

Questions submitted before and during the HOME Line 10/28/20 COVID-19 tenant/landlord webinar

Updated 11/3/20

QUESTION: Boyfriend and girlfriend live together. **No formal lease and no payments** ever made by GF to BF to live there. BF owns home. GF gets DANCO (Domestic Abuse No Contact Order) excluding BF from his own home. Does BF have to serve some form of formal notice to vacate premises and then if GF does not comply, bring an unlawful detainer action? If it were a married couple, we could deal with this in a divorce, but custody statutes don't account for occupation of a home and possession of personal property.....

ANSWER: *Not entirely clear this is a landlord/tenant situation (would recommend looking at the definition of both under MN Stat. 504B.001 to see if landlord/tenant law applies)*

QUESTION: If a defendant demands a **jury trial** it is unlikely to occur for months.

ANSWER: *A tenant asking for a jury trial is a tactic that has gotten quite a bit of press in other jurisdictions. It's not clear that it would extend the time of a case substantially in Minnesota and if a tenant asks for this in a case where attorney's fees (check the lease) are allowed, it could end up costing a tenant more, especially if the jury request is seen as a way to attempt to delay the case. However, jury requests are allowed and in some cases may be appropriate and the tenant's best chance for a positive outcome.*

QUESTION: Can you discuss **Airbnb** rentals (with months' long tenancies) as de facto 504B tenancies and whether they fall within EO 20-79?

ANSWER: *AIRBnB's have always been sort of a strange gap in Minnesota. Tenants and landlords are both defined in MN Stat. 504B.001, and without more information, an AIRBnB is likely a landlord/tenant situation. Different cities may have different regulations addressing these type of short-term rentals and have different regulations.*

QUESTION: Are there any updates regarding **foreclosure** actions? What rights do we have to enter a property that we own after redemption end from bidding at a sheriff sale?

ANSWER: *This is outside of our area of expertise, but you might review [provisions #2 and #8 of EO 20-79](#).*

QUESTION: Is there any **relief for landlords** with non-paying tenants?

ANSWER: *Our ongoing advice for this question has been to suggest landlords encourage tenants to apply for the COVID-19 Housing Assistance Program. This program provides housing assistance payments to help prevent eviction, prevent homelessness, and maintain housing stability for eligible renters and homeowners. Apply online (<https://www.housinghelpmn.org/>), or you can apply by dialing 211, or texting "MNRENT" or MNHOME" to 898-211.*

More info about the COVID-19 Housing Assistance Program:

<http://www.mnhousing.gov/sites/np/covid19housingassistanceprogramFAQ>

Additionally, we have heard that some government jurisdictions that have CARES Act funding are proposing to use it on financial assistance programs that landlords can apply for. Not clear that any of these programs are currently in effect yet.

QUESTION: My client signed a **month-to-month lease** and paid double (for the security deposit). Are month-to-month leases protected at all?

ANSWER: *Month-to-month leases are just as protected as term leases (one-year is the most common term) under the Governor's order or the CDC order.*

QUESTION: Any **advice for landlords**? Advice to deal with many tenants who don't care how deep hole gets in unpaid rent; **we can't evict, good luck trying to ever collect**? Doesn't seem like there are any rules protecting the owners/landlords for their hardships?

ANSWER: *Under all three orders (CARES Act, Governor's Executive Orders, CDC), the rent is still due and has been since the pandemic began. Many landlords have helped tenants find all the financial resources that might be available to them and then got the rent after the tenant successfully applied. There's no legal rent cancellation or rent holiday. Landlords need to stay apprised of what they legally can or can't do as this area of the law has shifted frequently and dramatically during the pandemic. We encourage landlords and tenants to check our updated COVID-19 landlord/tenant law page:*

<https://homelinemn.org/6356/executive-order-on-evictions-covid-19-information/>

QUESTION: Can landlords still raise rent and/or charge **late fees**? How are **rent increases** affected by the executive orders? Arguably, changing terms ends tenancy & creates new one

ANSWER: *Late fees are allowed under the Governor's Executive Orders as well as the CDC moratorium. The only official prohibition of late fees was in the CARES Act, which mostly 'sunsetting' on July 25, and only pertained to rental units covered by the CARES Act---in short, places where a federal subsidy was involved or the landlord had a mortgage backed by Freddie Mac or Fannie Mae.*

Rent Increases: There's a decent argument that any rent increase is a fundamental change of a lease. Ultimately, it's the MN Attorney General's decision to decide whether to enforce that interpretation of the Governor's Executive Order.

QUESTION: I am curious if we (as a landlord) are able to still post **3 day notices for eviction** (even though we won't follow through with them) to have them on record for those that haven't paid anything towards rent since March and haven't responded or replied to any attempts to contact.

