (such as a hallway light) of less than 1,752 kilowatt hours per year. This is basically one 200-watt bulb on all day, every day. The landlord must be able to prove that the electricity use is below this cap.

How to determine if a meter is shared. If the tenant suspects a shared meter, one way to confirm is to contact the utility company. Utility companies must investigate when contacted about a suspected shared meter. Certain utilities like electricity or even gas require expert investigation to confirm shared meters.

Tenants may be able to identify a shared meter through their own investigation. Utilities like water or electricity lend themselves to an easier investigation as the tenant can control the use of the utility. For example, a tenant might be able to detect a shared meter by turning off and unplugging all electrical appliances in his or her apartment. As long as a tenant is using utilities in the apartment unit that is suspected of sharing utilities, the electric meter for the first apartment will still be spinning, showing continued shared use of the electricity.

Bill in landlord's name. If there is a shared meter, the landlord must put the bill in his or her own name. If the landlord sets up a utility account with the tenant's name and the tenant ends up paying, the tenant has a legal right to have the bill transferred to the landlord as well as a $500 penalty or "treble damages" (triple what the tenant has paid for the utilities), whichever is greater. A court would impose this judgment, allowing the tenant to collect the money if he or she wins.

Landlord Must Disclose Utility Information. When there is a shared utility meter, the landlord puts the bill in his or her own name and then "re-bills" the tenant for a fraction (share) of the total bill. Generally, a landlord must divide up a bill among all parties using the service. The process the landlord uses to bill the tenant must follow these rules:

1. The billing formula must be written in the lease.
2. The billing formula must be "equitable" (fair to the tenant).
3. The billing formula must be an "apportionment," meaning the landlord cannot charge fees. The formula must divide up the bill and not add billing or administrative fees (landlords occasionally attempt to collect fees, especially at larger apartment complexes).[23]
4. The lease must state that upon the tenant's request, the landlord will provide a copy of the full bill for the utility meter that the landlord received from the utility company, along with the partial/fraction bill sent to the tenant. The landlord must abide by this lease provision.
5. Upon request, the landlord must give the tenant copies of the landlord's full bills for the previous two years (or earlier if the landlord recently purchased the building).
6. Before signing a lease, the landlord must provide any prospective tenant the amount of the bill for each billing period (usually each month) during the prior calendar year. This requirement includes the whole bill from the utility company for the shared meter (this can be two units or even the entire apartment complex depending on what the meter measures). For example, a prospective renter applies in January 2011 and the landlord wants to "re-bill" for water, which is billed quarterly. The landlord must provide four numbers to the applicant: the amount he or she was billed in each quarter in 2010.

A landlord who fails to follow these rules is liable for either a $500 penalty or treble damages, whichever is greater. Again, a court would impose this judgment, allowing the tenant to collect the money if he or she wins.

How to deal with shared-meter violations

If a tenant is aware of a violation, he or she should consider any of the following actions:

1. Contact the utility company asking to transfer the bill into the owner's name and retroactively transfer past charges.
   Contact the landlord, specifying the law (Minnesota Statute § 504B.215, Subdivisions 1 through 2a) and negotiate for the landlord to provide back-payments and for a fair payment arrangement going forward.
2. Suing the landlord in Conciliation Court for the $500 or triple damages (Chapter 13 includes tips on court).

Snow Removal/ Lawn Mowing

Jason Goodrich

A landlord can require a tenant to take care of maintenance (snow shoveling and lawn mowing are the most common), but the landlord must pay the tenant to do this work. This payment has to be "adequate" or fair, and the agreement to perform the maintenance must be in writing.[24] For example, a legal maintenance provision would be when the lease states that rent is $1,000 if the tenant does not shovel and mow but only $900 per month if the tenant does (assuming $100 per month is adequate pay for the work given the size of the yard and driveway). If the landlord fails to write down the amount of the discount for performing maintenance, then the tenant can either stop performing the maintenance or sue the landlord for past due wages after move out. See Chapter 18, Employees of the Landlord, for more information.

Negotiating Different Lease Terms

Landlords are running a business when they accept prospective tenants to live in their property. Because rental housing is a business, tenants are the customers who can have an influence over the product they are receiving. **Before signing a lease, prospective renters should carefully read and understand the lease.** If there are lease terms or provisions that the tenant disagrees with, or if the tenant wants to include additional amenities or services, he or she should identify these issues and negotiate with the landlord to address concerns.

The best time to negotiate for different lease terms is after the tenant has applied and been approved for the apartment but before signing the lease. At this point the landlord has already accepted the tenant, meaning that he or she qualifies and the landlord is interested in making the tenant his or her newest customer. Keep in mind that although almost all landlords provide written leases, very few of them have actually written it; instead, many landlords use model leases drafted by attorneys. This is important because these landlords do not have any reason to be especially defensive about the terms currently written in the contract; therefore, tenants should not feel shy about negotiating what the lease contains. The landlord might be more willing to agree to lease changes if he or she is trying to minimize the number of vacant apartment units. **Furthermore, if the tenant is up front about concerns he or she has with the lease before the tenancy begins, the landlord may be more eager to fix the lease terms rather than deal with problems or lease violations later in the tenancy.**

For example, if there are provisions in a lease about a maximum number of days a guest can stay and the tenant knows that his or her sister will be coming to visit for the summer, the best time to mention it to the landlord would be before signing the lease. It is more likely the landlord will allow this visit to occur if he or she is aware of it early in the process, and the tenant may be successful in removing or modifying the guest provisions from the lease.

If the landlord and tenant agree to any new lease terms, they can either draft a new contract or the terms can be written on the current lease. The landlord and the tenant should both write the date and sign their initials next to any changes made to the lease contract.

Conclusion

As a general rule, prospective renters should never sign something they have not read or do not understand. Leases are valid, enforceable legal documents. This means a tenant can end up owing thousands of dollars of rent to a landlord or even end up homeless after violating terms of the lease. Prospective tenants must understand a few basics to ensure they can abide by the terms of a lease: how long the lease will run, the amount of rent and deposits owed, when rent is due and if late fees are charged, who pays utilities, and what other rules govern the tenancy. Before agreeing to a lease, tenants can try to negotiate with the landlord if they want something changed, though the landlord may not have an obligation to agree with lease changes. For help understanding a lease, call HOME Line's tenant hotline.

Notes

1. Minn. Stat. § 504B.01, Subd. 8
2. Minn. Stat. § 504B.111
3. Minn. Stat. § 604.113, Subd. 2
4. Minn. Stat. § 504B.171
5. Minn. Stat. § 504B.115
6. *Fisher v. Heller,* 219 NW 79, 174 Minn. 233 (1928).
7. *Fisher v. Heller,* 219 NW 79, 174 Minn. 233 (1928).
8. Minn. Stat. § 504B.178, Subd. 5-6
9. Minn. Stat. § 504B.177
10. *Gorco Const. Co. v. Stein,* 256 Minn. 476, 99 N.W.2d 69 (1959).
11. Minn. Stat. § 604.113, Subd. 2(a)
12. Minn. Stat. § 504B.172
13. *Gorco Const. Co. v. Stein,* 256 Minn. 476, 99 N.W.2d 69 (1959).
14. *State v. Hoyt,* 304 N.W.2d 884 (1981).
15. No Pets Allowed: Housing Issues and Companion Animals, 11 Animal L. 69,85-86 (2005).
16. 42 U.S.C. § 1437z-3(c)
17. 12 U.S.C. § 1701r-1(a)
18. 24 C.F.R. § 100.204(b)
19. 42 U.S.C. § 3602(h)
20. 42 U.S.C. § 3604(f)(3)(B)
21. No Pets Allowed: Housing Issues and Companion Animals, 11 Animal L. 69,85-86 (2005).
22. Minn. Stat. § 504B.215.
23. *State by Hatch v. Northtown Village,* Anoka Cty Dist. Ct. File No. C5-03-64, (July 21,2003) (consent judgement).
24. Minn. Stat. § 504B.161, Subd. 2.

5 Neighbors

In most types of rental housing, tenants share walls, hallways, parking lots, and other common areas with each other. This can inevitably lead to conflict when neighbors do not act respectfully. While most tenants get along with their neighbors, there are times when it seems like it is impossible to coexist in the same building.

Most neighbor disputes involve noise complaints. Less common are disputes over smoking, parking spaces, access to common areas and amenities. Neighbor disputes can often be dealt with informally, but renters should know that their landlord may be ultimately responsible for solving these problems.

WHAT YOU'LL LEARN:

- How to deal with noisy neighbors.
- Your rights if being accused of a noise violation.
- To recognize laws that specify requirements for smoking.

Dealing with Loud Neighbors

Dealing with loud neighbors can feel like an absolutely powerless situation, because tenants will often find that the neighbor, the landlord, and even the police will be reluctant to stop the noise. One of the landlord's duties under the law and the lease is to keep the apartment "fit for the intended use." Sleeping is obviously one of the intended uses of an apartment. Ultimately, to enforce this law when a landlord fails to comply, a tenant would need to file a Rent Escrow action in court.[1] The process of filing a Rent Escrow action is described more in depth in Chapter 7, Repairs. Below is a general guideline for how a tenant should approach a noisy neighbor situation leading up to filing a Rent Escrow action if it becomes necessary.

HOME Line's advice for renters follows the subsequent timeline, which usually takes more than just one noise complaint. HOME Line suggests that tenants keep written track of each noise violation. Often, tenants may have already tried one or more of these steps. It is important to follow the steps in order, as it can provide the tenant with the best argument in front of a judge if absolutely necessary.

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1. Make respectful and polite requests to the neighbor to quiet down.
2. If the neighbor does not quiet down, ask the landlord to deal with the situation.
3. If the landlord does not deal with the situation, call the police if the noise continues to be blatantly obvious. Obtain any police reports that are issued, if at all possible.
4. If the noise continues, submit a formal, written request to the landlord (See Appendix 2: Notice of Neighbor Violation form letter). This is effectively a "14-day letter" that legally allows a tenant to file a Rent Escrow action later.
5. If the landlord fails to comply within 14 days, the tenant can file a Rent Escrow action in court to have a judge order a remedy.

Throughout this timeline, tenants will find that each party may be reluctant to stop the noise for various reasons. The neighbors may not respond to any polite requests to quiet down. Tenants should then complain to the landlord. Unfortunately, landlords will routinely ignore such neighbor complaints because both the tenant and their neighbor are equal customers in the landlord's mind. The landlord does not want to take sides for fear of losing one or both of the paying customers. When tenants try calling the police, they often arrive too late to assist because the noisy neighbor has either quieted on their own or stopped all activity in order to fool the police. Regardless, if the police issue any type of report, the tenant should obtain a copy in case he or she needs to prove the issue to the landlord or in front of a judge. Tenants should use a written request. See Appendix 2 for a sample Notice of Neighbor Violation form letter.

Tenants may have the strongest legal protection if a neighbor dispute is truly unlivable. In a scenario where a tenant must sleep elsewhere every night just to get rest, that tenant may have an argument to break the lease.[2] These cases are called a constructive eviction and are covered in more depth in Chapter 7, Repairs. Again, these arguments are only valid in the most extreme circumstances where a rental unit is unlivable because of noise.

In Rent Escrow cases involving neighbor noise complaints, a judge has the power to order several different remedies.[3] The judge can order that the lease be ended, that the tenant be refunded rent money for not having a suitable place to live, or even require the landlord to either quiet down the noisy neighbor or file an eviction to remove him or her. Tenants who intend to file a court case should consider documenting the issues as thoroughly as possible. This may mean recording the noise levels (or asking a witness to listen to it). Keeping a dated journal of each noise violation, as well as obtaining police reports, as discussed earlier, can be useful in court.

Often, giving the landlord formal written notice (with the form letter in Appendix 2), or filing a court case might lead to the landlord having a more reasonable settlement conversation with the tenant before going to court.

Defenses When Accused of Noise Violations

The first defense to any noise complaint is that there either is no noise or that the accused tenant is not producing the noise. If a neighbor is complaining about noise levels, it is difficult to take legal steps to resolve the situation. As discussed above, the inevitable outcome of a neighbor who has a complaint may result in the landlord filing an eviction on the accused party. The best solution involves negotiation and agreement between neighbors.

Tracey Goodrich

Children are often the cause of noise complaints. This can be difficult for parents who may be making every attempt possible to minimize noise but are unsuccessful because of their children's behavior. In the case of small children, communication is essential to avoid eviction or other consequences. Tenants should try to come to an agreement about noise levels. These agreements might require a certain timeline during which the children will be quiet. For example: between 10 p.m. and 7 a.m., or the tenant may require that children stay out of a certain room during the time the neighbor downstairs is sleeping. Neighbors should share their phone numbers and agree that they will call when there is a noise problem rather than calling the landlord or the police first. **By agreeing to a reasonable phone call beforehand, tenants can solve many noise issues instead of escalating the situation.**

When the noise is related to something other than children, such as stereos, TVs or computers, tenants can usually take steps to minimize their noise. Because noise violations can constitute a lease violation, tenants should recognize their willingness to minimize noise can mean the difference between an eviction and a happy tenancy. Headphones (some are cordless now and work reasonably well) may be a solution,

especially when a person needs a higher volume because of hearing loss.

If these practical approaches do not work, tenants may want to approach their landlord about transferring to a different apartment unit or ending the lease. The landlord likely has an interest in keeping the quiet tenant as a customer, so he or she may let the noisy neighbor out of the lease.

Smoking and Secondhand Smoke from Neighbors

It is a petty misdemeanor to smoke in the hallway or other common areas of any apartment building in Minnesota.[4] Beyond the common areas a landlord has the right to decide that the apartment building is going to be smoke-free or not.[5] There are some prospective renters shopping for apartments who want smoke-free buildings, while others want the freedom to smoke. As a result, some landlords cater to either type of tenant and may advertise the apartment buildings as such.

Legally, smoking is exactly like noise when it comes to apartment life. Secondhand smoke from a neighbor that intrudes on a tenant's living environment can be considered a violation of the Covenants of Habitability[6] (see Appendix 5) if it causes difficulty breathing. Furthermore, secondhand smoke may increasingly aggravate those with certain medical conditions.

Complaining about Smoke Entering an Apartment

If the apartment is advertised as smoke-free and the neighbors are frequently smoking, the tenant has a strong claim against the landlord. The lease may even state that the apartment is smoke-free. A tenant could easily file a Rent Escrow action in this case (see Chapter 7, Repairs for that process).

Even when there is no promise of a smoke-free apartment building, a tenant still has a right to an apartment where smoke does not pour in.[7] Just as with a noise complaint, the tenant should follow a similar timeline that will ultimately result in a Rent Escrow action if necessary. Again, if the apartment is truly unlivable and the tenant has a note from a doctor regarding the tenant's inability to continue living there because of health reasons, there may be an argument for a constructive eviction, as was explained earlier for noise violations (and discussed in more depth in Chapter 7, Repairs). Constructive evictions can be exceptionally difficult to prove, so tenants should fully understand the law and have proper evidence.

Change of Lease or Ownership

When a new owner wants to change a complex to one that is non-smoking, he or she can run into trouble if there are already smokers living there. This becomes a legal issue when the landlord attempts to alter the terms of the lease agreement midway through

the lease.

A landlord has a right to make the building smoke-free if he or she so chooses but cannot change any terms in the middle of the lease, including whether smoking is allowed. Landlords must follow proper notice procedures, which tenants can learn more about in Chapter 10, Rent Increases (notice periods for rent increases are the same for other changes to lease terms).

Conclusion

Dealing with a problem neighbor can be frustrating, but tenants have negotiation options and legal choices available when the problem is severe. It is important to document neighbor violations and take proactive steps with the neighbor, the landlord, the police, and the courts if necessary.

Notes

1. Minn. Stat. § 504B.385
2. *Colonial Court Apts. v. Kern*, 282 Minn. 533, 163 N.W.2d 770 (1968).
3. Michael Vraa, Handling a Noisy Neighbor, 71 Hennepin Lawyer 14, May 2002 (also available at www.homelinemn.org/publications/other-publications/).
4. Minn. Stat. § 144.417, Subd. 2
5. See 32 Am. Jur. Landlord and Tenant § 205
6. Minn Stat. § 504B.161
7. Minn. Stat. § 504B.161

6 Privacy Violations

Invasion of privacy, or a landlord intrusion, can be tremendously upsetting for any renter. Minnesota state law directly addresses privacy in an apartment, but the statute itself only answers some of the most common questions tenants ask. In many cases, renters just need to keep the landlord informed of the law and record any unauthorized invasion of their privacy. Tenants will be most successful suing a landlord if they can prove continued, inappropriate, and unauthorized invasions of privacy. As discussed in the introduction to this book, the term "landlord" in this chapter can mean any number of people including the owner of the apartment, a manager, a caretaker, a maintenance worker, or even an employee of another company who has been hired to perform a service for the landlord (a pest control company, a plumber, etc.).

WHAT YOU'LL LEARN:

- What a landlord's "reasonable business purpose" can mean.
- There is not a set standard for "reasonable notice."
- That in an emergency situation a landlord can enter without notice.
- That vague "blanket notices" are not valid if they provide no specific date and time for entry.
- How to reasonably address a privacy violation.
- What you can sue a landlord for if you believe your privacy was violated.

Basic Guidelines

A landlord always has the right to knock on a tenant's door and ask for permission to enter (a landlord has the same right that a flower delivery employee has to knock). In these cases, if a tenant has not received any previous notice from the landlord, the tenant can refuse the landlord entry. The concern is that the landlord has a key to the rental unit and, if he or she wishes to break the law, can get in without permission. This is what the state law is concerned with: the landlord (or agent, caretaker, maintenance, etc.) using a key to enter the rental unit unannounced or barging in without permission.

According to the law,[1] the landlord can only enter if the following two conditions are met: the landlord must have a "reasonable business purpose" for entering the unit and must try to give the tenant "reasonable notice." Tenants should note that the notice does not have to be in writing to be legal; it can be provided verbally as well.

Landlord Needs a Reasonable Business Purpose

A "reasonable business purpose" means the landlord must enter the unit for some purpose defined under the lease or the law. The law names several circumstances that it considers to be reasonable business purposes. These include, but are not limited to, entry by the landlord to check smoke detectors, to inspect the unit for any repairs that are needed, to complete needed repairs, to check for unauthorized residents, or even to show the unit to a prospective tenant. Entering the unit to demand rent payment, to shut off the tenant's radio, or to intimidate the tenant for any other reason would not be a reasonable business purpose. If a tenant wanted to challenge a landlord on reasons for entry, the tenant would need to go to court, and the burden would be on the landlord to prove to a judge that it was a reasonable business purpose.

When a landlord has a legitimate business reason, the tenant's permission is not necessary to enter; rather, the landlord must notify the tenant of the reason and give that notice within a reasonable time frame of the entrance.

Landlord Must Provide Reasonable Notice

How much notice is reasonable? "Reasonable notice" is not explicitly defined in the law. The law does not require a landlord to give a minimum of 24 hours notice, as many people believe. It is possible for tenants to negotiate with a landlord in advance to include such a requirement in their lease, and in those cases the landlord must give 24 hours notice. In most cases, the law requires the landlord to at least attempt to notify the tenant of the plan to enter, the reason for entering, and a definitive time when the entry will occur. The point of this law is to allow tenants to plan their lives around the landlord's intended time of entry. Tenants do not want the landlord arriving while they are sleeping, in the shower, or in some other private situation.

Several Privacy Violation Scenarios

The situations where privacy violations occur most frequently are when the tenant has asked for repairs, the landlord is performing repairs or inspections, the tenant has not paid rent and the landlord enters to demand rent, or the landlord is trying to show the apartment to someone else.

Tenant Requests Repairs

In this case, the tenant has an interest in allowing the landlord entry to complete repairs. Because the tenant has actively requested the repair, many landlords will assume the tenant is forfeiting any right to privacy. The landlord may presume he or she does not even need to inform the tenant when he or she (or a hired employee) plans to enter. The law does not allow the landlord to do this. The landlord is still required to inform the tenant when the entrance is scheduled for, regardless of whether the tenant had requested a repair. If the landlord is hiring a company or individual to perform repairs, the tenant should be informed as soon as a scheduled time is set for the contractor to arrive.

Landlord Performs Repairs or Inspections

There is no question a landlord needs to be able to enter an apartment in order to make a repair or to assess the conditions of the unit, whether it is part of a regular inspection required by the city, state, or federal government, or whether the landlord wishes to maintain the property. What can often happen is that a landlord gives a tenant proper notice that he or she is coming either to inspect the apartment or to fix something, but does not show up. Rather, the landlord ends up entering the unit the following day, later in the week, or on some other day. It is understandable that unforeseen events happen that interfere with scheduling. Nonetheless, the landlord is legally obligated to provide new notice to the tenant for the day he or she actually plans to come do the repair or inspection.

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Another situation that may arise is when the landlord states the plan to enter part of the unit for one business purpose but enters for

something else that the tenant is not expecting and enters other parts of the unit. For example, the apartment manager tells a tenant that he or she will be coming over with a technician to inspect the furnace. When the manager and technician arrive, the manager also inspects the entire apartment for housekeeping and safety hazards. Although both are reasonable business purposes, this situation is a problem because the tenant did not know to prepare for this type of inspection in the entire apartment and may have left personal items in plain view in some of the rooms. The notice that the landlord provided is not good enough and is in violation of the tenant's privacy.

Landlord Enters to Demand Rent

This circumstance can involve anger between the landlord and the tenant. The landlord is annoyed because the tenant has not paid rent yet. The tenant is mad because the landlord barges in with no advance notice and without the tenant's permission. The tenant has the right to call the police and ask that the landlord be removed for trespassing (see penalties below).

Landlord is Showing the Unit to a Prospective Renter

This is the most common privacy violation for which HOME Line receives tenant complaints. The tenant has provided notice to move out at the end of the next month, and the landlord wants to show the apartment unit to prospective tenants. The landlord will want to show the property as soon as a prospective tenant arrives at the property. This is understandable, as the landlord does not want to lose a potential new customer. Furthermore, this book advises prospective renters to view the actual apartment unit they will be renting before signing a lease (Chapter 1, Shopping for an Apartment, and Chapter 13, Security Deposits have more information). Nonetheless, reasonable notice is still required by law for the landlord to enter the unit with a prospective renter.

Tenants should consider the strong financial interest they have in making sure their place is re-rented for the day after they leave so the landlord has less time or reason to nitpick issues to be deducted from a security deposit (Chapter 13). In any case, there are reasons why current tenants in these situations do not want to cooperate with the landlord. The relationship with the landlord may have soured over time. The tenant has no obligation to help the landlord show the property if proper notice was not given. Furthermore, the tenant is not required to leave when the landlord is showing the place, to clean up before the landlord comes over, or even to sit quietly when the landlord and prospective new tenant are in the apartment. HOME Line is aware of instances where current tenants remained present and told their rental and repair problems to the new tenant as he or she was looking around. This may not be a great idea for the current tenant (poor relations may prompt a landlord to be exceptionally thorough when identifying security deposit deductions), but there is no law preventing it.

"Blanket" or Vague Notices

A "blanket notice" says something like "We'll be in sometime during the next two weeks to check on everyone's air conditioner during reasonable business hours." These notices are not reasonable as they fail to provide the tenant with any identifiable time frame when the landlord will enter. Such a notice suggests that the tenant should go without showering during business hours for two weeks because the tenant cannot be certain of the exact time the landlord will enter. Cable companies and other repair professionals have set an accepted standard of providing a four-hour (or less) time frame for when they expect to arrive. A proper notice for entry should give tenants a specific date, not a range of dates, and a window of time to expect possible entry on that date.

Entrance for Emergencies

In an emergency, the landlord has the right to enter without any notice at all. Emergency is not completely defined in the law, but cases suggest that if there is an immediate health or safety threat such as a gas leak, water visible under the door, or smoke coming out of the window, the landlord may enter. If the landlord enters because he or she observed an emergency situation, they are required to leave a note in a visible location stating when and why they entered.[2]

Responding to a Privacy Violation

Because of the method by which a tenant enforces rights in a privacy violation circumstance, as well as the relatively small penalties for landlords, tenants should be methodical about documenting every violation. In most cases, a landlord will comply when challenged by a tenant with a letter explaining the violation. In some situations landlords will test the limits. In these cases, tenants should attempt to document each violation, noting each entry: date, time, notice period, reason for entry, person who entered, and any other appropriate information. In extreme circumstances, tenants may want to set up surveillance in their apartment if they are concerned about safety and/or theft. Providing a documented timeline of multiple privacy violations or some type of photo or video evidence will help a tenant prove the case in court.

After even one suspected violation of privacy, a tenant is within his or her rights to sue the landlord; however, in most cases, it is not a reasonable response, because it takes time, money, and patience. Tenants are almost always better served by notifying the landlord in writing of the violation, the relevant laws, and a suggested ideal notification timeline if the landlord had not given a reasonable notice. Appendix 2 includes a form letter titled "Notification of Tenant's Right to Privacy" that renters can use to respond to a violation of privacy.

Landlord Penalties

The penalties for privacy violations are quite weak for "lesser" violations. The statutory civil law penalty for a landlord violating the privacy statute is limited to $100 per violation.[3] A tenant may face several challenges to successfully bring a civil case. First, the tenant must prove that the landlord entered without any reasonable notice. Second, the tenant can only sue for these damages by bringing a court action, such as a Rent Escrow or Tenant Remedies Action,[4] and the case must be filed while the tenant still lives in the apartment. The tenant cannot sue for a $100 violation in Conciliation Court; it must be a Rent Escrow or Tenant Remedies Action. A judge does have the power to end a lease in these court actions, if he or she deems it appropriate under the circumstances[5] (see Chapter 7, Repairs, for a discussion of Rent Escrows).

A tenant can call the police if a landlord enters without advance notice. When a landlord decides to rent to a tenant, the landlord gives up some possession rights of the apartment. Unless the landlord complies with the privacy statute, he or she cannot lawfully let him or herself in. If the landlord enters, the tenant then has a right to complain about this violation. The criminal statute to quote to a police officer relating to this situation is Minn. Stat. § 609.605.

If the landlord does something really bad in the apartment, there may be a case for more damages. In more severe instances, a tenant can sue for the civil penalty under the statute (discussed earlier), call the police for trespassing, and file a claim for an "intrusion upon seclusion."

An "intrusion upon seclusion"[6] civil claim is the most aggressive legal action a tenant can take, because it has no cap on financial damages. If a tenant suspects the landlord of performing unseemly things in the apartment, it is a good idea to set up a hidden video camera to catch the landlord in the act. If a tenant is successful in obtaining video footage of the landlord stealing things or searching through an underwear drawer, the claim would greatly increase for a civil suit against the landlord.

Conclusion

Tenants have a legal right to privacy in Minnesota. Landlords must provide tenants with reasonable notice before entering an apartment and must have a reasonable business purpose for entering. Tenants can call the police when privacy is violated and they feel threatened, and they may sue their landlord for monetary damages with clear evidence.

Notes

1. Minn. Stat. § 504B.211
2. Minn. Stat. § 504B.211
3. Minn. Stat. § 504B.211
4. Minn. Stat. § 504B.211
5. Minn. Stat. § 504B.211
6. *Lake v. Walmart*, 582 N.W.2d 231 (Minn. 1998).

7 Repairs

The most common reason renters call HOME Line is to learn how to make a landlord fix needed repairs. In general, when the landlord does not make necessary repairs, the Rent Escrow action is the best legal option for the tenant. Tenants who have emergency repairs may have other, more aggressive options, and neighbors who share similar concerns should consider organizing together to address the problems. (See Chapter 20, Tenant Organizing, for tips.)

WHAT YOU'LL LEARN:

- What the Covenants of Habitability mean for tenancy and repair issues.
- The difference between an emergency and a non-emergency repair and several methods to respond to each type of repair.
- How to be proactive about asking a landlord to complete repairs.
- Several tips about repair issues that are often more difficult to address, including mold, bedbugs, and loss/lack of heat.
- What to do when your apartment is bordering on unlivable or has been condemned by a local government.
- How to be protected when you perform your own repairs and maintenance.

Covenants of Habitability

Regardless of what the lease says, the landlord is responsible for making sure that the apartment is in livable condition. For decades, Minnesota law has outlined a set of guidelines—the "covenants of habitability" that govern all rental housing. There are three main components to the covenants of habitability:[1]

- The apartment must be compliant with all safety and health codes.
- The apartment must be in reasonable repair.
- The apartment must be fit for the use intended.

The tenant cannot require a landlord to fix repairs that could arguably be caused by "the irresponsible, willful or malicious conduct of the tenant," which means that the issues a tenant brings up must be due to normal wear and tear on the apartment.[2]

These are legal requirements that state a landlord must complete repairs to an apartment unit if they satisfy certain conditions. The fact that they are legally binding means that the ultimate method by which a renter can assert these rights is to threaten and possibly to initiate legal action in court. Repairs can be completed with much less effort than this—a simple phone call to the landlord or a quick stop by the management office should be effective. If all else fails, the only way a tenant can continue to abide by their own lease and force a landlord to complete repairs is to go to court.

Regardless of what the lease says, the landlord is responsible for making sure that the apartment is in livable condition.

Going to court can be an intimidating experience, one that most people want to avoid at all costs. In learning what various rights they can use to initiate legal action, renters have several tools they can choose from to compel a landlord to fix their repair issues. Landlords often want to avoid court too, as it costs money and time. A renter should keep this in mind when considering how to respond to repair issues: There is a wide spectrum of possible actions to take, with legal action being on the more aggressive side. Often tenants are successful by pressuring the landlord the right amount at the right time to fix the problem sooner rather than having to go to court. Lastly, tenants must consider their overall housing stability when looking to address repair concerns. While there are local and state laws protecting tenants from retaliation (see Chapter 8, Retaliation), landlords can still assert a certain amount of power and intimidation over tenants in many circumstances.

Ask Three Questions

When addressing a repair issue, there are three quick questions a tenant should ask that will help direct how the process continues:

How Bad is the Problem?

When someone's home is not in full repair, it can be a very distressing issue to deal with—a broken window, a malfunctioning faucet, a poorly serviced dryer, or lack of heat—all affect the tenant's ability to fully enjoy the home. There is a very clear definition of how landlords must respond depending on the severity of the repair.

Tenants can initiate legal action on a much faster timeline if the repair is an emergency that threatens their immediate health or safety. While repairs that do not fall under this very specific legally defined category are still important, the process for addressing them in court is different. Separate sections below discuss both cases.

Does the Landlord Know?

Although it may be common sense to tell the landlord, it may not always be communicated with the best technique possible. It is ideal if the tenant writes down exactly what the problems are and what would be a satisfactory fix. A properly written explanation will qualify as an official court document allowing initiation of court action. A clearly written explanation can often strengthen a tenant's potential case in court. Once the landlord knows about the problem, the tenant must not attempt to unreasonably delay or stop the landlord from fixing the repair.

Do the Neighbors Have the Same Problem?

There are a number of common repair problems that affect numerous, if not all, residents in apartment buildings because of the way they are constructed. Examples include structural and common-area repairs, plumbing problems, insect infestations, lack of heat, and many emergency repairs. Tenants can gain an upper hand when they work together in approaching a landlord about repair issues that affect multiple residents. A landlord is less likely to retaliate against an entire building of tenants with the same issue. In addition to having more people targeting the landlord and gathering community support, there are legal advantages in court when tenants are organized. Many of the legal tools outlined in this chapter, such as Rent Escrows and tenant remedies actions, are tools tenant groups use to enforce their rights. To learn more about how to organize with neighbors, see Chapter 20, Tenant Organizing.

Non-Emergency Repairs

Non-emergency repair cases involve problems such as leaking faucets, mechanical failures, mold, and infestations.

Again, the tenant should tell the landlord as soon as possible about the repair issue. Calling or sending a text message is a good first step, but the tenant should always follow up with a formal letter soon after the first communication. The letter should state briefly and clearly (in less than a page, if possible) exactly what the problem is, how long it has

been a problem, and what is involved in satisfactorily fixing to the problem. The letter can be delivered by mail, by handing it to the landlord, or by depositing it at an on-site office or rent-payment box. The letter should not be aggressive or overly emotional: no double underlines or triple exclamation points!!! Simply state the facts about the problem, the time frame involved, and the solution. Depending on the circumstances, a judge may review this letter in the future; therefore the letter must show a reasonable request for a legitimate repair issue to be a valid legal complaint in court. The letter should be signed and dated, and the tenant should make and keep a copy before sending it.

