Due Process Denied: Handling of Eviction Cases at the Anoka and Dakota County Courts

by

Katherine Zerwas and Paul Birnberg on behalf of HOME Line

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About HOME Line

HOME Line is a Minnesota non-profit corporation. HOME Line's programs include a hotline that receives approximately 11,000 calls per year from tenants throughout the state; a litigation program providing legal representation to tenants, mostly in eviction and lack-of-repair cases; a program of presentations to local high schools to educate the students on becoming knowledgeable and responsible renters; presentations to police officers on criminal aspects of landlord-tenant law; presentations to social workers, landlords, and law students on landlord-tenant law; an organizing program, providing staff to facilitate organization of residential tenants; and various programs designed to help tenants in buildings being foreclosed. HOME Line also participates in housing policy advocacy at the state and national levels.

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

The Dakota and Anoka County District Courts hear about 2,400 and 1,700 eviction cases per year, respectively. They rank third and fourth among all Minnesota counties in the number of eviction cases heard. Almost all involve residential property. The vast majority of cases involve low-or moderate-income tenants. Unlike the two counties ranking ahead of Anoka and Dakota in number of eviction cases—Hennepin and Ramsey—where specialized housing-court referees hear these cases, in Anoka and Dakota Counties housing cases are heard on the special-term calendars by judges who rotate onto the calendars for brief stints.

Anecdotal reports indicated that housing-case decisions in Anoka and Dakota Counties have been inconsistent and sometimes contrary to law. To test the truth of these reports, a trained observer watched and analyzed 697 housing-case hearings – 233 in Anoka County, 221 in Dakota County, and 243 in Hennepin and Ramsey Counties. In Anoka County, errors of simple and common black-letter law were noted in 15.4% of the contested cases and in Dakota County in 18.2%. In contrast, in Hennepin and Ramsey Counties, only one error was noted, a mere 2.3% error rate. Among all cases, including uncontested cases, the error rates were 4.3% in Anoka, 4.1% in Dakota, and only 0.4% (one error) in Hennepin and Ramsey combined.

The cause of the errors is not that jurists in Hennepin and Ramsey Counties are smarter than those in Anoka and Dakota. Rather, the specialized referees in Hennepin and Ramsey benefit from concentrating on one area of the law. HOME Line recommends one of the two following solutions:

- [1] Institute housing courts with specialized referees in Anoka and Dakota Counties. This could involve a part time referee in each county or one full time referee riding circuit in the two counties.
- [2] If logistical or financial considerations make the first recommendation impractical, each county should assign one judge to hear all housing cases as approximately half his case load and have that judge stay on that assignment for a good length of time, effectively creating an approximation of a special housing court.

This would:

- 1. Greatly decrease inconsistent and erroneous decisions in housing cases.
- 2. Allow all housing cases to be set for trial in a predictable way.
- 3. Simplify post-hearing motion practice in housing cases.
- 4. Ensure that all eviction cases would be heard by the same court that deals with all tenant-initiated housing cases.

A second observation we made was that Anoka County Court appears to be enforcing the rule from Nicollet Restoration v. Turnham, Walnut Towers v. Schwan, and 301 Clifton Place L.L.C. v. 301 Clifton Place Condominium Association that corporate and LLC litigants in all cases, including evictions, be represented by an attorney at law while Dakota County is not. We recommend that Dakota begin conforming its practice to this rule and require corporations and LLCs to appear by attorney.

A third observation is that Anoka County is requiring non-attorney agents (such as a property manager appearing as attorney in fact for the owner of a building) to file written powers of authority from their principals to appear and Dakota County is not. While there may not be an absolute rule requiring such written authorizations, it is a good practice and we recommend that Dakota County institute it.

INTRODUCTION

1. Housing Cases in the four largest counties.

The Dakota and Anoka County District Courts hear about 2,400 and 1,700 eviction cases each year, respectively See Table 1 (next page)¹. They rank third and fourth among all Minnesota counties in the number of eviction cases heard. Almost all involve residential property. The vast majority of cases involve low- or moderate-income tenants.

The two courts hearing more eviction cases are Hennepin and Ramsey County Courts. Hennepin hears about 9,300 eviction cases per year and Ramsey about 4,000 per year.²

2. Anecdotal evidence suggests that the Anoka and Dakota County Courts do a poor job with housing cases.

As described more completely on page i, HOME Line provides a variety of services to Minnesota tenants. As part of its tenant-advocacy program, HOME Line operates a hotline which receives about 2,000 telephone calls each year from Anoka and Dakota County tenants. In addition, our attorneys appear in court on eviction cases and practice exclusively in the area of landlord-tenant law. Thus we have received a great deal of anecdotal information about the housing calendars.

For several years, this evidence has included repeated complaints and incidents of incorrect, unfair, and inconsistent decisions made in housing cases in these two counties. We have also heard reports of odd or inconvenient scheduling of these cases, especially when cases have gone to trial. In addition, the two courts apparently have taken divergent approaches to dealing with corporations, limited liability companies, and other business entities appearing without attorney representation.

3. Special Housing Courts in Hennepin and Ramsey Counties have resolved these problems.

Prior to 1990, similar problems plagued the courts in Hennepin and Ramsey Counties. In 1989, Housing Courts were established in those two counties to bring efficiency and consistency to

 $^{2}Id.$

¹The data in Table 1 was provided by the State Court Administrator. The figures quoted above are for the year 2009.

Table 1
Number of Eviction Action Cases Filed Per Year*

Year

| County/District | 2005* | 2006 | 2007 | 2008 | 2009 | 7/09-6/10 |
|-------------------------------------------------------------|-------------------|---------------------------------------------|-------------------|---------------------------------------------|---------------------------------------------|---------------------------------------------|
| LeSueur | | 53 115 406 | 143 | 2709 380 96 84 150 561 30 | 478 | 2140 259 96 46 87 486 18 |
| District 1 Total | 3098 | 3355 | 3800 | 4010 | 3479 | 3132 |
| Ramsey | 4488 | 4773 | 5054 | 4740 | 4037 | 3562 |
| Hennepin | 9493 | 9964 | 10471 | 10772 | 9324 | 8311 |
| Kanabec Pine Sherburne Washington Wright | 235 889 361 | 141 124 46 88 236 942 335 | 294 964 453 | 48 97 364 1055 458 | 201 175 54 92 298 807 424 | 162 131 44 91 268 754 375 |
| District 10 Total | 3714 | 3611 | 4175 | 4566 | 3737 | 3311 |
| St. Louis-Duluth St. Louis-Hibbing St. Louis-Virginia | 527 62 60 | 469 60 55 | 534 70 57 | 575 80 54 | 54 | 473 47 39 |
| St. Louis Cty Total | 649 | 584 | 661 | 709 | 540 | 559 |

^{*}In 1st, 2nd, 4th and 10th Judicial Districts and St. Louis County. Years are calendar years except for 7/09 to 6/10. Data provided by the State Court Administrator.

the handling of housing cases in the two counties. Prior to their creation, housing cases were heard by many different judges who rotated onto the housing calendar for a one week stints.³ Different judges had different levels of housing-law expertise, and outcomes were unpredictable. <u>Id</u>. Since judges rotated, cases requiring continuing jurisdiction and oversight were poorly handled because there was no good centralized system for tracking cases and no particular judge was in charge. <u>Id</u>. In essence, Hennepin and Ramsey Counties handled housing cases pretty similarly to the way Anoka and Dakota Counties handle them now.