ANSWER: *"3-day notices" don't likely have much legal effect in MN even before the pandemic. Many MN landlords get leases from neighboring states that do utilize 3-day notices. If I were a landlord, I'd be careful about posting a 3-day notice (which I assume is either a threat of an eviction or a notice to terminate)---it may be a violation of EO 20-79.*

QUESTION: Can cases proceed simply as **breach of contract for the monetary damages** without the eviction piece?

ANSWER: *Assuming that this question is whether a landlord can sue for unpaid rent, then the short answer is probably, yes. The Governor's Executive Order (along with the CDC order and the CARES Act) explicitly point out that rent is still due. But, the courts aren't especially fast these days so it's unclear when these cases would be heard.*

QUESTION: Can a **landlord be sued if a client feels they caught COVID** from apartment complex, due to poor air quality in unit/bldg?

ANSWER: *It's possible. We don't do personal injury cases at HOME Line, but the tenant would have to overcome issues with causation.*

QUESTION: Does the eviction stay Order include people whose job is secure and whose income is unchanged, but **decline to pay rent** anyway?

ANSWER: *The Governor's moratorium on evictions doesn't require a tenant to declare anything about their financial situation, it automatically precludes evictions for non-payment of rent (and for most other typical reasons evictions are filed). The CDC order, which currently has no effect in MN, does require a statement from the tenant concerning COVID-19 costing their income. But again, it has no meaning in MN as it specifically defers to the state moratorium on evictions as it is more protective of tenants.*

QUESTION: Under **what circumstances can a landlord evict a tenant?** Criminal violations etc.?

ANSWER: *Right now, there are only a couple of reasons a landlord can evict a tenant. The first is for violation of 504B.171, the covenant not to allow unlawful activities. This typically applies to drug use or trafficking, sex work, or illegal firearms. Landlords can also evict tenants if they endanger other tenants or residents. EO 20-79 also added some exceptions to the moratorium including material breach for significant damage to property and holdover after notice to vacate when the landlord or landlord's family is going to move into the rental property.*

QUESTION: How have **courts been interpreting the "seriously endanger lives of others"**?

ANSWER: *Courts are interpreting "seriously endanger lives of others" quite broadly, but cases still remain very fact-dependent and subjective. Apart from very obvious instances of endangerment (stabblings, shootings, violent physical assault), claims of endangerment have been filed hand in hand with other claims such as illegal activity or significant damage, so it is hard to precisely define the boundaries of "endangerment."*

QUESTION: Any case law established that better defines **"need" under the family member exception** of the current eviction restriction? How is a family member defined?

ANSWER: *Not that we were able to find. This is still super vague. We did see that most instances of the family member exception claimed an immediate family member as the one moving in, not a long-lost cousin. Many filings that claimed the family member exception were not consistent, with some giving very specific reasons the landlord/family needed to move in and others just saying "family needs to move in." "Family" is not defined in the statute.*

QUESTION: Myself and 6 children rent a home that we've lived in for the past 3 years. My landlord is selling it and gave me written notice to vacate the property due to non-payment and destruction. The home is in great shape and minor wear and tear. I am 2 months behind in payment but he told me I wouldn't have to pay that amount for September and October because he feels bad for selling it, and said his family is choosing it, not him. What options do I have? Throughout the time renting he has also never given me a renters tax credit either. Thank you

ANSWER: *This is a little too detailed to answer here, we'd recommend contacting our free tenant hotline directly at 612-728-5767 or sending a question through our free email an attorney service: <https://homelinemn.org/e-mail-an-attorney/>*

QUESTION: Briefly--overview of **new St. Paul ordinance** about housing

ANSWER: *This won't take effect until March 1, 2021, but here's a fact page explaining what the changes will include: <https://www.stpaul.gov/departments/mayors-office/safe-housing>
Our understanding is that the city will be organizing a number of sessions to share more about the ordinances, and HOME Line may host our own training on the ordinances as we get closer to the first date of enforcement.*

QUESTION: Please cover the **extent of damages or threats to public safety** are required in order to file an eviction action

ANSWER: *It's subjective -- it has to be a material breach of the lease and the damage has to be significant. We discussed this a bit in our 10/14/20 webinar:*

<https://homelinemn.org/7089/10-14-20-webinar-on-covid-19-rental-housing-issues-with-guest-speaker-luke-grundman-from-mid-mn-legal-aid/>

Also important to note is that the "endangerment" exception only extends to residents and workers, not to the full public. Most instances where the landlord prevailed on an endangerment/threat exception were for incidents that occurred on the property in question, not for incidents that generally threatened "public safety."

QUESTION: What about **breaking down the front door** to an apartment complex so that it is no longer secure? Could that constitute significant damage? Also, what sort of proof is the court looking for to link the damage to the tenant?