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Rent Escrow

If the letter does not convince the landlord to fix the problem within two weeks (or by the date of a city inspector's order, as discussed later), the tenant can file a Rent Escrow, a court case in which the tenant pays rent to the court rather than to the landlord. Most tenants do not have an attorney for a Rent Escrow. Tenants need some form of evidence that a repair issue exists in order to file.[3] Therefore, a Rent Escrow case cannot be filed without a copy of a repair request letter the tenant sent, an expired city inspector's report, or both. The cost for filing a Rent Escrow case is approximately $75 (depending on the county). The fee can be waived if the tenant's income is very low, in which case the tenant must fill out a court form requesting a fee waiver in advance (see Appendix 1 to learn how to file IFP). If the tenant wins the case, the fee will almost always be ordered to be repaid to the tenant by the landlord. After the tenant files, the court schedules a hearing date within approximately two weeks of the filing.

When the case eventually is heard in court, the tenant has the obligation to prove the case—the landlord simply must defend his or her position. The ten-

ant can present evidence such as verbal or written testimony, hard copies of photos of the disrepair (almost always a very influential piece of evidence if documented well), or witnesses who can attest to the existence of the disrepair and/or experts who are able to advise the court as to the affects of the disrepair (for example, testers who measure the severity of mold). The judge can award several different remedies in a Rent Escrow case, and has the choice as to how to apply the law. A tenant can request that one of these specific remedies be awarded:[4]

- Rent abatement (rent money returned to the tenant for putting up with the problem—including reductions in future rent if necessary).
- Allow the tenant to repair the problem and deduct the repair cost from current or future rent.
- Order the landlord to make the repairs on a specific timeline.
- In extraordinary or emergency circumstances:
    - Break the lease so the tenant can move without penalty.
    - Appoint a third party as an "administrator" to manage the property, instead of the original landlord, until the repairs are made.
- The judge can grant other relief deemed "just and proper," which can include a judgment against the landlord for attorney fees.

In many cases where a tenant is successful, the court will order a review hearing sometime in the future to ensure whatever order the judge gave was followed.

Tenants should always be organized and prepared in advance when testifying in court. Tips on preparing for court can be found in Chapter 13, Security Deposits.

Emergency Repairs

While the Rent Escrow procedure can be a very successful approach for a tenant, there are circumstances when waiting this long to solve a problem is not fast enough. Very specific emergencies are outlined in the law and include "the loss of running water, hot water, heat, electricity, sanitary facilities or other essential services or facilities that the landlord is responsible for providing." In these cases only, the tenant has the right to file an Emergency Tenant Remedies Action (ETRA).[5] It is not necessary to have an attorney to file an ETRA, but it is advisable.

To assert this right, the tenant calls the landlord (leaving a message is sufficient if the landlord cannot be reached) or tells the landlord in person about the problem and states that if the problem is not fixed within 24 hours, the tenant has the right and intends to file an ETRA. It is appropriate to quote the statute that authorizes this tenant right: Minnesota Statute § 504B.381. After 24 hours, the tenant has the right to file an ETRA at the county courthouse. In Hennepin and Ramsey Counties, an ETRA is filed in Housing

Court; elsewhere in the state, it is filed in District Court. The court is directed by the law to set up a date as soon as possible (sometimes even the next day) to hear evidence about the emergency conditions. Filing an ETRA case costs approximately $322 unless the tenant's income is low enough to qualify for a fee waiver (see Appendix 1 to learn how to file IFP). If the tenant wins the case, the fee will almost always be ordered to be repaid to the tenant by the landlord.[6]

> While the Rent Escrow procedure can be a successful approach for a tenant, there are times where waiting is not an option.

In an ETRA case, a judge can order any of the same remedies as in a Rent Escrow case discussed in the bullet points above.[7] Judges can force the landlord to provide alternative housing until the problem is solved.

Lastly, emergency repairs are frequently large enough issues that they may affect multiple renters in an apartment building. Tenants should consider how this may affect their situation; approaching neighbors to work together in an attempt to address emergency repairs can often have significant influence over the landlord and can strengthen a court case such as an ETRA or a Rent Escrow. The ETRA law even allows tenants organized as formally recognized groups to file collectively. See Chapter 20, Tenant Organizing.

If a landlord is responsible for an emergency situation because he or she shut off a tenant's utility service, another section of law can apply in addition to the rights covered in this chapter. See Chapter 12, Lockouts and Utility Shutoffs, for more information about these rights.

Note that another situation that can be an emergency—the threat of a utility shutoff—may occur when a utility bill has not been paid and the utility company plans to shut off service. Depending if the landlord or the tenant is responsible for the bill, there are different laws that apply. Chapter 12 provides advice about how to respond to the threat of a utility company shutting off service for nonpayment of a bill.

City Inspectors

Many cities in Minnesota have housing or rental inspection departments that, depending on the city's code of ordinances, can inspect rental units for certain levels of health and safety violations. Inspectors will frequently write up a report identifying specific repairs that the landlord must complete, along with a deadline for completion. If a tenant wants to contact an inspector the tenant should check with city officials to find out if there is an inspections department and then ask for the inspector to come out. There is no charge for inspectors to come out. There are pros and cons to calling a city inspector:

Pros:

- An official city inspector's report carries a great deal of influence both with most landlords and with many judges when in court. In other words, a landlord might respond quicker to an inspection report than a tenant letter, and a judge may be more likely to rule in favor of a tenant if an inspector backs up the claims.
- Some city ordinances penalize landlords financially or by threatening rental license suspension if the landlord does not comply with an inspector's order. This can further influence the landlord to make repairs.
- Some cities have anti-retaliation ordinances that penalize a landlord for retaliating against a tenant. For more information, see Chapter 8, Retaliation.

Cons:

- Some cities do not have an inspector or may have weak city codes relating to rental housing.
- An inspector may not find a violation, or may suggest a remedy with which the tenant disagrees.
- A tenant may have to wait longer for a repair (or to go to court) if an inspector provides the landlord a longer timeline to repair the problem.

Withholding Rent

Tenants have the freedom to withhold rent to try to force the landlord to complete repairs,[8] but it is not advisable and in most circumstances means the tenant risks getting an eviction on his or her record. A landlord has the right, and almost certainly will file an eviction—and even if the eviction case settles, the tenant will probably still have an eviction on his or her record. This makes it increasingly difficult to find a new apartment in the future. Even if the tenant wins the case, getting the eviction expunged may still be difficult.

Despite the risk, withholding rent can still be a legal method to resolve repair issues, and tenants can be successful defending an eviction case. If a tenant withholds rent, and the landlord eventually files an eviction without ever repairing the problem, the tenant should assert what is called a "*Fritz* defense." In order to assert a *Fritz* defense, the tenant must be present to defend the case at the eviction hearing and must pay the court "adequate security."[9] Adequate security means whatever rent is owed at that time (not including the landlord's court costs, which can be close to an additional $400). The tenant must prove the repair problem exists and that it was a valid reason for withholding the rent. If the tenant does not have the proper amount of rent, the judge should rule against the tenant and not allow the tenant to assert a *Fritz* defense.

Landlord Defenses and Charging for Repairs

In court, the landlord can provide several legitimate defenses to a tenant's allegation that adequate repairs were not made in a timely fashion.[10] The landlord can argue:

- He or she was not aware of the problem
- The damage was caused by the irresponsible, willful or malicious conduct of the tenant
- The tenant refused to allow the landlord in to the apartment unit to make repairs (by far the most common explanation a landlord offers)

If a judge agrees with a landlord on one of these defenses, it may mean the tenant will lose the case. By following the advice in this chapter, tenants will have already successfully navigated these defenses.

Lastly, if a landlord attempts to bill or charge a tenant for repairs, it is usually not valid. **The only case in which a tenant would be required to pay for repairs is when a landlord can prove that the damage was caused by the irresponsible, willful or malicious conduct of the tenant.**[11] A tenant can ignore such bills unless it is clear the landlord has such proof. If a landlord has proof, the tenant may be in violation of the lease and should consider paying the bill or negotiating an agreement.

Addressing Difficult Repair Issues

Mold

Mold can be one of the most expensive repair problems. Mold experts explain that the key to solving a mold problem is to address the source of the moisture, not just the damage caused by the moisture. It does absolutely no good to replace damaged sheetrock and/or repaint a wall if identifying and fixing the source of a water leak is not part of the repair process.

Proving the existence of some types of mold can be difficult, depending on many different factors. Again, the best kind of proof is photographic. Pictures showing obvious, visible mold all over a wall can have a powerful impact on a court. Unfortunately, sometimes mold will only be growing in walls or other locations that are difficult or impossible to photograph. Likewise, it can be very difficult to prove that someone is becoming ill because of mold. It may be easy to convince a doctor that an illness may be caused by the mold in an apartment, but to prove to a judge that the mold actually did cause an illness is much more difficult.

There are thousands of different types of mold, but only some of them are actually dangerous to people. In a Rent Escrow setting, proving that any type of mold exists, regardless of its health effects, is probably sufficient. If a tenant wants to sue for health

problems caused by the mold, an air quality test demonstrating that mold exists, along with the type of mold, may be necessary. Mold cases often require that a tenant hire a personal injury attorney to assert all of the tenant's rights.

Infestations and Bedbugs

Infestations can involve a tenant noticing that animals or insects have entered the apartment and possibly have begun living somewhere in or near the apartment unit. If a tenant has a problem with mice, cockroaches, ants, bedbugs, or some other infestation, the problem should be dealt with like any other type of repair problem. The tenant should follow the steps laid out earlier in this chapter to remedy the problem: calling an inspector, writing a repair request letter, and/or filing a Rent Escrow if needed. The tenant should, of course, cooperate with the landlord in attempting to solve the pest problem. This can include somewhat intrusive pest removal spraying and other remedies.

Bedbugs are currently a much larger issue than any other form of infestation, and landlords frequently treat tenants in a negative fashion when responding to bedbug problems. The scope of the problem is immense and is growing nationwide. Bedbugs are robust and capable of living without food (blood) for several months, meaning they can remain unnoticed between different tenancies in a single rental unit or show up many months into a tenancy through no fault of the tenant. Treatment is usually by either chemicals or heat. The chemical treatment is cheaper but usually not as effective because it may not reach all sections of the apartment and common areas. The heat treatment, which involves the entire rental unit being heated to an extreme temperature, seems to work much more effectively but can be double or triple the cost.

More than any other repair problem HOME Line is aware of, landlords regularly blame tenants for bedbugs and attempt to force the tenant to pay for treatment. Can the tenant lawfully be blamed for bedbugs? It is a very difficult case for a landlord to prove the tenant brought the bedbugs in irresponsibly, willfully or maliciously—which a landlord must legally prove. This is an exceptionally high standard which, in most cases, results in a landlord not legally being able to force a tenant to pay for treatment. An example of a best case for a landlord would include many facts that favor the landlord such as: the tenant resides in a single-family home (the tenant is the only occupant so the bedbugs cannot be blamed on neighbors), the tenant has been the only resident for a long time, the tenant acted very carelessly by bringing in a used bed from an alley. Unless the landlord can prove facts that are similar in relevance and importance to the example, it becomes increasingly difficult for the landlord to hold the tenant liable for bedbug treatments.

As discussed earlier, if the landlord does not fix a bedbug problem, the tenant should follow the regular repair steps including calling an inspector, writing a repair request letter, and/or filing a Rent Escrow if needed. If a landlord repairs it and later tries to charge the tenant, the tenant still has the protections discussed in this section.

Heat

In Minnesota, inadequate or total loss of heat can be a serious, possibly life-threatening problem. As discussed in the emergency repair section, loss or lack of heat (such as a utility shut-off or a malfunctioning furnace that results in little or no heat) constitutes an emergency under the law and can be dealt with swiftly. While the law does not have a threshold for how cold it must be to assert this right in an ETRA, anything under 60 degrees is accepted as an emergency heat issue. Unfortunately, there is no statewide minimum temperature requirement for rental units, meaning a tenant with inadequate heat follows the same repair request process described early in this chapter—this can be lengthy if the landlord fails to respond, so the tenant may continue to experience unsafe heat levels. Furthermore, because there is not a state law requiring a minimum temperature, there is no assurance that a judge will find a particular temperature as a violation of the law.

In cities where there is a heat code, the tenant may have a strong interest in calling a city inspector, depending on what the city ordinances require. The most common heat codes require that a minimum temperature be maintained (68°F is the most common) during a specific time of the year (often between October 1 and May 1). HOME Line maintains a list of larger cities that have heating or building codes at www.homelinemn.org. Tenants can either call HOME Line's hotline or view the website for advice about what heat code their city employs (See the Preface for more information about HOME Line.) Alternately, tenants can always call their city hall to ask if their city has a heat code and whether there is an inspections department to enforce the requirements. In cities where there is a requirement but not an inspector, the tenant will need to assert rights via a Rent Escrow but should get a copy of the city requirements for evidence to help the case in front of a judge.

In either case, the tenant should purchase an inexpensive thermometer (do not rely on a thermostat or other device in the unit), and measure the heat in the middle of several rooms, preferably at a location that is approximately three feet off of the ground and not immediately next to a window or exterior door. The tenant should document the temperature (a photo of the thermometer) in case it has to be proven to a judge. If the heat is below a standard set by local city ordinances, the tenant may have a choice to call the city to have an inspector make a report, or the tenant may wish to follow the same repair request process described early in this chapter. If the temperature is below 60° F, the tenant probably has a good enough case to file an Emergency Tenant Remedies Action.

Loss of heat because of an unpaid utility bill is another issue that renters experience. There are different protections for tenants depending on who is responsible for paying the utility bill. Chapter 12 provides advice for either situation: when the lease requires the tenant to pay heating bills or when the landlord is responsible for utility payments.

Condemnation or City-Ordered "Unfit/No Occupancy"

Condemned rental units are rare, but condemnations can occur because of unsafe living conditions or because of a process called "eminent domain," where the government takes over private property for a public purpose such as expanding a highway. If an eminent domain action occurs, the tenant may be awarded relocation costs because the public entity is required to provide such costs in most eminent domain situations.

The more common reason for condemnation is the result of serious repair problems that make a rental unit uninhabitable. Condemnations can be very complicated, because they may involve various different government entities, laws, and disputes. A tenant should seek help immediately from Legal Aid or HOME Line if and when an official city notice requires the tenant to vacate because of condemnation or some other reason.

In a typical condemnation, an inspector (usually a city employee such as a building, rental, or fire inspector), will post a notice on the rental unit's front door stating that the premises are uninhabitable. These can either be immediate notices, meaning everyone must vacate immediately, or notices that state a certain date by when everyone must vacate. These notices may not state the unit is "condemned." In some instances, cities want to allow tenants more time to move and will instead post the unit as "unfit for occupancy," giving the tenant a set amount of time to vacate.

There may be ways to appeal a condemnation notice, depending on what the city's ordinances state (again, a reason to call HOME Line or Legal Aid to obtain legal consultation). It is very likely that the tenant will have to move by the date posted on the move-out notice; often, disregarding such a notice can subject the tenant to a criminal penalty. Tenants may be able to file an Emergency Tenant Remedies Action (covered earlier in this chapter) because the circumstances that resulted in a condemnation almost always constitute an emergency. Emergency Assistance may be available to assist with moving costs (see Appendix 4 for these resources). A tenant also has a decent claim against the landlord for financial damages due to the landlord's breach of the lease; such a claim would be filed by the tenant in Conciliation Court (see Chapter 13). Once again, a tenant should seek help as soon as possible in these cases.

A tenant should seek help immediately if an official city notice requires the tenant to vacate because of condemnation.

A tenant is no longer liable for any rent due after the date of condemnation.[12] If the building is condemned, the tenant is entitled to the return of the security deposit within five days of the condemnation (as compared to waiting 21 days as is discussed in Chapter 13). This issue arises frequently if a fire has destroyed or made a building uninhabitable. There are few legitimate reasons for a landlord to deduct anything from a tenant's security deposit if the building has been

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condemned.

Lastly, the landlord is not allowed to rent to any new tenants if the landlord knows about the condemnation order. This situation is very rare, but if the landlord does rent a condemned property, the new tenant can sue for financial damages in addition to three times all the money paid (in rent/security deposits) plus court costs and attorney's fees.[13] This case would be filed in Conciliation Court (see Chapter 13).

Breaking a Lease by Constructive Eviction

If an apartment is uninhabitable, a tenant has the right to vacate at any time. A landlord may attempt to assert the rights, under the lease, to future months' rent. For a court to decide that a rental unit is uninhabitable, and therefore that future rent should not be owed, is a fairly subjective decision and in reality, constructive evictions are rarely attempted by tenants or enforced by judges. HOME Line very rarely advises renters that they have a strong constructive eviction case, because it is a risky approach to take when dealing with repair issues. The tenant risks a financial judgment against him or herself for all unpaid rent for the entire term of the lease.

In a successful constructive eviction defense, a tenant vacates a property claiming that it was unlivable. The tenant may have left with six months of a one-year lease remaining. The landlord sues the tenant in Conciliation Court for the unpaid rent. The tenant defends the case, arguing that the rental unit was uninhabitable and the judge or referee agrees.

The problem with most constructive eviction cases is proving that the apartment was unlivable. Think about the condition of apartments on a spectrum: On one end of the spectrum is a perfect apartment with no flaws or repair problems. On the other end of the spectrum is an

apartment that has been burned to the ground. Most apartments lie somewhere in the middle of the spectrum. To win a constructive eviction, the tenant has to convince the judge that the rental unit is close enough to the livability of a burned down apartment building that the contract should be broken. This is the risky part for the tenant; if the judge believes the rental unit is livable, the tenant can be forced to pay the remainder of the rent due under the lease in addition to court costs and attorney fees.

Practically speaking, a number of key factors are often discussed when a tenant asserts a constructive eviction. The longer the tenant remained in the apartment unit during the period when there were poor conditions, the weaker the tenant's constructive eviction case. Meanwhile, if a landlord refuses to fix a gas leak when the tenant reports it immediately after noticing it (along with confirmation from the gas company), the tenant has a great constructive eviction case if he or she moves out immediately. The tenant does not stay at the apartment until he or she finds somewhere else to live—the tenant is acting as if it is unlivable.

Unfortunately, the most common story does not fit that description. If a tenant has problems with mice and has to put up with them for months hoping the landlord will ultimately solve it, it probably cannot be considered an emergency or unlivable place under the law (unless condemned by an inspector). By remaining in place with the problem for months, the tenant has demonstrated that it is not an emergency issue; a judge might ask: "How did the tenant continue to live there if it was life threatening?" The proper remedy in a case like this would be the Rent Escrow process described previously.

Lastly, a tenant is required to "give up possession" of the apartment for a constructive eviction to be valid. Keeping property at the apartment or even holding on to the keys is enough to weaken or eliminate a constructive eviction case.

Tenant Performing Maintenance

Occasionally, landlords expect tenants to perform routine maintenance in or around the rental unit. The most common example is when the lease requires that the tenant shovel snow in the winter and mow the grass in the summer. It is legal for a landlord to require a tenant to do this if, and only if, the landlord pays the tenant for the work.[14] This agreement to pay must be in writing, and it must provide adequate or fair compensation. For example, the lease could state that the rent would normally be $1,000 per month, but if the tenant agrees to take care of the maintenance, the rent is only $900 per month. It is not good enough for the landlord to claim later that he or she "figured a lower rent" for the shoveling and mowing. The reduction in rent must be obvious, be in writing, and pay the tenant a fair amount.

If a tenant has been doing this work without payment, the tenant can stop and may have a Conciliation Court claim (see Appendix 1 for how to file) against the landlord for the time living there while not being compensated fairly. This situation occurs most commonly in single-family homes or duplexes.

Conclusion

Failure to complete repairs is one of the most common problems tenants have with their landlords. **The basic rule is that a tenant has an obligation to pay rent and a landlord has an obligation keep the apartment livable by making repairs.** This is exactly why the tenant is paying rent. By understanding the rights outlined in this chapter, tenants have the tools to keep their landlords accountable.

Notes

1. Minn. Stat. § 504B.161. The Covenants of Habitability are also included in Appendix 5.
2. Minn. Stat. § 504B.161.
3. Minn. Stat. § 504B.385
4. Minn. Stat. § 504B.385, Subd. 9
5. Minn. Stat. § 504B.381
6. Minn. Stat. § 504B.381
7. Minn. Stat. § 504B.381, Subd. 5
8. *Fritz v. Warthen*, 298 Minn. 48, 213 N.W.2d 339 (1973).
9. *Fritz v. Warthen*, 298 Minn. 48, 213 N.W.2d 339 (1973).
10. Minn. Stat. § 504B.385, Subd. 3
11. Minn. Stat. § 504B.161.
12. *Crowley v. Potts*, 180 Minn. 234, 230 N.W. 645 (1930); also see Minn. Stat. § 504B.131.
13. Minn. Stat. § 504B.204
14. Minn. Stat. § 504B.161, Subd. 2

8 Retaliation

Tenants are occasionally nervous about complaining when they have repair issues because they fear the landlord will retaliate against them for asserting their rights as renters. This is certainly a legitimate fear. No landlord likes to be told by a city inspector that the apartment is not up to code and that he or she will need to spend money to solve the problem. Even if a tenant makes an informal request to the landlord to complete a repair, it can create tension between the landlord and tenant that affects communication.

Retaliation is never a legitimate legal response for a landlord when tenants are requesting services. Tenants in certain situations may have various local, state, or federal laws protecting them from retaliation.

WHAT YOU'LL LEARN:

- What the law considers as retaliation.
- Your specific legal rights when you fear retaliation.
- That you cannot be retaliated against for making legitimate calls for emergency services (police, fire, ambulance).
- How to organize with your neighbors to respond to intimidation and retaliation by the landlord.

There are several retaliation and intimidation tactics that are not covered in this chapter. They are considered criminal acts and can be reported directly to police. These include: locking tenants out, shutting off a utility service such as water, natural gas, or electricity, threatening physical violence, and physical or sexual harassment. Lockouts and utility shutoffs are covered in more depth in Chapter 12.

Legal Protection

If a renter has a legitimate issue and asserts his or her tenant rights, there is protection under state law. The tenant must be able to prove that he or she asserted rights (calling an inspector, writing a letter to the landlord, requesting that the landlord respect privacy, etc.).[1] The landlord may not respond to the tenant's action through retaliation—filing an eviction, giving the tenant a notice to vacate, increasing the rent, or reducing services in some manner (for example: locking the laundry room door). There must be a clear connection from the tenant's action to the landlord's retaliatory response. Harassment or intimidation may not be enough proof of retaliation—the landlord has to actually act in some method that directly affects the tenancy. If there is harassment or threats, the matter may be considered criminal and the tenant may want to call the police.

If the tenant can show a clear connection, a judge in an eviction case should consider the action retaliatory, and the eviction should be thrown out. The law provides additional protection if the landlord's action takes place within 90 days of the tenant's request (assertion of rights). If this occurs, any sort of action the landlord takes that appears to be retaliation will be presumed to be retaliation unless the landlord has a substantial independent business reason for it. That is, if the retaliation is within 90 days the burden of proof in court is placed on the landlord.[2] After the 90 day window has passed, the landlord is still not allowed to retaliate, but the legal burden shifts to the tenant to prove that the landlord is retaliating for the tenant's assertion of rights.[3]

For example, a landlord would be able to prove it was not retaliation if the following occurred:

> On December 1, the tenant sent the landlord a letter asking for the dishwasher to be repaired. The lease ends at the end of February of the next year. At the end of December, the landlord gave the tenant a notice that the rent is going up $50 per month beginning on March 1, after the lease has expired. The tenant believes this is retaliation. The landlord shows that in this 50 unit building, everyone's rent is increasing, not just the tenant who complained about the dishwasher.

In addition to this Minnesota state law, there are some federal laws that protect tenants in subsidized housing protection from retaliation, especially when tenants are organizing a tenant association (see Chapter 20, Tenant Organizing, for more information). Local cities that have rental licensing and inspection ordinances may have codes

relating to landlord retaliation for a tenant calling an inspector. Tenants should check with the city to ensure they understand all of their rights.

Calls for Emergency Services

A landlord is not allowed to retaliate in any way against a renter for calling for emergency assistance, which includes the police department, the fire department, or an ambulance.[4] This rule is based on a state law designed to give all people (family, friends, neighbors, etc.) the right to call the police in case of domestic abuse and other serious problems.

There are some city ordinances that penalize landlords and/or tenants for a high volume of police calls to a rental unit. These ordinances usually threaten to revoke a landlord's license or fine the landlord for too many police calls. The state law promoting emergency assistance, however, trumps any city ordinance which penalizes a tenant for seeking emergency assistance. This can be a situation in which the landlord may not know the full extent of the law. Landlords do not want to lose their rental license or face a fine, so many of them will threaten the tenant if he or she calls the police too often.

The key question in any case involving a landlord trying to penalize a tenant for emergency calls is: Who called the police? If it was the tenant calling for emergency assistance (or even yelling, "Help, someone call the police"), then that tenant is protected under state law. A neighbor calling on behalf of a tenant who is believed to be in need of emergency assistance would also be protected.

If the neighbor called the police because of excessive noise not relating to domestic abuse or other harmful conduct, then the tenant can be penalized (including an eviction) for the noise violation. The state law protection is only triggered when the tenant or the tenant's helper calls for emergency assistance.

Practical Advice and Tenant Organizing

Retaliation under Minnesota law is primarily used as a defense to an eviction. This means there is no simple proactive court procedure to assert that the landlord is retaliating. Under most circumstances, tenants do not want to end up in court defending themselves from an eviction. Furthermore, it can often be difficult to prove retaliation unless the tenant has evidence of a clear assertion of rights and a very clear retaliatory response by the landlord.

For example, in the rent increase situation on page 78, the tenant's typical remedy to what was believed to be retaliation is to not pay the increase. The tenant has no simple proactive way—except to ask the landlord, which may or may not satisfy the concern—to question the rent increase. If the tenant refuses to pay the increased rent, he or she risks an eviction filed and may or may not have enough knowledge of the situation to ensure that a judge would side with him or her on a claim of retaliation.

Sometimes, a better approach to responding to retaliation from a landlord is to act collectively with neighbors to place more community influence on the landlord. Landlords who try to intimidate tenants with harassment and retaliation are often not looked upon well by neighbors, community members, and public officials. When a group of tenants organize to respond to poor conditions and mismanagement of their apartments, it can assert a stronger influence over the landlord because it represents more than just a single, vulnerable household. Instead, the group of tenants can be a threat to the landlord by filing multiple legal actions or by demanding more accountability for the rent. When multiple tenants threaten to move, it may mean much more to the landlord's bottom line. See Chapter 20 for more organizing advice.

Conclusion

While tenants may be understandably nervous about asserting their rights, they should understand there is legal protection from eviction given certain circumstances. Tenants also have a right to call for emergency services when threatened with harm. If the landlord is treating several tenants badly, the most practical response to retaliation from a landlord may be to organize with neighbors to address harassing actions. The power dynamic in a landlord-tenant relationship can often be said to be skewed in the tenants' favor—when they organize.

Notes

1. *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46 (Minn. Ct. App. 1998).
2. Minn. Stat. § 504B.285, Subd. 2; 504B.441
3. Minn. Stat. § 504B.285, Subd. 2; 504B.441
4. Minn. Stat. § 504B.205

9 Ending a Lease

Generally, a tenant has to give notice to end a lease. Tenants may choose to end their tenancy as directed by the terms of the lease or sometimes end it early.

As discussed in Chapter 4, Leases, a lease is a written or oral contract that specifies the terms and length of a tenancy. This means a tenant or a landlord can enforce the terms laid out in the lease (as well as local, state, and federal laws pertaining to the lease) by going to court. Tenants contact HOME Line frequently to learn how to end a lease by providing proper notice or by breaking a lease in the middle of the lease term.

WHAT YOU'LL LEARN:

- What different lease-length terms mean.
- How a tenant gives proper notice to a landlord to end a lease legally.
- What is involved in breaking a lease.
- How a tenant can legally break a lease.
- How to negotiate with a landlord to break a lease.
- What consequences can be involved if tenant breaks a lease illegally.

Proper Notice

Proper notice is necessary for any lease modifications (rent increases, changes to amenities or services, etc.). Notice terms are almost always the same as what is required to end the lease.

Most leases end with the landlord either non-renewing (ending) the contract by the end of the lease term or by the tenant giving proper notice to leave at the end of the lease term. If notice terms are mentioned in the lease, either the landlord or the tenant must give the notice the lease requires.

If a tenant or landlord provides improper notice, the notice has no effect[1] and can be ignored. The following two sections explain how to give proper notice.

Tenant Decides to End Lease: Tenant Gives the Landlord a Notice to Vacate

If there is no written lease or if the written lease is month-to-month (or periodic), then there are standard rules that apply. Assuming that rent is due on the first of the month (by far the most common situation), the tenant's proper notice must be:

- In writing
- Properly timed and delivered promptly and correctly
- Clear as to the tenant's intentions

Written notice is fairly self-explanatory, but there are a few things tenants can do to protect themselves. The notice must be legibly written down (e-mail or a text message may suffice if both the tenant and landlord have established a pattern of using that as their primary form of communication)[2] and given to the landlord. It is suggested that a tenant write the date on the notice, sign it, and make a copy of the notice for personal records. The original should be given to the landlord.

Proper timing is more complicated. The basic rule is that a full rental period's notice must be given. For example:

> Assuming monthly rent is due on the first, and today is the 15th of January, the tenant can give notice for the end of February. The tenant cannot give notice for the 15th of February because that's not a full rental period's notice. If the date is January 31, the tenant can still hand the landlord notice for the end of February.[3] Once January is over, it is too late to give notice for the end of February. On February 1, the tenant will be giving notice for the end of March.

This notice has to be delivered early enough to allow the landlord to receive it before the end of the rental period. Tenants are usually allowed to deliver notices to the same person or office that rent is paid to. Therefore, dropping it in a rent box or at a management office may often be a quicker option, but mailing the notice

may be some renters' only choice. Given the example above, putting it in the mail on January 31 will not be good enough—mail is not delivered the same day.[4] Also, putting it in the mail on Sunday the 30th of January will not be sufficient as the mail is not picked up on Sundays. There is no extension in the law giving a tenant extra time to turn in a notice, and a weekend, holiday or office closing makes it difficult. It's up to the tenant to make sure the notice gets to the landlord with plenty of time to spare.

Finally, the notice should clearly state the last date the tenant "will have possession of the unit;" in other words, it should state when the tenant will move out (the end of the next month in most cases). It is critical that the notice mentions this date exactly. In the case of the above example, the notice should say that the tenant will be vacating on February 28—not, "by March 1"[5] or "around the end of February."

Landlord Decides to End Lease: Landlord Gives the Tenant a Notice to Vacate (or Quit)

The rules for the landlord are similar to those discussed above for the tenant. The landlord must give a clearly written notice. The notice must be given with the proper amount of time, as is required of a tenant.

Generally, the landlord does not have to provide any reason to give the notice to vacate. The contract ends, and the landlord chooses not to renew it. This is an issue where many tenants get very upset—they have paid their rent on time for the entire term of the lease (maybe for years), and the landlord decides abruptly to give them a notice to vacate. There are a few cases where the landlord does need a valid reason to give a notice to vacate. Those cases relate to manufactured/mobile homes and most forms of subsidized housing.[6] Furthermore, the landlord cannot retaliate or discriminate against the tenant. These situations can be fairly difficult for the tenant to prove and usually require that the tenant wait for an eviction (Unlawful Detainer, or UD) to be filed, meaning an eviction will go on the tenant's record. Retaliation is covered in Chapter 8, manufactured homes in Chapter 16, and rules relating to subsidized housing in Chapter 17.