For the most part, the establishment of the Housing Courts solved these problems. <u>Id</u>. The courts are run by a main housing-court referee in each court. The referee handles the administration of the court and hears the vast majority of the cases. In Hennepin County, a second part-time referee with extensive housing-court experience handles almost all the rest of the cases.

In contrast, the situation in Anoka and Dakota Counties is similar to the pre-1990 system in Hennepin and Ramsey Counties. Housing cases are set for initial hearing on the special term calendars. When a case goes to trial, it is usually continued for a week to another special-term calendar, especially in Anoka County. The Anoka cases are heard three times a week. The Dakota cases are heard about five to seven times per week. A strong majority (about b) are heard in Apple Valley, which holds the requisite special-term calendars three times per week. Of the rest, most are heard in West Saint Paul (two calendars per week) and a small number are heard on occasional calendars in Hastings. Like the pre-1990 systems in Hennepin and Ramsey Counties, the cases are heard by judges who rotate to the special-term calendars for brief periods.

³The legislation that created housing courts in Hennepin and Ramsey was 1989 Minn. Laws ch. 328, art. 2, s. 17. *See* Advisory Committee to State Court Administrator's Office, Housing Calendar Consolidation Project Evaluation Final Report (hereafter "Final Report") at 1 (1993) (report produced pursuant to the law that created the housing court as a pilot project, 1989 Minn. Laws, ch. 328, art. 2, s. 17, subd. 8). Page 5 of the report discusses the one-week stints.

4. Eviction cases deserve proper consideration.

The anecdotal evidence troubled us. Under Minnesota law, an eviction case must go to trial within six days of the initial appearance and can go to trial on the spot. Thus, there is little chance to educate the judges in the law. First, the hurry-up atmosphere allows no time for education. Second, since an eviction case is a civil case, the Sixth Amendment right to counsel does not apply. Usually both parties appear pro se. The landlord, at least a non-corporate/LLC landlord, appears pro se (or "represented" by a property manager) because too little money is at stake to pay an attorney; the tenant appears pro se because the tenant cannot afford an attorney, and there aren't nearly enough free attorneys to go around. For lack of financial resources and because the Anoka and Dakota County cases can be appealed only by direct appeal to the Court of Appeals within 10 days, the parties are very unlikely to be able to appeal an unfair, adverse decision.

Judges are forced on the spot to make important decisions that can result in homelessness. In comparison, in almost all other civil cases, the judge has the luxury of up to 90 days to make decisions and usually has the advantage of briefs submitted by attorneys from both sides. In criminal cases, the state always has an attorney to brief the court and the defendant usually does; in addition, many of the important decisions can be taken under advisement.

Because of the stakes involved, if the anecdotal evidence is indicative, the handling of eviction cases in Anoka and Dakota Counties is a very serious situation. A family's home is usually at stake. If the tenant loses, a family is homeless, perhaps with little warning that homelessness was a possibility. If a mom-and-pop landlord loses unfairly, the landlord can suffer a significant financial loss. And, while a large-scale landlord probably can weather a few losses in court, several unfair losses or inconsistent decisions erode that landlord's faith in the judicial system.

5. Purpose and design of the study.

The study was designed to measure the following:

- (i) Error rates in eviction cases in the two courts and in the Specialty Courts (Hennepin and Ramsey Housing Courts) as a control.
- (ii) The amount of time litigants had to wait to have their case heard in each court.

- (iii) Rates of settlement.
- (iv) How the courts handled business entities representation by counsel or by an attorney-in-fact with written authority to appear.

The purpose of measurement (i) has already been discussed. In short, the least litigants should expect from court is a correct and consistent application of the law to their case.

Measurement (ii) is related to litigants' perception of the reasonableness of the process. Measurement (iii) is related to an announced goal of the court system – to help parties work out their own problems whenever possible. Measurement (iv) is related to the idea that such situations should be handled consistently and consistent with established law.

The details of the study are set out in the Methods section that follows. Briefly, during the summer of 2010, a trained law-school student watched and timed a random selection of more than 220 cases in each venue. The observer took careful notes on each case, marking those that might have involved an incorrect application of the law. The marked cases were reviewed several times by different attorneys who specialize in housing law to determine if a clear violation of black-letter law occurred. When needed, the case files were read. Data was also taken on the other three issues by use of a watch, case notes, and, when needed, by reading the files. The results are reported below.

Our goal is not to single out any individual judge for criticism. Indeed, it is our opinion that the errors we observed result from good judges being placed in a bad situation. Therefore, although the data are available in our office, we do not report any information identifying judges or litigants.

METHODS

<u>1. Cases Observed</u> Observations were made during the period June 1, 2010 to August 18, 2010. For the first two weeks, attorney Paul Birnberg and William Mitchell College of Law student Katherine Zerwas acted as joint observers. Subsequently, Ms. Zerwas was the sole observer.

Anoka County Court holds initial hearings for eviction and tenant-initiated cases under Minn. Chap. 504B on Mondays, Wednesdays, and Fridays at 9:00 a.m. Dakota County holds such hearings at the Apple Valley Courthouse on Mondays, Wednesdays, and Thursdays at 9:00 a.m.; at the West Saint Paul Courthouse on Tuesdays at 9:00 a.m. and Fridays (alternating 9:00 a.m. and 1:30 p.m).; and at the Hastings Courthouse at 9:00 a.m. on each day of the week (in theory, although in practice, housing cases were few and far between). Hennepin County holds such hearings at 8:45 a.m./10:30 a.m. (two calendars run back to back) on Mondays, Wednesdays, Thursdays, and Fridays plus sometimes on Tuesdays plus some at 1:30 p.m. when the other calendars fill up for a particular week. Ramsey County holds such hearings on Mondays, Tuesdays and Fridays at 8:45 a.m.

The observer attempted to attend as many such initial hearings at the Anoka and Dakota County Courts as possible and came close to meeting this goal. The three limits placed on this attempt were that the observer spread out her observations so that the number of observed cases in Anoka and Dakota counties were approximately equal over the observation period, at least some cases were observed at each of the three Dakota County courthouses, and if a calendar had less than three landlord-tenant cases attendance was skipped to limit transportation costs. In all, 233 initial hearings were observed in Anoka County and 221 in Dakota County (158 in Apple Valley, 60 in West Saint Paul, and 3 in Hastings). In addition, ten trials in Anoka County and three trials in Dakota County were observed.

A randomly selected group of housing calendars in Hennepin County were also observed, limited by giving priority to observations in Anoka and Dakota Counties. One such calendar was observed in Ramsey County. Some of the Hennepin calendars observed were presided over by Referee Mark Labine and others by Referee Linda Gallant. The Ramsey calendar was presided over by Referee Finlay. A total of 214 initial hearings were observed in Hennepin County and 29 were observed in Ramsey County.

2. Data Collected The observer timed each individual hearing as well as the time between the announced start of the calendar and the actual start of the calendar. For each case, she entered the appropriate data by checking off boxes on the form set out as Exhibit 1 (*see* Appendix C.) Finally, she took detailed notes of the arguments made by both parties and the reasoning and ruling of the judge or referee; the notes were made on the form itself, using extra sheets as needed. Where the oral proceedings could be better understood by reference to the case file, the observer subsequently pulled the file and took notes from the pleadings and orders.

Within 48 hours, usually within 3 hours, observer Zerwas then discussed each case with attorney Birnberg and, in some cases with other attorneys at HOME Line as well. If all these persons agreed that the judge's or referee's ruling contradicted black letter law, the case was so marked. The marked cases subsequently went through a repeat analysis; in a few instances, upon further review, the case was "unmarked" because the ruling, though incorrect, might not have positively contradicted black letter law.