ANSWER: *This question goes beyond pandemic-specific law. Landlords have attempted to evict tenants for years because of damage done by tenants or their guests. One starting question is whether the person that broke down the door was actually an 'invited guest.' In many situations like this, it's the tenant's abuser, and the tenant may have not only not invited them, but taken steps to make clear they weren't welcome. It's a pretty fact-specific question. Ultimately, it remains the landlord's burden to prove that the damage was caused by the tenant or their guest.*

As for whether this would constitute "significant damage," that determination is very fact-dependent and subjective. However, many instances where the landlord prevailed after claiming significant damage were for instances where the damage was not easily remedied or rendered the apartment effectively unlivable. A broken door may not reach that threshold.

QUESTION: Impact of various executive order and prohibitions on **commercial evictions**.

ANSWER: *Commercial evictions are not affected by the Governor's Executive Order and are being scheduled and heard. A CLE on COVID related issues for Commercial Leases, including litigation for nonpayment of rent, is coming up on November 16, sponsored by the Landlord Tenant Section of the Hennepin County Bar Association:*

<https://www.mnbar.org/members/cle-events/hcba-event?EventID=4230>

QUESTION: How are **Contract for Deed Cancellations** affected?

ANSWER: *HOME Line doesn't work with Contract for Deed Cases, but it may fall under the protection granted in EO 20-79. Unless it is specifically excepted under this order, evictions can't be filed.*

QUESTION: Do the prohibitions on evictions also prohibit a replevin action regarding a **mobile home**?

ANSWER: *A replevin action generally is to recover personal property. However, if a person is renting a mobile home, they are a tenant, they possess the legal right to live in the property, the mobile home, not the home itself. And that specific legal right can only be taken away by an eviction (or possibly an ejectment action). Executive order 20-79 would control that.*

If however, for some reason a person had possession of a mobile home owned by someone else, but were not a tenant, a replevin action might be appropriate, but it would be outside of our area of expertise and we wouldn't know the answer. We could say that executive order 20-79 wouldn't apply, but perhaps some other covid-19 related protection would.

So another way of answering the question would be to say, if there is a landlord-tenant relationship then yes, executive order 20-79 would control it, otherwise it wouldn't (and there might be some other law that does) so the first question is whether or not there is a landlord-tenant relationship.

QUESTION: Can you provide a comprehensive list of **resources for tenants**?

ANSWER: *Our first referral is to United Way: 2-1-1 / <https://www.211unitedway.org/>. We also have some additional suggested referrals on our website here:*

<https://homelinemn.org/6356/executive-order-on-evictions-covid-19-information/#ra>

QUESTION: How does **Sect. 8 of Minn Constitution fit in?** Could this represent a **separation of powers issue**.

ANSWER: *It's hard to know exactly what this question is asking and which part of the Minnesota Constitution this question is citing. However, at this point a lawsuit challenging the Governor's power to impose an eviction moratorium has been filed in Federal court.*

QUESTION: What is being done to address what will happen once evictions are able to proceed forward? What is the best way to **volunteer pro bono** to help mitigate the coming eviction crisis?

ANSWER: *Legal Aid and other organizations have been meeting to discuss this and how to respond. On 11/18/2020, HOME Line will be hosting a webinar that will discuss the latest COVID-19-related rules and also go in-depth into how lawyers, students, and others can volunteer going forward:*

<https://homelinemn.org/7127/11-18-20-home-line-covid-19-webinar-eviction-moratorium-training-lawyers-to-represent-tenants-pro-bono-when-the-eviction-wave-hits/>

QUESTION: What can **case managers/housing workers do to advocate** for our clients? How can we gather together to lobby for actual change?

ANSWER: Case managers and housing workers can encourage their clients to advocate for themselves, demand repairs are made, privacy rights are respected. If multiple tenants are facing the same issues in a building it makes sense for them to consider organizing and ask for repairs, etc., as a group. As for lobbying for change, contact your legislators, both locally and at the state, and tell them what your concerns are.

If the tenant is behind on rent, keeping up on the current funds available for tenants might be the most important thing you can help them with during COVID-19.

QUESTION: Evictions for non-payment of rent, but not related to COVID **just poor choices**, and evictions related to severe damage to property

ANSWER: Without making a determination of what is or isn't a poor choice, under EO 20-79, a landlord can evict a tenant only for specific reasons. The first is for violation of 504B.171, the covenant not to allow unlawful activities, which typically applies to drug use or trafficking, sex work, or illegal firearms. Landlords can also evict tenants if they endanger other tenants or residents or if they cause significant damage to the property. The Minnesota executive order does not require renters to show that they have been negatively affected by COVID to be protected from eviction. The CDC Order requires tenants to attest to this in order to be protected.

QUESTION: Is the **sale of tax forfeited state-owned properties** allowed while eviction actions are pending?

ANSWER: Sorry--this is outside of the scope of our expertise.

QUESTION: Any **existing cases on the EO exception for family move** in within 7 days of tenant vacate?