Another important consideration: A landlord can choose to give an "informal" notice to vacate even during the middle of a lease term if the landlord believes the tenant's lease was violated (by not paying rent, breaking the terms of the lease, etc.). Landlords are not required to give such a notice (unless it is subsidized housing), and tenants might not be required to follow such a notice, but many landlords choose to give notices like these to pressure the tenant to move before filing an eviction. These types of notices can sometimes be considered helpful for a tenant, because it allows for a chance to try to fix the situation and negotiate with the landlord before an eviction goes on the tenant's record. On the other hand, these notices can play a more retaliatory or discriminatory role by intimidating an innocent renter into moving out before the lease ends.

Automatic Lease Renewal

Some leases have provisions that allow the lease to automatically renew. It is important that a tenant understands whether the lease automatically renews. If it does, do the terms of the lease trigger a state law requirement for the landlord to notify the tenant of an automatic renewal?

This process is complicated and can sometimes lock them into a lease renewal without any notice. The main requirements for the state law to take effect are:

- The original lease is two months or more.
- The lease specifies that it "automatically renews" for two months or more (meaning that if the tenant gives no notice, the lease automatically renews for at least two months).

For example:

> The original lease is for one year and it requires two month's notice at the end, or it automatically renews; then the statute takes effect.[7] The tenant moves in on January 1st for a one-year lease. The lease requires that the tenant gives the landlord notice (in writing), no later than October 31st to vacate by December 31st. If the tenant does not give any notice, the lease automatically renews, and the earliest the tenant can end his lease is the end of February.

If the automatic renewal statute is triggered by the lease, the landlord must warn the tenant to give the landlord notice 15-30 days before the tenant is supposed to give the notice. In the example above, where the notice from the tenant is due by October 31st the landlord would have to warn the tenant between October 2nd and October 16th. This notice must be given in one of two ways; either by certified mail or personal service (one adult handing it to a resident of the home who is of suitable age and discretion). Regular mail or sliding the notice under the door is not good enough.

Breaking a Lease

Breaking a lease means a tenant wants to end his or her contract before it officially ends. There are a number of reasons a tenant wants to break a lease. The most common include: unfixed or emergency repair issues, buying a house, taking a job in another state, or changing schools. Sometimes, the rent may have become too expensive; typically there is a job loss in these cases. Occasionally, there are safety reasons: Perhaps crime has gone up in the neighborhood or the tenant has been the victim of a crime.

Tenants are not "banned" from moving out of an apartment mid-lease, however, the terms of a lease may still be in effect. If a tenant leaves before the lease is up, without some type of agreement or valid legal defense, rent will continue to be owed until

the landlord re-rents the property or the lease ends.[8] The landlord can sue the tenant in court to force payment, and if the tenant does not pay it can affect their financial situation and credit score. If the landlord re-rents the property for less than what was previously charged, the tenant will probably owe the difference in rent. Under current Minnesota law, the landlord is probably under no obligation to try to re-rent,[9] although almost every landlord will try to re-rent the place.

Negotiating an Early End Date

There are a few reasons listed later in this section that allow a tenant to break a lease without the landlord's consent. Apart from those reasons, the best approach is to negotiate with the landlord for an agreed-upon early end date to the lease. Some leases actually have break-lease fees listed. A tenant who wants to agree to those terms certainly can do so by providing adequate and proper notice, paying exactly as directed in the lease, and by getting a signed, written agreement that specifies the terms of the early lease termination. Tenants should be careful that the landlord does not agree to try to re-rent in exchange for a break-lease fee, since it is very rare a landlord will not try regardless of the agreement. **What the tenant needs is a written agreement that actually ends the duty to pay anything more after paying a break-lease fee and vacating the apartment.**

There are some creative ways to try to negotiate, depending on the circumstances. For example:

> The lease has six months remaining, and the rent is $1,000 per month. The tenant's worst-case scenario is paying rent for the remaining six months, or owing $6,000 (note that a tenant should never pay a break-lease fee for more than the remaining rent until the end of the lease). If there is no break-lease language, the tenant could offer $1,000 plus the security deposit (many tenants pay a full month's rent for a deposit), meaning the landlord would get $2,000 for the tenant vacating. If the landlord re-rents the apartment the day after the tenant leaves, the landlord is actually profiting when the tenant vacates. This depends on rental market conditions. If the landlord has many empty apartments, this probably will not work, as the other empty units will be re-rented first.

Another approach is to try to find a replacement tenant to move in. The tenant can offer to pay the new tenant's first two months of rent, for example. The tenant will still only pay $2,000 to vacate the apartment, but the agreement will be with the replacement tenant instead of the landlord. This may take more work on the tenant's part—finding a new tenant can take time and effort and the landlord will still want to approve them. Nonetheless, it is an option with which some tenants have had success. Be aware that this is called "subleasing" and is usually not allowed in leases without the landlord's written permission.

In some situations where widespread repair or mismanagement issues affect resi-

dents and cause a desire to break leases, tenants can have a stronger negotiating position in negotiation by organizing. Neighbors can work together to collectively persuade a landlord to negotiate changes to their leases or to fix the problems. Landlords often will take a group of organized residents more seriously than a single tenant because it is more of a hassle for them to re-rent or to try to evict more than one unit at a time. It is costly, time-consuming, and may reflect poorly on the reputation of their respective businesses. To learn more about working with neighbors to organize around housing issues, see Chapter 20, Tenant Organizing.

Of course, if a tenant wants to vacate, the landlord cannot make the tenant stay. The most the landlord can do is chase the tenant in court for any rent due (both now and in the future). If the landlord re-rents the apartment, the tenant is only liable for any unpaid months, or the difference in rent. (If the landlord had to lower the asking price from $1,000 to $900 per month, the original tenant would owe the difference.) The tenant may also be responsible for whatever advertising costs the landlord incurred plus costs to "turn" the apartment (prepare it for the new tenant).

What Reasons are Legally Good Enough to Break a Lease?

The legal reasons to break a lease only cover several specific circumstances that are usually tied to an emergency or a military requirement. Many of the reasons for which tenants contact HOME Line are not included in this list. For example, buying a home is not covered, nor are most repair issues, crime in the neighborhood, or going to a nursing home. It is in a tenant's best interest to think about these issues before signing a long-term lease.

If a landlord will not voluntarily let a tenant out of a lease, there are currently only a few reasons a tenant can break the lease legally.

Domestic Abuse

The newest of the break-lease rules in this section was enacted in 2007.[10] It allows the tenant to vacate in the case of domestic abuse. In order to use this statute, the tenant must show a "fear [of] imminent domestic abuse" from a person named in either a No Contact Order or an Order for Protection. The tenant must also give a written notice to the landlord stating the tenant is vacating for that reason by the end of the current rental period (usually the end of the month). The tenant cannot vacate under this statute without providing the No Contact Order or Order for Protection. The tenant must pay a full month's rent as a sort of buy-out fee for breaking the lease.

Here is an example: The tenant has an Order for Protection against an abuser. The lease runs to the end of December and the rent is $900 per month. The tenant wants to get out of the apartment because of fear for personal safety and the safety of his or her children. On July 28th, the tenant writes the landlord that the apartment will be vacated at the end of July,

and gives the landlord the copy of the Order for Protection at the same time. The tenant includes $900 with the notice and Order for Protection. The apartment is vacated on July 31st. A landlord must keep all information about this issue private.

Joining the Armed Forces

If a tenant signs a lease and then joins the military, or after signing a lease receives military orders for permanent change of station or 90-day deployment, the tenant (along with all of the tenant's dependents) may terminate the lease.[11]

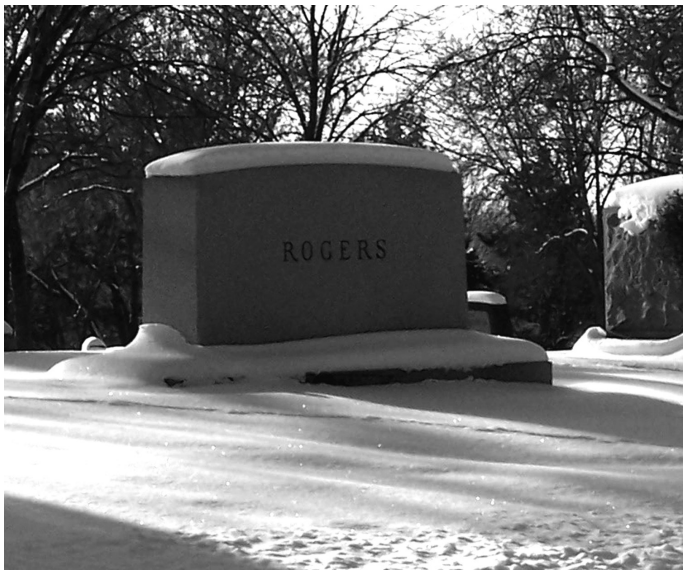
The tenant terminates the lease by delivering notice of termination with a copy of the military orders to the landlord or to the landlord's agent (such as a manager). This notice must be delivered by hand, by private business carrier (like UPS), or by mailing with return receipt requested, basically certified mail or registered mail with a return receipt.

If the lease is month-to-month, the notice is effective 30 days after the first date on which the next rental payment is due after the notice is given (if the rent is due on the 1st, the tenant can give notice prior to the 1st to leave 30 days after the 1st of the month). For any other type of lease, the notice is effective on the last day of the month, following the month in which it is delivered.

Note that if a tenant has a non-dependent roommate, and only one of the tenants has a military transfer or assignment under this rule, the roommate will still owe the full rent(for both roommates) for the remainder of the lease

Death

A lease may be terminated before its end date if all of the adult tenants die.[12] At least two months' written notice, to be effective on the last day of a calendar month, must be given by the deceased's estate in order to take advantage of this law. The tenant's estate still owes the landlord rent for those two months as well as any other money owed to the landlord. When this occurs the landlord may try to collect rent from the son or daughter of the deceased. The landlord has no claim against any family member not on the lease. The landlord's claim is only against the estate—which means that if the deceased passed away without any as-



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sets, the landlord will never collect any more rent from the estate because the estate has no money. If the lease has less than two months to go, the lease provides an easier way for the estate to give notice than the law.

Condemnation

If the building is destroyed, uninhabitable or unfit for occupancy (and has been declared condemned by a governmental official) the tenant has a solid case that the lease is broken.[13] A tenant in such a circumstance should obtain copies of a condemnation notice or proof of such an order from a governmental official. A tenant should communicate intent to end the lease by attaching a copy of the condemnation to a notice and sending it to the landlord.

Judge's Order

If a judge orders that the tenant can break the lease through a Rent Escrow, Tenant Remedies Action (TRA), or Emergency Tenant Remedies Action (ETRA), then the lease is terminated. Rent Escrows and ETRAs are covered in Chapter 7, Repairs, while TRAs are covered in Chapter 20, Tenant Organizing.

Constructive Eviction

If a building is destroyed, uninhabitable or unfit for occupancy through no fault of the tenant, then a tenant has a right to leave the property and stop paying rent.[14] The best example of this is when a house burns down. There is nothing physically left to rent, and the tenant is out of the lease. For comparison, a repair issue like a broken screen might be of concern to a tenant, but a tenant cannot terminate the lease because the issue does not rise to the level of an emergency. There is no easy to way to define when a case becomes a good candidate for constructive eviction.[15] The law only says the building must be destroyed, uninhabitable, or unfit for occupancy or when the "enjoyment" of the apartment "is so interfered with by the landlord as to justify an abandonment." Note that a constructive eviction is different from a condemnation. In a condemnation, a government official (usually a city official) tells the tenant to vacate. In a constructive eviction, the tenant decides the rental unit is unlivable and leaves.

The problem with arguing that there is a constructive eviction is that the tenant is gambling that a judge will agree with that personal assessment of how livable the apartment was. If the judge does not agree, the tenant could end up owing rent for the remainder of the lease. Constructive evictions are covered extensively in Chapter 7, Repairs.

Because of the potential downside, it is seldom a good idea for a tenant to claim constructive eviction.

Negotiating for Break-Lease Terms before Signing the Lease

The legal reasons listed to break a lease are only those supplied by law. Additional reasons can be, and often are, bargained for in the lease itself. A tenant who hopes to buy a house soon (or is expecting a job transfer) might ask to put a break-lease agreement in the lease. This will probably be a set fee. The landlord may charge something at the beginning of the contract for including this type of clause. This fee is probably negotiable. For more information regarding negotiating lease terms, see Chapter 4, Leases.

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Conclusion

If a lease is either ending or a tenant wants to give proper notice in a month-to-month lease, he or she should follow rules in the lease or in the law. Proper notice is vital.

If breaking the lease is necessary and negotiation with the landlord is not possible, the law allows tenants to break leases in a few situations: domestic abuse, joining the armed forces, condemnation, death, and constructive eviction. Beyond these situations, a tenant can only legally break a lease if the lease allows it, the tenant and the landlord agree to it, or a judge orders it. Breaking a lease can result in a tenant owing a substantial amount of money, so walking out on a lease is not something that should be done lightly.

Finally, it is important to realize that an apartment is not a prison. A landlord cannot handcuff a tenant to the radiator and force him or her to stay.[16] Leaving is always an option, but doing so may mean owing the landlord a large amount of money. In some cases it may be better to leave than to stay. This can be true for any number of legal or non-legal reasons. For example, in most cases the tenant will continue to owe the landlord even after eviction. If the tenant cannot afford the rent, leaving before the eviction is filed will hopefully prevent the eviction from going on the tenant's record. The tenant will still owe the landlord, but has avoided an additional negative consequence. Breaking a lease this way can open a tenant up to substantial financial liability. Therefore, consultation with a lawyer before doing so is strongly advised.

Notes

1. *Eastman v. Vetter*, 57 Minn. 164, 58 N.W. 989 (1894).
2. There is no case law directly on point and the relevant statues were written long before the invention of computers. Most judges follow the indicated rule and could find support in Minn. Stat. § 325L.02(a). A writing has the advantage of being retained and read as many times as the receiver desires.
3. Minn. Stat. § 504B.135; *Oesterreicher v. Robertson*, 187 Minn. 497, 245 N.W. 825 (1932).
4. Minn. Stat. § 504B.135; *Oesterreicher v. Robertson*, 187 Minn. 497, 245 N.W. 825 (1932).
5. In context, "by March 1" could mean "effective February 28" or "on February 28" and thus might be effective notice. *Heinsch v. Kirby*, 233 Minn. 302, 16 N.W.2d 363 (1947). However, writing "by March 1" is risky.
6. See Chapter 17, Subsidized Housing.
7. Minn. Stat. § 504B.145
8. *Gruman v. Inv. Diversified Services*, 247 Minn. 502, 78 N.W.2d 377 (1956).
9. *Gruman v. Inv. Diversified Services*, 247 Minn. 502, 78 N.W.2d 377 (1956).
10. Minn. Stat. § 504B.206
11. *Servicemembers Civil Relief Act*, Section 305, 50 U.S.C. App. § 535
12. Minn. Stat. § 504B.265
13. Minn. Stat. § 504B.131; *Beaumia v. Eisenbraun*, File No. A06-1482 (Minn. Ct. App. Sep. 4, 2007) (an illegal contract is of no effect).
14. Minn. Stat. § 504B.131; *Beaumia v. Eisenbraun*, File No. A06-1482 (Minn. Ct. App. Sep. 4, 2007) (an illegal contract is of no effect).
15. *Colonial Court Apartments. v. Kern*, 282 Minn. 533, 163 N.W.2d 770 (1968).
16. In contrast, in extraordinary circumstances, a commerical tenant may be ordered to stay. *Metropolitan Sports Facilities Commission v. Minnesota Twins Partnership*, 638 N.W.2d 214 (Minn. Ct. App. 1968).

10 Rent Increases

Rental housing is a business. Many landlords' primary source of income is monthly rent payments. Because the expenses involved in running a business can change, landlords occasionally need to change the amount of income they are receiving. They can do so by changing what they charge as rent. There are specific rules controlling when and under what circumstances a landlord may raise the rent. In most situations, a rent increase is only allowed if the landlord has provided the tenant proper advance notice. The notice period guidelines for rent increases are similar to those addressing a notice to vacate, discussed in Chapter 9, Ending a Lease. Many subsidized housing programs (Chapter 17) have restrictions and guidelines on rent increases.

WHAT YOU'LL LEARN:

- When a rent increase is allowed.
- How to respond to an illegal rent increase.
- What is involved in landlord's decisions about rent levels.
- When a rent increase could be considered retaliation or discrimination.

Fixed-Term Lease

A rental agreement that lasts a fixed amount of time will, in most cases, not allow a rent increase during that time period. For example, a common lease duration is one year. In this case, neither the landlord nor the tenant may change the amount of rent owed during the term of the lease. The parties both agreed to the terms by agreeing to the one-year lease, so neither may change the terms without the other's permission.

At the end of the year, the landlord may choose to raise the rent by giving the tenant proper notice. Notice periods for any lease term change—such as a rent increase—are the same as those required for ending a tenancy (see Chapter 9 for more information). Assuming the lease in our example started on January 1 and required only one months' notice, a landlord would have to inform the tenant no later than November 30 in order to increase the rent on January 1. Notice given to a tenant on December 15 for a rent increase January 1, would not be effective.

A fixed term lease can include a "lease escalator clause" that legally allows the landlord to increase the rent in stages during the term of the lease. Although these lease clauses are very rare, tenants should always review their lease before signing to ensure they are not agreeing to a mid-term rent increase.

Periodic, Month-to-Month Lease

In the case of a month-to-month (or periodic) tenancy, a landlord may raise a tenant's rent by giving the tenant proper notice. Most month-to-month leases require that this notice must be one full rental period. This is the same notice period as what is required for the notice to vacate (discussed in more detail in Chapter 9). Essentially, a landlord is telling the tenant to accept the new terms or vacate the premises. If the tenant remains in the apartment beyond the notice period, the higher amount of rent is owed.[1]

The only legal way a tenant can avoid a lawful rent increase is to end the tenancy and move out.

Refusing to Pay

The only legal way a tenant can avoid a lawful rent increase is by ending the tenancy and moving out.

If a landlord does not provide a tenant with proper advance notice of a rent increase, the rent increase can be considered improper. When a rent increase is improper, a tenant has no legal obligation to pay the increased amount. If a tenant does not pay any rent, he or she could be evicted—however, if the tenant refuses to pay the increased

amount, he or she is within legal rights. The landlord might recognize that he or she made a mistake and give the tenant proper notice, after which the rent increase would be valid. On the other hand, if a landlord believes the tenant is wrong, the landlord might begin charging late fees and claim that the tenant is behind on rent because he or she has not paid the full amount. A tenant can ignore these late fees. As long as the landlord continues to accept rent, he or she should not file an eviction. If a landlord were to file an eviction based on nonpayment of a rent increase, the tenant's defense would be to prove the notice was improper as well as to provide evidence that the landlord continued to accept the original rental payment amounts.

Limits on Maximum Rent

There is no law limiting rent levels (except in subsidized housing—See Chapter 17). Some leases can and will state specific limits, but it is not required. Generally, a landlord can raise the rent to whatever level he or she thinks the rental market will allow.[2] Landlords are running a business and must make decisions about how to best market the housing they are offering. If rents are too high, they run the risk of motivating tenants to move to a cheaper apartment.

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Even if a landlord raises rent, a tenant can still try to negotiate for a lower amount. Many tenants successfully negotiate lower rent increases. A tenant can remind the landlord that empty apartments rent for much less money than the proposed new rent. The landlord understands that the tenant knows moving is both costly and time consuming—they may prefer to stay and pay the increased rent. These types of negotiations can be tricky, but the tenant can always threaten to move if they cannot agree with the landlord on a lower rate. Tenants might consider asking the landlord what additional services or amenities are being provided with a substantial rent increase.

Rent Increases as Retaliation/Discrimination

Tenants should pay attention to the circumstances surrounding a rent increase. Landlords cannot increase rents in a retaliatory or discriminatory fashion; if they do so, they may be subject to serious penalties, and a tenant may be safe from eviction.

If a rent increase occurs as a result of a tenant invoking their tenant rights under their lease or within local, state, or federal law, it could be considered retaliation. For example, a landlord cannot increase rent on a tenant because the tenant called a city inspector to address a repair issue. A tenant in this case would have a valid retaliation defense to an eviction action. Tenants in these circumstances should review Chapter 8, Retaliation.

Similarly, if a rent increase is being enforced in a discriminatory manner, it may constitute a violation of local, state, or federal housing discrimination laws. For example, if a landlord institutes an across-the-board $50 rent increase for any tenant who has children in their household, it is a violation of Minnesota's Human Rights law. Tenants in these circumstances should review Chapter 3, Housing Discrimination.

Conclusion

Landlords are in business to make money and rent is their income. Eventually, a landlord will raise rent in their apartment in an attempt to keep up with rising expenses. It is important for tenants to understand when it is legally allowable for a landlord to raise the rent so they do not pay for charges they do not owe.

Notes

1. Minn. Stat. § 504B.135; *Strupp v. Canniff*, 276 Minn. 558, 150 N.W.2d 574 (1967).
2. Minn. Stat. § 471.9996

11 Evictions and Expungements

An eviction, also known as an unlawful detainer (or UD), is a lawsuit a landlord files against a tenant in an attempt to remove the tenant from a rental unit. **Tenants who are being evicted must receive a formal court notice and have a chance to defend themselves in court before they can be removed from their home.**

In an eviction, the landlord asks the court to issue an order for a sheriff to remove the tenant for violating the terms of the lease or rental agreement. An eviction can have both immediate (homelessness) and long-lasting effects (difficulty finding new housing) on a tenant. A landlord who is successful in an eviction lawsuit will win possession of the rental unit and a monetary judgment for court costs only (not for rent or utilities). Currently, the landlord must pay approximately $320 to file the case, depending on the county.

Renters who are concerned about an eviction can prepare by following the law, the terms of their lease, and understanding how the eviction process works. Tenants can defend themselves from an eviction and can even work in some cases to remove, or expunge, an eviction from record.

WHAT YOU'LL LEARN:

- The difference between a notice to vacate, a lockout, and a formal eviction action.
- What actions can lead to eviction.
- What the formal, legal timeline for most evictions looks like.
- How to defend yourself in an eviction action lawsuit.
- How to attempt to remove, or expunge, an eviction from public record if the eviction was filed without a proper reason.
- To identify eviction cases that are more likely to be expunged.

What is an Eviction?

Evictions are formal, legal actions that take place in the context of Minnesota's court system. This means a tenant will be served with a formal notice from the court stating a court date during which the tenant can defend him or herself. The notice also states the reason(s) why the landlord is trying to evict the tenant. The tenant does not have to leave upon getting this notice; he or she has time to defend him or herself and may negotiate for additional time. An eviction is the only legal way, besides negotiation, for a landlord to remove a tenant from the home, and only after a judge rules that it is legal to do so. Evictions, on average, take 20 to 30 days; during this time the only point at which a tenant is at immediate risk of homelessness is when a judge orders a "writ of recovery" for a sheriff to forcibly remove the tenant from the home.

Tenants who are being evicted must receive a formal court notice and have a chance to defend themselves.

HOME Line receives many calls from renters who are concerned they are being "evicted," only to learn they are not at immediate risk of an eviction. In fact, often the landlord has told them verbally that they must leave, which may or may not be legal depending on the terms of the lease. Here are a number of situations that **are not** evictions:

- "Eviction" notice from a landlord: Some landlords may be angry and tell a tenant verbally or in a letter that he or she is evicted with no formal court action. In most cases, this is not true. Landlords must follow the legal eviction process before removing a tenant.
- Notice to vacate: A letter or verbal statement from the landlord that effectively means "get out" or "leave by (specific date)." A notice to vacate from the landlord does not carry the same legal weight as a court-ordered eviction. If the landlord provides proper notice (see Chapter 9, Ending a Lease, to learn more) the tenant is probably required to leave by the date stated in the notice or he or she could risk having the landlord file a valid eviction in the future.
- Lockout: If a landlord changes the locks or prevents the tenant from entering the home in some other way, it is a misdemeanor. Even in an eviction the landlord is not responsible for removing the tenant; rather, a sheriff will remove the tenant and the tenant's possessions. Tenants who are locked out by their landlord can call the police (see Chapter 12, Lockouts and Utility Shutoffs, for more information).

Reasons and Defenses for Evictions

When a landlord files an eviction he or she must state the reason the tenant should be evicted. There are only a few valid, legal reasons for an eviction to be filed: nonpayment of rent, holding over after a notice to vacate, breach of the lease, and some other legally prohibited tenant behaviors.[1] Below, each of these violations is discussed in more depth along with common legal defenses associated with each violation. A landlord may try to file an eviction for another reason beyond these; in those cases, tenants usually have a good defense as long as they can show they abided by the lease and committed no crimes.

Defenses to Any Type of Eviction

There are a number of defenses a tenant can use to respond to an eviction, depending on if the landlord followed the correct steps. Tenants should be aware of these issues because it is possible to win an eviction case based on the landlord failing to follow the law.

Proper service. To begin with, a landlord must "serve" the tenant the court papers stating when and where the eviction case will be heard at least seven days before the court hearing. There are certain requirements in the method the papers are delivered or "served."[2] An adult who is not the owner of the property must deliver the papers. The papers must be delivered to someone living in the rental unit (not to the babysitter or other guest) who is of suitable age and discretion (it can be a teenager but not a child unable to realize the importance of court papers). If the tenant has not been served properly and he or she can prove this, the judge (or referee) may dismiss the eviction. The landlord would then have to file another case to evict the tenant.

Disclosure of address. The landlord must tell the tenant, either in the lease or in some other manner, an actual street address where the tenant could serve court papers to the landlord. A post office box is not sufficient. This has to be done at least 30 days prior to the filing of the eviction.[3] A landlord who fails to provide this cannot evict a tenant because the landlord has not provided adequate information for the tenant to be able to sue the landlord.

Registered business. If the landlord is doing business under what is known as an "assumed trade name," he or she must properly register that name with the Secretary of State's office to be able file or defend any claim in civil court in Minnesota, including an eviction.[4] In simpler terms, if Joe Smith is the landlord, and he has an apartment building known as "Joe Smith's Apartments," this is not an assumed trade name because it specifies who is the owner. If the apartment building's name does not include the name "Joe Smith," such as "Whispering Oaks Apartments," that name must be registered with

the Minnesota Secretary of State. Tenants can check registered businesses at the Minnesota Secretary of State's office by calling 651-296-2803 (metropolitan area) or 877-551-6767 (toll free in Greater Minnesota). This government office also has an online tool for searching registered businesses. The link to this website can be found on this book's online appendix at www.homelinemn.org/book/online-appendix.

Type in the name of the apartment or the business name listed on the lease to see if the landlord has registered the name and that the listing is current. If the landlord has not registered, or if the listing has expired, an eviction case can be "stayed" (put on hold) indefinitely until the landlord registers the name. The tenant is also entitled to a tax of $250, which the landlord owes.

Eviction for Nonpayment of Rent

HOME Line estimates that 90 percent of all evictions filed in Minnesota are for nonpayment of rent. If rent is due on the first day of the month, then the landlord can legally file the eviction on the second day of the month. Most landlords do not file that quickly; the 12th of the month is the most common day evictions are filed. During a tenant's final month in a property, the landlord might not wait to file the eviction because he or she does not want the tenant to use the security deposit to cover the final month's rent.

Defenses for Nonpayment of Rent

Redemption. A successful defense to a nonpayment of rent eviction is for the tenant to arrive at court with all of the rent, late fees, and additional court fees that are due to the landlord. Paying everything that is due is called "redemption." The landlord cannot refuse money offered in court (as long as it includes everything that is due).[5] A written guarantee of payment from a government agency or social service provider (like emergency assistance) may be sufficient.[6] "Everything due" can add up quickly and can include the following items:

- Any rent that is due.
- Lawful late fees (discussed in Chapter 4, Leases).
- Approximately $320 for court filing fees (the landlord paid this, but the tenant must pay it back in a redemption case).
- Approximately $80 for "service of process." This is the cost the landlord usually pays to have the court papers delivered to the tenant.
- A maximum of $5 for attorney's fees.

Rent already paid. By offering evidence, the tenant can argue that he or she has already paid the rent. It is important to pay rent that provides proof payment has been made. The ideal way for a tenant to pay is with a check or cashier's check. Minnesota law requires a landlord to provide a receipt when a tenant pays in cash.[7] In certain cases

copies of money orders or receipts for money orders can be used as proof of payment (as long as the amounts add up to the full amount of rent due).[8] If a tenant pays with cash or money order, it is a good idea to get the receipts signed by the landlord to prove that the payment was made.

No rental license. If the city in which the apartment is located requires a landlord to have a rental license and if the landlord does not have a license, this may be a defense to nonpayment of rent.[9] Some city ordinances specify that no rent is due if the landlord does not have a license. A tenant should gather evidence of the city ordinance and the landlord's lack of a license to ensure he or she can prove this in court.

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Fritz defense for repair issues. The *Fritz* defense (covered in the Chapter 7, Repairs) is a valid defense for nonpayment of rent.[10] In these cases, the tenant withholds rent to force a landlord to make a repair. If the landlord files an eviction for nonpayment of rent, the tenant can assert the *Fritz* defense. The tenant must have all the money he or she owes for rent, in court, to assert this defense. As discussed in Chapter 7, this is not the ideal way to deal with repairs. Tenants should consider filing a Rent Escrow with the court instead.

Partial payment. If a tenant has made a partial payment of the rent due and the landlord accept-

ed the payment, this can be a valid defense to a nonpayment eviction. This depends on how the lease is worded and whether there was some other written agreement between the landlord and the tenant when the partial payment was made. Landlords may occasionally refuse to accept partial payment, so this defense relies on a tenant understanding the terms of the lease.[11]

Eviction for Staying after a Notice to Vacate: "Holding Over"

If the landlord has given the tenant a notice to vacate (to move out by a specific date), and the tenant has not left, then the landlord may file an eviction for "holding over."

Defenses to holding over. In court, the landlord will have to prove that he or she gave a written notice to vacate by the correct date (unless the lease states that it automatically ends at the conclusion of the term; usually one year). The amount of time required is covered in detail in Chapter 9, Ending a Lease. Tenants might also have an argument if the landlord has an illegal or invalid reason for ending the lease. In short, a landlord cannot discriminate against renters by giving a notice to vacate because of race, religion, etc. (see Chapter 3, Discrimination, for a full list), nor can the landlord retaliate against a tenant for asserting his or her rights (covered in Chapter 8, Retaliation).

Eviction for Breach of Lease or Illegal Behavior

A breach of lease is when the landlord claims that the tenant violated a key provision of the lease and should be evicted for that reason. Some of the more common breach of lease cases include: the tenant has permanently moved a guest into the apartment without the landlord's permission, the tenant has an unauthorized pet, the tenant caused damage or destruction of property, or the tenant violated neighbors' peace and quiet with noise violations.

There are four criminal or quasi-criminal bases for which a landlord can evict even if the violations are not named in the lease. Landlords can evict for possession of illegal drugs, possession of illegal weapons, possession of stolen property, or engaging in prostitution.[12] For any of these crimes, there is no minimum amount of time before a landlord can evict. Possession of a small amount of marijuana or even a single stolen doughnut is enough.[13] Often, if a landlord has evidence that a tenant committed one of these crimes he or she will tell the tenant and offer to let him or her move out by a certain deadline before filing the eviction.

Defenses to breach of lease. First, a landlord must prove in court that the tenant violated the lease. Asserting that the tenant has done something wrong is not enough. The landlord has the "burden" to prove that the tenant violated the lease, meaning the landlord must provide evidence to show the violation.

Second, the landlord has to prove that the breach was "material."[14] This means that the violation is important enough that a judge or court referee will decide to remove a tenant from the home. For example: the landlord files an eviction when the tenant puts garbage in the wrong dumpster. A judge has the authority to decide whether that violation is "material" enough to potentially make a tenant homeless. Common sense suggests this is not a "material" breach as it does not cause the landlord considerable harm.

