



Tenant Hotline

Phone: 612-728-5767

Online: [homelinemn.org/email](https://www.homelinemn.org/email)

## Minnesota Tenant/Landlord Law

Training and CLE

May 25th, 2022: 12:00 - 4:30pm

# What is HOME Line?

HOME Line Tenant Hotline:

**612-728-5767**

Toll-free: 866-866-3546

- Para Español, llame al 612-255-8870
- Af- Soomaali wac 612-255-8860
- Hais lus Hmoob, Hu 612-255-7104
- Online: *[homelinemn.org/email](http://homelinemn.org/email)*



# Agenda

- COVID-19 Specific Regulations
- Tenants and Tenancies
- Forming the Tenancy
- During the Tenancy
- Ending the Lease
- Evictions
- Post Tenancy Issues

# COVID-19

Eviction Moratorium from March 2020 - June 2021

Replaced by Session Law

Most restrictions gone by October 2021

Last protection expires after May 31, 2022

Tenants who have a pending application with a qualified Emergency Rental Assistance program are protected from eviction for nonpayment of rent until June 1, 2022

# Safe harbor for tenants applying for rental assistance

- Landlord can't file an eviction for nonpayment or proceed with an eviction for nonpayment if tenant has a pending application for rental assistance
  - A tenant **MUST** show up to court if an eviction is filed
- If tenant can reasonably access info, the tenant must provide landlord or court with:
  - Proof of the pending application
  - Reason, if any, for delay in processing the application
- Protection lasts until June 1, 2022

# Pre-Eviction Notice Requirements

## CARES Act

- 30-day Notice requirement never 'sunsetting'

## HUD Public Housing

- Housing providers to give 30-day notice to public housing and project-based rental assistance (PBRA) tenants prior to eviction for nonpayment of rent.
- The notice must include information about local emergency rental assistance programs.

# Tenants and Tenancies

# Tenants and Tenancies

- Types of Housing
  - Private Housing
    - Leases with an End Date (Term Leases)
    - Leases without an End Date (Tenancies-at-Will)
  - Subsidized Housing
  - Other Housing
    - Hotels
    - Manufactured Homes



# Manufactured/Mobile Home

- The tenant owns the home and rent the lot
- Additional Protections
  - Application process more protective for prospective buyers
  - Security Deposit capped at 2 month's rent
  - Rent may only be increased twice in a 12 month period
  - Notice and a right to cure before eviction
  - "Endless" lease
- Minor Exception - redemption

# Forming the Tenancy

# Applications

- Typical Screening Criteria
  - Criminal Background
  - Rental History
  - Credit History
  - Income Requirement
- Application Fees
  - Written Criteria
  - Free Copy of Report if Denial Within 60 Days
  - Must be Sequential
  - Minn. Stat. § 504B.173

# Discrimination

- Protected Classes
  - Race, color, creed, gender, marital status, family status, sexual orientation, religion, disability, national origin, public assistance---throughout entire state
  - City Protection: Saint Paul (Age, Ancestry), Mpls. (Age, Ancestry, Gender Identity, Section 8)
- What's Not Protected?
- Special Protection
  - New Child in Family
  - Minn. Stat. § 504B.315

# Pre-Lease Deposit

- Conspicuous written agreement **must**:
  - State the circumstances under which deposit will be returned
  - State that landlord will return within 7 days of above circumstances (postmark okay); and
- If accepted, deposit is to be applied to security deposit or rent
- Not common in modern applications—application system has very quick turnaround
- Minn. Stat. § 504B.175

# Leases

- Contractual Concept
  - A legally binding contract between two or more “consenting” adults
  - Plus all applicable laws and ordinances
- Types of leases
  - Written
    - Required if 12 or more residential units (Minn. Stat. § 504B.111)
    - Required if over 1 year (Statute of Frauds)
  - Oral (Estimated 10% of leases in MN)
- Copy of Lease
  - Must be given to tenant (Minn. Stat. § 504B.115)