ANSWER: We are seeing some cases where landlords are successfully getting to court based on the family move-in exception. To clarify, landlords can only file for eviction after giving proper notice per the terms of the lease, the tenant holds over despite this notice, and the landlord then gives a 7 day notice of intent to file an eviction. The landlord cannot just say that a family member is moving in and unilaterally end the lease within 7 days. We are keeping an eye on possible abuse of this vague exception.

QUESTION: Any changes/exceptions in the order RE evictions, lease terminations, and notices to vacate in **probate/estate matters**.

ANSWER: EO 20-79 does not mention any exceptions involving probate/estate matters. Any family member exception for probate/estate matters would likely apply the same as for landlords who are trying to sell their property. No notice can be given until the property is sold/closed and only then can proper notice per the terms of the lease be given based on the new owner wanting to move in.

QUESTION: **Application of laws and executive orders to tribally-owned housing**

ANSWER: EO 20-79 specifically states that it doesn't apply to federal tribal trust land.

QUESTION: whether housing court rules apply to **commercial evictions** - Hennepin county

ANSWER: They seem to. Commercial evictions are being scheduled and heard in Hennepin county. Ramsey county includes commercial evictions on its housing court calendars. The eviction exceptions in EO 20-79 do not appear to apply to commercial evictions - see, for example, many commercial evictions for non-payment from stores in the Rosedale Mall (for example).

QUESTION: How would the Governor's order apply to the nursing home, assisted living, and/or independent living context?

ANSWER: If the eviction is for nonpayment of rent then it is not permitted under EO 20-79. However, EO 20-79 applies only to residential leases, not to contracts for services.

QUESTION: What happens when the executive order ends and when do you see it ending

ANSWER: This is a difficult question, but we have discussed estimates in previous webinars (<https://homelinemn.org/hotline-services/covid-19-webinar-recordings/>). We will talk about it again in our next session on 11/18/20. Also, during the 11/18/20 webinar we will go in-depth into how lawyers, students, and others can volunteer going forward:

<https://homelinemn.org/7127/11-18-20-home-line-covid-19-webinar-eviction-moratorium-training-lawyers-to-represent-tenants-pro-bono-when-the-eviction-wave-hits/>

QUESTION: Is the CDC Eviction Moratorium still effective in Minnesota until Dec 30, 2020?

ANSWER: At this point the CDC Eviction Moratorium/Order concerning non-payment of rent is not in effect in Minnesota because Minnesota has its own eviction moratorium which provides more protection than the CDC order. If the MN peacetime emergency ends, the CDC Eviction Order could come into effect.

QUESTION: Why is a landlord forced to renew? Can't evict, but not forced to renew the lease. If holdover rent is higher landlord could fail to renew and seek later to collect holdover rent.

ANSWER: A landlord isn't really forced to renew a lease--at least not a 'term lease.' However, if a term lease ends during the eviction moratorium, EO-20-79 clearly stops a landlord from terminating the tenancy. But, the landlord could simply not renew the lease--the tenant stays and pays rent. If the landlord accepts the rent, it's likely that a month-to-month holdover lease is created going forward.

QUESTION: I'm a Landlord. Can the landlord evict during the EO, if the tenant gives a notice to vacate but has not moved out on the date they gave to vacate the Property?

ANSWER: The key to answering this question is to look at EO-20-79. If the situation mentioned (a tenant holding over after the tenant gave a notice to vacate) isn't mentioned as an exception, then that probably answers the question. Tenant holdover isn't on this list, so, no, a landlord shouldn't be able to evict for this reason.

QUESTION: What is the status of non-compliant mask wearing in common areas of multi dwelling units. My tenants will not comply.

ANSWER: EO-20-81 covers masks in Minnesota. We put together an FAQ on this topic that you can find here: <https://homelinemn.org/6889/faq-on-masks-in-mn-rental-housing/>

QUESTION: I'm a landlord attorney. Tenant is seriously behind on the rent. **Landlord wants to evict and replace the tenant with a family member**, as is allowed under the moratorium. Would the federal **CDC order prevent an eviction** even under these circumstances, assuming the tenant makes the appropriate declaration that they cannot pay the rent for COVID-19 reasons?

ANSWER: This is an interesting question that we concede we had not really considered since yesterday. We've seen an argument from a tenant attorney that argues the CDC order does protect tenants from the family member exception, but we haven't seen any court rulings to that effect.

QUESTION: A court appointed mental health attorney: if you **can get access to MGA, you can see the courthouse records** from your office, so long as it is for a purpose associated with your premise.

ANSWER: Thanks for this tip--anybody with MGA access does have increased access to court records from their office.

QUESTION: Wondering about **protections for month-to-month leases...**

ANSWER: Virtually all of the protections we've been discussing are the same for month-to-month renters as they are for term leases.