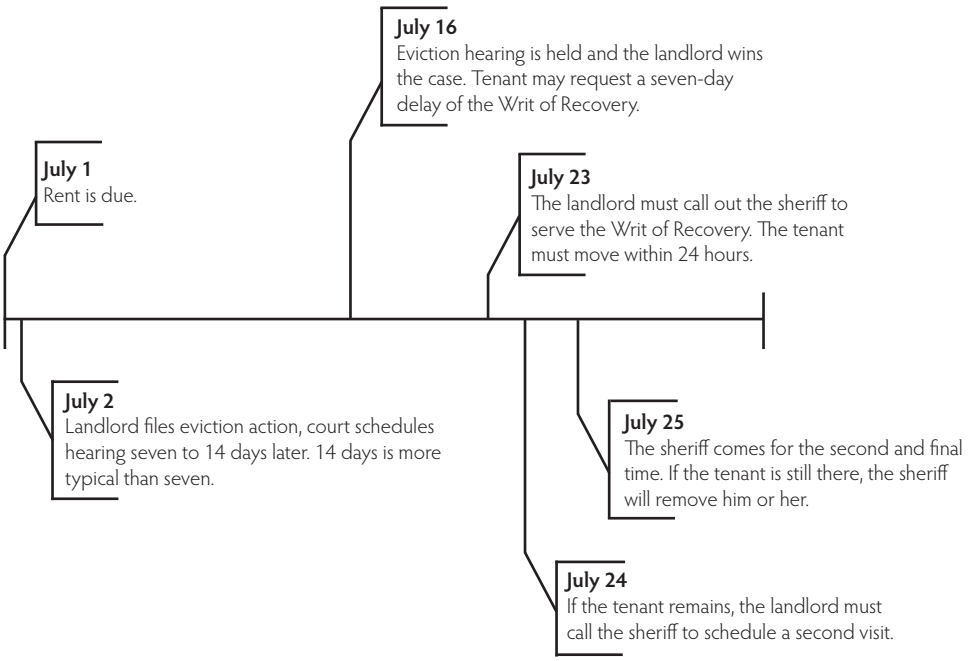
Third, except in the case of illegal behavior, the lease must actually prohibit the activity for which the landlord files an eviction. A landlord cannot legally enforce a no-pet policy unless it was either stated in an oral lease or is spelled out in the written lease. Tenants should keep in mind that "house rules" and "resident handbooks" are legally considered part of the lease if they were presented to the tenant at the time of lease signing, or the tenant was given proper notice of a lease change (see explanation of proper notice in Chapter 9, Ending a Lease).

Fourth, except in the case of the four types of criminal or quasi-criminal behavior discussed above, the lease must state what happens to the tenant if he or she violates one of the terms of the lease. For example, it is not enough for the lease to say "no pets allowed." It must explain that if the tenant violates the lease then the landlord may file an eviction against him or her for having the pet. This is called a "re-entry clause."[15]

Fifth, unless there is a "non-waiver" clause in the lease, if the landlord accepts rent knowing about an "evictable" behavior, then the landlord has lost the right to file an eviction against the tenant. For example, if a tenant has a big, noisy party on the 15th of the month and the landlord was aware of this lease violation, yet later the landlord accepts the next month's rental payment, the landlord is barred from evicting the tenant for that behavior in the future. Leases can include language, or "non-waiver" clauses, that protect the landlord's ability to file an eviction in these cases. Therefore, tenants should review the lease to understand their own rights.[16]

How Long Do Evictions Take?

This depends on several variables, but in general, standard evictions in most Minnesota counties take approximately 20 to 30 days from initial filing until a landlord might successfully get a "writ of recovery" allowing him or her to have a sheriff remove the tenant from the home. Tenants should understand that even if they have no legal defense to an eviction, they can show up in court and ask for an additional seven days to vacate (it helps to mention if there are children in the home or if any family members have a disability when making requests for a time extension).[17] On the next page is a sample timeline for a common eviction.



Common Myths about Evictions

Myths about evictions arise from rumors, word-of-mouth, and sometimes from unique leases that may affirm common beliefs.

The most common myth is that renters cannot be evicted during the winter. This may be related to some leases that specify no move out during winter months or even the "cold weather rule," which affects utility service shutoff during winter months (see Chapter 12, Lockouts and Utility Shutoffs, for more information).[18] A lease term that states no move out during specific winter months means that neither the landlord nor the tenant can give a notice to vacate for the purposes of not renewing the lease during these months. A landlord can file an eviction any time of the year for any of the reasons listed earlier in this chapter. There is no "It is winter so I cannot be evicted" defense.

Tenants may believe they cannot be evicted if they are pregnant or have children. There is no special law that says a landlord cannot evict because a tenant has children or is pregnant. However, if this is the sole reason why a tenant is being evicted, it may be discrimination (see Chapter 3).

Another myth involves the definition of an eviction. Renters occasionally believe that they can be "evicted" if they move out and break the lease before the end of its term. An eviction in this case would be a waste of money for the landlord. If the tenant moved all of his or her property out of the apartment and turned the key over to the landlord, then there is no basis for an eviction because the landlord now has possession of the apartment unit.

The landlord's only available legal step in this case is to sue the tenant in Conciliation or District Court for any past or future rent that is due.

Removing or "Expunging" an Eviction from Public Records

Evictions stay on a tenant's publicly available rental history record indefinitely. After seven years, the court record still exists, but the tenant screening companies that landlords typically hire may no longer legally report them to landlords (see Appendix 3 for a list of screening agencies and Chapter 2, Applying for an Apartment, for more information about dealing with an imperfect rental history).

Most tenants who have imperfect rental histories want to remove, or expunge, past evictions from their records. It is much more difficult to meet a landlord's application screening criteria with an eviction on a rental history record. However, expunging an eviction from public court records can be very difficult. Judges deny the vast majority of eviction expungement requests filed in Minnesota courts. Because court documents are considered public records, the judge or court referee must be convinced that the general public should not be allowed to view these records in the future.

To get an eviction removed, the tenant must prove that the landlord had "no basis in fact or in law"[19] for filing the eviction on the day it was filed. There are three issues that lend themselves to a valid legal expungement:

- The landlord had the facts or law wrong.
- The tenant already gave up possession of the rental unit.
- The landlord improperly served the court papers to the tenant.

Wrong Facts

Cases where the landlord was wrong about the reason for the eviction can be very difficult to prove. Because more than 90 percent of evictions filed by landlords are for nonpayment of rent, tenants in these cases must prove that they were not delinquent on the day the case was filed. A common good expungement case occurs when the tenant drops the rent in a drop slot on the night of the fifth, and the landlord goes to file the eviction first thing on the morning of the sixth. The landlord actually had the rent money; he or she just did not realize it at the time. Occasionally landlords may make accounting mistakes and file an eviction based on incorrect rent ledgers. These instances are rare because landlords must spend more than $300 to file eviction cases, so most landlords usually double check their math and give the tenant a chance to sort it out before spending the money and filing the case.

Gave up Possession

Even if the tenant's lease was broken earlier in the tenancy, as long as the tenant gave up possession of the rental unit the landlord may not have had a legal reason for the eviction. Ideally, the tenant must have all property removed, keys turned over to landlord, and a note to the landlord stating the tenant gave up possession. When the landlord files an eviction, he or she has to swear under oath that the tenant is still in possession of the rental unit. The landlord may still have a claim against the tenant for any past or future rent due, but an eviction case is not appropriate.

Improper Service

Another consistently good argument for an expungement is when the landlord fails to serve the eviction papers properly. When a landlord files an eviction, he or she has to deliver the papers in a very strict, legal way, as discussed earlier. Again, a landlord must: hire or ask someone else (the landlord, or "plaintiff," named on the court case cannot deliver the papers) to deliver court papers at least seven days before the court case to an adult or teenager (not a child) who lives in the rental unit.

How to Request an Expungement

The typical procedure to request an expungement requires the tenant to file a motion with the court seeking expungement. The tenant will have to pay approximately $320 for a filing fee plus a motion fee unless the tenant's income is very low (see Appendix 1 to learn how to file IFP). Depending on the county, the motion may not be heard for several months because the court system is backed up. In the motion papers, the tenant explains the relevant facts why his or her proposed expungement meets the legal requirements discussed above. After the tenant files the case, the court will set a hearing date and the tenant is required to "serve" (deliver by mail, typically) the motion papers on the landlord. During the hearing, both the landlord and the tenant have an opportunity to present arguments and evidence. Then the judge will grant or deny the motion and issue an appropriate order.

In some counties (not Hennepin County or Ramsey County, because these counties have formal housing courts), tenants may be more likely to get an expungement as part of a settlement agreement during an eviction case. The state law that allows for tenants to request an expungement in specific cases is not the only method by which an expungement can be granted. The court has the right to decide what to do with its own records, including expunging them, at any point in the process. Therefore, a tenant who is defending him or herself from a "weaker" eviction may want to consider requesting an expungement in a settlement agreement with a landlord or while he or she is in front of a judge. Obviously, the tenant will need some evidence showing that the eviction was not valid, as discussed earlier.

If a tenant successfully receives an expungement, it is critical to keep a copy of the court order granting the expungement. Copies of the order should be mailed to each of the tenant screening agencies (a list is in Appendix 3) to inform them of the expungement and request that they stop reporting the case in future screening reports. Tenants should consider writing a letter to screening agencies even for eviction cases that are dismissed, stricken, or removed (rather than expunged). An example of a letter to screening agencies is in Appendix 3.

Difficult Expungement Cases

Judges deny the majority of expungement motions. Tenants should be aware of the difficulty of obtaining expungements and recognize in which situations it is just not worth spending the time and money. Several common unsuccessful reasons that tenants file include:

- The landlord said he or she would expunge the case. Once the landlord files the case in court, he or she does not have the authority to expunge it from court records. The landlord can dismiss the case and recommend to the judge that it be expunged, but only the judge can expunge the case.
- The tenant paid the rent after the case was filed but before the eviction hearing took place. The key question is whether the landlord was correct at the specific time he or she filed the case. If overdue rent was not paid by the day the eviction was filed, the eviction case is probably valid.
- The tenant did not show up at the eviction hearing but later paid rent. When a tenant fails to show up at the court hearing, he or she is in immediate default and will lose the case. Judges will not look kindly at an attempt to expunge such a case.

Conclusion

Tenants can fight an eviction and may be able to remove evictions from their rental record as well. Renters may have a very clear defense to an eviction or a landlord may slip up when filing the eviction. Even if the tenant has no legal defenses, he or she can show up in court and ask for an additional seven days to vacate.[20] Most importantly, tenants should be aware of the difference between a formal court action known as an eviction and what is common for people to believe is an eviction. Proper notices to vacate may lead to evictions, but tenants often have much more time and might not have to move out immediately, despite what the landlord threatens.

Tenants can fight an eviction and may be able to remove an eviction from their record.

Because evictions are reliant on individual facts, an analysis of the law, and lease terms, it is a good idea to contact HOME Line to discuss a particular eviction case. Tenants who want to request an expungement may have a valid case as well and should consider contacting HOME Line, Legal Aid, or a private attorney for advice.

Notes

1. Minn. Stat. § 504B.285; Minn. Stat. § 504B.291
2. Minn. Stat. § 504B.331
3. Minn. Stat. § 504B.181
4. Minn. Stat. § 333.01–333.06
5. Minn. Stat. § 504B.291, Subd. 1(a)
6. Minn. Stat. § 504B.291, Subd. 1(a)
7. Minn. Stat. § 504B.118
8. Minn. Stat. § 504B.118; Minn. Stat. § 504B.291, Subd. 1(a)
9. *Beaumia v. Eisenbraun*, File No. A06-1482 (Minn. Ct. App. 9/4/07), available at www.lawlibrary.state.mn.us/archive/ctapun/0709/opa061482-0904.htm.
10. *Fritz v. Warthen*, 298 Minn. 54, 213 N.W.2d 339 (1973).
11. Minn. Stat. § 504B.291, Subd. 1(c)
12. Minn. Stat. § 504B.171
13. *D.H. Gustafson v. Rasmussen*, 2000 WL 1742111 (2000).
14. *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, (1998); *Skogberg v. Huisman*, 2003 WL 22014576 (2003).
15. *Bauer v. Knoble*, 51 Minn. 358, 53 N.W. 805, (1892).
16. *Kenny v. Seu Si Lun*, 101 Minn. 253, 112 N.W. 220, (1907).
17. Minn. Stat. § 504B.345
18. Minn. Stat. § 216B.096
19. Minn. Stat. § 484.014
20. Minn. Stat. § 504B.345

12 Lockouts and Utility Shutoffs

The formal eviction process, covered at length in Chapter 11, Evictions and Expungements, is not about the landlord changing the locks on the tenant—instead, the landlord must follow the court process; only after a judge signs an order can the sheriff physically remove the tenant if necessary. Unfortunately, landlords occasionally attempt to intimidate tenants, bypassing the legal system. Two intimidation tactics landlords employ (which are both illegal) are changing the locks to the rental unit so the tenant cannot access the home and belongings in it, and utility shutoffs that involve the landlord disconnecting a utility.

WHAT YOU'LL LEARN:

- How to react to a landlord who threatens a lockout.
- That a tenant can call the police to respond to an actual lockout.
- How to respond to a landlord who has disconnected utility service.
- Identify what options are available when a utility service may be shut off by the utility company because of past due bills.
- What a tenant can win in court if suing a landlord who locks the tenant out or shuts off utilities in bad faith.

Lockouts: A Crime

A common situation that prompts landlords to change the locks is when the tenant owes rent. The landlord believes—despite the law stating otherwise—that if the tenant is not willing or able to pay rent, he or she should no longer have access to the apartment. The landlord changes the locks mid-lease with no eviction process, or in some rare cases, removes the door so anyone can enter. In either instance, if the landlord is acting in "bad faith" he or she is guilty of a misdemeanor[1] (meaning police can and should be involved in assisting the renter) and can be sued for financial damages.[2] "Bad faith" means the landlord's intention is to keep the tenant out of the unit. It would not be bad faith if the landlord changed all the locks in the building as a security measure after losing the master key.

The financial damages that a tenant can sue for are either $500 or three times whatever the tenant's actual expenses are as a result of the lockout (whichever is greater). The "three times actual expenses" number can be very substantial depending on the circumstances. If a tenant is locked out on Friday night and has to stay in a hotel until Monday when they can file the lockout case in court, the cost of the hotel is tripled. The tenant might also have a tripled damage claim for meals out at restaurants because of not having access to a cooking area, and any costs associated with buying replacement clothes/toiletries for the entire family. The tenant should try to keep the costs reasonable because explanations to a judge are necessary if the tenant wins the case. The tenant should keep all receipts that result from the lockout

What to do When Locked Out

If a tenant is locked out of his or her home—and it is clear it is not for some reasonable security concern—the tenant has immediate remedies. A tenant should first inform the landlord that the lockout is a crime and provide the landlord with the statutes that confirm this. The statutes to quote are: Minnesota Criminal Statute § 609.606 and Minnesota Civil Statute § 504B.225. This alone may solve the problem; if it does not, the police should be contacted.

Police officers occasionally say this is a civil matter and are reluctant to get involved. If this occurs, tenants have a right to explain to the police that it does constitute a criminal act under Minn. Stat. § 609.606. The landlord is guilty of a misdemeanor and can be arrested if he or she does not comply. The tenant should be allowed access to his or her home immediately and can sue at a later date (Minn. Stat. § 504B.225) for damages.

If the police refuse to help or cannot convince the landlord to unlock the doors, the tenant can file a lockout petition[3] with the courts. This process occurs faster than most court actions (the hearing could be scheduled for the next day). These cases cost about $320 to file currently, unless the tenant qualifies to file the case for free under the IFP standards (see Appendix 1). If the judge rules in the tenant's favor, the sheriff is given

an order instructing him or her to let the tenant back into the property or turn on the electricity, etc. At this point a tenant can file the civil suit previously mentioned, suing for $500 or three times the actual damages (whichever is greater), or the judge may allow the tenant to set a hearing date to cover damages.

If the tenant wins a lockout, he or she can have the attorney's fees covered (if the tenant hired an attorney). If a tenant is considering hiring a private attorney, it is worth mentioning this fact because it means the tenant will likely not have to pay for legal services. It is a good idea to call HOME Line or Legal Aid if a lockout occurs to speak directly about the circumstances involved in the specific case.

Landlord Threatening Lockout

In most lockout cases, a landlord will only threaten to lock a tenant out of his or her home. Tenants are understandably nervous with this threat. If a tenant suspects a lockout may occur, the tenant should take proof of residency any time he or she leaves the apartment. Anything like the copy of the lease, a current driver's license (with the address of the rental unit), or even mail with the tenant's current address can help convince the police that the tenant has the right to enter the locked apartment, if necessary. **In addition, tenants should alert the landlord that lockouts are a crime. This can motivate a landlord to obey the law.**

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Utility Shutoffs

The legal requirements for utility shutoffs are virtually identical to the lockout discussed earlier. In the case of utility shutoffs, the landlord will turn off or disconnect a utility (water, natural gas, electricity) to intimidate a tenant into paying rent (or to force the tenant to do so). All the penalties mentioned in the lockout section (misdemeanor, three times expenses or $500, reasonable attorney's fees) are available to the tenant.[4] The tenant should inform the landlord as suggested above and quote the relevant

statutes: Minnesota Criminal Statute 609.606 and Minnesota Civil Statute 504B.221.

On the other hand, if a utility service is shut off for some reasonable business purpose such as to fix plumbing or complete other repairs, or due to nonpayment of a utility bill, it is not the equivalent of the intentional shutoff discussed just above.

Determining the party that is responsible for the utility payments is critical in these cases involving nonpayment of a utility bill:

- If the rental agreement states that the tenant is required to pay the utility bill and he or she fails to do so, the utility company can shut off the power after providing advance notice, and the landlord is not liable under the utility shutoff rule. If the utility affects heat service (gas and electric), the Minnesota cold weather rule may protect the tenant. Tenants have to make arrangements for protection under the cold weather rule by contacting the natural gas or electric company, whichever affects the heat of the apartment, and set up a payment plan.[5] Note that the cold weather rule has nothing to do with eviction—landlords can still evict tenants during winter months—it simply provides a process to allow tenants with past-due heat bill the opportunity to protect themselves from a utility shutoff.
- If the landlord is responsible for payment and chooses to disconnect or turn off the service for non-maintenance reasons, the landlord has committed a misdemeanor. If the landlord is responsible for utility bill payments, does not pay, and the utility company turns off service, then the tenant may have a right to "pay and deduct" the bill from the rent, or even file a court action (an ETRA) if they lose an essential utility service. The pay and deduct process is covered in depth below. The ETRA process is outlined in Chapter 7, Repairs.

Pay and Deduct Process

If the landlord stops paying a utility bill, and is responsible for doing so under the lease, the tenant will end up receiving a shutoff notice from the utility company. These notices are either posted on a common door of the building or mailed to tenants. The notice will state that because there is an unpaid bill, the utility will be shut off on a specific date.

Tenants have the right to organize with neighbors to help pay the bill if one person cannot cover the entire bill. If an individual or a group of tenants decide to pursue this option, steps that should be taken include:[6]

- Call the utility company to find out the amount due for the current month. If the utilities are about to be shutoff, tenants should have received a notice by mail or posted on a common door at the building. This notice should have the phone number for the utility company.

- Consult with neighbors and discuss whether one tenant can cover the amount, or whether a group of tenants can pitch in to pay.
- Give 48-hour *written* notice to the landlord about the tenant's intent to pay the bill. If verbal notice is given, then it *must* be followed up with written notice within 24 hours. Keep a copy of the notice for a record.
- If the 48-hour period goes by, and the landlord has still not paid, the tenant/s may then pay the bill.
- It is important to get a receipt for the amount paid for the utility.
- Tenants should deduct the amount each person (if more than one) paid from individual rent totals, and pay the landlord the reduced amount. A copy of the utility receipt should be included with the reduced rent to show the landlord that the bill was paid.

A utility company is allowed to limit residents paying in this manner for single payment period (usually 1 month), meaning this can be a temporary fix. Tenants should consider organizing to address rental housing mismanagement that results in utility shutoffs. Chapter 20 provides additional advice on tenant organizing.

An exception to the one payment period rule is for tenants residing in buildings of 4 units or less. Tenants in these situations have a right to become the permanent "customer of record." This allows tenants to begin paying only current bills from the date at which they become the customer, and they can deduct the payments from their rent. Again, organizing with neighbors can be an important factor in asserting this right.

Conclusion

A landlord cannot bypass the legal system by locking residents out of the home or shutting off essential utility services. While a lockout may be intimidating, inconvenient, and may cost the tenant money in the short term, tenants have very strong rights in these situations. If they follow the necessary steps, most renters can probably prevent or resolve the situation quickly.

Notes

1. Minn. Stat. § 609.606; Minn. Stat. § 504B.225
2. Minn. Stat. § 504B.231
3. Minn. Stat. § 504B.375
4. Minn. Stat. § 609.606; Minn. Stat. § 504B.221
5. Minn. Stat. § 216B.096
6. Minn. Stat. § 504B.215, Subd. 3

13 Security Deposits

Security deposits, also known as damage deposits, are used in rental housing to cover outstanding damage or disrepair that may be caused by a tenant during a tenancy. Most tenants are required to pay a deposit before moving into the apartment. Many landlords charge a full month's rent for a security or damage deposit (or more, especially if the tenant has bad credit or no good rental history). Additional deposits for pets can be included as well. For detailed information about pet deposits and the effect of pets on a lease, see Chapter 4, Leases.

Security deposit disputes are one of the main reasons tenants call HOME Line. Most landlords are fair with tenants when it comes to deposits, but there are certain landlords who seem to keep every tenant's deposit. There are important proactive steps a tenant can take to protect himself on this potentially expensive topic.

Renters can improve their chances to get the deposit back by following these guidelines and learning more about how security deposits work.

WHAT YOU'LL LEARN:

- Overall rights and responsibilities as they relate to security deposits.
- How to document apartment conditions and take photos before moving in and after moving out.
- To keep apartment in good condition; notify landlord promptly when repairs are needed.
- Not to "ride out" deposit to cover the last month's rent.
- What to do after moving out.
- To expect a response from the landlord within 21 days of move out.
- To understand that in court, the burden is on the landlord to prove the tenant caused damage beyond ordinary wear and tear.

Photos and Apartment Condition Checklists

The first step in getting a security deposit returned from a landlord actually occurs on the first day of the lease. Whether it is an apartment, a condominium or a house, the goal on the first day is to document the condition of the rental unit. This way, it can be proven later what condition the place was in upon move in.

Many landlords ask tenants to complete a move-in/move-out checklist. From a tenant's perspective these are not ideal, because many renters will quickly fill out the move-in checklist without carefully looking at the condition of the apartment. The tenant feels rushed or pressured by the landlord to fill it out quickly. Moving day can mean that the tenant is really busy—for example, they have rented a truck by the hour, have a friend who could help them move only during the lunch hour, or have a baby who needs lots of attention. The landlord has very little incentive to find any damage at the beginning of the tenancy. It is in his or her best interest to prove the place was perfect the day the tenant moved in and the landlord may be in a big rush as well. Landlords, especially at big complexes, may have several new tenants all moving in on the first day of the month. The landlord cannot force the tenant to do a move-in checklist, but if the tenant agrees, they should take their time and try to find any damage that exists.

Instead of doing the checklist, the tenant would be better served to walk around with a camera and take pictures. Most courts prefer pictures rather than a video showing the condition of an apartment. Usually courts are not set up to play videos. If going to court, make sure to print the pictures out and not only have them on a camera or phone. There are two types of pictures to take: overall pictures and specific pictures of damage that already exists upon move in.

Overall pictures show the condition of each room. It may take up to 10 pictures in each room to show all the key components (walls, windows, ceilings, floors, etc.). Other important

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places include the oven, refrigerator and bathroom.

Specific pictures include clear, close-up photos of any damage that is present on move-in day. Look everywhere for evidence of damage, because on the last day the landlord will be looking everywhere for damage. The most substantial item in deposit disputes is usually regarding the floor — especially the carpet. It is critical to have photographic evidence to prove that the damages were there on the first day of the lease.

During the tenancy, the place should be kept as clean as possible. If something breaks or needs to be repaired, tell the landlord right away and keep a copy of any repair requests or reports sent to the landlord.

On the last day of the lease, take pictures again. Take these pictures right before the landlord gets the keys, after all possessions have been removed, and the place has been cleaned thoroughly. Focus again on the trouble areas: the oven, the fridge, the carpet, and the bathroom to demonstrate how clean they are. Again, take up to 10 photos in each room showing the overall condition. Having the photos from move-out day gives a tenant more evidence to prove, in court if necessary, the final condition of the apartment.

To prove when the photos were taken, it makes sense to date the pictures so they state when they were taken. Many digital cameras allow automatic date printing, and some photo developing businesses can print the date on the photo. People have used photos in courts for evidence for more than 100 years. If you are the person who took the picture, you testify in court under oath that you took it and state when it occurred. Unless the other side has some evidence to the contrary, the judge will likely assume that you are telling the truth about the date the pictures were taken.

It may not ever be necessary to print or develop these photos. If the pictures are necessary, they can be critical in recovering the deposit, which could be worth hundreds, if not thousands, of dollars. These days, pictures are easy to take and to store, and can be much more useful than a move-in/move-out checklist.

Cleaning List

An increasing number of landlords now provide tenants with a list of everything that needs cleaning after move out in order to get their deposit returned. These lists are sometimes more than a page and can include some surprisingly detailed items. Do these lists mean anything legally? They certainly have no legal meaning if the landlord gives them to the tenant at the end of the tenancy. If the landlord provides a list of such expectations at the beginning of the lease, along with the lease, they have a better argument. Keep in mind that even if it is provided at the beginning of the lease, the tenant cannot be required to do anything but make the place look like it did at the beginning of the lease (except for ordinary wear and tear covered in the next section).[1] Again, the best course of action is to have photographic and written documentation of the apartment's condition before and after moving.

The 21-Day Rule

How to Trigger the Clock

The landlord must return the full deposit, part of the deposit with an explanation, or a letter stating what happened to the deposit within three weeks (21 days) of move out.[2] Move out is very specific and includes two conditions:

- The tenancy must be terminated.
- A forwarding address must be provided to the landlord, letting him know where to send the deposit.

Both things must occur. A landlord must be given a forwarding address, and the tenant must give up possession before the 21-day clock begins.

The termination of the tenancy requirement is the first trigger. Most of the time this is fairly easy to understand. The tenant leaves on the last day of the lease, turns in his keys, and provides a forwarding address on that day. What happens if the tenant leaves two months before the lease ends or vacates on the 16th of the month when the lease runs until the end of the month? Figuring out when the lease ends depends heavily on other facts. One sure way to know that the tenancy has terminated is if a new tenant has moved in. HOME Line frequently advises tenants to drive by the old apartment at night and see if someone has moved in. The old tenant can bring a friend if he is nervous, but it makes sense to knock on the door and ask the new tenant when he moved in. (The old tenant should explain who he is and that he is trying to get his deposit back from the landlord. Typically the new tenants are fascinated to hear anything about the landlord and the deposit.)

If there is no new tenant and the old tenant vacated on the 16th of the month, the conservative advice is to assume that a judge is unlikely to consider the start of the 21-day clock on the 16th. It is probably best to treat the last day of the lease as the trigger for the start of the 21 days.

The forwarding address requirement is also important. The law requires the tenant to tell the landlord where to send the deposit. It must be a mailing address (the only way the landlord can lawfully send it is through first-class (regular) mail). It does not have to be the tenant's next actual address. Many tenants do not want their landlord to know where they are moving. It is legal to use a relative's address, a P.O. Box, or a work address. Unless the landlord is given a forwarding address, the deposit technically never needs to be returned because the landlord might not know where to send it. When in doubt, be thorough, and give the address to the landlord in writing and keep a copy.

Consequences for the Landlord

It is a huge mistake for a landlord to miss the 21-day rule. If he or she does, the tenant has the right to sue for:

(The security deposit + interest on the security deposit) x 2 + $500 (if a judge agrees the deadline was missed and the deposit was withheld in bad faith).[3]

If the landlord has missed the 21-day rule, the tenant has two options. First, the tenant could sue the landlord immediately for everything allowed under the law. Second, the tenant could send a letter to the landlord telling him that the tenant can sue for this amount of money if the landlord does not return the deposit within a set amount of time. An example of a security deposit demand letter is available in Appendix 2. This second option is often what HOME Line advises because it costs the tenant a minimal amount and does not require immediately going to court. Many landlords will respond by sending the deposit in order to avoid court, but if they do not, the tenant still has the right to sue.

Some landlords will send a note on the 21st day stating that they have not figured out whether to return the deposit but that they will soon and will contact the tenant at that point. This is not allowed under the statute. The landlord has only three lawful choices within the 21-day window: return the deposit, send a letter stating why he or she is keeping the deposit, or a combination of the two (the landlord returns half of the deposit and keeps the other half to cover damages). At a minimum, the landlord needs to identify the items that reduced the security deposit.

Security Deposit Interest

Security deposits accrue interest. In the majority of cases, state law sets the interest, but individual leases sometimes can specify higher rates than state law. The state legislature has changed the rate over time. Since August 1, 2003, it has been set a 1 percent simple interest.[4] If there is a deposit of $500, the interest for one year is five dollars. If the tenant is in the place for two years, it is $10; it does not compound (the interest from past years is *not* included in the calculation for future years). If the tenant has resided in the apartment since before August 1, 2003, the interest is more complicated to tabulate. Appendix 2 includes a security deposit interest calculation worksheet for any period of time or length of tenancy.

Deposit Deductions

A landlord is allowed to make deductions from a security deposit for two reasons:

- Debt that is owed to the landlord that is left over from the tenancy.
- Damages to the rental unit that are beyond "ordinary wear and tear."

Debt Owed

Typical debts that tenants leave owing include unpaid rent and unpaid utilities. Either one is a perfectly legitimate reason for a landlord to decide to keep a deposit, provided the landlord can prove the tenant owes the debt.

More and more, landlords try to deduct fees from deposits as part of the lease agreements. Frequently these are called administrative fees, cleaning fees, or carpet cleaning fees. Depending on the circumstances, these may or may not be enforceable if a Conciliation Court judge hears the case. If they are actually labeled as fees and the landlord demands them at the beginning of the tenancy, they are probably legal. In many cases, landlords fail to label them properly. They might, for example, set a deposit at $1,000 and then have a different part of the lease that mentions fees that essentially render the deposit as non-refundable. In most cases, Minnesota law does not allow this, especially if it deals with cleaning. When this is the case, the "deposit" is not really a deposit (which implies the money will be returned if certain conditions are met).[5] In other words, if fees are structured in a way to make parts of the deposit non-returnable, then it is likely they are not valid and the tenant may have a strong argument suing their landlord in court. Fees are covered in Chapter 4, Leases.

Damages

Damage beyond ordinary wear and tear is less of a legal issue and is based more on the conditions of the apartment. On a basic level, a landlord can only charge for damage they can prove was caused by the tenant.[6] That damage must be to a level beyond ordinary wear and tear. What qualifies as ordinary wear and tear can be very subjective, and frequently depends on what a judge believes is fair. Below are a couple examples that help explain ordinary wear and tear.

The single most expensive item in many security deposit disputes is carpet. The most sophisticated landlords calculate carpet depreciation when they determine how much the tenant owes. Depreciation is easy to understand in an example:

When the tenant moved into the apartment, the carpet was new. According to the carpet manufacturer, this carpet is supposed to last 10 years and the tenant stayed in the apartment for five years. Even if the tenant completely destroyed the carpet while they were there, the landlord can only charge for half the value of the carpet (plus labor), because the carpet is only worth half of it's original value. As always, photo evidence showing the condition of the carpet before and after the tenancy is very important.

The next issue that affects renters frequently is smoking and smoke damage. A landlord can decide that his entire apartment building will be smoke free and ban all smoking on the premises. An estimated 15% of the landlords in Minnesota currently ban smoking, but the other 85% do not because they want to be able to rent to as many people as possible. In that case, if a smoker moves into an apartment that allows smoking, he should be aware of how it could affect his security deposit. For example, when a tenant moves out, the landlord may decide that the tenant must repaint several times to cover up the smoke color or smell, or clean or even replace the carpet because of the smoke damage. Landlords frequently try to force tenants to pay for all of their smoking damage by withholding their deposits. This can be a difficult case for a landlord to win, because it is arguably ordinary wear and tear for an apartment where smoking is allowed. Again, photo evidence showing the condition of the unit before and after

the tenancy is very important.