Some of the marked cases involved rulings that were incorrect but where the case was uncontested, the ruling did not necessarily affect the outcome of the case, the ruling could be said to be on peripheral issues, or in a sense amounted to dicta. Such cases were marked as such, and as part of our effort to err on the conservative side, have been reported as errors in "uncontested cases" rather than in contested cases.

Lastly, the marked cases, with full case notes, were reviewed by Douglass Turner. Mr. Turner is an attorney whose practice includes a substantial amount of landlord-tenant law, almost always representing landlords. He appears regularly in Anoka and Dakota County, as well as other metro-area counties, in housing matters. Mr. Turner concurred that all the marked cases were wrongly decided (contested cases) or involved erroneous rulings ("uncontested cases").

A summary of each of the marked cases is found in Appendices A and B. Since our intention is not to single out individual judges or individual cases, identifying information has been removed from the summaries. The original case notes for all the cases are available for review in our office.

3. Statistical Analysis To determine if two percentages were statistically different, a difference-of-p's analysis was performed. For a discussion of this statistical method, *see e.g.* Frederick Mosteller et al., Probability with Statistical Applications § 9-5 (Addison-Wesley Publishing Co. 1970).

RESULTS

1. The Anoka and Dakota County Courts were far more likely than the Specialty Housing Courts to make errors of law.

The main hypothesis tested by the study was that the Anoka and Dakota Courts are less effective at correctly applying Minnesota landlord-tenant law than the housing courts in Hennepin and Ramsey Counties ("Specialty Courts"). The results obtained strongly support the hypothesis. The details are given below, but in summary, the Specialty Courts were nearly error free in contested cases (an error rate of about 2%) compared to over 15% and 18%, respectively, in Anoka and Dakota Courts. In all cases, including uncontested ones, the error rate was only 0.4% in the Specialty Courts compared to 4.3% in Anoka County and 4.1% in Dakota County.

A description of the cases in which errors of law were observed is set out in Appendices A and B. Overall, 233 hearings were observed in Anoka County, 221 in Dakota, 214 in Hennepin, and 29 in Ramsey. The observed outcomes from these hearings are set out in Table 2 (next page). The outcomes are broken into two major categories – "uncontested cases" (category #5) and "contested cases" (category #6). The uncontested cases are broken into three subcategories – "default" (either tenant or landlord did not appear), "settled", and "voluntarily dismissed" (plaintiff-landlord dismissed the case and so reported to the court). Finally, the number of cases in which errors were observed are reported in three categories – errors in contested cases (category #7), errors in uncontested cases (category #8), and errors in all cases (category #9 = category #7 + category #8).

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| Table 2, Raw Data | | | | |
|-----------------------------------------------|-------|--------|----------|--------|
| Number of Cases | Anoka | Dakota | Hennepin | Ramsey |
| [#1] Total | 233 | 221 | 214 | 29 |
| [#2] Default | 76 | 64 | 66 | 9 |
| [#3] Voluntarily Dismissed | 29 | 43 | 11 | 2 |
| [#4] Settled | 89 | 81 | 102 | 9 |
| [#5] Uncontested (#2+#3+#4) | 194 | 188 | 179 | 20 |
| [#6] Contested | 39 | 33 | 35 | 9 |
| [#7] Errors in Contested Cases | 6 | 6 | 1 | 0 |
| [#8] Errors in Uncontested Cases ¹ | 4 | 3 | 0 | 0 |
| [#9] All Errors (#7+#8) | 10 | 9 | 1 | 0 |

The raw data from Table 2 was then converted to error-rate data to form Table 3 (next page) as follows. First, figures for Hennepin and Ramsey counties were added to give figures for Specialty Courts Combined. Second, an extra column is included, giving the sum of the Anoka and Dakota figures. Third, errors are stated as both raw numbers (actual number of errors) and error rates (percentages of cases of that category). These error rates were subjected to difference-of-percentages statistical analysis as described in the Methods section; see footnote 4 of Table 3.

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| Table 3, Collated Data with Percentage Error Rates ¹ | | | | |
|-----------------------------------------------------------------|--------------|-------------------------|-------------------|----------------------------------------------|
| Number of Cases | Anoka | Dakota | Anoka + Dakota | Specialty Courts Combined ¹ |
| [#1] Total | 233 | 221 | 454 | 243 |
| [#2] Uncontested | 194 | 188 | 382 | 199 |
| [#3] Contested | 39 | 33 | 72 | 44 |
| [#4] Errors in Contested Cases | 6 | 6 | 12 | 1 |
| [#5] Percent Errors in Contested Cases ² | 15.4% a 4 | 18.2% b ⁴ | 16.7% b | 2.3% |
| [#6] All Errors | 10 | 9 | 19 | 1 |
| [#7] Percent All Errors | 4,3% b | 4.1% b | 4.2% b | 0.4% |

¹Hennepin + Ramsey

As shown in Table 3, the Anoka Court erred in 6 out of 39 (15.4%) contested cases and the Dakota Court in 6 of 33 (18.2%) contested cases. The Specialty Courts erred just once in 44 contested cases, an error rate of only 2.3%. Thus, the Anoka error rate was almost seven times higher than the Specialty Courts and the Dakota error rate almost eight times higher

Among all cases, the error rates were 4.3% in Anoka, 4.1% in Dakota, and only 0.4% in the Specialty Courts. That is, the error rate in all cases in the Specialty Courts was less than one tenth that in Anoka and Dakota courts.

These error rates do not just seem different, but are statistically different as well. Statistical analysis determined that for both contested-case errors and all-case errors, the differences between Anoka or Dakota Courts on the one hand and the Specialty Courts on the other were significant with 98-99% confidence.

 $^{^{2}}$ #4 ÷ #3 x 100

 $^{^{3}}$ #6 ÷ #1 x 100

⁴The letters "a" and "b" mean that the percentage is significantly different from the percentage for Specialty Courts Combined with a confidence level of 98% for "a" and 99% for "b".

The errors noted in contested cases were not in cases involving arcane points of law. Over half the errors (seven of twelve) involved either the non-payment/redemption statute (Minn. Stat. § 504B.291, Subd. 1) or the stay-of-the-writ statute (Minn. Stat. § 504B.345, Subd. 1(d)), the two most commonly applied statutes in eviction actions. These seven errors involved ignoring straightforward language in the statute – such as allowing 9 days stay in the writ, not the maximum 7 days allowed by statute, accompanied by a statement "I split the difference."

Other errors included (i) evicting the tenant for non-financial breach of lease even though the evidence presented was that the lease did not prohibit the alleged conduct, thereby contravening common law and Minn. Stat. §504B.285, subd. 5 (two cases); (ii) not requiring ongoing payment of rent into court by a defendant-tenant who raised just one defense to a non-payment eviction complaint, a lack-of-repair (habitability) defense, thereby contravening the rule from the case establishing such a defense, Fritz v. Warthern, 298 Minn. 54, 213 N.W.2d 339 (1973); (iii) modifying the parties' settlement without legal basis and harming both parties; and (iv) assigning a security deposit to rent as well as modifying the lease prospectively, thereby issuing two equitable rulings in contravention of the limited nature of eviction actions and thereby exceeding the subject-matter jurisdiction of the court in a basic way.

The differences cannot be accounted for by one or even several rogue judges. The twelve errors in Anoka and Dakota involved nine different judges. No judge made the same error twice in the twelve hearings.