# Common Leases

- Internet
- Attorney Drafted
- Professional Management Companies
- Homemade (both verbal and written)
- Minnesota Multi-Housing Association
- **Minnesota State Bar Association: Model Residential Lease (Free!)**  
<https://www.google.com/search?q=minnesota+state+bar+model+residential+lease&ie=utf-8&oe=utf-8&client=firefox-b-1>

# Unenforceability

- Common Unenforceable Clauses in Leases
  - Lawn Maintenance, Snow Shoveling
  - Privacy (When the Landlord can Enter)
  - Abandoned Property
  - Automatic Lease Renewals
  - Automatic Security Deposit Deductions
  - Excessive Late Fees (Especially Daily)
  - Evictions
  - Break lease for Death of a tenant or by victims of violence



# City Rules and Local Ordinances

- Common Types
  - License and Registration
  - Crime Free Lease Addendum Requirement
  - Zoning/Conversion Fee
- Pre-Eviction Notices
  - Minneapolis, St. Louis Park, Brooklyn Center
- Rent Stabilization - St. Paul
- Screening Criteria - Minneapolis
- Just Cause protections - Brooklyn Center

# Break #1

1:00pm  
Five Minutes

During the Tenancy

# Repairs

- Repairs
  - Landlord Obligations (Covenants of Habitability)
  - Remedies
    - Withholding Rent (Fritz Defense)
    - Rent Escrows
    - Fritz Defense vs Rent Escrows
    - Emergency repairs
  - Landlord Defenses
  - Retaliation Protection

# Modification of the Lease

## During the Lease Term

- Only by mutual agreement of all parties

## Common Requests for Rule Changes

- Landlord
  - Rent Increase, Rule Changes
- Tenant
  - Pets, Sublet, Add Tenants

## End of Lease

- Generally, no cap on Rent Increases
  - Exception: St. Paul Rent Stabilization Ordinance

# Privacy/Intrusion

- In order to enter, Landlord must have:
  - Reasonable Business Purposes e.g.:
    - Repairs, maintenance
    - Showing unit to prospective renters
- Landlord must give reasonable notice
  - 24 Hours very likely enough, less time may be okay
  - No Notice Required for Emergency or to comply with local ordinances regarding unlawful activity occurring within the residential tenant's premises.
- Any Contrary Lease Term Unenforceable (Minn. Stat. § 504B.211)
- If tenant is not home and reasonable notice has not been given by Landlord
  - Landlord must leave note in conspicuous place

# Privacy Violation Remedies

- Remedies for Unlawful Entry under statute:
  - Up to \$100 per violation
  - Potential break-lease order from court for substantial violations
- Tenant could press criminal trespass charges against landlord (Minn. Stat. § 609.605)
- **Not** a defense to an eviction
- “Intrusion upon seclusion” suit

# Sexual Harassment

- Includes quid pro quo and hostile environment
- Prohibited by the FHA (42 U.S.C. 3601-3619) and MN Human Rights Act (Minn. Stat. 363A.03, subd. 43)
- Tenant can file a claim with an Agency, District Court, or Federal Court
- An attorney can represent in both agency and court process



# Roommate Issues

- Non-payment of rent
- Joint and several liability
- Guests of the Tenant
  - Unauthorized permanent occupant
    - May be grounds for eviction
    - Frequent guests: look at lease for limitations
  - Generally a tenant is liable or responsible for guest activity