As shown in the two examples about ordinary wear and tear, these situations can get very complicated very quickly. Having photos of the apartment is critical for proving the before and after condition of the property.

Tips for Court

Whenever a tenant is challenging his landlord in court, it is important to understand what the landlord must do to win the case. This is because the legal system is most frequently focused on who has the burden of proving something. When it comes to deposits, **the landlord has the burden of proving that the tenant is responsible for whatever damage occurred.**[7] Although this explanation does not appear in the law, a successful landlord in a security deposit case would need to show four things:

1. A representation of the apartment's condition upon move in. This could be with photos, witnesses, or a move-in checklist.
2. Evidence that the apartment's condition upon move out was worse than at move in. Again, they have to be able to prove this.
3. Proof the tenant caused damage beyond ordinary wear and tear.
4. Documentation that shows the fair value for all of these damages. Receipts, invoices, time sheets, or at least estimates, are important for a landlord to prove the damages actually cost him something. This documentation is not necessarily required by law, but most judges or court referees will ask for these things.

This book covers a number of topics that can result in either a tenant suing or being sued in Conciliation Court. As discussed above, in security deposit disputes it is usually the landlord who has the burden to prove their actions in court. Other scenarios may require the tenant to provide the evidence and prove to the court that the landlord owes money to the tenant, or that the landlord is incorrect in demanding money from the tenant. Such scenarios include: the landlord sues the tenant for unpaid rent or utilities, the tenant sues the landlord for abandoned property that the landlord disposed of improperly, etc. In any situation where a tenant is either suing or being sued in Conciliation Court, he or she should understand who has the burden of proof and should contact HOME Line for specific advice.

Using the Deposit to Pay the Last Month's Rent

The law clearly states a tenant cannot force the landlord to apply a security deposit to pay for the last month's rent.[8] If the landlord sues the tenant , the tenant could owe the landlord a payment equal to the cost of damage to the unit, the full amount of rent that was withheld, and the deposit interest. Although this is the law, in most cases that HOME Line is aware of, it

is rarely enforced. Sophisticated landlords use a more powerful tool: filing a non-payment of rent eviction early in the last month to force the tenant to pay. This means an eviction will go on the tenant's record, (read Chapter 2, Applying for an Apartment, for an explanation of what an eviction means to a tenant's record).

How to Ensure the Return of a Security Deposit

No landlord will ever say this, and it is not in any law, but the single biggest factor in getting a full deposit refund is something a tenant may or may not be able to control. If a new tenant moves in the day after the old tenant vacates, most, if not all, of the deposit will be returned. The reasons are clear: the landlord—who normally has 21 days to figure out what to do with the deposit—may only have hours to turn over the apartment. Although there is no law that requires landlords to paint or change (or even clean) carpets between renters, many do as a matter of business. If they are hustling to clean and make these minor fixes, they will not have time to look for everything that may be wrong in the place.

There is one way a tenant can help make sure this happens. After the tenant gives notice to the landlord, the landlord will want to show the place to prospective new tenants. During the time after the notice was given but before move out, the tenant should try to keep the place as orderly and clean as possible while making sure not to make it difficult for the landlord to show the place, even if they give very little notice (to understand if a landlord abuses his or her right to show the apartment to prospective tenants, read Chapter 6, Privacy).

Conclusion

Deposit disputes are common between landlords and tenants. A smart tenant prepares for the possibility of these problems at the beginning of the tenancy by documenting the condition of the rental unit. On the last day of the tenancy, after everything has been cleaned and removed, they then take pictures right before giving the landlord the keys. This helps to prove the "before and after" condition of the unit.

Notes

1. Minn. Stat. § 504B.178, Subd. 3(b)(3)
2. Minn. Stat. § 504B.178, Subd. 4
3. Minn. Stat. § 504B.178, Subd. 4, Subd. 7
4. Minn. Stat. § 504B.178, Subd. 2
5. *State v. Keehn*, 554N.W.2d 405 (Minn. Ct. App. 1996).
6. Minn. Stat. § 504B.161, Subd. 1
7. Minn. Stat. § 504B.178, Subd. 3(c)
8. Minn. Stat. § 504B.178, Subd. 8

14 Abandoned Property

When a tenant vacates a property, he or she occasionally leaves behind personal possessions because of any number of circumstances: a short timeline for moving, an eviction, inadequate space at a new apartment, or by mistake. The landlord cannot sell or dispose of the property immediately; rather, the landlord must store any remaining property for 28 days after the tenant has vacated the apartment. The tenant has a right to retrieve it during this period. The law regarding retrieval of the property is slightly different following an eviction, and the differences are discussed later in this chapter.

WHAT YOU'LL LEARN:

- What the law requires when you leave any possessions in the apartment after a regular tenancy or an eviction.
- Practical advice to approach a landlord when you have left behind personal possessions.
- What legal action you can take if a landlord absolutely refuses to return property.

Return of Property

Minnesota law requires that landlords store any remaining property for 28 days after the tenant has vacated the property. After 28 days, the landlord can dispose of the property or sell it. If the landlord chooses to sell the property, he or she must notify the tenant 14 days in advance of the sale. The landlord must apply revenue from the sale to all money the tenant still owes from the tenancy.

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The landlord may incur expenses for transporting property to storage and for storage costs; tenants can be held responsible for these expenses (and they can be deducted from a sale of the property). The landlord is not allowed to hold the property "hostage" to collect unpaid rent[1]—the property must be returned regardless of the status of any property storage expenses, past due rent payments, or deductions from security deposits. The landlord will have a claim in Conciliation Court to sue the tenant for reasonable transport and storage costs.

When a tenant demands the return of the property within the 28-day storage period, the landlord must return the tenant's property if that demand is in writing. The tenant must provide the landlord a minimum of 24 hours written notice of when he or she intends to retrieve the property if it is stored "on premises." If the property is being stored "off premises," such as a storage locker or warehouse, or probably even a garage separate from the apartment, the tenant must provide a minimum of 48 hours written notice.[2]

Return of Property following an Eviction

If the landlord won an eviction case (or unlawful detainer), and the tenant was ultimately removed from the apartment through the eviction process (see Chapter

11, Evictions and Expungements), then the rules are identical to the previous situation, except for one circumstance: In an eviction, a sheriff can become involved in this process if the landlord must remove the tenant from the property.

The sheriff who arrives with a writ of recovery (the order authorizing the sheriff to remove the tenant) will give the landlord two options if the tenant's property remains:[3]

- Store the property on-site: If this occurs, the same rules for retrieving the property as discussed earlier are in effect. There is an additional requirement that the landlord makes an inventory of the property that is on-site, and the sheriff must sign it (these lists tend to be very basic, such as, "bag of clothes," "television," or "bed").
- Remove the property and place it in "suitable" storage. If this occurs, the tenant is required to pay for:
  - Transport and storage costs
  - Court-associated costs for the eviction proceedings

  If the tenant does not immediately pay these costs, a lien is placed on the tenant's possessions for the costs. This means a tenant must pay before he or she is able to retrieve the property. If the tenant does not pay within 60 days of the physical eviction (the day when the sheriff arrived to remove the tenant), the landlord can dispose of or sell the property in a public sale.[4]

The primary difference between these two choices is that if the landlord moves the property to an off-site storage location, the tenant may have a much more difficult time retrieving the property because he or she is required to pay. In any other situation, as discussed earlier, the landlord cannot hold the property hostage by requiring payment before the tenant can retrieve the property.

Practical Advice

In typical abandoned property cases, the tenant either loses an eviction case or cannot figure out how to haul all of his or her belongings to the new home. If a tenant knows in advance that he or she will have to leave some possessions behind temporarily, it is a good idea to notify the landlord, in writing, about the need to leave the property as well as to clarify the time frame in which the tenant is allowed by law to recover the property. It is essential for a tenant to leave the keys with the landlord so as to not retain possession of the rental unit.

Notifying the landlord in advance and turning in keys is important for several reasons. First, it is polite and professional and will make it less likely that the landlord will ignore the law when dealing with the property. Some landlords may just be unaware of the complicated legal timeline involved with abandoned property.

The primary reason for this is that the tenant does not want the landlord to file an eviction under the belief that the tenant is still residing in the apartment (because all the property is there and the tenant still has the keys). Beyond the additional hassle of going to court, a tenant may not be able to remove the eviction from his or her record if the landlord can prove it was reasonable to believe the tenant was still residing in the unit. If the tenant notified the landlord that he or she vacated but left some property, and returned the keys, the landlord should not file an eviction.

If at all possible, the tenant should pack and move any possessions that he or she considers hard to replace or irreplaceable (baby pictures, birth certificates, etc.). While the law does require the landlord to store abandoned property, there is always a risk of disposal involved if the landlord is unaware of the law or chooses to break the law. The tenant should take pictures of any property left behind in order to prove ownership and its condition on the last day the tenant was in the rental unit. This can be useful if the tenant goes to court to retrieve the property or financial damages from the landlord.

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Legal Action If a Landlord Refuses to Return Property

Tenants have legal remedies to sue a landlord for return of the property or financial damages. If the property has not been disposed of, the tenant may sue for return of the actual property (this is called a "replevin" lawsuit). At the same time, the tenant may, and should, sue for the value of the property in case the landlord has disposed of it. The tenant can also sue for "punitive damages." Punitive damages are equal to the greater of twice the amount of actual damages or $1,000.[5] For example, if the landlord throws away furniture worth $600, the tenant sues for $1,800 = $600 (the actual damage) + 2 × $600 (punitive damages that are twice the value of the actual damages). If the landlord withheld a chair worth $200, the tenant should sue for replevin (the actual chair) + $1,000 (since the chair is valued less than $1,000, the tenant chooses the maximum) + $200 (the value of the chair in case it is disposed of) = $1,200.

Usually tenants can initiate these legal actions in Conciliation Court (see Chapter 13, Security Deposits, for advice about Conciliation Court). If the value of the property is over $7,500, a tenant would sue the landlord in District Court, which is much more difficult without an attorney.

In addition to the penalties mentioned above, if the tenant hires an attorney and wins the case, he or she may be able to collect reasonable attorney's fees from the landlord. If the value of the property is high, a tenant may be able to find an attorney more willing to represent him or her in this type of case as the attorney's fees may pay for all of the legal work involved.

Conclusion

Tenants may have to leave their personal possessions behind for a short period of time when moving out of an apartment. It is important to recognize that landlords do have an obligation to hold the property and in most cases cannot force the tenant to pay up front to retrieve the possessions. In an ideal situation, a tenant should ensure property is removed by the move-out deadline. In a less than ideal situation, a tenant should make the landlord aware in advance of leaving property beyond the term of a lease to ensure the property is not illegally discarded and to have a better chance to retrieve it without going to court.

Notes

1. Minn. Stat. § 504B.101
2. Minn. Stat. § 504B.271
3. Minn. Stat. § 504B.365, Subd. 3
4. Minn. Stat. § 514.18 to 514.22
5. Minn. Stat. § 504B.271

15 Landlord Foreclosures

Landlord foreclosures have increased in recent years. The foreclosure crisis affects both homeowners and renters, but in many cases renters are the innocent victims who are often displaced as a result of the landlord's financial mismanagement. There are many misconceptions about a tenant's rights and obligations. It is common for landlords, tenants, and even sheriff's deputies to believe tenants must leave on the day of the sheriff sale. That is not the rule; rather, most tenants will have another six to 10 months to reside in their home after receiving notice. Another common tenant experience during foreclosure is the loss or reduction in services. Many landlords will "check out" by failing to pay utility bills, ignoring requests for repairs, or not properly returning or documenting security deposits. Tenants must know their rights remain intact during a foreclosure.

WHAT YOU'LL LEARN:

- What a landlord foreclosure means for a tenant's right to stay in his or her home.
- In most cases, rights and responsibilities will remain the same for at least six months as the foreclosure proceeds.
- How to recognize options at the end of the foreclosure process, including how to identify a proper notice to vacate.
- How to enforce the right to have the security deposit returned, and how to choose whether to use it to pay the last month's rent.

Basic Foreclosure Process

A "foreclosure" is the formal process where a bank or mortgage company reclaims possession of a building after the current owner of the building fails to make mortgage payments to the bank. The bank then initiates this process, which takes, at minimum, half of a year.[1] The foreclosure process gives the owner a last chance to pay what is owed before the building becomes the property of the bank.[2]

The foreclosure process begins when a property owner fails to pay monthly mortgage payments.[3] The mortgage company must serve a notice of pending foreclosure to the property, meaning each occupant of the building must be served.[4] This notice must contain the name of the mortgage company, the name of the attorney handling the foreclosure, and information regarding the date and location of the "sheriff sale."[5] The notice is usually received a month or more before the date of the sheriff sale. Often, this is the first time a tenant learns of the foreclosure. **It is important to understand that tenants do not have to move when they receive this notice. Rather, most tenants often have at least six to 10 months to continue living in their home.**

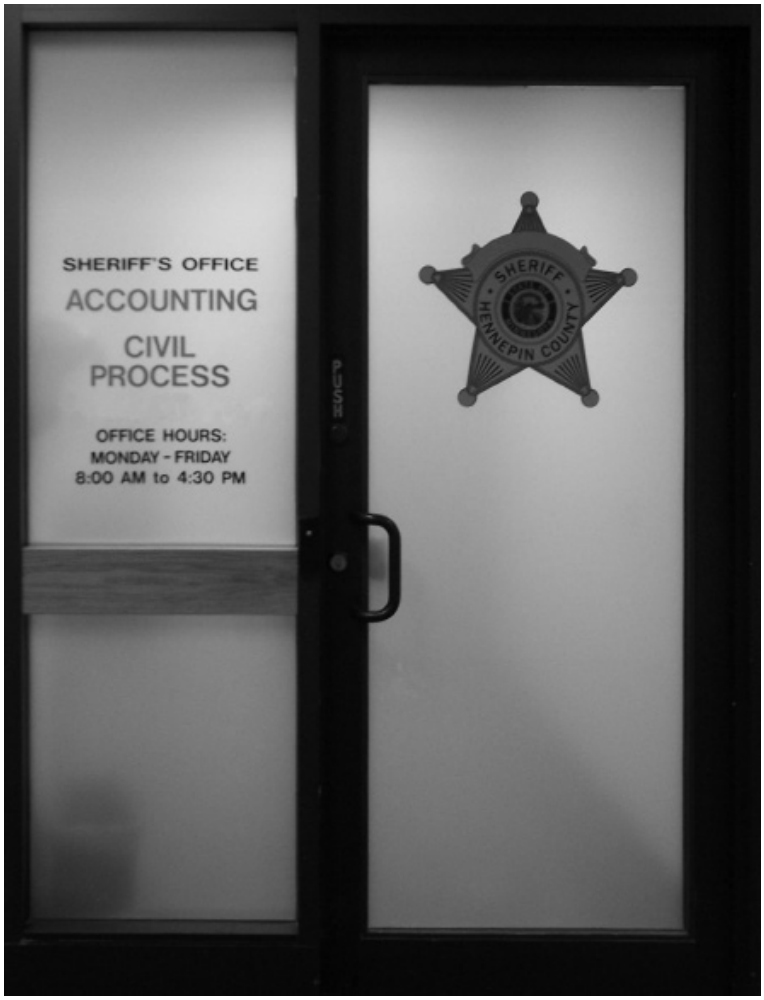
The foreclosure process begins when a property owner fails to pay the monthly mortgage payment.

A sheriff sale is an auction conducted by the county's sheriff department.[6] Anyone can attend the sale to bid an amount to purchase the title to the property. Bidding often begins at the amount that the current property owner owes on the property (what is remaining unpaid on their mortgage). Usually, the bank or mortgage lender wins the auction, buying the title to the property.

After the sheriff sale, the property enters a "redemption" period. This time period almost always lasts for six months. During this time, the original property owner retains possession of the property and can continue to rent the property to the tenants.[7] The redemption period offers the original owner a last chance to buy the house back by paying back the bank. If they pay the winning sheriff sale bid (not just what they are behind on payments) plus any legal fees involved in the foreclosure process, then the original owner "redeems" and is allowed to keep the property.[8] For example: if the landlord's mortgage was for $300,000, they must pay that full amount during the redemption period, not just the comparatively smaller payments they were behind on when the bank initiated the foreclosure. As one would expect, this almost never happens because the original owner is usually not financially stable, so the bank becomes the new owner at the end of the six month redemption period.

A Tenant's Rights and Obligations

During a foreclosure, tenants are often unsure of their rights and obligations; both because it is a complicated process and because they are not always given adequate infor-



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mation about what is occurring. **Before the sheriff sale and throughout the six month redemption period that follows, both the landlord and the tenant must abide by the terms of the lease.** Tenants may continue to live in the property and must pay rent to the original owner. A landlord is entitled to file an eviction for non-payment of rent during a foreclosure but must maintain the property just like any other landlord. When the redemption period ends, the tenant owes rent to the new owner, usually the bank. The tenant should no longer pay the original landlord at this point.

As stated earlier, both the landlord and tenant must abide by their rental agreement. If a landlord has agreed to pay for certain utilities, the landlord is still responsible for providing those utilities. A landlord is also obligated to address repairs that the tenant requests. Lack of repairs and unpaid utilities are covered in Chapter 7, Repairs, and Chapter 12, Lockouts and Utility Shutoffs. Make sure to review these sections, as it is not uncommon for a landlord to neglect their responsibilities during a foreclosure because they do not have adequate finances. These issues, coupled with the foreclosure, can sometimes be a trigger for neighbors to organize if the landlord continues to dismiss the tenant's concerns. The loss of utilities is a very serious problem that can often be handled more easily when tenants organize. Additional resources and tips on organizing with neighbors can be found in Chapter 20, Tenant Organizing.

If a tenant has a month-to-month lease, either party can end the rental agreement by giving the required notice. If the tenant is in the middle of a year-long lease, that lease is

still in effect. In fact, even if the length of a tenant's lease runs beyond the end of the six month redemption period, the new owner (typically the bank) must honor that lease in most circumstances.

After the Redemption Period

After the redemption period, the new owner takes possession of the rental property. At this point, tenants may want to determine what their options will be. There are four directions the new owner can go:

- Give the tenant proper notice to vacate
- Fail to provide adequate notice and demand that the tenant leave
- Offer the tenant "cash for keys"
- Negotiate a new lease or a purchase

In most cases, the new owner wants the tenant to move. The new owner must give the tenant a timely and proper notice to vacate. In the case of a month-to-month lease, or a lease with less than 90 days remaining, the new owner must give the tenant a 90-day notice to vacate.[9]

If the tenant is in the middle of a long-term lease, the new owner must honor the length and the terms of that lease.[10] Like any real estate sale, the new owner essentially "steps into the shoes of the old owner."[11] There is one situation where a longer-termed lease could be cut short: If the property is sold at or after the sheriff sale to an owner/occupant (someone intending to live there, rather than an investor). The new owner can end the tenant's lease by providing a 90-day notice to vacate.[12]

If the landlord does not provide adequate notice to vacate, the notice is not valid, and the tenant can remain living there until the landlord provides proper notice.[13] A landlord would have to file an eviction to remove a tenant, but if the notice is not valid a judge should side with the tenant. Since the end of the redemption period in a foreclosure is a unique situation, tenants should have a clear understanding of the timeline and notice process. For more about how proper notice works, see Chapter 9, Ending a Lease, as well as the foreclosure timeline chart at the end of this chapter.

Increasingly, tenants are offered "cash for keys" or "relocation assistance" deals from banks. This involves the new owner offering tenants money in exchange for them leaving their home early. These offers vary dramatically depending on circumstances such as the length of the lease. Tenants can choose to forgo the extra months or weeks of occupancy for cash. While this can be a good deal for tenants, they should always weigh the benefits and costs of moving early and the added security of having more time to find a new home. If agreeing to a deal, tenants should always get a copy of the deal in writing and signed by both parties.

Finally, there are some circumstances when a foreclosure results in a new owner or bank taking over as the landlord with the intention of keeping it as rental housing. Even if this was not their initial plan, tenants who are interested in remaining in their homes can try to nego-

tiate something with the new owner. While nothing is guaranteed, it may sometimes make financial sense to negotiate a lease extension, or even hire a realtor to make a purchase offer. The new owner is under no obligation to consider these requests, but depending on the circumstances it can be beneficial to both parties. When negotiating a deal, tenants should make sure to get a copy of any agreement that is made between themselves and the landlord.

Security Deposits

Security deposits can be a thorny issue in foreclosures. In many situations the original owner is in poor financial shape. In other cases, the landlord has vanished and will not respond to letters or phone calls. Regardless of the circumstances, tenants are entitled to receive their full security deposit or a letter explaining any deductions. For general advice about tenant rights as they relate to security deposits, see Chapter 13, Security Deposits.

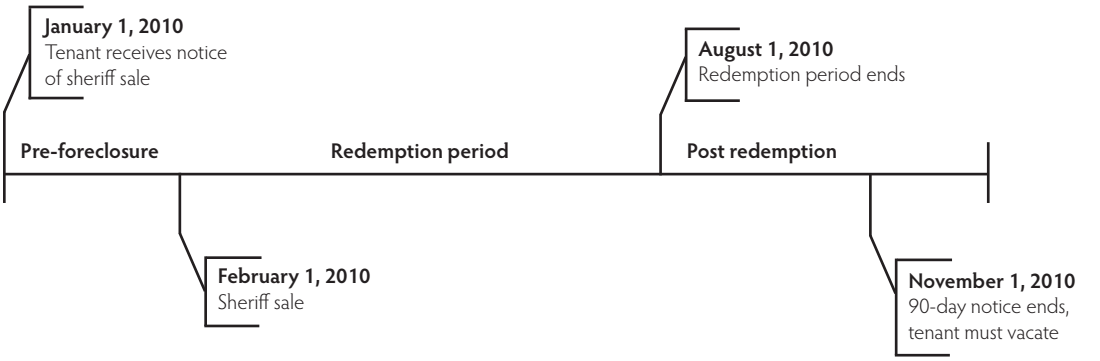
In the case of a sale (such as a sale to the bank during a foreclosure), the original owner must alert the tenant of the sale, transfer the deposit plus any accrued interest to the new owner and give the tenant 20 days to object to the transfer.[14] If the original landlord never did these things, then he or she is still responsible for the deposit. If the deposit is not returned and the tenant does not know what happened to the deposit during the change of ownership, the tenant has a right to sue both the previous and current landlord. It is essential to sue both landlords because the tenant cannot be sure who is holding it. Only one of the landlords may end up owing the security deposit, but the judge or court referee will determine who is liable.

Many tenants consider using their security deposit to pay the rent for the last month of the redemption period. Typically, a landlord can penalize a tenant for doing this by either filing an eviction, or by suing the tenant in court.[15] Under current law, a landlord cannot collect penalties when suing the tenant in a foreclosure situation, but they can still file an eviction.[16] Many foreclosed landlords, however, have "checked out" and are not willing to spend the time or the money to collect one month's rent by filing an eviction. A tenant must weigh the consequences and understand what is at stake before using the security deposit to cover the last month's rent in a foreclosure. While an eviction could be filed for withholding rent during the last month, it can be difficult to collect a wrongfully withheld security deposit from a "checked-out" landlord who has just gone through foreclosure.

Conclusion

Landlord foreclosures are complicated, and there is often a lot at stake for the tenant. The most important tenant right to remember is that there is almost always more time to stay beyond the sheriff sale. A typical tenant has at least 6 to 10 months from the notice of a sheriff sale until the day the bank may force them to vacate. Many tenants

believe that they must leave by the day of the sheriff sale. That is almost always not true. Below is an example of a more accurate timeline of when the tenant must vacate.



Notes

1. Minn. Stat. §580.23
2. Minn. Stat. §580.23
3. Minn. Stat. §580.02
4. Minn. Stat. §580.03
5. Minn. Stat. §580.03
6. Minn. Stat. §580.06
7. Minn. Stat. §559.17
8. Minn. Stat. §580.23
9. Public Law 111-222, Title VII, Protecting Tenants at Foreclosure Act, Sec 702; Minn. Stat. §504B.285, Subd. 1a.
10. Public Law 111-222, Title VII, Protecting Tenants at Foreclosure Act, Sec 702; Minn. Stat. §504B.285, Subd. 1a.
11. *Fisher v. Heller*, 174 Minn. 233, 219 N.W. 79 (1928).
12. Public Law 111-222, Title VII, Protecting Tenants at Foreclosure Act, Sec 702
13. *Eastman v. Vetter*, 57 Minn. 164, 58 N.W. 989 (1894).
14. Minn. Stat. §504B.178, Subd. 6
15. Minn. Stat. §504B.178, Subd. 8
16. Minn. Stat. §504B.178, Subd. 8

16 Manufactured Homes

Manufactured homes (or mobile homes) are a common affordable housing option throughout Minnesota. Most manufactured homes are in parks owned by private developers or investor owners. The park owners are effectively the landlord for the manufactured home park. In many parks, the landlord can rent either of the following:

- A lot where a manufactured home can sit. Frequently the homes already are on the lot, but the home is sold from resident to resident. The landlord will charge a rental fee for the lot, but the home is owned by a resident. People in this situation are considered manufactured home owners, even though they are renting a lot.
- A manufactured home already placed on a lot in the park. People who rent a home are considered residential tenants because they rent the unit and the lot.

People who rent in manufactured home parks have similar rights to those of other renters in Minnesota. Manufactured home renters are covered under the same set of laws as other tenants, so the advice in the rest of this book is relevant to them. Most manufactured home owners have additional rights. **This chapter focuses on the rights of manufactured home owners.**

WHAT YOU'LL LEARN:

- Which manufactured homes qualify for extra legal protections.
- Extra protections under the law in certain cases.
- To recognize when organizing with neighbors will help assert rights and hold a landlord accountable.

This chapter covers resident's rights during the normal operation of a manufactured home park. A major issue affecting manufactured home parks is when the park owner or some other party intends to close a park. Residents affected by the closing of a manufactured home park have additional protections depending on the circumstances. At minimum, they should receive a notice of park closing nine months in advance of the close. Residents in these situations should contact All Parks Alliance for Change (metropolitan area: 651-644-5525, toll-free hotline: 866-361-2722) and review Minnesota Statute § 327C.095.[1]

Which Manufactured Homes Qualify for Additional Legal Rights?

If the resident owns the home (either by paying all costs upfront or purchasing it with a mortgage or a contract for deed) and rents the lot from a landlord in a manufactured home park, the resident qualifies for additional legal protections beyond basic Minnesota tenant-landlord law.[2]

These extra rights do not apply if the resident rents the manufactured home as well as the lot, or if the resident is the only person renting a lot on the landlord's property (typically, this means renting a lot on a farm).[3]

If the land owner leases even two lots (or more) to manufactured home owners, the special rules apply just like in any other manufactured home park. The idea behind providing additional protections to manufactured home owners is that moving a manufactured home is expensive or may not even be possible due to the age of the unit, so the resident should not be forced to move unless they have made a serious violation of the lease or committed a crime.

Additional Rights for Manufactured Home Owners

Eviction

There are a number of different laws relating to what violations residents can be evicted for, how much time residents may have to respond to violations, and the timeline a resident has to obtain their property and sell their home after an eviction case is won by a park owner.

Eviction timeline. If a court evicts a resident, the court may provide the resident up to an extra 60 days (as opposed to only 7 days for regular renters) to: move out, move the home itself, or sell the home.[4] If a court allows this, the resident is required to leave the home "in place," meaning no residents can remain, just property. This

extra timeline, so long as the resident pays the 60-days rent as it comes due (not back rent), provides the resident an opportunity to move their belongings and attempt to sell the home to a new buyer. If the resident is unable to pay rent as it comes due or the 60-day timeline expires without a sale of the home, the law treats the home like any other personal property a tenant would leave behind (see Chapter 14 on Abandoned Property for details). The 60-day period does not allow the tenant to live in the home (at least not the final 53 days after the normal seven-day period that a judge can order in a regular eviction case).

Reasons for Valid Eviction

Park owners or landlords cannot evict manufactured home owners except in the following circumstances:[5]

Nonpayment of rent or utilities. The park owner must provide 10 days' written notice to the resident that a rental or utility payment is overdue. If the resident does not pay the outstanding bill within 10 days of receiving the notice, the park owner can file an eviction.

Violations of manufactured home laws. If the resident fails to comply with a local ordinance, state statute, or administrative rule relating to manufactured homes during the time period in which the law requires, the park owner can file an eviction. If the law provides no timeline, and the resident fails to make the change within a reasonable time after receiving written notice from the park owner, the resident could face eviction.

Rule violations. If the resident fails to comply with a park rule within 30 days after receiving written notice of the alleged noncompliance, the tenant risks eviction. This 30-day notice requirement does not apply to nonpayment of rent; instead, only a 10-day notice is required for nonpayment. Note that there are restrictions on a park owner's ability to enact unreasonable rules. Rules enacted by a park owner must follow these guidelines:[6]

- Be related to the purpose of promoting the convenience, safety, or welfare of the residents, promote the good appearance and facilitate the efficient operation of the park, protect and preserve the park premises, or make a fair distribution of services and facilities;
- Be clear in specifying and informing residents about what actions do or do not comply with the rule.
- Rules cannot:[7]
    - Be retaliatory or unjustifiably discriminatory;

- Prohibit a resident from placing a "for sale" sign on their home.
- Require a resident to use the services of a particular dealer or broker for an in park sale or require a resident to buy goods or services from a particular vendor—including the park owner.
- Require more than one occupant of a home to have an ownership interest in the home.

Endangering or substantially annoying other residents. If the resident acts in the park in a manner which endangers other residents or park personnel, causes substantial damage to the park premises, or "substantially" annoys other residents, the park owner can provide a 30-days written notice to vacate and file eviction if the resident remains.

Repeated serious violations. If the resident has repeatedly committed serious violations of the lease, local ordinances, state laws, or state rules relating to manufactured homes, they risk eviction when the landlord provides a 30-day notice (without a chance to "cure" or fix the problem).

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Lies in application. If the resident significantly lies on their application, they risk eviction. For example, lying about income or a criminal or eviction record may be serious enough for eviction. On the other hand, something minor such as a resident falsely stating that he or she is a member of a volunteer or civic organization may be a "nonmaterial misstatement," not putting the resident at risk of eviction.

Immediate eviction for a violation of criminal law. There is one set of violations that puts the resident at risk of immediate eviction: possession of controlled substances (without a prescription), stolen property, or illegal guns; or engaging in prostitution in the park or home.[8]

Rent Increases[9]

Leases for manufactured home parks are usually month-to-month. Regardless of the lease terms, the park owner cannot raise rent more than two times in a 12-month period, and only after providing a 60-day notice. Also, rents must be uniform, meaning the park owner must charge the same rent for lots that are the same.[10] It is rare for park owners to break this rule because most parks have uniformly divided lots. Residents concerned about being charged fairly should talk to neighbors living on similarly sized lots. There is no limit to the amount a park owner can increase rent.[11]

Written Lease Required and Changing the Lease[12]

Any rental agreement between a park owner and the owner of a manufactured home for the purpose of renting a lot must be in writing. Once a lease has been agreed to, it generally cannot be changed significantly. Residents of manufactured homes are able to "grandfather" their original rights into their ongoing month-to-month tenancy for as long as they reside in their home. In fact, a resident's original lease does not have to be renewed; instead most leases continue from month-to-month until both parties agree to end it. For example, if a park owner wished to no longer allow pets, the owner could change the month-to-month lease or "park rules" to exclude animals from the park. However, current residents would be allowed to have pets under the terms of their original lease. This new pet rule change would only apply to residents who are new to the park; those moving in after the date that the park owner begins the pet policy. Most changes to the lease require the park owner to provide a 60-day written notice.