QUESTION: **Representing personal representative in an estate.** Real estate is to be sold to pay mortgagees, cover delinquent real estate taxes, other creditors. One of the beneficiaries is living on the property (squatting) and the others (his siblings) want him out. Any ability to evict this tenant based on these circumstances? Or is he protected by the EO? are these only filings and not actual eviction rulings?

ANSWER: We only work with residential tenant evictions. Other than advising you to look at EO-20-79, we don't have any further advice on this kind of question which straddles quite a few different areas of the law.

QUESTION: I am a real estate attorney primarily representing landlords. Have you seen cases where a court has allowed the "**family member**" **exception** under paragraph 4 of EO-79 for a **first cousin**? What proof are courts requiring to establish a "need to move to the property" for the family member exception?

ANSWER: We haven't seen any first cousin cases, but 'family' is simply not defined in EO-20-79. As far as 'need to move to the property,' we haven't seen enough case law to know how that would be determined. It is also important to note that the Attorney General's office is checking on family member exception claims, so they may have more information on the parameters relating to "need."

QUESTION: We are a bank that **foreclosed on a property** (residential land). The defaulted borrower has been living on the property in a make shift home/camper and has refused to leave.

We did contact the sheriff and the sheriff did deliver the foreclosure documents telling them they need to vacate the property. However, the sheriff will not force them to leave unless we go through the eviction process. Does this type of eviction fall under the Executive Order?

ANSWER: This is outside of our area of expertise, but you might review [provisions #2 and #8 of EO 20-79](#).

QUESTION: I am a landlord attorney. Wondering if you've seen examples of what constitutes "**significant**" damage to property justifying an eviction under Emergency Order 20-79?

ANSWER: The majority of cases we saw where the landlord prevailed based on claims of significant damage to property concerned damage that was significantly costly or difficult to fix or otherwise rendered the property uninhabitable. Some examples include burning down the garage and water damage requiring complete renovation of floors. Some other examples of claims of significant damage were paired with claims concerning endangerment, such as intentional arson, smearing feces around a common area, or hoarding situations that also constituted a fire hazard.

QUESTION: How does Marijuana fit into this exception considering that it is decriminalized in MN? Unless it is medical marijuana Follow up on the marijuana question, how would noncriminal possession factor in?

ANSWER: Marijuana is still considered to be a controlled substance under Minnesota law, even though there have been changes in how its possession and use are enforced and prosecuted. Minnesota's landlord/tenant statute, 504B.171, doesn't take these changes into consideration - it prohibits the tenant from allowing any controlled substances in the unit or on the property and doesn't make a distinction between criminal and non-criminal possession. Medical marijuana, obtained through prescription and monitored by a physician is excluded from this prohibition.

QUESTION: Do **multiple filings require multiple fees** or do they ride on the initial filing fee?

ANSWER: Sorry, it's hard to answer this without a lot more detail. Depending on the situation, a landlord may or may not be required to pay a filing fee for each complaint.

QUESTION: How about **harm to self, such as suicide threats**, or threatening to kill or harm children?

ANSWER: Under the Executive Order, threatening to harm oneself is not listed as an exception to the eviction moratorium. Threatening to harm or kill children would be potential grounds for eviction under the Governor's order.

QUESTION: What about **eviction for offensive odors**? cooking 'odors'; body odors... complaints by other residents in the building... ?

ANSWER: Under EO-20-79, there are not exceptions listed for odors. So ... no, a landlord can't evict for these reasons.

QUESTION: Did any of these cases involve a guest of the tenant violating 504B.171, significant damage, endangering?

ANSWER: Yes, we did see some cases that were filed based on illegal activity/violation of 504B.171 perpetrated by tenant's guests. The landlord has the burden to show that the guest was invited by the tenant.

QUESTION: Is there any follow up to ensure landlords (or family) move in within 7 days of tenants vacating?

ANSWER: There is no follow-up built into the Executive Order, but the MN Attorney General's office has the power to enforce this order and may employ methods to determine if a landlord used this exception deceptively.

QUESTION: Supportive housing landlord here. We have a family housing property where there have been minors (16 years/17 years old) getting into fights that are often encouraged by their parents and guardians. The adults have had verbal altercations and intimidating situations, but nothing physical so far. The message from some of the adults is telling the minors to "fight across the street" so they can't get evicted for violence. **So two questions..is near/around the property enough and can we evict for minor's behavior since they are not lease holders?**

ANSWER: EO-20-79 only covers endangering others on the "premises, including the common area and the curtilage...", so across the street may not qualify as an exception under the lease. As far as evicting for action of the minors, the short answer is that may be allowed, and you'd likely argue that it's at the encouragement of the leaseholders themselves.

QUESTION: Are you aware of any specific cases where the court found that the court found the landlord had to give more than 7 (vs. 30-60) day notice required to end the lease?