# Break #2

2:05pm  
Five Minutes

# Ending the Lease

# Ending the Lease

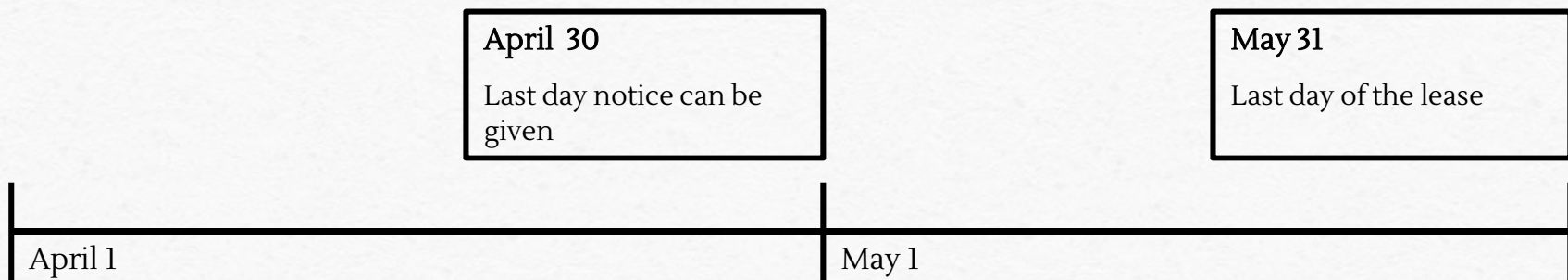
- A. Does the landlord need a reason?
  1. What is good cause?
    - a) Must show the tenant is a bad tenant
    - b) *Cimarron Village v Washington*: Not exactly “Material Non-Compliance”
  2. Public Housing, Project Based Section 8, Section 42, Mobile Home
  3. Other leases do not require good cause
    - a) Don’t need a good reason, can’t have a bad reason
    - b) Retaliation and unlawful discrimination are bad reasons
    - c) Landlord doesn’t need a reason but I’m suspicious if they don’t have one or don’t need one.

# Ending the Lease

## A. Notice to Vacate

1. Tenancy-at-Will covered by 504B.135
  - a) Interval from when rent is due or
  - b) Three months, whichever is shorter
  - c) See the Timeline Slide
2. Periodic Lease
  - a) Check lease. Often 30 or 60 days
    - (1) 30 days defaults to 504B.135 rule
    - (2) 60 days probably means 60 calendar days
  - b) If no notice listed, lease just ends (very rare)
  - c) Hold over tenancy defaults to notice in lease