Nor can the errors be accounted for by anti-landlord or anti-tenant bias. Of the twelve errors in the Anoka and Dakota courts, five favored the landlord, five favored the tenant, one harmed both parties, and one case involved two errors, one favoring each side.

The errors noted in uncontested cases also were not in cases involving arcane points of law. Two of the errors (same judge, same error) involved setting a trial date in contravention of the six-day-continuance rule in Minn. Stat. § 504B.341. (These two cases were actually contested of course, but are considered "uncontested" in this study since the ruling apparently was of

relatively little consequence to the parties and we wish to err on the side of caution before assigning an error as being crucial.) The other errors involved deciding an issue not pled or litigated in a case heard by default, having the defendant/party without the burden of proof go first at trial, misreading the partial payment statute (perhaps not crucial because under the actual circumstances it wasn't clear if the statute would have applied to the facts in the case at bar), and finally telling the tenant he had no recourse to clear up his tenant record when the tenant did have recourse through the commonly used expungement statute.

In summary, looking either at errors in contested cases or in all cases, error rates were much higher in Anoka and Dakota Counties than in the Specialty Courts. And, the errors noted were errors in ruling on common, mostly on very common, issues heard in eviction cases.⁴

2. Settlements are more likely in Hennepin County Court than in Anoka or Dakota County Courts.

A second issue examined was whether settlements were more common in Hennepin County than in Anoka and Dakota Counties. Settlement is an avowed goal of the courts.

Hennepin County employs mediators and has made a concerted effort to encourage settlement – not only using trained mediators, but having clerks and referees urging settlement, and employing a conistent approach to cases by the court.

The raw settlement data from Table 2 was converted to settlement-rate data to form Table 4 as follows (next page).

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⁴Actually, one of the "uncontested-case" errors, having the defendant go first at trial, was not in a true Eviction-Action case. It was in a lockout case involving an actual eviction in common parlance and was heard on the Eviction-Action calendar.

| Table 4, Collated Data with Percentage Settlement Rates ¹ | | | | |
|----------------------------------------------------------------------|-------------------------|------------|-------------------------|------------|
| Number of Cases | Anoka | Dakota | Anoka + Dakota | Hennepin |
| [#1] Total | 233 | 221 | 454 | 214 |
| [#2] Settled | 89 | 81 | 170 | 102 |
| [#3] Percent Settled ¹ | 38.2% b ² | 36.6% b | 37.4% a ² | 47.7% · |

¹#2 ÷ #1 x 100

The data in Table 4 indicate that settlement rates are somewhat higher in Hennepin than in Anoka or Dakota Counties. Although the differences are not dramatic, the settlement rate in Hennepin was about twenty-five percent higher than in Anoka or in Dakota and the differences in settlement rates were statistically significant at a 97-98% confidence level. Thus, the Hennepin Housing Court's efforts to promote settlement have a meaningful effect.

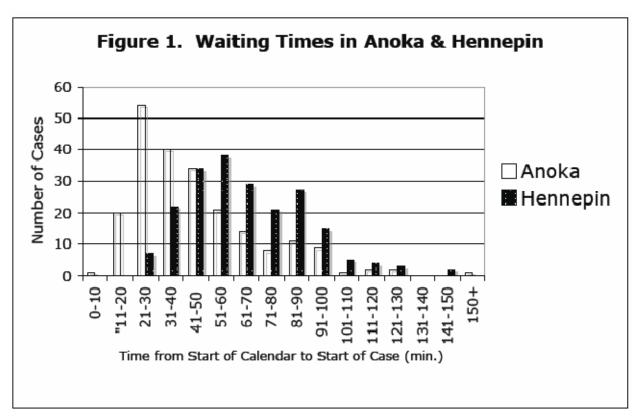
3. Court delays were similar in the various courts.

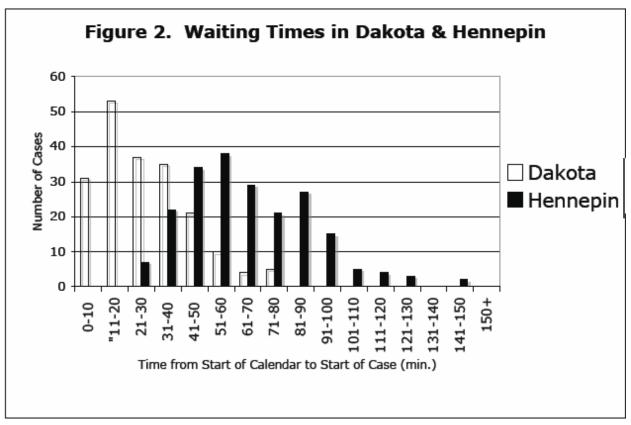
The third hypothesis tested was whether some courts were more prone to delays than others. To test this hypothesis, the observer timed the delay between the time for start of court stated in the Summons and the actual time the first case was heard.

The data is presented in bar-graph form. (*See* Figures 1-2, next page). In summary, the only significant difference was that start times were delayed by about 15-20 minutes in Hennepin as compared to Anoka and Dakota counties. The distributions were similar. In short, except for the rare case (discussed below), the courts processing of initial hearings were quite similar except that Hennepin started consistently later.

The reason for this initial delay is that the Hennepin court intentionally does not have the referee sit on the bench until the clerks have read an introduction, part of which encourages settlement and discusses the various options available to the litigants. The parties are then given a

²The letters "a" and "b" mean that the percentage is significantly different from the percentage for Hennepin with a confidence level of 98% for "a" and 97% for "b".





chance to return to the hallway to discuss settlement with or without the aide of mediators. Based on the results above regarding settlement rates, the added delay from this introductory activity may cause more settlements and provide a payoff for the short delay.

What Figures 1-2 do not show is that, at least in Anoka County, when a case is set for trial, there can be significant delays. Of the few trials observed, a couple trials did not start until after the parties sat through the better part of a morning and an entire calendar of initial hearings (for those parties, a second such calendar, the first being when they appeared for their own initial hearing). Furthermore, another trial would have been delayed an extra week except that the judge and the court staff agreed to stay through the lunch hour to finish the case and the parties agreed as well. An author of this report has experienced a similar trial delay where the initial hearing resulted in an agreed trial time for 9:00 a.m. on a subsequent date and the trial did not actually start until 1:30 p.m. on that subsequent date, not because of sloth by the court but because of a less than optimal scheduling system. Anecdotes from other attorneys practicing in Anoka report similar delays. We did not observe such problems in Dakota, but we have heard anectdotes of occasional such delays, although fewer in number.

4. Representation of corporations and limited liability companies and representation by non-attorney agents.

The final set of data collected was data on how the courts dealt with the issue of legal representation of corporations, limited liability companies, partnerships, and other business entities. This last group mostly consisted of litigants operating under unregistered assumed names like "Beautiful Manor Apartments". Specifically, for each case involving one of these entities, the observer noted whether the entity was represented by an attorney, by a non-attorney agent who

⁵Businesses operating under an assumed name are required to register the name with the Secretary of State. Minn. Stat. §333.01. The registration indicates the actual identity of the business, which may be a natural person, partnership of natural persons or a business entity such as a corporation. In either case, with a registered-assumed-name plaintiff, the observer, by checking the Secretary of State website, was able to catagorize the litigant by type of entity, be it corporation, limited liability company, human, etc.

filed either a Power of Attorney in Fact or similar document issued by a principal, or was represented by an agent who appeared without any written authorization. The observer also noted how the court handled the case.