Selling the Home[13]

The resident may sell their home and the park owner is limited in how they control the sale and choice of the new resident. Because of the condition and age of many manufactured homes, usually the resident sells the home as it sits in its current lot, meaning the park owner will begin renting to the new occupant. This is a unique situation that can cause conflict: the current resident must market their home to potential buyers yet at the same time recognize that the park owner can have some say in who can rent the lot on which the current resident's home is located. The park owner may not charge a fee for allowing a resident to sell their home. However, the park owner can charge a prospective buyer a fee of up to $25 for processing

their application to rent the lot on which the home for sale is located.

The park owner must use a standard procedure and criteria in reviewing a new buyer's application and must approve the application if the criteria are met. The application is approved automatically if the park owner does not deny it within 14 days, unless the owner gives a valid explanation of the need for delay. The explanation of delay must be in writing and must specify the reason for the delay. If the application is denied, written denial reasons must be provided to the prospective buyer within three days.

Organizing with Neighbors

Residents in manufactured home parks are protected by state law to organize resident associations with the purpose of resolving concerns relating to their living conditions and developments that may affect their homes.[14] Residents can form an association by receiving the written permission of 51 percent of manufactured homes in a park.[15] Manufactured home park residents should consider organizing with their neighbors to resolve common issues like park maintenance and general repairs as well as when notice is given of a potential park closure. Residents are also protected from a park owner retaliating against them for participating in resident association activities, as well as for exercising their rights under state and federal law.[16]

Conclusion

Residents who own their manufactured home have extra rights beyond the regular tenant rights discussed in this book. Manufactured home owners are protected in cases of eviction, rent increases, lease changes, selling their home, retaliation, and organizing resident associations. Residents should consider organizing with their neighbors to hold park owners accountable to their legal protections and to protect their homes from redevelopment.

Notes

1. www.revisor.mn.gov/statutes/?id=327C.095.
2. Minn. Stat. § 327C.01, Subd. 9
3. Minn. Stat. § 327C.01, Subd. 5
4. Minn. Stat. § 327C.11, Subd. 4
5. Minn. Stat. § 327C.09
6. Minn. Stat. § 327C.01, Subd. 8
7. Minn. Stat. § 327C.05
8. *D.H. Gustafson Co. v. Rasmussen*, Minn. Ct. App. File No. C2-00-540 (Nov. 28, 2000) www.lawlibrary.state.mn.us/archive/ctapun/0011/540.htm.
9. Minn. Stat. § 327C.06
10. Minn. Stat. § 327C.03, Subd. 3
11. *Skyline Village Park Assn. v. Skyline Village L.P.*, 786 N.W.2d 304 (Minn Ct. App. 2010).
12. Minn. Stat. § 327C.02
13. Minn. Stat. § 327C.07
14. Minn. Stat. § 327C.13
15. Minn. Stat. § 327C.01, Subd. 9a
16. Minn. Stat. § 327C.12

17 Subsidized Housing

Usually the most important factor that prospective renters consider when shopping for an apartment is the amount of rent they can afford. "Housing affordability" is defined as costing a household no more than 30 percent of its gross (before taxes) income. Most rental housing is not affordable to people with low incomes. If a household only earns $700 per month, it is unlikely that it will find a safe and decent place that is affordable within the private rental market. The primary way for families with fixed or low incomes to afford decent, safe rental housing is through housing that is "subsidized," or funded, by various government agencies. This chapter is a summary of the most common affordable housing subsidy programs as well as some of the most common legal issues renters face in these programs.

WHAT YOU'LL LEARN:

- The difference between tenant-based and location-based affordable housing.
- Which government agencies administer affordable housing programs.
- Advantages and disadvantages of the different programs.
- Basic subsidized housing rules.
- Common issues and concerns that renters face in subsidized housing.
- That continued availability of affordable housing is extremely limited.
- How to advocate for additional affordable housing on a local, state, and federal level.

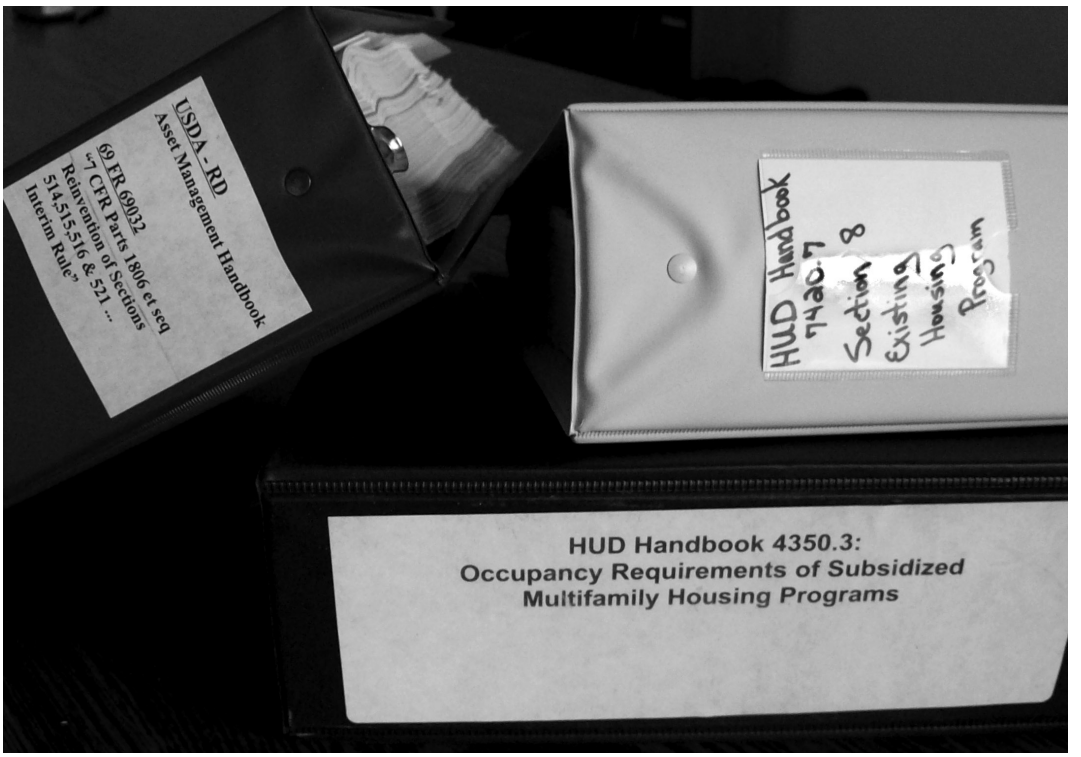
Approach of Chapter

Because there are numerous affordable housing subsidy programs that fall under a wide range of local, state, and federal laws and regulations, no effort is made below to cite these, given the overview approach to the law in this chapter. Renters in subsidized housing should consult with an attorney or tenant advocate if they have legal questions. Most subsidized housing programs are income-based; so many residents can qualify for free legal representation. Tenants can call HOME Line or their local Legal Aid office (see Appendix 4 for more resources).

The Big Three

The vast majority of subsidized rental units are made affordable through federal housing programs. Some states, local governments, and even charities or churches may have their own subsidized housing programs. This chapter focuses on three main federal agencies that provide subsidies:

1. Rural Development or "RD housing," run by the United States Department of Agriculture (USDA) and located primarily in rural areas and smaller towns.[1]
2. Department of Housing and Urban Development (HUD): Section 8 and public housing are the most common; however, this department administers several other programs.[2]



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3. "Tax credit" or Section 42 housing, run indirectly by the Internal Revenue Service (IRS).[3]

Prospective tenants who wish to apply to participate in one of these programs must income-qualify (income must be below a certain level) and in most cases must be added to a waitlist (because there is such a great need for this type of housing). Because subsidized housing helps tenants with fixed or low incomes afford housing, there are specific formulas unique to subsidized housing (different from the IRS income tax formula) that add up the income that can be counted (such as hourly wages, public assistance, child support payments), as well deduct expenses that are exempt from the calculations (such as medical expenses). Calculating a tenant's income helps both identify if the tenant qualifies for the housing and how much the tenant will pay for rent, depending on the program. The income calculation process differs between each program. A fat book could be written setting out tenant rights and responsibilities in each of these programs. In fact, the USDA, HUD, and IRS have written fat handbooks for each program. The most useful handbooks are mentioned in endnotes for each of the programs listed above. These handbooks are readily accessible on the Internet and links are provided in the online appendix of this book.[4] No effort is made to duplicate the books in this chapter.

Location-Based Versus Tenant-Based Subsidy

With a few minor exceptions, subsidies can be broken into two categories:

Location-Based

These subsidies are attached to a building or apartment complex and only tenants residing in the building have subsidized rent. All the programs discussed in this chapter, except the Section 8 Voucher program, are location-based.

Tenant-Based

The Section 8 voucher program subsidizes the tenant's rent in any rental unit he or she chooses and is eligible to live in. A government agency called a "housing authority" (can also be referred to as an HRA, PHA, or CDA) manages the voucher and imposes a set of responsibilities on the tenant. The tenant's rent is subsidized wherever he or she lives. The landlord receives two rent payments each month: one from the tenant and one from the housing authority.

Benefits and Drawbacks

Besides the primary benefit of providing very affordable rent, government subsidy programs can protect tenants in a number of additional ways. At the same time,

some of the programs have drawbacks that can affect a tenant's ability to fully enjoy the home.

Benefits and drawbacks of location-based subsidies. One of the most important rights included in all of the location-based subsidized housing is "good cause protection." Good cause protection means the tenant has a right to stay in the housing as long as it remains subsidized (and in most cases, even after the subsidy ends) as long as he or she does not "materially" breach the lease or perform some illegal activity. This is different than regular private-market tenants whose tenancies are protected just for the length of the lease. Once a private-market lease ends, the landlord can "nonrenew" the lease, effectively terminating the tenancy after proper notice simply because the landlord chooses. The exact details of what constitutes breaching the lease or creating a good cause for termination varies from program to program, but all the location-based federal programs have this important feature.

Besides the primary benefit of providing very affordable rent, government subsidies can protect tenants in other ways.

Often tenants are concerned about retaliation for enforcing their rights or speaking up. While state law protects tenants from some forms of retaliation, there can be a risk of the landlord refusing to renew an expiring lease. This concern matters less to a tenant in a subsidized apartment because he or she always has good cause protection, whether or not the tenant asserts his or her rights. The landlord cannot refuse to renew the lease if the tenant is abiding by its terms.

Additional benefits to some types of location-based affordable housing may include (depending on the type of subsidy):

- In most programs tenants must be given advance notice before a landlord files an eviction against them. This may allow tenants to fix the problem—such as in the case of rent nonpayment—before the landlord evicts them.
- Most subsidy programs allow tenants to remain in their homes if their income increases above the guidelines. This can save tenants from displacement if they have higher incomes during certain months or end up getting their dream job. This is covered later in the chapter.
- In many apartment complexes, tenants have a federally recognized right to organize with their neighbors to address common concerns and address issues related to their homes.

There can be disadvantages of location-based subsidized housing, depending on the tenant's situation. Because the buildings are only located in certain areas, they may

not allow tenants to live in the community of their choice, as a prospective renter might have to accept whichever apartment is offering a spot. If a tenant moves from his or her home, the subsidy stays with the unit—meaning the tenant will either have to find affordable housing elsewhere or apply to get a voucher. Lastly, as discussed later in the project-based housing section, some of these subsidies are at risk of termination or expiration, meaning the affordable housing subsidy can end and tenants can be displaced if it is no longer rental housing.

Benefits and drawbacks of tenant-based subsidies.[5] The primary benefit of Section 8 vouchers is that they allow tenants the freedom to find an apartment wherever they want. They have a choice to move from their current apartment to a new apartment and keep the subsidy with them. This freedom to rent at any eligible market-rate apartment provides more opportunities for tenants: They can live closer to a workplace, doctor, family, or school.

Unfortunately, in Minnesota it is legal for landlords to discriminate against renters who pay a portion of their rent with a Section 8 voucher by refusing to rent to them. This is discussed in more depth in Chapter 3, Housing Discrimination. As mentioned above, tenants with a voucher do not have good cause protection from eviction. Landlords can choose not to renew the lease of a family that has a Section 8 voucher. Lastly, Section 8 vouchers have been the target of many government funding cuts, which can ultimately affect residents in rent increases or reduced "voucher payment standards" (the maximum a voucher will pay for rent).

Overview of Federal Subsidy Programs

RD Housing (Rural Development, U.S. Department of Agriculture)

RD housing exists mostly in rural areas (or areas that were rural and have since become more populated). The USDA is the government agency responsible for funding and administering the program. Rent levels, income recertification, and other tenancy issues are handled by the landlord, not by a housing authority or the USDA.

Tenants pay a reduced rent related to their income. Some units in RD housing have an additional "rental assistance" subsidy (RA). If the tenant is in a unit with RA, the tenant will pay 30 percent of his or her adjusted income as rent. If the tenant does not have RA, he or she will pay rent that is between a "floor" (base rent) and a "ceiling" (note rent) depending on income. If 30 percent of the tenant's income is between the base rent and the ceiling rent, he or she will pay 30 percent of his or her income as rent.

RD tenants are protected by a number of rights not available to private-market tenants. Most important rights and responsibilities are spelled out in the lease. One

right that is different than other location-based subsides: Residents who become ineligible for the housing because of a large increase in income are not protected from displacement. The landlord is required to provide a notice to vacate to a tenant whose income rises above the eligible limits. RD tenants have a few extra responsibilities, mostly related to certifying income on an annual basis. Also, in between annual recertifications they need to report when family size or income has changed.

HUD Housing

HUD's three most common types of subsidized rental housing include: public housing, project-based housing (privately owned), and Section 8 vouchers. These are covered below, along with the HOME program.

Public housing. In public housing, the tenant lives in a building owned by the government. Usually an agency called a "housing authority" (also referred to as an HRA, PHA, or CDA) is the tenant's landlord.

The tenant usually pays 30 percent of his or her income as rent, although the tenant may choose to pay a "flat" rent which is independent of income. The flat rent is typically lower than rents found in the private rental market and can be a good choice for tenants with moderately higher incomes.

Public housing tenants have subsidized rent and good cause protection. Their rights are spelled out in the Code of Federal Regulations as well as in federal statutes.[6] The tenant's lease covers most of the tenant's rights and responsibilities. As with any other lease, this includes any house rules or handbooks.

Unlike other subsidized tenants, public housing residents sometimes have the right to have a grievance hearing to contest a decision their landlord (the housing authority) makes (in addition to their renters rights in court). Residents have the right to tenant representation on the Board of Directors of the housing authority. Tenants not only have the right to form a tenant association, but their tenant association can receive funding from the housing authority in order to address property- and tenancy-related concerns.

The responsibilities that residents have in public housing are similar to other responsibilities in HUD and RD housing. Most importantly, tenants should abide by the terms of the lease and notify the landlord whenever their income changes substantially. In one important area, the rules are stricter: Federal laws essentially ban all illegal drug possession anywhere (even outside of the United States) and the public housing authority has the right to file an eviction for such drug possession.

Project-based housing. Project-based apartments are owned by private landlords, but the rules and responsibilities of both the tenants and the landlords are highly regulated by the government. Although this type of housing can be located anywhere,

it tends to be in or near large cities.

In project-based Section 8 housing, the tenant pays 30 percent of his or her adjusted income as rent. In project-based Section 202 (legally designated to assist only elderly and disabled people) or Section 236 housing (financed by a certain type of mortgage), the tenant pays a rental amount that is set somewhere between a floor rate and a ceiling rate, much like a non-RA tenant in RD housing, depending on the tenant's income.

Landlords are required to use a form lease that specifies most of the important rules. Rent and income recertification, as well as most other tenancy issues are handled by the private landlord or management company, not by a housing authority or other governmental unit. If tenants have problems about housing conditions or management issues that the landlord is not responding to, they can notify HUD of concerns.

HOME. HOME is a HUD program that provides grants to state and local government to create affordable housing. The housing is location-based in that the subsidy stays in the unit and cannot transfer when a tenant moves out. While it is not as highly regulated as HUD's other rental programs, tenants still have good cause protection from eviction.

Section 8 vouchers. The Housing Choice Voucher program, better known as Section 8 vouchers, is a tenant-based subsidy that allows a prospective renter to locate his or her own housing from any landlord who qualifies and is willing to rent to the tenant. As discussed earlier, in Minnesota, most landlords may lawfully choose not to take voucher holders. The exception is landlords who operate certain types of subsidized housing (for example, project-based buildings with market-rate units and Section 42 "tax credit" landlords are required by law to accept vouchers). The process by which tenants locate suitable apartments and their rent is calculated can be complicated. Below is a basic timeline.

Once a tenant finds a landlord willing to rent to him or her, several things occur:

- The landlord's rent level must be within a maximum limit or voucher payment standard (VPS).
- The apartment unit must pass a basic inspection.
- The landlord and tenant sign a lease. Usually the first lease must be for a year term but can later go month-to-month. The lease states the full amount of rent for the unit, along with lease terms relating to rights and responsibilities.
- The housing authority and the landlord enter into a contract. This contract states how much the tenant must pay and how much the housing authority will pay.

A voucher holder and the landlord must follow the terms of the lease, HUD's voucher regulations, as well the housing authority's Administrative Plan. The plan is a guidebook developed by the housing authority based largely on HUD regulations but specific to the community the agency serves. Tenants can read a copy of the plan at the housing authority. The housing authority gives introductory training to each voucher holder explaining the important rules. Additionally, the apartment unit must pass a "housing quality standards" inspection that aims to correct health and safety issues in the unit.

The tenant annually recertifies his or her income and restates all the members of their family at the housing authority. Changes to the family size or substantial changes to income must be reported throughout the tenancy (the specific rules are outlined in the plan or the voucher itself). Failure to carefully follow the rules can lead to loss of the voucher, meaning the tenant would then be responsible for paying the full amount of rent or would be evicted.

Once the tenant's income is determined using a formula as discussed earlier, the tenant's rent is determined as follows: First, the contract rent (the full amount of rent for the unit) is compared to the VPS. The VPS is an average/moderate rent for the local community as computed by a HUD formula. If the contract rent is below or equal to the VPS, the tenant pays as rent 30 percent of his or her income. If it is higher than the VPS, the tenant pays 30 percent of income plus the difference between contract rent and the VPS. The balance of the contract rent is paid by the housing authority in a check called a Housing Assistance Payment, or HAP. If the total tenant rent so calculated is more than 40 percent of the tenant's income, the tenant may not rent from that landlord unless the tenant already lives in the unit and the lease is being renewed. Tenants may ask a landlord to voluntarily reduce their rent to make the apartment eligible for a voucher.

The rent must also be "reasonable." This means it must be no more than the amount charged to non-voucher holders for comparable units. The purpose of this rule is to stop landlords from overcharging rent on voucher leases, figuring that the subsidized tenant only pays 30 percent of income anyhow and will not complain, effectively allowing the landlord to use the voucher system to rip off the government.

Tenants are free to negotiate the rent amount or look elsewhere for housing (after the end of the lease) just like a tenant in the private rental market would. Allowing tenants this freedom to move is the goal behind the voucher program. Many housing authorities have strict rules regarding the length of leases and how often a tenant may change landlords because of the costs involved in processing a move (new inspections, leases, HAP contracts).

Tenants who have disputes with the housing authority—regarding income and rent amounts, termination of the voucher, or other issues—can address those issues through a grievance hearing. These hearings are held in a conference room (not a court), are presided over by non-judges selected by the housing authority, and have relaxed rules of evidence. The tenant must make a request for the hearing in writing, usually within

10 days of a decision with which he or she disagrees. A tenant's right to appeal the decision of a hearing is somewhat limited. These grievance hearings provide some due process to the tenants but fall short of what the tenant gets in an actual court. Of course, many disputes are resolved by discussion short of any hearing.

"Tax Credit" or Section 42 Housing

Section 42 of the Internal Revenue Code subsidizes housing by giving developer landlords tax credits in return for providing housing with rent caps.

In Section 42 housing, the tenant's rent is not based on the tenant's income. To be admitted to the housing, and in a few cases to have the right to renew a lease, the tenant must income qualify (have an income below a cutoff). The landlord will tell the applicant tenant the income guidelines so a tenant with a higher income does not waste time applying. Once accepted, the tenant signs a lease like any other private-market tenant. Renters in Section 42 housing have two important protections:

1. A rent cap based on unit size and the original agreement signed by the landlord developer.
2. Good cause protection from eviction.

Because of tax audit rules, the tenant has to recertify his or her income annually (voucher holders are sometimes allowed to use their voucher recertifications instead).

As discussed earlier, Section 42 landlords, unlike most private landlords, cannot discriminate against Section 8 voucher holders.

In some cases, unlike other landlords, a Section 42 landlord may charge slightly higher rent to Section 8 voucher holders. This typically does not affect the tenant, as he or she will still only pay 30 percent of income as rent.

Common Rental Issues in Subsidized Housing

Waiting Lists

All of the programs discussed in this chapter are in high demand, resulting in a need for most tenants to wait months or years to access the housing. The RD and most HUD subsidized housing programs have rules directing how tenants are added to waiting lists and at what point a tenant becomes "next in line" to receive affordable housing. Many housing authorities close their waiting list for public housing or Section 8 vouchers when there are many households waiting. Closed waiting lists mean that tenants cannot even apply for subsidized housing in that program. Tenants who are able to obtain a spot on a waiting list may be required

to annually update their status with the landlord or agency, and in most cases can request information about their place in line. Housing authorities and private owners of location-based subsidized housing are directed to prepare written policies outlining the process and timeline for selecting tenants on the waiting list. Tenants have a right to see these policies upon request before and/or during their tenancy. Tenants concerned about unfair selection criteria or favoritism should contact HUD or USDA, depending on the program.

All of these programs are in high demand, resulting in the need for most tenants to wait months or years to access the housing.

Utility Allowance

When calculating rents in these programs the tenant is said to receive a "utility allowance" that assists with the costs of any utilities the renter must pay. This amount is based on the estimated monthly utility bill for an average tenant for each utility the tenant pays. The tenant's share of the rent in the HUD programs is credited with this amount. For example, suppose the tenant's 30 percent share is $400 and he or she pays the electricity bill (with the landlord paying other utilities). If the electric utility allowance is $40, then the tenant's rent payment will be $360, regardless of what the tenant's actual expenses for the bill are each month.

For the Section 42 program, the rent cap is adjusted to account for the applicable utility allowance(s).

Changes or Loss of Income

Tenants in any subsidized housing programs should report any changes to their income (increases or decreases) to the landlord and/or housing authority during their tenancy. Some programs allow the tenant to request a recertification during the lease term to adjust the rent. Tenants who fail to report an increase in income (that would require a rise in rent) may be violating the lease.

Public and project-based Section 8 housing tenants have the right to stay in their housing even if their incomes rise above the eligibility limits. If a tenant in this type of housing gets a dream job with a fabulous pay raise, the tenant is allowed to stay in the home as long as he or she wishes. The tenant must report the change in income and begin paying the fair market rent that the landlord or housing authority charges.

This is a really important protection, because that dream job may not be all that it seems on the surface. If the job is temporary or seasonal, or if the tenant is laid off, he or she is allowed to recertify in order to readjust the rent back to an affordable level. Section 8 voucher holders do not have this safety net. They lose their voucher without hope of getting it back if their income goes above the limit just

once and no Section 8 subsidy is paid for six months.

There is a far more complicated situation for tenants living in Section 42 "tax credit" buildings who face this issue. In cases where the entire project has Section 42 units, nothing changes for the tenant whose income goes up. In complexes that are mixed with market-rate units and Section 42 units, a tenant whose income increases to less than 140 percent of the eligibility limit may continue to live in the apartment.[7] Those whose incomes are above 140 percent of eligibility might not have their leases renewed. Because of the complexity of the program, different rules may apply depending on the circumstances at any given property. Tenants should read the lease and contact HOME Line with questions.

Rural Development has a different set of rules that surround this issue. Basically, any tenant whose income rises above the eligibility limit must vacate after given a 30-day notice or a notice of nonrenewal at the end of the lease, whichever is longer. Exceptions to this rule can be requested from the RD office on an individual basis. When tenants have an established history of working seasonal jobs (such as students who may work only summers), their incomes can be calculated on an annual basis, preventing them from getting kicked out of the home because of a short-term income increase. Overall annual income must still be under the program limits.

Programs that allow tenants to pay 30 percent of their income for rent usually have rules when a tenant has no income or assets. Section 8 tenants (vouchers or project-based) may still be required to pay a minimum $25 to $50 rent, depending on the program. Tenants should review their lease and the administrative plan of their local housing authority.

Household Size and Guest Requirements

As mentioned briefly in Chapter 3, Housing Discrimination, subsidized housing rules sometimes regulate which apartment is available to a tenant based on the size of his or her family. For example, a project-based Section 8 landlord may require a family that has lost a member to move to an available smaller unit, making the larger unit available to a family of appropriate size.

Rent levels are dependent on the incomes of all household members. As a result, many of the subsidized housing programs are very specific about determining who is a member of the household. This means leases and federal rules may require the tenant only to allow guests in the apartment for a limited number of days. Tenants should review the lease for these requirements and read the "Guests" section of Chapter 4, Leases.

In some cases, there are exceptions to such "occupancy limits," which vary depending on the program. For example, two notable exceptions include reasonable accommodations for people with disabilities, and Section 8 voucher holders:

People with a disability. A single person who has a disability can often qualify for a larger bedroom size if he or she can show the need for an apartment with two bedrooms because a personal care attendant (PCA) stays overnight, or because the tenant needs the space for equipment related to the disability. Agency guidelines provide for these exceptions, but the tenant may have an argument for a reasonable accommodation as outlined in Chapter 3.

Section 8 vouchers. Individual housing authorities can set specific occupancy standards for their community. For example, some agencies' regulations can count a living room as a bedroom space. This would mean a six-person family could be limited to a two-bedroom voucher, because the living room would be considered as the third bedroom. If a housing authority says that providing a person with a disability a reasonable accommodation of a second bedroom would be an undue financial burden, it may be within rights to require a PCA to sleep in the living room of the one-bedroom apartment.

Organizing and Advocating for Affordable Housing

Subsidized housing programs continue to face challenges due to years of underfunding. Public housing, after decades of underfunded maintenance and repairs, is encountering substandard quality housing and the threat of demolition. **Tenants wishing to apply for any form of subsidized housing often must contend with long and even closed waitlists that remain closed for years, especially in areas like the Twin Cities.** Private owners of project-based and RD buildings have the choice to end their government contracts and are gradually leaving the programs. Once they are gone, the affordable rental units are not replaced.

Tenants who live in public and project-based housing have a federally recognized right to organize around issues that relate to the operation of their housing.[8] This means that it is illegal for any landlord or a landlord's employees to interfere with the organizing of a tenant association. HOME Line has successfully worked with residents of many project-based buildings to organize and preserve the Section 8 in their buildings. Organizing is an activity any group of tenants can do, regardless of whether they have this extended right. In many cases, tenants are joined in support for affordable housing with other community members, places of worship, and elected officials.

When tenants organize and advocate for their housing, it helps to ensure that subsidized housing across the country remains safe, decent, and affordable to all who need it. Residents can work together with neighbors and their community to hold their elected officials accountable. Remind them why affordable housing is important: it prevents homelessness and allows families to live independently, stabilizing their lives. **Tenants who act as a group have more influence over elected officials or landlords.**

Chapter 20, Tenant Organizing, covers tenant organizing in both market-rate and subsidized housing.

Conclusion

In general, the law around subsidized housing is complicated. Renters in subsidized housing have many additional rights and responsibilities beyond those of other tenants. Renters must understand what they are required to do as part of both their rental agreement and the regulations that govern these programs. If a tenant is having difficulty locating affordable housing or keeping the housing he or she currently lives in, the tenant should consider working with neighbors to preserve the housing and encourage elected officials to provide more funding for these programs. Tenants can contact HOME Line or a local Legal Aid office to learn about their rights in subsidized housing.

> Tenants organize to ensure subsidized housing nationwide remains safe, decent, and affordable.

Notes

1. USDA Rural Development Housing: HB-2-3560 MFH Asset Management Handbook.
2. Public Housing: 24 U.S.C. § 966 and local Housing Authority Administrative Plan; Project-based Section 8: HB-2-3206 MFH Asset Management Handbook; Tenant-based Section 8 vouchers: HUD Handbook 4350.3.
3. Section 42 "tax credit" housing: Guide for Completing Form 8823 and Minnesota Housing Financing Agency Housing Tax Credit Program Compliance Manual.
4. Visit HOME Line's website for links to each manual: www.homelinemn.org/book/online-appendix/
5. This section discusses traditional, tenant-based Section 8 vouchers. Some vouchers, not discussed here, are "project based" (tied to a specific apartment), and are governed by laws that mix regular voucher rules and project-based principles.
6. Public Housing: 24 U.S.C. § 966 and local Housing Authority Administrative Plan.
7. 26 CFR § 1.4-15
8. 24 CFR § Part 245

18 Employees of the Landlord

This chapter discusses caretakers, leasing agents, maintenance staff, and other persons who are employed by the landlord and live at the apartment complex. For the purposes of this chapter, they are all referred to as "caretakers." This chapter also reviews some rules regarding the landlord's employment of individuals who may have access to private apartment units, whether or not they live on-site.

Frequently, caretakers are said to live "rent free," meaning they pay their rent in labor rather than money. People applying for apartments are typically drawn to caretaking jobs because of the promise of free or reduced rent. Be warned, with many building owners, this is frequently a high-turnover position.

WHAT YOU'LL LEARN:

- The definition of "rent" includes goods and services.
- How to review a lease and employment agreement for proper caretaking language before signing.
- The rights involved with simple oral agreements.
- What rights caretakers have under Minnesota employment laws.
- That caretakers can be considered a legal representative of the landlord.
- The requirement for the criminal background check of caretakers or other employees of the landlord who can access an apartment.

Rent Paid with Labor

A caretaker is considered a residential tenant even if no money is paid for rent.[1] As long as there is some agreement to provide payment either in services (work) or goods (bartering is allowable; for example: free rent for Vikings tickets), a caretaker is a tenant and has the same legal rights as any other tenant discussed throughout this book.

Lease and Employment Agreements

In general, the caretaker's rights are governed by the lease in addition to the employment agreement, which can be included in the same document/agreement. If either or both of these documents (or oral agreements) state a rule regarding the nature of the rent payment, that is the rule that applies. As with any other tenant, some Minnesota laws overcome the lease, such as the right to repair. **This means the tenant retains rights under state law even if a lease/employment agreement states otherwise; tenants cannot waive certain rights just because a rental agreement states they do waive them.**

In many caretaker situations, a tenant agrees that the landlord can fire the caretaker from the job and the caretaker agrees to move out on very short notice if there is some breach of the contract. A caretaker in this scenario is probably out of luck when consenting to the lease and employment agreement. Therefore, a prospective caretaker should only take the caretaking job after reading the agreements in advance and deciding it is a fair deal.

Job Loss

The employment agreement and lease can be separate documents. For example, a tenant may sign an ordinary lease and then agree to perform caretaking duties for a separate paycheck or discounted rent. If the agreements are separate and do not clearly state otherwise, and the tenant loses the job, the tenant's lease is still valid, with all lease terms intact (this means the tenant gets to stay, but probably owes full rent if he or she is no longer performing any caretaking duties).

In either case, a landlord's ultimate remedy to remove a former caretaker from an apartment would be to file an unlawful detainer, or eviction. The former caretaker's defense would be to provide evidence, such as copies of the lease and employment agreement that shows that staying is within his or her rights.

Oral Agreements

An agreement to rent in return for caretaking duties can occasionally be very simple (frequently oral), involving only an expectation to perform some work to receive free rent. This form of rental agreement is considered a "tenancy at will," which is an agree-

ment without a fixed ending date and without a periodic rental payment. Under state law, a tenant in this situation has the right to a three-month notice to terminate the lease.[2] This means that as long as the caretaker continues to perform the work acceptably, the landlord cannot terminate the lease without a three-month notice (nor can the caretaker terminate the lease without a three-month notice).

Caretaker is an Employee

In most instances a caretaker is very likely considered a legal employee—someone receiving compensation (free rent and/or additional paychecks) for performing assigned duties relating to the management and maintenance of an apartment. The caretaker should understand employment rights, which can include receiving help from Unemployment Compensation, Workers Compensation, and the Department of Labor if terminated, hurt, or otherwise harmed. Caretakers should consider the tax benefits and responsibilities that come with being an employee.