ANSWER: The family member exception does not allow for 7 day notice to end the lease. The "7 day notice" refers to the requirement that landlords give a 7 day notice of intent to file an eviction. This must be done in addition to giving normal notice pursuant to the normal terms of the lease. The exception does not give landlords the ability to unilaterally terminate the lease outside the terms of the lease. We did see several cases that were dismissed without prejudice for failure to give proper notice - either under the lease terms or the 7 day notice of intent to file an eviction.

QUESTION: Preserve right for judgment re unpaid rents?

ANSWER: Not sure exactly what this refers to, but in general, if a landlord files an eviction, even for non-payment of rent (during non-pandemic times), the landlord is most accurately filing a case to try to recover possession of the rental. Evictions aren't technically suits for money--the winner (if there is one) gets possession of the rental. So, a landlord filing an eviction hasn't lost the right to subsequently sue for monetary damages, including unpaid rent.

QUESTION: Is there a waiver issue if you don't allege non-payment.

ANSWER: In general, 'waiver' comes up as a defense in evictions when a landlord accepts rent knowing about some past occurrence (like a giant party the tenant had--or even if the tenant has held over past a notice to vacate). At present, listing a non-payment violation on an eviction case is arguably a violation of EO-20-79.

QUESTION: Can the landlord come back in **district court/conciliation court after eviction to get back rent?**

ANSWER: *Yes. These are the most common conciliation court cases landlords file against tenants and they occur quite regularly.*

QUESTION: LL and VLN volunteer attorney: **what kinds of proof** are being used by LL's in the cases involving **illegal behavior, endangering others?** Police reports/complaints?

ANSWER: *Typically, police reports or affidavits from other tenants were included in the initial complaint as exhibits.*

QUESTION: What happens if a **landlord**, due to COVID, no longer wants to own the rental property & as a result **refuses to maintain the rental property to such a degree that the city will condemn the unit?**

ANSWER: *The tenant may still have some recourse here---if it's an emergency repair, the tenant may be able to file an Emergency Tenant Remedies Action under MN Stat. 504B.381 or a Rent Escrow under MN Stat. 504B.385 to force the landlord to make repairs.*

QUESTION: I asked the question earlier about the family member and non-payment of rent. I think my question was misunderstood. One assumes that a landlord cannot just end a lease to move in a family member for no reason, in the absence of any kind of breach, or just an ending of a month-to-month tenancy with appropriate notice. But **what if it's the middle of a year-long lease, and the breach at issue is non-payment of rent?** Can landlord evict, assuming a legitimate family member move-in scenario?

ANSWER: *Sorry if we missed the key to the question. A landlord can't use the family member exception to force a tenant to move out mid-lease. For instance, if the tenant's lease goes through June, 2021, the landlord can't force the tenant out now by merely giving a '7-day notice.' They still have to abide by the original duration of the lease and/or the notice period in the lease. The non-payment is legally a non-factor in the eviction under the Executive Order.*

QUESTION: Landlord's attorney here. Is there any **impact that proximity from the landlord's or landlord's family member's prior domicile to the premises** occupied by the tenant has on the case? For example, is a landlord or a landlord's family member from a house in Duluth moving to one in Mankato weighed more heavily than one moving from a house in Edina to one in Richfield?

ANSWER: *We talked about this question during the webinar. Short answer, there's nothing in EO-20-79 that really addresses this so we don't think it's much of a factor either way.*

QUESTION: Why is the Governor's executive order not an **impermissible government taking?** What's next, ordering grocery stores and restaurants to provide free food?

ANSWER: *We spoke about this question briefly during the webinar, but in short, both the Governor and the CDC's order (ultimately based on an Executive Order from the President) are both being challenged in court with the argument about takings along with a host of other constitutionally-based arguments. To date, these orders haven't been found by courts to be a taking or violating any other of the myriad arguments that have been made. As we also*

mentioned, our primary goal here is making sure everyone understands the logistical/court realities of these types of orders in the eviction setting.

QUESTION: Do judgements against tenants fall under **EO 20-50 that prohibits the granting of new judgements for "consumer debts"** or would this not count as a consumer debt?

ANSWER: EO-20-50 relates largely to efforts to collect on judgments. It doesn't stop a landlord from filing a case in Conciliation or District Court case for unpaid rent. These courts aren't necessarily moving at their pre-pandemic pace, but are still fileable.

QUESTION: Curious as to what remedy would the AG would exercise **if an owner moved in for a day and then moved out?** Restore the premises to the tenant? Under what authority?

ANSWER: It's likely the only remedy the AG would have to be found in EO-20-79. The AG's argument might be that the landlord didn't truly 'need to move into the property,' as EO 20-79 requires.

QUESTION: You would tend to agree, however, that **once the MN Executive Order Moratorium is lifted (if prior to December 31, 2020) the CDC Order would apply?** Secondly, would you agree that the CDC Order requires an affirmative step from the tenant in order to prevent an eviction? i.e.-providing the CDC Declaration to the Landlord.