# Timeline for Notice to Vacate

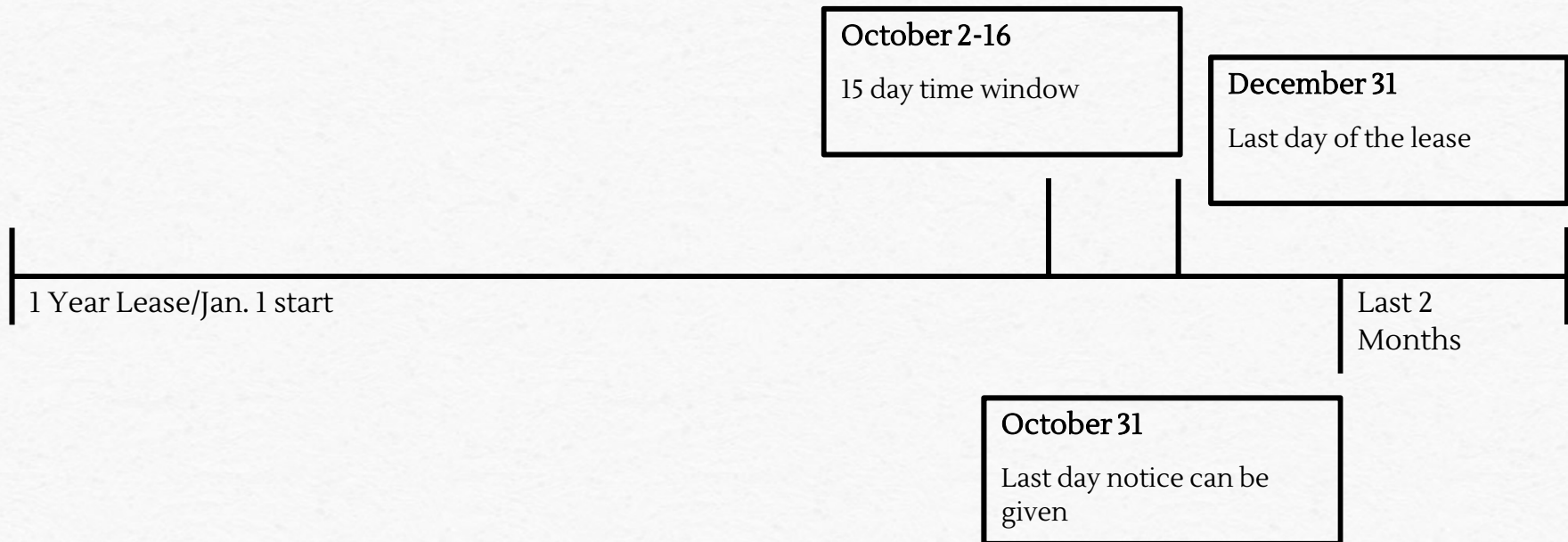


# Ending the Lease

## A. Automatic Renewal

1. A lot of things need to happen, 504B.145.
  - a) Must be allowed in lease
  - b) Lease must renew for its original term of 2 months or more
  - c) Tenant must be properly notified of their chance to opt out
    - (1) Must be in writing
    - (2) Personally served or sent certified mail (sign for it)
    - (3) Sent in the proper time window
      - (a) At least 15 days but not more than 30 days of the last chance to give notice to vacate
2. See the Timeline Slide

# Automatic Renewal Timeline





# Ending the Lease

## Break Lease

- Unilateral termination by the tenant. Very Rare, very extreme circumstances. Usually difficult
- Condemnation
- City orders the property vacated, unfit for habitation,
- Deposit returned in 5 days

# Ending the Lease

## Constructive Eviction

- Property in such bad condition it should be condemned
- Hand over the keys, remove your things, give Landlord letter stating lease is terminated because it is unlivable
- A defense to non-payment of rent if landlord disagree

## Death

- 504B.265
- Unlike most contracts, a lease can be voided
- Either Landlord or Tenant's personal representative may terminate
  - Two month notice, effective last day of the month
  - Hand delivered or mailed
- Relieves estate of rent liability but not damage claims

# Ending the Lease

## Victim of Violence or Domestic Violence

- 504B.206 - Allows lease termination under particular conditions
- Must be the victim of particular crimes
  - Domestic Violence, Criminal Sexual Conduct, Sexual Extortion, Harassment
- Must give statement tenant is in imminent fear for safety
- Must provide “Qualified Document”
  - Restraining Order or OFP, Statement from Sexual Abuse Counselor, Statement from a Law Enforcement Official among others
- Owes rent for the month lease is terminating
- Tenant forfeits deposit

# Ending the Lease

## Victims of Violence in Subsidized Housing

- VAWA - Violence Against Women Act (applies to men, too)
- Landlords cannot deny an application or evict because of domestic violence incident
- Cannot use domestic violence incident as violation showing good cause to evict
- The perpetrator can be removed without negatively impacting the victim
- Allows for the bifurcation of benefits or lease in some instances

# Ending the Lease

## Military

- Military Servicemembers Relief Act f/k/a Soldiers and Sailors Act
- Orders must require tenant/service member to move
- Tenant can give 30 day notice

Bought a house, new child, new job

What if there is a disagreement?

- Question about money. Landlord cannot force tenant to stay
  - A. Landlord can sue in court so long as unit is empty
  - B. Can they collect? That's a question
- Mitigation of damages - required?
- Prudent landlord will try and re-rent

# Lockouts and Shutoffs

- Utility shut-offs
  - Landlord may not shut off or interrupt the tenant's utilities in bad faith
  - Utilities = electricity, gas, heat, or water
  - Tenant can recover treble damages or \$500, whichever is greater, PLUS attorney's fees
  - Minn. Stat. § 504B.221

# Lockouts and Shutoffs

- Lockouts
  - Landlord cannot, in bad faith, “lockout” the tenant from the premises (change locks, remove doors, etc.)
  - Criminal misdemeanor (Minn. Stat. § 609.606)
  - Tenant can recover treble damages or \$500, whichever is greater, PLUS attorney’s fees (Minn. Stat. § 504B.225 and 504B.231)
- “Occupying a dwelling” includes the legal right of occupancy. *Cocchiarella v. Driggs*, 884 N.W.2d 621 (Minn. 2016)

# Foreclosures

## I. Foreclosure

Process by which a lender takes possession of the property because the borrower defaulted on loan secured by the property itself (Mortgage)

It is lengthy. Time will go quickly but at the outset, it looks like a long time.