Neighbors of caretakers should be aware of the caretaker's legal status. A caretaker can be considered an "agent" of the landlord, tasked with accepting rent, performing repairs, and other essential rental services. Tenants should consider caretakers as official representatives of the landlord and act accordingly when paying rent and requesting repairs. For example, if a tenant requests repairs but then refuses a caretaker from entering the unit to complete the repairs, the tenant may be in violation of the lease.

Manager Background Check

A landlord is required to conduct a criminal background check on any individual who has the means to enter tenants' apartments.[3] Effectively, anyone who could have access to keys for individual apartments cannot have a prohibited criminal background. A landlord cannot hire and must terminate the employment of a caretaker who has been convicted of a wide variety of felonies. The list is expansive; tenants can review the statute to learn what offenses are covered. If a landlord fails to comply with this law, he or she is guilty of a petty misdemeanor; a tenant can call the police to report the landlord.

Conclusion

In instances where a tenant performs duties for the landlord, the tenant should ensure the lease and/or employment agreement clearly states what expectations are involved and how the end of the employment affects tenancy. Caretakers are legal employees and representatives of the landlord, which introduces important personal rights for the protection of other tenants in the building.

Notes

1. Minn. Stat. § 504B.001, Subd. 12
2. Minn. Stat. § 504B.135 (a)
3. Kari Koskinen Act, Minn. Stat. § § 299.66-299C.71

19 Renters Credit

Over 300,000 Minnesota renters file for annual tax refunds based on the rent they pay and their income each year. The state usually issues checks for the previous year's rent/taxes in mid-August. The Minnesota Renters Credit assists renters with the tax burden they pay directly to their landlord because of property taxes imposed on rental housing.

WHAT YOU'LL LEARN:

- The purpose of the Renters Credit.
- To file proper tax forms to receive a Renters Credit.
- How to deal with a landlord who refuses to provide adequate forms to file for the refund.

Renters Credit: Purpose and Advocacy

The state of Minnesota gives some property owners a refund on the taxes they pay for owning property. Homeowners with low incomes may receive a check from the state for a portion of the property taxes they pay. Landlords pay property taxes on their apartment buildings, which is partially paid by tenants through their monthly rent. The amount of these taxes that many tenants pay, relative to their income, is higher than most Minnesotans, which is considered a "regressive" tax. Because Minnesota tenants pay a sizable portion of those property taxes, they may be eligible to receive a refund based on the amount of their rent and income levels. The idea is to make the tax system fairer to low- and moderate-income families that end up paying a higher percentage of their income to taxes.

The Renters Credit is based off of an "assumed" percentage of a tenant's rent that is directed to the property taxes on the apartment. Because this percentage can be difficult to calculate (property taxes, rents, and incomes vary widely), there have been legislative proposals to decrease the amount renters are refunded. Regardless of the percentage used to calculate an individual's refund, the purpose of the program is to assist renters with the elevated tax burden they face. Refunds are targeted to assist lower- and moderate-income families, with higher refunds directed to tenants who pay larger shares of their income toward property taxes. The program works as a tool for tax fairness, not necessarily an exact, direct tax refund.

When the program is reduced, tax burdens for low- and moderate-income renters increase and should be cause for alarm. Tax increases are a much-contested issue. Tenants should be mindful of how their elected officials vote on such tax increases—often these decisions are made without community input. To learn more about asserting influence over these decisions, read Chapter 20, Tenant Organizing.

Filing for a Refund

In order to receive the renter's refund, the tenant must fill out and submit a Property Tax Refund Form (M-1PR) with the Minnesota Department of Revenue. The department can answer many questions a tenant might have about this process and can be reached by calling 651-296-3781 (from the Twin Cities metropolitan area) or 800-652-9094 (from elsewhere in Minnesota).

The tenant's eligibility for the refund primarily depends on whether the property owner or landlord must pay property taxes, the monthly cost of rent, and the annual income of the tenant(s).

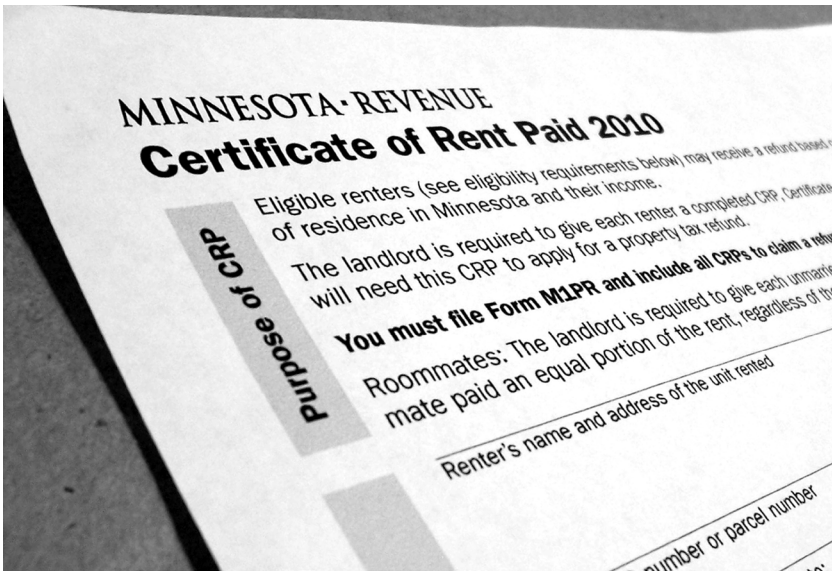
Landlord Pays Property Taxes

The first major factor to consider is whether the landlord pays property taxes. If the landlord does not pay property taxes (for example, if the tenant is renting from the

government, a private college, or some other person not required to pay property taxes) then that tenant is not eligible for a refund. If a tenant is unsure whether property taxes were assessed on the building he or she can check with the building owner.

Monthly Cost of Rent

If the landlord pays property taxes, he or she must give a Certificate of Rent Paid (CRP) to every unmarried tenant (or one CRP per married couple) by January 31st stating how much the tenant paid on rent during the previous year.[1] The CRP must state that each unmarried tenant paid an equal portion of the rent regardless of how the payments were split or whose names are on the lease. The tenant will find that the CRP states that each tenant is credited with having paid for approximately 19% (as discussed earlier, this percentage is debated and is subject to change every year) of the building owner's property taxes, regardless of any other circumstances.[2] The CRP will then be used when the tenant is filling out the M-1PR. See the section below for advice when a landlord refuses to provide a CRP.



Tracey Goodrich

Income of Tenant

If the tenant is single, then that tenant must apply for the refund individually. That tenant should only report his or her own income when filing. If two renters are married, they must report their combined incomes as one household income.[3] If two renters got married during the year they have the option of filing together or filing separately; and if they were divorced during the year, they must file separately.[4]

If a tenant has no dependents (children or other person who needs care), and the tenant's annual household income is $53,540 or more, the tenant is not eligible for a refund on property taxes (this amount applies for the year 2010 but may change in subsequent years).[5] If the tenant does have dependents, the income limit increases with family size to as much as $75,440 in a home with five dependents.[6] More specifics on

the income limit and the number of dependants can be retrieved from the Minnesota Department of Revenue. If the tenant's household income qualifies, then the amount of the refund depends on the renter's income as it compares to the cost of rent (as outlined in the CRP). For example, a tenant earning between $30,600 and $32,120 per year while paying between $900 and $925 per month may be eligible for a refund of $112.[7] Each tenant can figure his or her own refund amount from the Refund Table made available in the Minnesota Property Tax Refund Forms and Instructions from the Department of Revenue.[8] It is very important to retrieve these instructions, as the renter will not be able to calculate his or her refund amount without it.

A tenant must be careful in calculating the refund amount and filling out the M-1PR because if the Department of Revenue suspects the tenant fraudulently or knowingly applied for a refund that the tenant is not entitled to, the tenant may be liable for financial, civil, or even criminal penalties.

The M-1PR must be submitted with a copy of the CRP to the Department of Revenue either by mail, online, or in person, by August 15th.[9] Assuming the claim is filed correctly and all the information is complete, the tenant can expect a refund by mid-August or 60 days after the tenant files the claim (whichever is later). If the forms are incomplete or incorrect the disbursement of the refund will be delayed or the return will be sent back to the tenant.[10] If the return is sent back the tenant should immediately contact the Department of Revenue to find out how to proceed.

Landlord Provides Incorrect or No CRP

If the landlord fails to supply the tenant with a CRP by February 15th, or if there is a dispute over how much rent was paid, the tenant should contact the Minnesota Department of Revenue in order to file a Rent Paid Affidavit with that department. The Rent Paid Affidavit should only be sought after the tenant has made substantial attempts to get the CRP issues straightened out with the landlord. Once the tenant contacts the department for the Rent Paid Affidavit, the department will inform the tenant how to proceed.[11] The Rent Paid Affidavit is essentially a way for the tenant to prove he or she paid the rent over the past year, so it is useful for the tenant to have this information and keep evidence of payments.

Additional Requirements

A couple other minor but notable requirements are that the tenant must be a full or "part-year" resident for the year in which the property taxes were paid, and that the tenant must not be a dependent. The full- and part-time resident rule requires that a tenant must live in Minnesota for more than 183 days in a year in order to be eligible for the refund.[12] In many cases, the dependency issue will be solved by finding out if any third person claimed the tenant as a dependent on that third person's tax return. Sometimes it

becomes more complicated if a tenant lives with another family member for part of the year or if more than 50 percent of the tenant's living expenses are paid for by another person. In such cases, the tenant should contact the Minnesota Department of Revenue for further clarification.

Conclusion

Hundreds of thousands of Minnesota renter households contribute substantially to local property taxes through the monthly rent they pay. **All renters who are eligible should take advantage of the Renters Credit to ensure they are not unfairly taxed.**

The Minnesota Department of Revenue, which is responsible for administering this program, can be reached through its website at www.taxes.state.mn.us, or by phone at 651-296-3781 or toll free at 800-652-9094. Tenants may contact HOME Line with further advice or questions about advocacy.

Notes

1. Minn. Stat. § 290A.19
2. Minn. Stat. § 290A.03, Subd. 11
3. Minn. Stat. § 290A.05; 290A.08
4. Minn. Stat. § 290A.08
5. Minn. Stat. § 290A.04
6. Minn. Stat. § 290A.03, Subd. 3
7. Minn. Stat. § 290A.03, Subd. 3
8. Minnesota Property Tax Refund Forms and Instructions 2010, www.taxes.state.mn.us/Forms_and_Instructions/m1pr_inst_10.pdf.
9. Minnesota Property Tax Refund Forms and Instructions 2010, www.taxes.state.mn.us/Forms_and_Instructions/m1pr_inst_10.pdf.
10. Minn. Stat. § 290A.07
11. Minnesota Department of Revenue official website, www.taxes.state.mn.us/prop_refund/pages/refund_information_content_renters_refund.aspx#P131_9815.
12. Minnesota Property Tax Refund Forms and Instructions 2010, www.taxes.state.mn.us/Forms_and_Instructions/m1pr_inst_10.pdf.

20 Tenant Organizing

Tenant organizing is a powerful activity renters use to improve their housing situations. Whether it is in response to substandard living conditions, poor maintenance or management of rental property, efforts by landlords to convert affordable subsidized apartments to higher market rates, or an interest among neighbors to build a stronger community—tenant organizing results in safer, more affordable, decent rental housing.

At a local level, organizing helps community members gain power, change laws, and create more influential and welcoming neighborhoods. Tenants can use these efforts to improve their housing. Renters have stood up for their rights by advocating for stronger local rental ordinances, state laws protecting and assisting renters with tax burdens (such as the renters credit), and affordable housing programs.

This chapter focuses primarily on assisting renters in identifying collective problems and forming a tenant association to address common rental housing issues. Many of these common rental issues can be dealt with by enforcing the law—and organized tenants can have an easier time doing so. Organizing around problems that the law does not address is often a much different process. Once neighbors are organized, their collective power can better influence broader community issues that affect their city and renters across the state. Tenant groups can contact HOME Line to learn of current state and federal housing issues as well as how organized renters can influence and create broader social change.

WHAT YOU'LL LEARN:

- How organizing can be an effective tool for resolving building-wide problems.
- Suggested steps for taking collective action.
- The different issues around which tenants organize.
- Resources that can help tenant associations achieve their goals.
- Laws that help tenants organize to keep their housing affordable.

What is the Purpose of Organizing?

Sometimes tenants' rights can be enforced through simple communication with a landlord or individually through legal action. Other times, it takes the action of an organized group of tenants to make their voices heard. When rental problems affect more than just one person's unit, organizing may be the best method for solving the problem.

A group of tenants can collectively exert more pressure than an individual tenant can on his or her own. A group of tenants speaking with one voice is difficult to ignore. A landlord has more difficulty intimidating a group of tenants because the landlord cannot easily single people out. In subsidized housing and manufactured homes, formal tenant associations have stronger protections from landlord retaliation.

Chances are that if there is a problem a single tenant thinks is serious, others will share the same concern. The most common rental housing issues that HOME Line has worked with tenant groups to resolve include:

- Shared repair issues among neighbors.
- Emergency repairs or loss of essential services such as running water, hot water, electricity, or sanitary facilities.
- Loss of heat or inadequate heating.
- Utility shutoffs due to landlord nonpayment.
- Poor management, bad record-keeping, abusive or retaliatory behavior by management, and privacy violations.
- Possible loss of affordable housing.

Tenants who successfully organize to address these issues in their buildings are often able to use their organization and experience to work as strong advocates to strengthen renters' rights and provide more affordable housing on a local, state, and federal level.

Organizing with Neighbors

Step 1: Learn about Tenant Rights

Tenants who read this book will learn the most important of Minnesota's tenant-landlord laws and the most practical ways to deal with common rental issues. Below are tips for identifying additional rights under local or federal law. Understanding tenant rights and responsibilities is essential for finding a way to address the housing issue at hand. Tenants will be able to determine if the landlord is doing something illegal, as well as if residents are abiding by their responsibilities. Most importantly, tenants may learn that the issue they are facing is difficult to address

by using legal action, or may not be covered in the law. Organizing and gaining community support around an issue might be the only way to address it when the law either does not address the problem or there are challenges to enforcing the law. Know that there are rights within state and federal law to assist with organizing and allow for stronger legal action when tenants have collective problems.

To identify local renter protections, tenants can begin by calling their city hall. More than 100 cities in Minnesota have their own rental housing ordinances or building code requirements that affect rentals, and many of them have city inspectors whose job is to enforce the ordinances. City rental housing ordinances can vary in their effectiveness, but tenants should at least find out if their city has adopted rental codes that may help them and their neighbors.

Tenants living in subsidized housing (HUD, RD, tax credit, etc.) have additional rights that are covered in Chapter 17, Subsidized Housing. Links to the federal laws and handbooks that provide for these rights are in the online appendix for this book at www.homelinemn.org/book/online-appendix/.

Step 2: Do the Neighbors Have the Same Problem?

Finding out what issues other tenants in the building are having is a simple way to create a network of support within the apartment complex. If neighbors are facing similar issues, they can share information about how to deal with the problem. Most importantly, people can form a plan about how everyone affected by the problem can work together to address it. It is important that everyone agrees on a shared goal, so it is important to find out early if people share the same problems.

Learning about shared problems is as simple as beginning a conversation. Tenants can go door-to-door to speak with neighbors, distribute flyers about their concerns, encourage neighbors to write down rental issues, and eventually host a meeting.

Step 3: Get Organized by Setting a Goal

Tenants must come to a shared decision about what issues are most important to tackle. If residents are informed about their rights, they know whether the landlord is breaking a law or just scraping by with the most basic response. By identifying the most common problems people are seeing, a tenant group can easily narrow down what it is they want to change together. Once this has happened, they have created a goal to work toward.

When deciding to have a meeting, tenants should consider calling HOME Line's organizers or looking at online sources for some simple tips about how to run a successful and productive meeting. As long as efforts are made to represent the interests of all the tenants, by agreeing upon a collective goal, tenant associations can be effective.

Step 4: Make the Demand

Once a group of tenants organizes a list of problems and agrees on their main goals, they must find a way to communicate their concerns effectively. It is important to think about all the allies and organizations that can support the work the tenants are trying to accomplish. This list includes churches, local governments, and elected officials. Knowing early on who can help the organization meet its main goal will help the tenants gain support in the community and identify allies who can support their goals.

Organizing around repairs is a common reason to organize. Usually, a letter to the landlord is a good first step. The landlord needs to understand clearly the tenants' demands. Tenants should send the letter to the landlord as both a group or tenant association, as well as individual tenants. By sending both letters, individuals keep their right to go to court while demonstrating that everyone in the apartment is facing the same problem and is prepared to act together. Writing a letter from a tenant association is a good way to show the landlord that tenants mean business, and it can be a tool that is used later if legal rights are exhausted.

Tenants should compile a reasonable list of their concerns and rental problems so that it will fit in a simple request letter to the landlord. The letter should be brief, to the point, and specific about what tenants want the landlord to do. If the letter is unorganized or unclear about what is wrong or what needs fixing, the landlord will be able to ignore it, it might not stand up in court, and other members of the community (who would have otherwise supported tenants) may not think their requests are reasonable.

If repairs are not being made, the letters can be used in court to show that the landlord was made aware of the problems. Tenants have the right to file repair cases as an organization, as well as individuals to resolve rental problems.

Step 5: Use Unique Tactics

If legal rights are already exhausted (the law only goes so far, and what might seem wrong is not always illegal), and the landlord still refuses to respond, the tenant group will need to think creatively about approaching its concerns. Tenants HOME Line has worked with in the past have employed unique tactics and strategies to get attention and resolve their housing issues.

Making a request in a letter to the landlord is a fairly "quiet" method. Sometimes tenants need to "make some noise" to hold their landlord accountable. A tenant group might talk to everyone in the neighborhood about the problem, meet with their city council member, a leader of a local church, or maybe even a state legislator. The benefit of gaining support from other community members is that a landlord may be more responsive to an elected official, to a particular church group, or possibly even to the media (newspapers, radio, etc.). Local community leaders and

other business owners may have additional influence to hold a landlord accountable, and these members of the community often realize that tenants are a large part of their constituency and/or customers. Tenants organized to address housing issues have made their requests heard in many ways:

- Asking the landlord to meet with the tenant association.
- Writing a letter to the editor of the local paper.
- Talking to more people about the problem: other residents in the neighborhood, local church leaders, businesses, government officials, etc.
- Sending copies of their letters to the city council, state legislators, congresspersons, or any other elected official who represents the area. Politicians are elected to serve their citizens, so if residents are having a problem, they should not hesitate to let their government representatives know.
- Getting a meeting with those elected officials to tell them what is happening and ask for their support.
- Organizing an event or rally at the apartment building that showcases the efforts the tenant association has made to address their housing issue.
- Researching the landlord—maybe there are tenants in their other buildings who have similar problems. Involving more people strengthens the power of the group.
- Calling the news: TV, radio, newspaper, blogs, etc.
- Documenting and publicizing the problem by starting a blog.

Common Tenant Organizing Efforts

Throughout this book a number of situations are discussed that can be addressed successfully by organizing. Below are some of the more common issues tenants have successfully dealt with by taking collective action. These examples provide basic legal advice—more legal analysis is in each relevant chapter—and offer suggestions about initiating collective action that can pressure, coerce, and force a landlord to deal with a problem.

Repairs

Individual and group responses to repairs: Rent Escrow. If an apartment is in need of repairs, tenants have the right to get a prompt response from the landlord. Minnesota state law provides that once a repair request is put in writing, the landlord has 14 days to fix the issues.[1] If the landlord does not comply or provide a plan explaining how the issues will be addressed, a Rent Escrow can be filed at the county courthouse.

If tenants are experiencing the same repair issues, they should each individually send similar letters, communicate collectively with the landlord and other community members, and file separate Rent Escrow cases if needed. This is a very useful strategy for getting the landlord to fix the problems; instead of receiving a few angry calls, the landlord will get numerous written notices from residents stating their intent to go to court if it is not fixed—the result is that the landlord may be more responsive to multiple legal threats rather than just one. If the repair issue is affecting all or almost all of the residents, a Tenant Remedies Action might be a good option.

Action as a group of tenants: Tenant Remedies Action. If a repair issue affects numerous residents, it might be reasonable to form a tenant association or communicate with a neighborhood group to respond to the problem. A formal tenant association, a local neighborhood group, or even a city can file a Tenant Remedies Action 14 days after providing a repair request to the landlord.[2] The benefit to this legal option is that the court can issue an order addressing the repairs and conditions of the entire apartment building, rather than single units based on individual Rent Escrow actions. Individual tenants can file this action, but it may not result in court orders that benefit all residents. Organized tenants may have the leverage to request a neighborhood group or city department to file on their behalf, or even formally incorporate their own association and address the issues themselves.

Emergency repairs. Are there emergency repairs the landlord refuses to address? Legally, an emergency includes: "the loss of running water, hot water, heat, electricity, sanitary facilities, or other essential services or facilities that the landlord is responsible for providing." If tenants face any of these circumstances, they have the right to file a court case within as little as 24 hours after notifying the landlord.[3] This may be the best method for forcing the landlord to comply with the law. A group of tenants facing emergency issues should notify the landlord together that they intend to file court actions. Tenants can communicate this with others in the community—contact the city inspector, their city council, the media, and their local churches. All of this combined pressure might resolve the issue before a court action is needed.

The law requires that the landlord be notified at least 24 hours before filing in court of a tenant's intent to file an "Emergency Tenant Remedies Action, Minnesota Statute § 504B.381" if he or she does not resolve the emergency situation beforehand. Because emergency repairs often affect an entire apartment building, tenants should consider collectively addressing the emergency. All residents facing the emergency have a right to file the same action in court, and a judge will usually hear the cases together, allowing the tenants more power to prove their case in court.

Utility Shutoffs for Unpaid Bills

Chapter 12, Lockouts and Utility Shutoffs, covers tenants' right to organize and pay a landlord's past-due utility bill if the residents receive a shutoff notice. Unfortunately, a utility company is allowed to limit residents paying in this manner to a single payment period (usually one month) unless the building has four units or less.[4] In either case, tenants should consider organizing to fix the problem for the long term by contacting community supporters, working with city officials, or even going to court to enforce their rights. When organized, tenants have more power to hold the landlord, the utility company, and their local elected officials accountable—meaning it is less likely their homes will lose utility service or end up condemned for unsafe conditions.

Subsidized Housing

Millions of families struggle to find homes and apartments within their budgets. They are often forced to commute long distances, pay much more than 30 percent of their incomes for rent (30 percent is considered affordable), settle with substandard housing, or live in overcrowded conditions because of inflated housing costs.

One of the most effective programs for keeping housing affordable for seniors, families, and people with disabilities is project-based housing, as discussed in Chapter 17. The owner of a building agrees to keep it affordable by entering into a contract with the federal government. Most commonly, these programs are with the Department of Housing and Urban Development (HUD) or Rural Development (RD, part of the United States Department of Agriculture).

Millions of families struggle to find homes within their budgets.

While all of these programs have different rules and restrictions, at certain points, the owner may terminate, opt-out, or pay off the loan. This means the owner no longer wants to participate in the program that keeps rent affordable, and the community will lose an essential housing resource.

HOME Line has organized with residents in project-based housing for more than a decade. Tenant organizing can be very effective in keeping the building affordable long term. Tenants have organized in Minnesota to keep owners in the program or sell the building to an owner who will keep it affordable. Residents have organized to keep their housing affordable while also improving their living conditions. This process can seem complicated, but it is achievable.

Landlords who want to end their participation in these federal programs must provide a one-year notice called a Tenant Impact Statement.[5] The Tenant Impact Statement requires owners to provide, at least 12 months prior to termination, a statement to the state housing agency, local government, and the residents them-

selves explaining how tenants will be affected by the Section 8 termination. This notice became law because tenant groups in Minnesota organized and went to the state legislature. Tenants who receive this notice now have time to organize to figure out ways to keep the building affordable.

Tenants who are affected by the loss of project-based housing have a federally protected right to organize with their neighbors.[6] Because residents and neighbors in these apartments are the people most directly affected by the removal of affordable rental subsidies, they are in the best situation to protect it. Often, the first thing that residents learn is that there are plenty of people in their community who support their efforts. This is because it is difficult to build new affordable housing; many local and state officials would rather keep the housing that already exists rather than try to cover the costs of replacing it.

Renters can call HOME Line for advice and assistance organizing to preserve and promote affordable housing.

Conclusion

Regardless of whether the issue is about rent affordability or ongoing repair issues, organizing is a useful tool for resolving problems. **Regardless of what problem tenants are facing—whether it is something the law addresses or they want to see a positive change in behavior from their landlord or community—tenants working together can acquire the power needed to make change happen.**

Notes

1. Minn. Stat. § 504B.385
2. Minn. Stat. § 504B.395
3. Minn. Stat. § 504B.381
4. Minn. Stat. § 504B.215, Subd. 3 (b)
5. Minn. Stat. § 471.9997
6. 24 U.S.C. § 245 for HUD housing and 7 U.S.C. § 3560.157 (f) for USDA housing.

Appendix 1

Court Forms

Filing IFP, Fee Waivers

Throughout this book tenants are advised to file lawsuits and other court actions in order to enforce their rights. Tenants may have to sue their landlord to get repairs completed, to enforce a provision of their lease, or to force the landlord to return their security deposit. All Minnesota courts charge fees to file court actions. The fees can range from as low as $70 to as high as several hundred dollars depending on the county and the type of case. If the tenant wins the court case, the judge will usually require the landlord to pay the tenant back for the filing fees. Court fees can also be a barrier for people to enforce their rights, especially for people with limited or fixed incomes.

A tenant may be able to avoid these fees by filing a request to enter the court "In Forma Pauperis," or better known as an "IFP." An IFP order is a court order granted by a judge to allow an eligible person with a low-income to file their court case for free. This allows people with low-incomes an equal opportunity to enforce their lease and state laws. This does not mean the tenant does not have to pay the landlord for any penalties or judgments if they lose a court case.

A person may be eligible to file IFP if they can prove:

- Their income is at or below 125% of the Federal poverty level (these levels are set every year are available from the court and are published annually, as well, in the Federal Register);
- They receive some form of public assistance; or
- They can show that they are unable to pay the filing fee.

The procedure for filing an IFP varies slightly between different counties and court systems. For an example, the procedure for filing at the Hennepin County District Court is as follows:

1. Any forms that are relevant to begin the tenant's intended court action must be completed first. For example, there is a specific form for a Rent Escrow action if repairs are needed, or Conciliation Court forms for security deposits. These forms are submitted along with the IFP petition so that the court can review them together.
2. Tenants must fill out an "Affidavit for Proceeding In Forma Pauperis" form. A sample is included in this appendix. These are available at the filing counter at courthouses or they

can be downloaded from the Minnesota District Court website: www.mncourts.gov/district/50/?page=1982.

The Affidavit for Proceeding In Forma Pauperis is, like all affidavits, signed under oath and misstatements can lead to sanctions. In theory, the tenant's oath is sufficient to prove the amount of income, but some courts will require documentary evidence, so it is best to gather relevant documents that prove any of the items they agree to on the form; for example: an MFIP card, paychecks, tax returns, canceled check from a government agency or any other evidence of financial status. The Affidavit for an IFP should *not* be signed until the tenant is in front of a notary at the courthouse. It is important to make a copy of all court documents; when the Affidavit for Proceeding In Forma Pauperis is submitted copies of the other court documents must be included. This allows the judge to determine that the case is not frivolous before granting the IFP order.

3. Tenants should bring a photo ID (driver's license or passport will work), because the notary or court clerk notarizing the documents must be provided proof of identity.
4. A court employee will watch as the tenant signs the Affidavit for Proceeding In Forma Pauperis and will notarize the document when completed. The clerks at the counter will advise the tenant what to do next and exactly how the request is submitted to the judge. If the judge grants an IFP order, the tenant may proceed without paying the filing fee for their original case.

Conciliation Court Tips

Tenants may have to sue their landlord in Conciliation Court for a number of reasons. While the majority of cases filed by tenants involve recovering a damage or security deposit, there are many other issues mentioned in this book that may require a tenant to file in Conciliation Court if they hope to recover any money from a landlord. Conciliation Court is designed for people to sue without an attorney. The court procedure, while still formal in front of a judge or court referee, allows for people inexperienced with courts to sue and defend a case. Tenants should be dressed appropriately — business attire if available — and prepared to provide their evidence briefly and clearly.

A sample copy of a Conciliation Court filing form is included in this appendix. Tenants should review this form for some of the key points before they file:

The case can either be filed in the county in which the rental property exists or in the county where the defendant (the landlord) currently lives.

Plaintiff #1: This is the person starting the lawsuit. If suing for a security deposit from a former landlord, the tenant should list their current address here, not the former address.

Plaintiff #2: Include any roommates or other people who have a part in the claim.

Defendant #1: List the defendants (the landlord) name and address (must be a street address, not a P.O. Box). The tenant should be sure to list all possible defendants (using the other defendant lines) who could be associated with the owner: the actual owner (at a business address and/or a home address), the name of the apartment complex (such as "Lovely Pines"), the name of the property management company, and any on-site staff associated with leasing units. County property tax records can be very helpful in determining who actually owns a property (some are searchable online, otherwise a call to the county property tax record office can help), as can the Minnesota Secretary of State's online tool for business filings. A link to this resource is available at www.homelinemn.org/book/online-appendix.

Claim: This section begins with, "The defendant(s) owe plaintiff..." is where a tenant writes why the landlord either owes money or the return of property. Several tips for filling out this section:

- Maximum amount to sue for is $7,500. If the money owed or value of the property adds up to more than $7,500, the tenant must bring a civil case in District Court. Suing for more than $7,500 does not require an attorney, but it is strongly recommended.
- The filing fee is approximately $70 for most counties. Tenants can check with the counties Conciliation Court clerk to confirm the amount of the fee; from year to year courts can increase their fees. See the other section of this appendix for information about how to request a waiver of fees ("filing IFP").
- Be specific about dates. For instance, when seeking the return of a security deposit, state the exact dates when the tenant moved in, when they moved out and when they gave a forwarding address. The judge will ask for this information anyway so the tenant can present a better case if they are well prepared early.
- Be specific about facts, but keep it brief. For example, in a security deposit case, the tenant should state the key dates, the deposit interest due, along with what occurred during the tenancy. Be clear about any damage to the apartment present when you moved in. This is the first chance to tell the reason why you are entitled to money in a court setting, but there will be an opportunity to state more in front of a judge.
- Photos of the apartment can be provided as evidence in court. The tenant should make sure he or she has copies for the judge, the defendant, and a personal copy as a backup. The tenant should bring these to court on the day of the hearing.
- Cite any relevant statutes or court cases, allowing the judge a chance to look them up if needed. This book cites important statutes and case law in the endnotes to each chapter. Tenants can also call HOME Line for confirmation of the law.

- Make the claim statement fit into the section on the form. The tenant will have an opportunity to explain more in court. **Do not sign** this page unless in the presence of a notary. When the tenant arrives to file the case, the court clerk can serve as a notary, witnessing the tenants signature on the form. If the tenant is mailing this form in, they must get it notarized somewhere else (signed in the presence of a Notary Public).
- Settlement agreement section: Often when the tenant and landlord appear in court, there may be other parties in front of the same judge at the same time. Because of limited time and resources, the judge may ask all parties to step out of the courtroom to discuss settling their dispute before the judge hears them. Depending on the tenant's case, this may or may not be a good idea; in most situations the tenant should at least try to get an agreement from the landlord. If they come to an agreement, they can write the terms and the judge will review and make the agreement the official court order. Any agreement drafted by the tenant and landlord should be very clear about who must pay who and have a deadline for payment.

CONFIDENTIAL

State of Minnesota **District Court**

County	Judicial District:
	Court File Number:
	Case Type:

Plaintiff/Petitioner
vs / and
Defendant/Respondent

Affidavit for Proceeding In Forma Pauperis (Minn. Stat. § 563.01)

1. I am a party in this action. I am a natural person (not a corporation, partnership or other entity). In good faith, I request a court order waiving court fees and costs. I cannot support my family and myself and also pay or give security for costs.