ANSWER: No question, the CDC order would play a substantial role in Minnesota if the Governor's moratorium is lifted prior to Dec. 31, 2020 (or later, if the CDC order gets extended). Yes, the CDC requires a declaration by the tenant in order to be able to rely on its protection.

QUESTION: Are MN laws reflective of the **very strict federal laws regarding a 'guest' who is caught dealing drugs** (illegal activity, etc.) even it is unknown to the tenant = the tenant is responsible for their guests and can be evicted? There was a case where a man's PCA was dealing unbeknownst to the tenant and the tenant was nevertheless evicted.

ANSWER: We had a similar question like this earlier, but the short answer is that it's very fact-specific. It may largely hinge on whether the person was an actual 'guest' of the tenant.

QUESTION: If the tenants lease ended and they received a non lease renewal but are **continuing to stay housed without paying what can a landlord do ?**

ANSWER: The non-renewal from the landlord may be legally problematic (the landlord may have violated EO-20-79, depending on when they gave it to the tenant). The landlord may not have any recourse (at least through an eviction). The landlord could sue in Conciliation or District Court to try to collect the rent, but doesn't likely have any extra rights to evict under EO 20-79.

QUESTION: Landlord...I have tenant who has not paid for many months although they are still working. **Can I file conciliation court to get judgment and work towards getting payments or garnishing wages...** not eviction? I have tried everything to get them to cooperate.

ANSWER: It seems like there's no legal barrier to filing a conciliation court case, but collecting on the judgment would be limited under EO-20-50.

QUESTION: **Should tenants continue to pay rent** during the pandemic?

ANSWER: Yes. We advise tenants to continue to pay rent if they can as there can be many negative consequences if they do not. Under every order we discussed yesterday--the Governor's Executive Orders, the CARES Act and the CDC order, it's clearly been stated that rent is still due. We can't really say when the eviction moratoria will expire, but it seems certain that they eventually will.

QUESTION: Non-payment Tenants.....typically these non-payers are without resources to ever get caught up, do not have assets or reserves to ever get paid up, **thus we the Owner or Landlords get shorted** as they will walk out the door when these orders are lifted & the losses are born upon the good guys doing the providing of housing!! More money spent to process a judgement on someone who will never have the depth to pay up is a lost cause & more lost time chasing a non-payer

ANSWER: This is something we've been hearing since the Governor's original Executive Order. In fact, the Minnesota Multi-Housing Association (a MN landlord trade group) authored some advice at the outset of the pandemic for its landlord-members advising them to hold off on evictions for over two months. Obviously, the Governor and the President have both amplified and extended the protection for renters.

Many tenants have been able to qualify for public assistance and subsequently pay their landlords, but many more have not been able to keep current with their rent. There have been multiple proposals at the state and federal level to authorize more funding which will eventually get funnelled to landlords to cover delinquent rent, but these legislative proposals haven't become law. There's still a chance that may happen at both levels at some point in the near future.

QUESTION: **Mediators can be a good resource** for helping landlords and tenants negotiate with one another. Organizations like Conflict Resolution Center and Community Mediation and Restorative Services provide free mediation services.

ANSWER: Absolutely.

QUESTION: You mention United 211/First Call for Help assistance. We have tenants who are telling us they are withholding paying so they will get assistance to pay for them but if not they have the money. **Why is there not requirement for tenants to prove they have a need...** not just behind by choice? This would ensure those in need get help not just people using the system.

ANSWER: Under the Governor's Executive Order, there is no requirement that a tenant prove that they have a need for financial assistance. The CDC order does require a declaration from the tenant stating that the tenant has tried to come up with the money, but at this point the CDC order doesn't meaningfully apply in MN with the Governor's order in place.

QUESTION: Did I miss **whether landlords are allowed to give non-renewals?**

(understanding the eviction option is not allowed if anyone holds over)

ANSWER: We did cover it, but happy to re-state. EO-20-79 doesn't allow a landlord to non-renew a lease or terminate a tenancy or give a notice to vacate at present. Those would all be violations of the letter of the law.

QUESTION: If a landlord **does not have a written lease with the tenant**, and would like to sell the home, do the 4 exceptions still apply?

ANSWER: The lack of a written lease is not all that uncommon in Minnesota. Except for a few circumstances, it's not required that a lease be in writing. But the short answer to your question is that yes, the exceptions will still apply. A landlord can't evict simply because they want to sell the home.

QUESTION: I have a question, what if the landlord is a **Federally Recognized Tribal Entity**?

ANSWER: EO 20-79 specifically says it doesn't apply to federal tribal trust land.

QUESTION: If I execute a new lease and **tenant explicitly and willingly "waives" any and all protections by COVID related executive orders**, does that bypass the restrictions?