Table 5 below sets out the number of cases in each county involving corporations or limited liability companies, the number of such cases with attorney representation of the entity, and how the courts proceeded if the entity had no attorney.

| Table 5 - Corporation and LLC Attorney Representation | | | | | |
|-----------------------------------------------------------------------------------------|--------------|---------------------------------|---------------|---------------------------------|--|
| | Anoka County | | Dakota County | | |
| Number of Cases With Corporate or LLC Litigant | Corporation | Limited Liability Company | Corporation | Limited Liability Company | |
| Total | 67 | 26 | 32 | 20 | |
| With Attorney | 67 | 22 | 27 | 7 | |
| No Attorney | 0 | 4 | 5 | 13 | |
| No Attorney - Case Dismissed or Continued to Allow Litigant to Get Attorney | na | 2 | 0 | 0 | |
| No Attorney - Case Proceeded Without Attorney | na | 2 | 5 | 13 | |

In summary, in Anoka County, all corporations were represented by attorneys. In Dakota County, 27 of 32 corporations were represented by attorneys while five were not; all five of those cases were allowed to proceed. In Anoka County, 22 of 26 limited liability companies were represented by attorneys while four were not; of those four cases, two were allowed to proceed and two were not. In contrast, in Dakota County, only seven of 20 limited liability companies were represented by attorneys but all 20 cases were allowed to proceed.

Table 6 below sets out the number of cases in each county where a non-attorney agent appeared as an agent for a litigant, the number of such cases where the litigant or agent filed a Power of Attorney in Fact or the equivalent, and the number of such cases where the agent appeared without any written authorization.

| Table 6 - Agents With and Without Power of Attorney in Fact | | | | |
|--------------------------------------------------------------|--------------|---------------|--|--|
| Number of Litigants Represented by Non- Attorney Agent | Anoka County | Dakota County | | |
| Total | 14 | 113 | | |
| Filed a Power of Attorney in Fact or Equivalent | 13 | 54 | | |
| Did Not File a Power of Attorney in Fact | 1 | 59 | | |

In summary, in Anoka County, all but one non-attorney agent filed a Power of Attorney in Fact or the equivalent, while in Dakota County less than half (54 of 113) did so.

Examination of the underlying cases indicated that the reason for the vast difference in number of agent representations – only 14 in Anoka and 113 in Dakota – is that in most of the Anoka cases of the type in which a non-attorney agent would have appeared in Dakota (primarily partnerships and litigants with unregistered assumed names), the Anoka County litigant was represented by an attorney.

RECOMMENDATIONS

1. All housing cases should be blocked to one judge.

Theoretically, the number of erroneous rulings could be reduced by seminars for the judges hearing the eviction cases or similar educational efforts. It is not clear that this approach would work. The main advantage the housing-court referees have is not seminars but the experience gained from hearing hundreds if not thousands of cases. There is no way for judges to duplicate this except by accepting an assignment to housing court or the housing calendar for several months or a year at a time, just as judges are rotated into family court for a year or two in

some counties.

An alternative solution, perhaps an even better one, would be to create a housing court staffed by a housing court referee in each county, as is done in Hennepin and Ramsey counties. The one serious problem with this solution might be cost effectiveness. Unless the referee serves only part time, she would be seriously underused.

Table 1 (page 4), obtained from the State Court Administrator, shows the number of Eviction Action cases in each county in the First, Second, Fourth, and Tenth Judicial Districts by 12-month period from 2005 through June 2010. While the total number of housing cases, including tenant-initiated cases, was a bit higher than shown in Table 1, the numbers of all housing cases would be very similar since evictions represent at least 95% of all housing cases.

As Table 1 shows, Hennepin County has been hearing 8,311-10,772 evictions per year and Ramsey 3,562 - 5,054 per year. Hennepin's housing court uses about 1½ full-time-equivalent referees; Ramsey uses just under one full-time-equivalent referee. In comparison, Anoka County has been hearing 1,486 - 2,133 evictions per year and Dakota 2,140 - 2,709 per year. Thus, each county would occupy a bit under ½ full-time-equivalent of a housing-court referee. Possibly, each referee could ride circuit throughout each judicial district. Doing so would occupy the referee about 3/4 as much time as the Ramsey referee. However, the First Judicial District has seven counties and the Tenth has eight counties, meaning the referee would be in transit quite a lot and could not even visit each county once per week, rendering this an ineffective solution.

Therefore, while a housing referee would be the best option, using one would mean using only a part-time referee in each county or having one referee serve in both Anoka and Dakota Counties. If this were feasible, it would be a good solution – certainly for the litigants – but we are not in a position to determine whether this possibility is workable.

Given the problems associated with using housing-court referees, the next best solution is to assign one judge in each county to hear all housing cases and have that judge stay on the assignment for a good length of time, at least six months for example. Doing so would have at

least eight benefits.

First, as already discussed, the number of erroneous decisions would be substantially decreased. The judge assigned to housing cases would naturally familiarize herself with the applicable law, both out of necessity from hearing a large number of housing cases and because of a natural inclination to do an excellent job. Unlike the current situation, where judges hear housing cases only 5-10% of the time, the assigned housing-case judge would hear them about half the time and would thus be able to find the time to keep up on the law.

Second, cases would be more likely to settle.

Third, cases set for trial would be set for trial in a predictable way. The assigned judge would set trial before herself and thus would not be forced to simply have the litigants come back to the same special term calendar the following week or another similar "cattle call" calendar. The judge would also be in a better position to manage discovery.

Fourth, post-hearing motion practice would be easier. Eviction cases, like other cases, occasionally require a motion to open a default judgment – typically because one litigant missed the hearing with a good excuse, such as a car accident. Sometimes a tenant doesn't attend the initial hearing because there actually was not service of process and the writ of recovery of property and order to vacate (the "writ of restitution") was the first notice the tenant received. Currently, the litigant has to seek out a judge – a signing judge or maybe a judge on the day's special-term calendar or maybe the judge who entered the default judgment. With an assigned housing-case judge, the litigant could go straight to that judge.

Fifth, post-settlement motion practice would be easier. The typical situation involves a tenant who has agreed to issuance of a writ of recovery if the tenant defaults on a settlement agreement. The landlord believes a default has occurred and a writ is served. The tenant wants to quash the writ. Exactly the same obstacles faces such a tenant as faces a default-judgment litigant. And, as with opening a default judgment, bringing a motion to quash before the assigned judge would be simpler (winning the motion, of course, depends on having a good case).

Sixth, all eviction cases would be heard by the same judge who deals with all tenant-initiated cases. This allows for consistent decisions. It also allows for easy consolidation of related eviction and tenant-initiated cases, avoiding inconsistent decisions in the same dispute.

Seventh, even where the case turns on gray areas of the law, the litigants can predict the court's ruling because the judge has likely ruled on the same issue before. Litigants can plan their lives well if they simply know how the court will rule. (If the litigant thinks the court's view is wrong, appeal to the Court of Appeals is available.)

Eighth, for those litigants who believe they need another judge to hear their case and want to file a Rule 63.03 notice, they can still do so. This would be no harder or easier than under current practice, where a removed case has to get assigned to a different judge hearing special term motions. Presumably, if the housing-case judge is removed under Rule 63, the case would be assigned to a judge hearing general special-term motions.

For all these reasons, it is our belief that the Anoka and Dakota County Courts should each assign a judge for a substantial period to handle all the housing cases and have this assignment represent about half her workload.