### A. Default by borrower

1. Borrower doesn't make mortgage payments
2. Tenant's duty to pay rent isn't related to borrower's duty to pay loan
3. After 4 or 5 missed payments, lender will schedule a Sheriff Sale
4. Tenant will receive notice 4-6 weeks before Sheriff Sale

### B. Sheriff Sale

1. An auction where bidding starts at amount left owing on loan
2. Must have cash, cashier's check, or proof you are the lender
3. Commences the Redemption Period



# Foreclosures

## Redemption Period

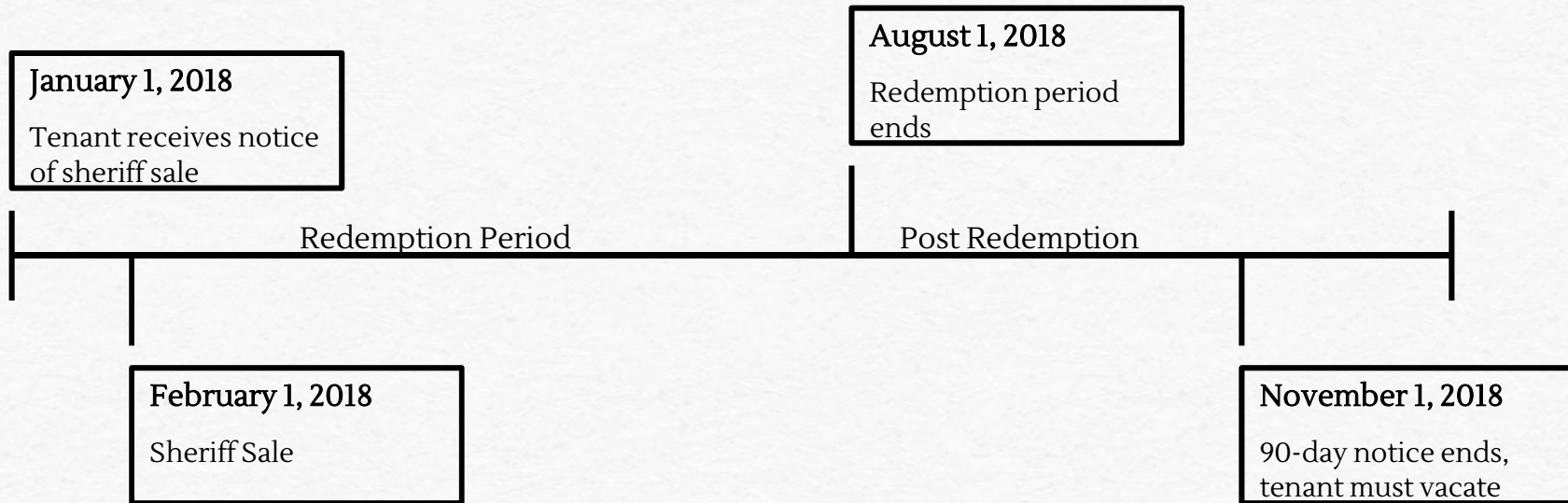
- Typically 6 months
- Borrower's last chance - They can keep the property if they can pay the Sheriff Sale amount
- Landlord stays the Landlord, Tenant stays the Tenant
  - Tenant still owes rent
  - Landlord still owes duty of repair, privacy, etc.
  - Lease is the lease
  - Winner of the Sheriff Sale (The Bank) becomes owner at the end of the Redemption Period

# Foreclosures

## Post-Redemption

- Month-to-month tenants entitled to 90 day notice
- New Owner must honor any Bona Fide Tenancy
  - Roughly Fair Market Value for rent
  - LL/T not parent/child/sibling/spouse
  - Not a sweetheart deal
    - Bona Fide Tenancy can end early if property sold to owner/occupant.  
Must give 90 day notice.
- See Timeline Slide