2. I believe that I have valid reasons for pursuing this action. **My pleadings** (the Petition, Complaint, Answer, Appeal or other pleading) **are attached.**

3. a. ☐ I am receiving public assistance under one or more of the following **means-tested** programs:
   - ☐ MSA (Minnesota Supplemental Assistance Programs);
   - ☐ MFIP (Minnesota Family Investment Program);
   - ☐ Food Stamps;
   - ☐ General Assistance or Discretionary Work Program;
   - ☐ MinnesotaCare, Medical Assistance, or General Assistance Medical Assistance;
   - ☐ Energy Assistance;

   b. ☐ I am receiving public assistance under some other means-tested program: (Name the program) _____

   I have attached proof that I receive public assistance (such as MFIP card or cancelled check from agency) **or I will provide proof if requested.**

   c. ☐ I receive Supplemental Security Income (SSI) as a resource for meeting my expenses.

   If you checked #3a or 3c and receive help under one of the listed programs, skip to the signature line on page 2. If you checked #3b and receive some "Other" means-tested assistance, go to Question 4.

4. ☐ I am represented by attorney _____on behalf of _____ _____a civil legal services program or volunteer attorney program, based on indigency. *If you checked #4, skip to the signature line on page 2.*

5. My family size is _____. (Include yourself, your spouse, your minor children, and other dependents in your household.) For my family size, I counted myself and (list all others):

Name	Age	Relationship to you

6. ☐ My gross **annual** family income (before taxes and deductions) is $_____which is less than 125% of the Federal Poverty Line for my family size of _____ members. **I have attached proof of my family income or I will provide proof if requested.** *If you checked #6, skip to the signature line on page 2.*

CONFIDENTIAL

If you did not check #3, 4, or 6 you must answer all of the rest of the questions.

7. My gross **monthly** income before taxes and deductions is $_____. My net (take home) **monthly** income is $_____, and the source of that income is: ☐ Job / wages ☐ Unemployment ☐ Spousal Support ☐ Trust Income ☐ Social Security ☐ Other: _____

8. My spouse's gross **monthly** income before taxes and deductions is $_____. My spouse's net (take home) **monthly** income is $_____, and the source of that income is_____ _____; OR, I do not know my spouse's income because:_____ _____OR ☐ I am not married.

9. All other family members and dependents living with me have net **monthly** income as follows:

Name of person	Age	Net (take home) monthly income	Source of that Income

10. I receive $ _____ per month in child support (includes medical support and/or child care support.

11. I pay $_____ per month in court-ordered child support (includes medical support and/or child care support).

12. I pay $_____ per month in court-ordered spousal support.

13. I pay $_____ per month for ☐ rent ☐ mortgage payment.

14. I own:
Cash $_____
Checking, savings and credit union accts $_____
Cars, other vehicles (list make, year and equity value (market value minus unpaid loans))
_____ $_____
_____ $_____
Real Estate (market value minus unpaid mortgage/loans)
Homestead: $_____
Other Real Estate: $_____
Other personal property (jewelry, stocks, bonds, etc. - list separately)
_____ $_____
_____ $_____

15. I am presently $_____ in debt, excluding car loans and real estate mortgage/loans.

16. Other factors which support your request are (explain unusual medical expenses, emergencies, reasons that the family money is not available to you, or other circumstances to help the Judge understand your situation): _____

Dated: _____

_____
Signature *(Sign only in front of notary public or court administrator)*

Sworn/affirmed before me this _____day of_____, _____.

_____
Notary Public \ Deputy Court Administrator

Name: _____
Address: _____
City/State/Zip: _____
Telephone: (_____) _____

State of Minnesota — **Conciliation Court**

County	Judicial District	Case No.

STATEMENT OF CLAIM AND SUMMONS

Plaintiff #1	PLEASE PRINT	**Plaintiff #2**
Name		Name
Address		Address
City/State/Zip		City/State/Zip
VS		VS
Defendant #1		**Defendant #2**
Name		Name
Address		Address
City/State/Zip		City/State/Zip

Case No. _____

PLAINTIFF'S STATEMENT OF CLAIM

☐ 1. The Defendant(s) owe(s) me $_____, plus filing fees and costs of $ _____, for a total of $ _____ because (state what happened and when it happened):

_____

_____

_____

_____

☐ 2. The Defendant(s) has/have the following property that belongs to me (list property), _____ _____ valued at $ _____, plus filing fees and costs of $_____, for a total of $ _____. I want the Court to order this property returned to me or make the Defendant(s) pay me money for the value of the property.

3. I believe the person(s) I am suing is/are at least 18 years old and not in the military service. Defendant #1 date of birth _____ Defendant #2 date of birth _____

4. I understand that if I do not come to court on my hearing date, my case will be dismissed and I may have to pay money to the Defendant(s) on any counterclaim that has been filed.

NOTARY STAMP OR COURT SEAL	SWORN TO BEFORE ME ON:	THE ABOVE STATEMENT OF CLAIM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE
	Date: _____	Signature: _____
	Signature: _____	Name: _____
		Title (if representative): _____
		Telephone: _____
		Plaintiff #1 date of birth _____
		Plaintiff #2 date of birth _____

Notice of Settlement

The above-entitled case having been settled, the same may be and hereby is dismissed with my consent.

Date: Plaintiff's Signature:

SUMMONS: IMPORTANT NOTICE TO THE PARTIES

You **must** come to court for a hearing on _____ at _____ ___.m. at
Date Time

_____.
Location/Address

If you do not come to court for this hearing, you may lose the case and have to pay money to the other party.

Dated: _____ Court Administrator/Deputy _____

MEMORANDA OF PROCEEDINGS

Judgment becomes final and time for removal expires on _____.

Action	Date	Action	Date
Claim filed		Notices Mailed	
Hearing set for		Stricken-Settled	
Notices Mailed		Order of Dismissal	
Notice returned/not delivered		Judgment Entered	
Notice re-mailed		Notice of Judgment mailed	
Answer/Offer filed		Judgment satisfied	
Counterclaim filed		Removal/Appeal perfected	
Notices mailed		Order Vacating Judgment	
Hearing continued/reset to		Transcript issued	
Notices mailed		Exhibit Inf. (Date filed)	
Hearing continued/reset to		Exhibits returned	

SETTLEMENT AGREEMENT

Minn. Gen. R. Prac. 512(e)

Plaintiff(s) and Defendant(s) have agreed upon a settlement of this case, which agreement is as follows:

Plaintiff(s) and Defendant(s) further agree that they will abide the judgment to be entered based upon this agreement, without removal, appeal or further litigation.

_____ Plaintiff

_____ Plaintiff

_____ Defendant

_____ Defendant

Dated: _____

_____ Judge

INSTRUCTIONS

- **Failure to Appear:** If Defendant does not come to Court for the scheduled hearing, the Defendant may lose the case and have to pay money to the Plaintiff. If Plaintiff does not come to Court for the scheduled hearing, the case may be dismissed and the Plaintiff may have to pay money to the Defendant on any counterclaim that has been filed.

- **Questions:** All questions and correspondence should be addressed to the Conciliation Court.

- **Change of Hearing Date:** The court administrator may change the hearing date if there is good cause for a continuance, but only if you request a different hearing date at least five days prior to the scheduled hearing. The court administrator may change only one hearing date per party. All other requests for a change of hearing date must be determined by the judge. All parties will be notified by the Court of any new hearing date. The Court in its discretion may assess costs of not more than $50.00, either absolute or conditional, to the other party as a condition of granting an order for a continuance of any case.

- **Counterclaims:** If the Defendant wants to bring a counterclaim against the Plaintiff, it must be filed, along with a filing fee, at least five days (not including Saturdays, Sundays, and holidays) before the scheduled hearing date. The Court will then notify the Plaintiff of any such counterclaim. The Court will hear both the claim and counterclaim at the same time. If the counterclaim exceeds the jurisdictional limit of the Conciliation Court, see Rule 510 of Minnesota General Rules of Practice for the District Courts.

- **Evidence and Witnesses:** Each party must bring to the hearing all witnesses and exhibits, including repair bills and estimates, deemed necessary to prove his or her case. Upon request, the Court will issue subpoenas requiring witnesses to appear.

- **Trials:** After hearing the evidence, the Judge will either issue an order right away or take the case under advisement and issue an Order at a later date. The parties will be notified by mail of the Judge's decision. If a party changes his or her address, the Court must be notified.

- **Settlement:** If the parties agree on a settlement prior to the hearing, each party who has made a claim or counterclaim must promptly tell the Court in writing that the claim or counterclaim has been settled and that it may be dismissed.

- The Plaintiff may notify the Court by completing and filing with the Court the Notice of Settlement section on the Statement of Claim form.

Appendix 2

Form Letters

The form letters included in this appendix can help you address common rental housing issues. Below are instructions for all of the letters as well as descriptions of the purpose for each form letter. Form letters are best used only after reading the relevant chapter in this book.

These forms are not meant as legal advice. If you have a legal question or need advice about using any of the forms, please contact HOME Line's free tenant hotline:

612-728-5767 in the metropolitan area or 866-866-3546 from Greater Minnesota.

Instructions

1. Fill out the appropriate letter. Be clear and to the point. If the letter includes a list (such as repairs), explain the problem and what solution you are requesting.
2. Make sure you sign the letter and date the letter.
3. Make a copy of the letter after you sign and date it. Keep it for your personal file. The copy can be useful if you end up in court.
4. Send the original request by first class mail (a regular stamp) to the landlord or property owner (whoever you pay rent to or is named on the lease).
5. The letter you filled out gives your landlord a certain number of days to respond. Allow your landlord that amount of time to reply to your request.
6. If the landlord or property owner fails to comply with your request, call HOME Line and a tenant advocate will discuss your options.

Form Letter Descriptions

Guest rights. Use this letter if your landlord or property manager is trying to limit your visitors. Review your lease for terms relating to guests and call HOME Line for advice.

Neighbor violation. If your neighbor is bothering you, use this letter. Neighbor violations, if severe, are the responsibility of the landlord to correct.

Privacy violation. If your landlord or property manager enters your home without notice, use this letter.

Repair request. Use this letter if your landlord or property manager will not make necessary repairs. If the landlord has not repaired the problem after 14 days of receiving this letter, you may consider filing a Rent Escrow Action in court.

Retaliation notice. If your landlord or property manager takes actions against you after you call an inspector or otherwise assert your rights as a tenant, use this letter.

Security deposit demand. If your landlord has not returned your deposit or a letter explaining how the deposit was used within 21 days after, use this letter. If your landlord has sent you a letter outlining how your deposit was used, but you do not agree with the amounts withheld, call HOME Line; a tenant advocate will discuss your legal options with you.

Security deposit interest calculation. If you need help calculating the interest on your security deposit, use this form.

Sample notice to vacate. This is a sample letter you can use to provide a proper notice to end your tenancy. You must understand the terms of your lease to provide adequate, timely notice. Review your lease or call HOME Line for advice.

Copy of lease request. If you do not have a copy of your current lease, use this letter. The landlord may have difficulty enforcing lease terms if you can prove they did not provide you a copy of the lease.

Demand for property. If your former landlord has possession of your property, but you were not evicted through court proceedings, use this letter. If you went to court for an eviction hearing, a writ of recovery was issued, and your former landlord has possession of your property, call HOME Line to speak with a tenant advocate.

Guest Rights

Notification of Tenant's Right to Have Guests

_____
Landlord

_____
Street Address

_____
City, State, Zip

I, _____, reside at your property located at
(Print tenant's name)

_____
(Address, city, state, zip)

I am writing to inform you that a landlord may not prohibit a tenant from having guests.

In State v. Hoyt 304 N.W. 2d 884 (Minn. 1981), the Minnesota Supreme Court clearly adopted the rule that a tenant has a right to give guests a license to visit, and the landlord has no right to deny or interfere with this license. In summary, if I want to have a visitor/guest, that guest has a "claim of right" to visit me, to take a direct route to my door, to socialize with me in my residence, and to socialize with me in the common areas that I myself can visit.

Please take notice when I have guests such as friends and family, I have granted a license allowing them to do so. A license includes all steps involved in making these visits, including but not limited to walking to the entrance of the complex, standing in the entryway awaiting entry, walking to my residence, and walking with me, and socializing with me as I or we use the facilities.

Please consider this my formal assertion of my legal right to have guests. This means that if you take any action against me, I will rely on Minnesota Statute §504B.285 and §504B.441, which protect me from retaliation.

Thank you for your prompt consideration of this matter.

_____ _____
(Signature) *(Date)*

This form can be found online at www.homelinemn.org/hotline/form-letters.

Neighbor Violation

Notice of Neighbor's Covenant Violation

_____
Landlord

_____
Street Address

_____
City, State, Zip

I, _____, reside at your property located at
(Print tenant's name)

_____
(Address, city, state, zip)

Minnesota Statute § 504B.161 requires that every landlord of residential premises, whether the lease is in writing or oral, do the following:

(1) keep the premises and all common areas fit for the use intended by the parties;
(2) keep the premises in reasonable repair during the term of the lease or license;
(3) maintain the premises in compliance with the applicable health and safety laws of the state.

Since parties to a lease or license of residential premises may not waive or modify the "covenants of habitability" imposed by this statute, the landlord must do these things regardless of any contrary lease terms (unless the tenant caused the disrepair by his or her willful, malicious, or irresponsible conduct).

I believe my premises is not fit for the use intended because of the following disturbances caused by neighbors:

_____
(Neighbor) *(Date)* *(Violation/Incident)*

_____
(Neighbor) *(Date)* *(Violation/Incident)*

Please remedy this situation within fourteen days.

_____ _____
(Signature) *(Date)*

This form can be found online at www.homelinemn.org/hotline/form-letters.

Privacy Letter

Notification of Tenant's Right to Privacy

_____
Landlord

_____
Street Address

_____
City, State, Zip

I, _____, reside at your property located at
(Print tenant's name)

_____
(Address, city, state, zip)

I wish to inform you of Minnesota Statute § 504B.211, which gives all tenants the right to privacy.

The statute states a landlord may enter the premises rented by a tenant "only for a reasonable business purpose and after making a good faith effort to give the tenant reasonable notice . . ." The statute further states that if a landlord violates this statute, the tenant is entitled to receive a penalty including rent reduction up to full rescission of the lease, recovery of any damage deposit, and up to $100 civil penalty for each violation.

Please comply with this statute by giving me reasonable notice before you enter my premises. I believe a 24-hour notice is reasonable time for me to prepare for your entry into my premises. If you violate Minnesota Statute § 504B.211, I reserve the right to take legal action to enforce my rights under the statute.

Thank you for your cooperation in this matter.

_____ _____
(Signature) *(Date)*

This form can be found online at www.homelinemn.org/hotline/form-letters.

Repair Request

Request for Repairs

_____
Landlord

_____
Street Address

_____
City, State, Zip

I, _____, reside at your property located at
(Print tenant's name)

_____
(Address, city, state, zip)

I wish to inform you that Minnesota Statute § 504B.161 requires that every landlord of residential premises, whether the lease is in writing or oral, do the following:

(1) keep the premises and all common areas fit for the use intended by the parties;
(2) keep the premises in reasonable repair during the term of the lease or license;
(3) maintain the premises in compliance with the applicable health and safety laws of the state.

Since parties to a lease or license of residential premises may not waive or modify the "covenants of habitability" imposed by this statute, the landlord must do these things regardless of any contrary lease terms (unless the tenant caused the disrepair by his or her willful, malicious, or irresponsible conduct).

I am requesting repairs within 14 days to the following items or conditions:

1. _____
2. _____
3. _____
4. _____

_____ _____
(Signature) *(Date)*

This form can be found online at www.homelinemn.org/hotline/form-letters.

Retaliation Notice

Notification of Retaliatory Conduct

_____
Landlord

_____
Street Address

_____
City, State, Zip

I, _____, reside at your property located at
(Print tenant's name)

_____
(Address, city, state, zip)

I am writing to inform you that Minnesota tenants may not be retaliated against for asserting their rights as tenants. Your notice of _____
(type of notice given by landlord, ie. rent increase)
is retaliatory based on my following actions:_____
_____
_____
_____
_____.

Please be informed that Minnesota Statutes § 504B.285, subd. 3, and § 504B.441 provide that a residential tenant may not be evicted, nor may the tenant's obligations under the lease be increased (such as a rent increase), nor the services decreased if it's intended to be a penalty for the tenant's assertion of legal rights under the lease or law.

The landlord has the burden to prove the notice was not retaliatory if it is delivered within 90 days of the tenant's assertion of rights.

Your notice appears to be retaliatory, which violates Minnesota law. Please rescind the notice within fourteen days.

Thank you for your prompt attention to this matter.

_____ _____
Tenant's Signature *Date*

This form can be found online at www.homelinemn.org/hotline/form-letters.

Security Demand Deposit

Request for Security Deposit

_____
Landlord

_____
Address

_____
City, State, Zip

_____
Tenant

_____
Current/Forwarding Address

_____
City, State, Zip

I, _____ *(Tenant's name)*, vacated the premises located at _____ *(address)* _____ *(address)* on the _____ *(date)* day of _____ *(month)*, _____ *(year).*

Per Minnesota Statute §504B.178(3), you were required to return to me, within three weeks of my vacating the premises, one of the following:

1) My full deposit of $_____ plus interest for a total of $_____; or
2) A written statement showing the specific reasons for withholding my deposit or any portion of it, as well as the portion of my deposit not withheld, if any, plus interest.

Since you have failed to fulfill these obligations, Minnesota Statute §504B.178(4) allows me to recover the portion of the deposit and interest illegally withheld, and, as a penalty, an amount equal to this amount, as well as court costs. In addition, Minnesota Statute §504B.178(7) allows me to recover up to $500 for bad faith retention of my security deposit.

I would, however, prefer to settle this issue out of court. Therefore, please send me my full security deposit plus interest, as noted above, to the above address within five days. If you fail to comply with my request, I will take court action to recover the full amount plus the penalties and punitive damages authorized by Minnesota Statutes.

_____ _____
Tenant's Signature *Date*

This form can be found online at www.homelinemn.org/hotline/form-letters.

Security Deposit Interest Calculation

Security Deposit Interest Worksheet

Before using this worksheet check your lease – your lease may specify an interest rate higher than the law requires!

Instructions

1. Multiply the amount of your security deposit by the interest rate at the time you lived there
2. Divide the number of months you lived in your apartment by 12
3. Multiply the total of step 1 by the total of step 2

((security deposit) x (interest rate)) x ((number of months) ÷ 12) =

(_____ x .05) x ((# of months prior to October 1984) ÷ 12) =

(_____ x .055) x ((# of months between October 1, 1984 and April 30, 1992) ÷ 12) =

(_____ x .04) x ((# of months between May 1, 1992 and March 1, 1996) ÷ 12) =

(_____ x .04) x ((# of days between March 1, 1996 and March 21, 1996) ÷ 365) =

(_____ x .03) x ((# of days between March 22, 1996 and March 31, 1996) ÷ 365) =

(_____ x .03) x ((# of months between April 1, 1996 and July 31, 2003) ÷ 12) =

(_____ x .01) x ((# of months between August 1, 2003 and now) ÷ 12) =

Total (add the column above) = _____

Example: The following example would be for a tenant who paid a $275 security deposit and lived in an apartment from August 1, 1985 to August 31, 2010.

(275 x .05) x ((0) ÷ 12) = 0	0 = # of months prior to Oct. 1984
(275 x .055) x ((81) ÷ 12) = 102.09	81 = # of months between Oct. 1, 1984 and April 30, 1992
(275 x .04) x (46) ÷ 12) = 42.17	46 = # of months between May 1, 1992 and Mar. 1, 1996
(275 x .04) x ((21) ÷ 365) = .63	21 = # of days between Mar. 1, 1996 and Mar. 21, 1996
(275 x .03) x ((10) ÷ 365) = .23	10 = # of days between Mar. 22, 1996 and Mar. 31, 1996
(275 x .03) x ((88) ÷ 12) = 60.5	88 = # of months between April 1, 1996 and July 31, 2003
(275 x .01) x ((84) ÷ 12) = 19.25	84 = # of months between August 1, 2003 and now

Total = $224.87

This form can be found online at www.homelinemn.org/hotline/form-letters.

Sample Notice to Vacate

Notice to Vacate

I _____ (printed tenant's name) hereby terminate my tenancy at the following address:

_____ street address

_____ apt. # (if any)

_____ city/state/zip

I will be vacating on or before _____ (month,day year).

_____ _____

Date notice given Signature of Tenant

This form can be found online at www.homelinemn.org/hotline/form-letters.

Copy of Lease Request

Request for Copy of Lease

_____
Landlord

_____
Street Address

_____
City, State, Zip

I, _____, reside at your property located at
(Print tenant's name)

_____
(Address, city, state, zip)

I am writing to inform you that Minn. Stat. §504B.115 requires landlords to provide any tenant who occupies a dwelling unit, whose signature appears on the lease agreement, with a copy of the lease.

Pursuant to this statute, I am requesting a copy of my lease to be delivered within 5 days of this request.

_____ _____
Signature *date*

This form can be found online at www.homelinemn.org/hotline/form-letters.

Demand for Property

Notice of Property Confiscation

_____
Landlord

_____
Street Address

_____
City, State, Zip

I, _____, claim that you have intentionally confiscated my
(Print tenant's name)
property and are holding it at: _____
(Address, city, state, zip)

Please be advised that Minnesota Statute § 504B.101 forbids a landlord from holding a tenant's personal property, even if the tenant is behind on rent. Such conduct may constitute a crime.

As required by Minnesota Statute § 504B.271, you must allow me to take possession of my personal property within: (*check applicable clause*)

- ❑ 24 hours (excluding weekends and holidays) if the property is stored on the premises.
- ❑ 48 hours (excluding weekends and holidays) if the property was removed and is now stored off the premises.

If you fail to do so, I may sue for punitive damages of up to the greater of $1,000 or twice actual damages in addition to actual damages (the value of my property), as well as reasonable attorney fees.

Furthermore, Minnesota Statute § 504B.271 forbids the landlord from imposing any fees on the tenant before the tenant picks up his/her property. If you or your agent attempt to charge me any fees up front for return of my property, you will have violated the statute.

I sincerely hope you consider these consequences and you allow me immediate access to my personal property within the required time. I will pick up my property at the address above on:

_____, the _____ day of _____, _____.
(day) *(date)* *(month)* *(year)*

You may contact me at _____ with any questions or concerns.
(Telephone number)

_____ _____
Signature *date*

This form can be found online at www.homelinemn.org/hotline/form-letters.

Appendix 3

Tenant Screening Resources

List of Tenant Screening Companies

Most reputable landlords use tenant screening companies to check on prospective renter's rental, financial, and criminal backgrounds. Because the information in these reports can affect a tenant's ability to rent where they choose, tenants may wish to contact screening companies for a number of reasons:

- The tenant successfully received a court-ordered expungement of an eviction and wants it removed from reports.
- An eviction was more than 7 years ago and the tenant wants to make sure the companies are no longer reporting it, as required by federal law.
- The tenant wants a copy of a recently collected report that was provided to a landlord.
- The tenant is aware that the company is reporting incorrect information and has proof to show the report is wrong.
- The tenant wishes to use his or her right to submit a 100-word explanation for a less-than-perfect record.

Below is contact information for the eight major Minnesota-based tenant screening companies. In most cases, tenants should write formal letters (samples included in this appendix) to make their requests. Tenants may be able to call the companies with their questions.

Multihousing Credit Control
10125 Crosstown Circle #100
Eden Prairie, MN 55344

Apartment Services Plus
7400 Metro Blvd. #419
Edina, MN 55439

Rental History Reports, Inc.
10505 Wayzata Blvd. #200
Minnetonka, MN 55305

Tenant Check
910 Ivy Ave. E.
Saint Paul, MN 55106

Rental Research Services, Inc.
7525 Mitchell Rd. #301
Eden Prairie, MN 55344

Renters Acceptance
P.O. Box 9001
Minnetonka, MN 55345

Screening Reports, Inc.
12805 Hwy. 55, Suite 304
Plymouth, MN 55441

First Check
6910 Idsen Ave. S.
Cottage Grove, MN 55016

Sample Letter to Tenant Screening Company

Below is a sample letter for a tenant who has had an eviction expunged. Tenants should review all of Minn. Stat. § 504B.241 and can change their request depending on the situation. A tenant will need to quote different sections of the statute if they are informing the company of something other than an expungement.

Minn. Stat. § 504B.241…

- **Subd. 1**: Tenant has a right to obtain a copy of the report. Depending on the situation, the company may be able to charge a fee.
- **Subd. 2**: Companies must correct the accuracy of a report if tenant can prove a report is incorrect.
- **Subd. 3**: Tenant has a right to submit an explanation (can be limited to 100 words) to prospective landlords regarding an imperfect rental history.

Fair Credit Reporting Act, 15 U.S.C. 1681 § 622 (2): Companies can only report rental history information such as evictions for events within the past 7 years.

Date:_____

<Insert address of each tenant screening company>

RE: Expungement of Eviction Action/Unlawful Detainer Case:

Case Name (Plaintiff and Defendant): _____

District Court File Number: _____

Dear Residential Tenant Screening Service:

Your records may reflect information regarding the above-referenced case. Please take notice that, as indicated by the attached order, this case has been expunged pursuant to Minn. Stat. § 484.014. Please follow your legal duty and delete any reference to said case in any data maintained or disseminated by your company about this case—i.e. erase any reference to this you may have in a file you keep regarding this case. If you are unaware of it, Minn. Stat. § 504B.241 (Subd. 4) provides, in relevant part: *"If a tenant screening service (you) knows that a court file has been expunged, the tenant screening service shall delete any reference to that file in any data maintained or disseminated by the screening service."*

I trust that you will adjust the file as needed. Subdivision 2 of the same statute states: *"At the request of the individual, the resident, the tenant screening service must give notification of the deletions to persons who have received the residential tenant report within the past six months."*

I request that you make these "six-month" notifications. Please call with any questions.
Sincerely,

Tenant Name, Address & Phone Number
Enclosure: Court Order for Expungement.

Appendix 4

Additional Resources

The resources below provide a basic guideline for tenants who need assistance with: legal rights, financial or emergency assistance, discrimination or harassment, and locating rental housing. This is not an exhaustive list of resources available in Minnesota. Tenants can call HOME Line for advice and referrals to service providers in their community. Additionally, United Way's 2-1-1 service provides free referrals to many local providers.

HOME Line has prepared an online appendix for this book that provides links to online content, resources, laws, ordinances, court cases, and federal regulations. Most of the endnote citations throughout this book are available by accessing this online appendix. The online appendix is accessible here: www.homelinemn.org/book/online-appendix/.

Legal Assistance

The law: Minnesota Landlord/Tenant Statutes, Chapter 504B, as well as other related laws and cases: www.homelinemn.org/book/online-appendix/.

HOME Line: Free legal hotline for all renters in Minnesota (excluding Minneapolis residents): 612-728-5767 (Twin Cities metropolitan area) or 866-866-3546 (Greater Minnesota).

Minneapolis Housing Services: Landlord-tenant hotline for renters and landlords in the city of Minneapolis: 612-673-3003.

LawHelpMN.org: Provides answers to legal questions, contact information for local Legal Aid offices across the state, and links to courthouses and local community organizations. Legal aid offices provide legal advice and representation to people who have low incomes: www.lawhelpmn.org.

All Parks Alliance for Change: APAC is a nonprofit tenants union for residents of Minnesota's manufactured (mobile) home parks: 651-644-5525 or 866-361-APAC (2722).

Minnesota Multi Housing Association: Landlord-tenant rights hotline that advises landlords of their rights: 952-858-8222.

Minnesota Attorney General: The Attorney General's telephone hotline is staffed by specialists that answer questions on a variety of consumer topics, including rental housing: 651-296-3353 or 1-800-657-3787 www.ag.state.mn.us.

Minnesota State Bar Association: MSBA provides a free online lawyer search and referral service: www.mnfindlawyer.com.

Minnesota Homeownership Center: A nonprofit provider of information and resources aimed at helping Minnesotans begin, and maintain, home ownership: 651-659-9336 www.hocmn.org.

Minnesota Public Utilities Commission: Assists customers of regulated utilities by mediating disputes between customers and companies (not between tenants and landlords or roommates). The areas of those disputes involve utility service, billing, meter reading, and rates: 651-296-7124.

Minnesota Department of Revenue: If you do not receive your CRP form for a Renters Credit rebate by February 15, ask your landlord for the form. If you still cannot get it, or it is incorrect, this department can help you complete a rent paid affidavit: 651-296-3781 or 800-652-9094.

Financial Assistance

United Way 2-1-1 First Call for Help: This is a referral line available 24/7 and offers local information about food, housing, employment, childcare, transportation, health services, senior services and more. Multilingual access is available in over 100 languages. By dialing 2-1-1 callers will be routed to the closest call center in their area. This is a statewide number but may only be accessed by a land line telephone. You can also call 651-291-0211 or toll free 1-800-543-7709.

Hennepin County Emergency Assistance Program: Meets the short-term emergency needs of eligible families with children: 612-596-1900.

Ramsey County Emergency Assistance: People not currently on assistance with Ramsey County can call 651-266-4444 to get information on how to apply for emergency assistance.

Discrimination

Chapter 3, Housing Discrimination, outlines some important resources for discrimination and government agencies where complaints of discrimination are filed.

The following two organizations serve clients with low incomes by investigating discrimination claims, negotiating, giving advice and referrals, and representing clients in court and administrative actions.

Housing Discrimination Law Project: Serves the same counties as Mid-Minnesota Legal Assistance: 612-977-1801.

Housing Equality Law Project: Serves the same counties as Southern Minnesota Regional Legal Services: 651-222-4731.

Americans with Disabilities Act Information Line: Answers questions about general or specific ADA requirements including questions about the ADA Standards for Accessible Design. 800-514-0301 (voice) 800-514-0383 (TTY).

Harassment

In Minnesota, services for protection against harassment vary by location. Call 2-1-1 for services in your area. In Hennepin and Ramsey County, there are specific offices to deal with threats of harassment:

Hennepin County Domestic Abuse Service Center: The Domestic Abuse Service Center serves people who are victims of violence caused by a family or household member: 612-348-5073.

Ramsey County Domestic Abuse and Harassment Office: This office assists victims of domestic abuse to obtain Orders For Protection and Harassment Restraining Orders: 651-266-5130.

Housing Search

Craigslist: Classifieds for apartments, rooms, sublets, etc. at www.craigslist.org.

Housing Link: Housing Link provides a statewide affordable housing vacancy listing service, which can be accessed by anyone: www.housinglink.org.

Appendix 5

Covenants of Habitability

Minn. Stat. § 504B.161 Covenants of Landlord or Licensor

Subdivision 1. Requirements

(a) In every lease or license of residential premises, the landlord or licensor covenants:

(1) that the premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee;

(3) to make the premises reasonably energy efficient by installing weatherstripping, caulking, storm windows, and storm doors when any such measure will result in energy procurement cost savings, based on current and projected average residential energy costs in Minnesota, that will exceed the cost of implementing that measure, including interest, amortized over the ten-year period following the incurring of the cost; and

(4) to maintain the premises in compliance with the applicable health and safety laws of the state, and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

(b) The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

Subd. 2. Tenant Maintenance

The landlord or licensor may agree with the tenant or licensee that the tenant or licensee is to perform specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in a conspicuous writing. No such agreement may waive the provisions of subdivision 1 or relieve the landlord or licensor of the duty to maintain common areas of the premises.

Subd. 3. Liberal Construction

This section shall be liberally construed, and the opportunity to inspect the premises before concluding a lease or license shall not defeat the covenants established in this section.

Subd. 4. Covenants are in Addition

The covenants contained in this section are in addition to any covenants or conditions imposed by law or ordinance or by the terms of the lease or license.

Subd. 5. Injury to Third Parties

Nothing in this section shall be construed to alter the liability of the landlord or licensor of residential premises for injury to third parties.

Subd. 6. Application

The provisions of this section apply only to leases or licenses of residential premises concluded or renewed on or after June 15, 1971. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

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