2. Representation of corporations, limited liability companies, and other entities.

Our second recommendation, actually a pair of recommendations, has to do with the handling of cases involving corporations, limited liability companies ("LLCs"), and other businessentity parties. Unlike the erroneous-rulings issue discussed in the prior section (pages 18-21 *supra*), the Anoka and Dakota Courts have been following different paths. In our view, the approaches taken in Anoka are the better ones, and in the case of corporate and LLC representation by attorneys, the only correct one.

a. Corporations and limited liability companies should not be allowed to proceed without attorney representation.

There are actually two issues here. The first is whether a corporation or an LLC may appear in a housing matter in district court without an attorney. Anoka County has consistently required an attorney while Dakota County has not. As shown in Table 5, all corporations and

almost all LLCs appeared by attorney in Anoka County. In contrast, in Dakota County most but not all corporations appeared by attorney and only about a third of LLCs did so. In effect, Dakota County permits corporations and LLCs to make their own choice as to whether to appear by attorney or non-attorney agent.

The case law is quite clear that corporations must appear in district court by an attorney. Nicollet Restoration v. Turnham, 486 N.W.2d 753 (Minn. 1992). While Nicollet Restoration v. Turnham was not a housing case, it was followed in Walnut Towers v. Schwan, File No. A07-1311 (Minn. Ct. App. Sept. 16, 2008) (unpublished). Walnut Towers v. Schwan was an Eviction Action filed by a corporate landlord without an attorney. The Court of Appeals held that since Walnut Towers never retained an attorney, even when given a chance, dismissal of the case was required. While Walnut Towers v. Schwan is unpublished, it simply applies a supreme court case and is the rule of law.

As to LLCs, the recent case of 301 Clifton Place L.L.C. v. 301 Clifton Place

Condominium Association, 783 N.W.2d 551 (Minn. Ct. App. 2010) established that the same rule of attorney representation from Nicollet Restoration applies to LLCs as well as corporations because the same policy concerns apply to LLCs as to corporations.

Therefore, both courts – Anoka which appears to be following <u>Nicollet Restoration</u>, <u>Walnut Towers</u> and <u>301 Clifton Place</u>, and Dakota which does not – should henceforth require both corporations and LLCs to appear by attorney.

One question remaining is what the court should do when a corporation or LLC appears without an attorney. The <u>Walnut Towers</u> court, following <u>Save Our Creeks v. City of Brooklyn</u>

<u>Park</u>, 682 N.W.2d 639 (Minn. Ct. App. 2004), held that the case should be continued to allow the

⁶The <u>Walnut Towers</u> court noted that in Hennepin and Ramsey housing courts, Minn.Gen.R.Prac. 603, promulgated by the same supreme court that established the general rule of <u>Nicollet Restoration</u>, might call for a different outcome in those two housing courts. <u>Walnut Towers</u>, slip. op. at 7, fn. 2. This further supports the holding that in the 85 counties where Rule 603 does not apply the corporate landlord must appear by attorney.

litigant to obtain attorney representation. Under <u>Save Our Creeks</u>, this opportunity should be granted unless the litigant knowingly flouted the attorney-representation rule. Only if, as in the actual <u>Walnut Towers</u> case itself, the litigant does not avail itself of this opportunity, is the case subject to dismissal.

Not only is this the rule of law, but appears to be good practice. It would allow innocent (ignorant might be a better description) corporations and LLCs to proceed eventually with only a partial penalty – delay rather than dismissal. Over time, corporations and LLCs would learn the rule and start their cases with an attorney. This appears to be what has happened in Anoka County where such litigants, with only a couple of exceptions in our study, have appeared by attorney from the start of the cases. The few litigants that knowingly flouted the rule would have their cases dismissed and presumably would not flout the law again.

The approach would also provide an important benefit to the tenant on the other side of the case. With a non-attorney agent "representing" the corporation or LLC, the tenant desiring to settle the case cannot know that the settlement has the force of law. If a non-attorney agent makes a settlement, it is not clear if the agent has the actual and legal authority to do so, leaving the tenant in a kind of limbo. Even if the case is tried and the tenant prevails, there might be an argument that the outcome is not res judicata as the agent didn't even have the power to try the case.

b. All non-attorney agents should be required to file a written power of authority from their principals.

The second issued concerns non-attorney agents appearing for litigants who are not corporations or LLCs. Usually these cases involve non-attorney property managers appearing on behalf of partnerships or individuals who own the building they manage. Often the plaintiff/landlord is named something like "Elm Street Apartments" where Elm Street Apartments is an assumed name for the owner.

While it is probably an open question whether such agents may appear at all⁷, here we only comment on whether those agents should be allowed to appear without written authority from their principals. As set out in the Results section, Anoka County effectively is requiring such agents to file a Power of Authority or equivalent while Dakota County effectively is allowing agents to appear based simply on their orally stated (or just implied) representation to the court that the principal has authorized them to litigate the case for the principal. Such an appearance does <u>not</u> constitute the crime of unauthorized practice of law. Minn. Stat. § 481.02, subd. 3, clauses (12)-(13). Minn. Stat. § 513.04 does provide as follows:

No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or <u>power over or concerning lands</u>, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the parties creating, granting, assigning, surrendering, or declaring the same, or by their <u>lawful agent thereunto</u> <u>authorized by writing</u>. This section shall not affect in any manner the power of a testator in the disposition of real estate by will; nor prevent any trust from arising or being extinguished by implication or operation of law.

(emphasis added). An argument could be made that the underlined phrases require a written power of authority to prosecute an eviction action, but until an appellate court so rules we don't claim this to be black letter law.

In Hennepin and Ramsey Counties, Minn.R.Gen.Prac. 603 requires a written power of authority. However, this rule only applies to those two counties.

In summary, a written power of authority is not clearly required. However, as Anoka County already does, it would be in the court's inherent authority to enforce such a requirement. This would be good practice. As with non-attorney agents representing corporations, when a tenant tries to settle his case with an agent appearing just on his own say-so, the tenant has a legitimate concern as to whether the agent has the actual and legal authority to do so, leaving the tenant in a kind of limbo. We are aware from anecdotal reports of situations where principals have

 $^{^{7}}$ We are aware of no appellate court has ruling on this issue, related to the court's inherent authority to regulate who may appear in court.

approached the court, during an initial hearing or after the hearing, to state that an "agent" claiming to represent their interests did not actually have that authority. While this recommendation is not as important as the recommendation that all housing cases be blocked to one judge, we do suggest that written powers of authority be required by the court.

Appendix A Improperly Decided Contested Cases

Part I - Anoka

Case 1, Judge 1. Court denies plaintiff mandatory award of filing fees on grounds they are discretionary. In an eviction for non payment of rent, the court allowed the tenant to redeem by paying the rent in arrears without paying the filing fee and other costs. The court's reasoning was that costs are "discretionary." The costs are not discretionary. Minn. Stat. § 504B.291, subd. 1(a) provides:

[I]f, at any time before possession has been delivered ... the tenant may ... redeem the tenancy and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, *costs of the action*, and an attorney's fee not to exceed \$5 [emphasis added]

Case 2, Judge 2. Eviction for breach of lease and for non payment, tenant evicted without a chance to redeem even though "breach" was for having a dog where lease did not prohibit pets. In an eviction for breach of lease and non payment, the evidence at trial left some doubt as to whether the proper plaintiff was claiming unpaid rent but left no doubt that there was neither a written lease between the parties nor an agreement, even oral, that pets were prohibited. The court issued an order for a writ of recovery and denied the tenant the right to redeem the unpaid rent. Minn. Stat. § 504B.285, subd. 5 provides:

Subd. 5. Combining allegations.