ANSWER: Like so many questions submitted, we can't be sure unless/until a court hears that type of case. But ... landlord/tenant law is replete with areas where the law specifically overrides the lease contract. Our view is that a landlord could not effectively 'write around' the Governor's Executive Order and the CDC order--but again, we haven't seen any leases explicitly try that yet.

QUESTION: I was late - so I apologize if this has already been addressed. **Is the inability evict only apply to those that are on the lease?** i.e. if someone allows a friend or someone to stay with them due to their own lack of housing, but that person is not on the official lease, could the friend/whoever be "evicted"/kicked out?

ANSWER: This gets to be incredibly fact-specific. A tenant is actually defined in MN Stat. 504B.001, so the question of whether they are a tenant or not might hinge on whether they ever paid (or were even asked to pay) rent.

QUESTION: What happened when the **landlord lost his license and the tenant was issued a 45 days to vacate**, what can the tenant do?

ANSWER: Start by telling the city that they are living there, which the city may not be aware of--some of these vacate orders are simply served on the property, not the tenant specifically. The tenant may have time to solve the underlying issues as to why the landlord doesn't have a license (like needed repairs through a Rent Escrow or an ETRA---mentioned earlier in a similar question).

QUESTION: What is the recourse for a **tenant who doesn't have the rent money to put into court for a rent escrow**?

ANSWER: A tenant is still technically able to file a rent escrow case if they are unable to pay rent into the court, but the case will almost certainly be dismissed by the judge for not paying the rent due into court. If the repair is serious enough, the tenant can file an ETRA which does not

require the tenant to escrow money in advance. A tenant may have a claim for rent abatement which they could use as a defense to owing rent in conciliation court if the repair is not fixed.

QUESTION: Do all of these orders/laws, etc. **apply to landlords that do not have a rental license?**

ANSWER: *Most likely, yes. None of these orders (Governor, CARES Act, CDC) exclude unlicensed landlords from their applicability.*

QUESTION: As to **assisted living and independent senior living**, are there any restrictions or executive orders limiting the tenant's ability to bring a claim against the landlord for violation of the lease?

ANSWER: *This is also very fact-specific. The key legal question is whether landlord/tenant law really applies. There are some state regulations beyond MN Stat. 504B that may apply.*

QUESTION: I am tenant-side housing attorney. **We argued that the CDC order did apply in a case where a landlord was trying to evict under the family member move in exception** because the CDC Order does provide greater protection than EO 20-79 in that instance. The case settled.

ANSWER: *Thanks for sharing this and we appreciate you sending your legal argument. We're reviewing this theory (but really wish the judge would have issued a ruling!).*

QUESTION: I am a city attorney. Can **the building inspector condemn and demand removal of a tenant for health and safety reasons?**

ANSWER: *The Governor's Executive Order doesn't explicitly prohibit this, but we haven't seen nor represented a case on this topic since the pandemic began.*

QUESTION: What if the **landlord is allergic to cigarette smoke** and lives in the building?

ANSWER: *The landlord would have to successfully argue that the tenant is "seriously endangering" them by smoking on the premises. None of the other exceptions in the Governor's order seem to apply here.*

QUESTION: So **what is the length of waiting time to get into conciliation court** right now? I heard it was months and months to get a hearing date.

ANSWER: *Courts are, in general, working hard to get back to business as usual (or at least as usual as it can be). From what we've heard from tenants, this answer varies substantially depending on which judicial district the case is being filed in.*

QUESTION: Just for clarification **a non-licensed landlord that doesn't have leases with it's tenants** still falls under this EO?

ANSWER: Yes.

QUESTION: What about a landlord filing an **ejectment action?**

ANSWER: Ejectments aren't explicitly banned under the Governor's order. This is a pretty creative question. We'd probably have to do some serious research to find out how ejectments work because none of our legal staff have any first-hand experience with these types of cases. But, it's likely that an ejectment action would have to be filed in District Court and fight for a slot on their calendar. It's a good guess that the ejectment action might not be heard for close to a year or longer, depending on the court's calendar.

Will you please apply for CE Credit for MN Real Estate Agents?

ANSWER: We looked into this, and it appears that an application for such credit must be submitted at least 30 days before the initial proposed course date (see [MN Statute § 45.30](#)). We unfortunately did not apply in advance, so we cannot provide this credit. We are happy to provide certificates of attendance to anyone who attended if that would be helpful. Please email Deb Riebel (debr@homelinemn.org) to request a certificate.

I am a senior district court judge. Will there be a downloadable copy of the agenda for today that I can submit for CJE credit from the supreme court?

ANSWER: [The slides from the webinar are available to download here](#). We are also happy to provide certificates of attendance to anyone who attended if that would be helpful. Please email Deb Riebel (debr@homelinemn.org) to request a certificate.