- (a) An action for recovery of the premises may combine the allegation of nonpayment of rent and the allegation of material violation of the lease, which shall be heard as alternative grounds.
- (b) In cases where rent is outstanding, a tenant is not required to pay into court the amount of rent in arrears, interest, and costs as required under section 504B.291 to defend against an allegation by the landlord that the tenant has committed a material violation of the lease.
- (ç) If the landlord does not prevail in proving material violation of the lease, and the landlord has also alleged that rent is due, the tenant shall be permitted to present defenses to the court that the rent is not owing. The tenant shall be given up to seven days of additional time to pay any rent determined by the court to be due. The court may order the tenant to pay rent and any costs determined to be due directly to the landlord or to be deposited with the court.

Thus, the tenant did have the right to redeem with a seven-day period to do so if the landlord failed to prove material violation of the lease. Here, the allegation was that the tenant had a dog. Having a dog is not unlawful and while it is a breach of many leases, here the lease said nothing about dogs or pets or animals so there was no breach.

Case 3, Judge 2. <u>Indicating it had no discretion</u>, <u>court denies tenant the statutorily provided</u> <u>seven days to pay court courts</u>. In an eviction for non payment of rent, the defendants had the full amount of rent with them in court, but did not have the filing fee or other costs. They offered the

rent and asked for seven days to pay the costs to redeem. The court reasoned it had no such no such discretion, denied the motion, and issued an unredeemable writ of recovery. Minn. Stat. § 504B.291, subd. 1(b) provides:

(b) If the tenant has paid to the landlord or brought into court the amount of rent in arrears but is unable to pay the interest, costs of the action, and attorney's fees required by paragraph (a), the court may permit the tenant to pay these amounts into court and be restored to possession within the same period of time, if any, for which the court stays the issuance of the order to vacate under section 504B.345.

Clearly, the court did have the discretion to give the tenant seven days to pay the costs and redeem. (The parties subsequently settled the case. Presumably the landlord either recognized the ruling was wrong, or was more interested in money than eviction, or both.)

Case 4, Judge 3. Eviction action for non payment dismissed by applying security deposit to rent but tenant ordered to vacate 28 days hence. An eviction was filed for non payment of June rent. The tenant asserted that the parties had agreed that the security deposit could be applied to last month's rent. The tenant presented evidence that the filing of the eviction made apartment shopping difficult but presented no evidence of an agreement to apply the security deposit to rent or evidence of what was the last month of the tenancy. Even so, the court ordered the security deposit to be applied to June rent, ordered the tenant to pay prorated rent for however many days tenant chose to stay in July, ordered tenant to vacate by August 1, and then dismissed the case.

There is no authority for dismissing an eviction action because the filing made apartment shopping difficult. The judgment can be stayed for seven days (not 28 days), Minn. Stat. § 504B.345, subd. 1(d), but this statute does not provide for dismissing the case. There is no basis to apply a security deposit to rent without an agreement to that effect, much less to June rent as "last month rent" if the tenancy continues through July. Indeed, as to the court's prospective ruling (prorating July rent and ruling on the end date of the lease as August 1), there is authority that the court's jurisdiction is limited to determining present possessory rights of the parties, and that the trial court exceeds its jurisdiction by ruling on other issues. See Eagan East Ltd. Partnership v. Powers Investigations, Inc., 554 N.W.2d 621 (Minn. Ct. App. 1996). In other words, the court's ruling included several mistakes of law.

Case 5, Judge 3. Court denies plaintiff mandatory award of filing fees on grounds plaintiff must pursue them in conciliation court. In an eviction for non payment of rent, the parties reached a settlement which allowed the defendant/tenant to redeem the tenancy by paying the rent in arrears plus the costs of the action. The court required the parties to amend the settlement to exclude the costs, reasoning "I never award costs in an eviction" and that if the plaintiff wanted costs he would have to pursue them in conciliation court. This is the exact opposite of the law. The plaintiff has the right to payment of costs as part of the tenant's redemption payment. Minn. Stat. § 504B.291, subd. 1(a) provides:

[I]f, at any time before possession has been delivered ... the tenant may ... redeem the tenancy and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, *costs of the action*, and an attorney's fee not to exceed \$5 [emphasis added]

Case 6, Judge 4. Court denies defendant seven-day stay in writ because it is a commercial tenant. In a commercial eviction for non payment of rent, the court granted a writ of recovery. Upon motion for a seven-day stay under Minn. Stat. § 504B.345, the court denied the motion, saying, "I didn't think I could stay the writ for seven days unless there are children present." Minn. Stat.

§ 504B.345, subd. 1(d) states in pertinent part that

upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship upon the defendant *or* the defendant's family, the court *shall* stay the writ of recovery of premises and order to vacate for a reasonable period, not to exceed seven days. [emphasis added]

The statute does not use the word children nor does it limit hardship extensions to residential tenants.

Part II - Dakota

- Case 1, Judge 1. Court stays writ for nine days instead of the statutory seven days. In an eviction for non payment of rent, the tenant moved for an 11-day stay of the writ of recovery, the landlord moved for a 7-day stay, and the court stayed the writ for 9 days, saying "[I] split the difference." This contravenes Minn. Stat. § 504B.345, giving the court discretion in the amount of time to stay the writ up to a maximum of seven days.
- Case 2, Judge 2. Tenant in default but court stays the writ anyhow. In an eviction for non payment of rent, the tenant defaulted. The court asked the landlord if the tenant had children, was told yes, and then stayed the writ of recovery for seven days. This violated the rule that a stay is only available upon proof of hardship by the tenant and here the tenant literally offered no proof since the tenant did not even appear. See Minn. Stat. § 504B.345, subd. 1(d), which provides:
 - (d) Except in actions brought: (1) under section 504B.291 as required by section 609.5317, subdivision 1; (2) under section 504B.171; or (3) on the basis that the tenant is causing a nuisance or seriously endangers the safety of other residents, their property, or the landlord's property, upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship upon the defendant or the defendant's family, the court shall stay the writ of recovery of premises and order to vacate for a reasonable period, not to exceed seven days. [emphasis added]
- Case 3, Judge 3. Eviction for breach of lease by unauthorized occupancy, holdover and non payment. Tenant evicted for non payment despite tender of rent without any evidence on the other issues. In an eviction for breach of lease, holdover and non payment, the evidence at the five-minute "trial" was that the tenant had tendered rent but the landlord rejected it. The court entered judgment for the landlord without taking evidence on the other issues. On its face, the notice was improper as to time and timing (notice given on May 20 and case filed May 28) and no evidence was taken as to whether the tenant had or had not breached a no-other-occupants lease clause. Minn. Stat. § 504B.285, subd. 5 provides:

Subd. 5. Combining allegations.

- (a) An action for recovery of the premises may combine the allegation of nonpayment of rent and the allegation of material violation of the lease, which shall be heard as alternative grounds.
- (b) In cases where rent is outstanding, a tenant is not required to pay into court the amount of rent in arrears, interest, and costs as required under section 504B.291 to defend against an allegation by the landlord that the tenant has committed a material violation of the lease.

(ç) If the landlord does not prevail in proving material violation of the lease, and the landlord has also alleged that rent is due, the tenant shall be permitted to present defenses to the court that the rent is not owing. The tenant shall be given up to seven days of additional time to pay any rent determined by the court to be due. The court may order the tenant to pay rent and any costs determined to be due directly to the landlord or to be deposited with the court.

Thus, the breach case should have been tried first (and actually tried). The holdover case should have been dismissed out of hand under Minn. Stat. § 504B.135 and *Oesterreicher v. Robertson*, 187 Minn. 497, 245 N.W. 825 (1932). Finally, since breach of lease was not proven, holdover claim or not, the tenant would have the right to redeem and have seven days to do so – not including the fact that where the tenant tendered the rent and the landlord rejected it, the tenant cannot be said to be in breach for non payment. In other words, the court's ruling included several mistakes of law.

Case 4, Judge 4. Judge denied motion by landlord to have tenant, raising a lack-of-repair defense, pay rent into court, stating he did not have the authority to so order. In an eviction action for non payment, the tenant raised a habitability (lack of repair) defense. The landlord moved that the tenant pay his rent into court as it came due. The court ruled it did not have the authority to so order. The opposite is the rule – an order to pay rent into court is the presumptive order. In *Fritz v. Warthern*, 298 Minn. 54, 61-62, 213 N.W.2d 339, 343 (1973), the case establishing the right to raise a habitability defense, the Minnesota Supreme Court held:

Recognizing these potential problems, we have concluded that once the trial court has determined that a fact question exists as to the breach of the covenants of habitability, that court will order the tenant to pay the rent to be withheld from the landlord into court pursuant to Rule 67.03, Rules of Civil Procedure for the Municipal Court, and that until final resolution on the merits, any future rent withheld shall also be paid into court.[5] The court under its inherent powers may order payment of amounts out of this fund to enable the landlord to make repairs or meet his obligations on the property or for other appropriate purposes. In the majority of cases, final determination of the action will be made quickly and this procedure will not have to be used. It is anticipated that the trial court, in lieu of ordering the rent paid into court, in the exercise of its discretion may order that it be deposited in escrow subject to appropriate terms and conditions or, in lieu of the payment of rents, may require adequate security therefor if such a procedure is more suitable under the circumstances.

Case 5, Judge 5. Court materially modifies a valid settlement. In an eviction for non payment of rent, the parties reached a settlement under which the tenant had to perform certain acts by certain dates, that the case would be dismissed if the tenant performed, and that if the tenant failed a performance the plaintiff could get a writ of recovery issued upon affidavit of non compliance. The court did not accept this valid settlement and issued a writ but stayed execution of the writ if the tenant performed. The court-modified "settlement" was a detriment to both parties. The tenant's rental record now shows a judgment of eviction against him, and the landlord potentially lost time to execute the writ or even the right to execute the writ since upon its issuance, the writ becomes of no effect upon the mere passage of time, to wit thirty days. See WRIT OF RECOVERY OF PREMISES AND ORDER TO VACATE, Minn. Stat. §504B.361, State Court Administrator form HOU 112, available at www.mncourts.gov/forms.

Case 6, Judge 2. Court denies tenant right to redeem. In an eviction for non payment of rent, the tenant offered to redeem by paying rent in arrears plus costs. The court stated that rent was late

and denied the motion. The tenant has the right to redeem by paying rent in arrears plus costs. *See* Minn. Stat. § 504B.291, subd. 1(a), which states that

[I]f, at any time before possession has been delivered ... the tenant may ... redeem the tenancy and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, costs of the action, and an attorney's fee not to exceed \$5

Part III - Hennepin

Case 1, Referee 1. In non payment case where tenant's only defense was lack of a rental license, court issued writ but stayed it for 14 days. In an eviction for non payment of rent, the tenant demonstrated that the landlord had no rental license and presented this as her sole defense. Following *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. Ct. App. Sept. 4, 2007), in most cases this means that no rent is due and the case should be dismissed. With some rental ordinances, the landlord can still have the right to collect rent. Thus, either the case should have been dismissed or judgment entered for the landlord, with a possibility of staying the writ for up to seven days pursuant to Minn. Stat. § 504B.345, subd. 1(d). The referee did neither, entering judgment but staying judgment for 14 days, stating that a 14-day stay was "appropriate" for the lack of the rental license (apparently as a referee-created compromise). There is no authority to enter judgment but stay it for 14 days.

Appendix B Dicta / Erroneous Rulings in Uncontested Cases

Part IV - Anoka

Case 7, Judge 5. Expungement ignored as possibility. The underlying case was not in dispute but the tenant requested that the case be removed from his record – expunged. The court indicated he had no such discretion, offered to "seal" the record but did not do so when the landlord opposed doing so. The judge could have expunged the case and had the discretion to do so regardless of the landlord's desires, assuming the expungement requirements were met. See Minn. Stat. § 484.014.

Case 8, Judge 6. Eviction trial set out 36 days without parties' agreement. In an eviction action that needed to be set for trial, the court unilaterally set the trial date 36 days after the initial hearing. Minn. Stat. § 504B.341(a) states "(a) In an eviction action, the court, in its discretion, may grant a continuance of the trial for no more than six days unless all parties consent." The only exception, found in section 504B.341(b), did not apply. The court could have asked for consent and the parties might have agreed to a similar court date, but they were given no chance to accept or deny the distant court date. Since it is not known if delay mattered to either party, this case is noted in this part instead of Part I.

Case 9, Judge 6. Eviction trial set out 38 days without parties' agreement. Same as Case 8 except trial date was set 38 days after the initial hearing.

Case 10, Judge 7. Judge denied motion by landlord to have tenant, disputing the amount of rent owed, pay rent into court, stating he did not have the authority to so order. In an eviction action for non payment, the tenant admitted owing rent but argued that he owed less than claimed and asked for a trial on that issue to obtain a ruling on the amount of rent he needed to pay to redeem. The parties consented to a delayed trial under Minn. Stat. § 504B.341(b) and then the landlord moved that the tenant pay the rent, or at least the undisputed rent, into court. The court denied

the motion on the grounds that it did not have the discretion to so order. The court does have this discretion. *See Priordale Mall v. Farrington*, 411 N.W.2d 582,585 (Minn. Ct. App. 1987) (citing *Fritz v. Warthen*, 298 Minn. 54, 61-62, 213 N.W.2d 339, 343 (1973)). Since this denial was on a discretionary matter, this case is noted in this part instead of Part I.

Part V - Dakota

Case 7, Judge 1. Eviction Action for holding over, judge rules that tenant did not pay rent. In an eviction action for holdover, the tenant did not appear at the initial hearing. The landlord reported that the tenant had moved out since the case was filed. The court issued a writ anyhow, stating "There will be an order here that shows he hasn't paid [the rent]", an issue not even raised in the pleadings and not requested by the landlord.

Case 8, Judge 2. Lockout case, defendant ordered to present its case first. In a case brought under Minn. Stat. §504B.375, the plaintiff/tenant alleged an unlawful lockout. The court had the defendant present his case first, contrary to the rules in a civil case. See Minn.Rules.Civ.Proc. 41 and 50 (case may dismissed if party with burden of proof fails to meet its burden, meaning said party necessarily goes first). Since both sides did get to present evidence eventually, this case is noted in this part instead of Part II.

Case 9, Judge 2. Eviction in non payment case despite acceptance of partial payment. In an eviction action for non payment, the landlord said that he had accepted partial payment of rent. Under some circumstances, the acceptance would require dismissal of the case. See Minn. Stat. §504B.291, Subd. 1(b). The judge ignored the statement and issued an order for writ of recovery. Without further facts relevant to the cited statute, one cannot know if the case should have been dismissed or not and so this case is noted in this part instead of Part II.

Appendix C

Exhibit 1