# Foreclosure Timeline



# Break #3

3:10pm  
Five Minutes

# Evictions

# Evictions

## Eviction Basics

- History of “self-help”
- Purpose of an eviction – possession of the premises, not money

## Reasons for Evictions

- Non-payment of Rent
- Holding Over after notice to vacate/lease termination
- Certain illegal activities - Drugs/Guns/Prostitution/Contraband
- Material breach of lease

# Evictions

## Process

- Summary Process – designed to go fast
- Complaint is filed
- Summons is issued
- Service – 7-14 days before court date
- Hearing – remote right now
- Settlement/Trial
- Writ of Recovery if T loses at trial or doesn't comply with settlement
- Execution of Writ of Recovery of Premises

# Evictions

## General Eviction Defenses

- Insufficient Service of Process – must comply with Rule 4
  - Anybody but Plaintiff can serve
  - Substitute service – someone of suitable age and discretion
  - Nail & Mail – posting and mailing to T
- Hennepin and Ramsey county have their own rules



# Evictions

## Defense to Non-Payment

- Redemption
- Partial-payment if not allowed by lease
- “I paid”
- Fritz defense
- Improper late fees

## Defenses to Holding Over

- Insufficient Notice
  - “Short” notice under the lease
  - Not “month and a day”
  - Not written
- Waiver by Acceptance of Rent (Pappas v. Stark, 142 N.W. 1046, 1046 (Minn. 1906))

# Evictions

## Defenses to Illegal Activities

- Must have permitted conduct – didn't do it or didn't know about it

## Defenses to Breach of lease

- "I didn't do it"
- Lease doesn't prohibit it
- Not "material"
- Waiver by acceptance of rent (Kenny v. Si Sue Lun, 112 N.W. 220, 256 (Minn. 1907))

## Other Defenses

- Illegal Discrimination
- Retaliation

# Evictions

Court Date -Remote right now as per MN Supreme Ct

- High rate of defaults
- Trial – T post undisputed amount of rent
- Heavy emphasis on settlement
  - Payment plan + expungement
  - Move out date + expungement

# Evictions

## Writ of Recovery

- Default by Tenant
- Loss at Trial
- Noncompliance with settlement
- T options very limited
  - Negotiate for more time
  - Rule 60 motion
    - Mistake
    - Inadvertence
    - Excusable Neglect
    - Fraud

# Expungements

- Get an eviction off the record.
- Grounds for expungement.
  - Statutory:
    - No basis in law and fact.
      - Minn. Stat. 484.014.
      - Includes service issues.
      - Something that could have been raised at the hearing.
  - Inherent:
    - All other reasons.
    - Majority of cases.
- When does expungement occur?
  - Within a few days from Order.

# Lay Advocates

# Lay Advocates in Court

- Minn. Stat. 481.02, subd. 3 (13) appears to permit lay representation in Housing Court cases.
  - Can't charge legal fees (or any other fees)
  - Can't 'pretend' to be a lawyer
  - Can't appear in jury trial or Appellate Court
- But, *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753 (Minn. 1992)
  - (prohibiting a lay person from representing a landlord in conciliation court on constitutional grounds), cast doubts on clause (13).
- The Minnesota Supreme Court created the [Legal Paraprofessional Pilot Project](#)
  - beginning in March 2021 and ending March 2023.
  - This Project allows lay representation in Housing Court.
  - A legal paraprofessional may apply, and there are 18 participants. ‘
  - Hennepin County is excluded from the Project.

# Lay Advocates in Court

Things a lay person can do

- Advise a client.
- Tell a client what to say in court.
- Write down and give a client something to read to the court.
- Assist a client in a settlement discussion including advocating to the LL's attorney.
- Assist a client in a mediation discussion including advocating to the mediator..
- Prepare a motion or other pleading for the client to sign.
- Assist a client at the housing court counter.
- If in court, sit at counsel table and confer w client.
- If at a zoom hearing, assist the client in a separate zoom room.
- Be present in the courtroom or zoom hearing.



# Lay Advocates in Court

Things a lay person may or may not do depending on the constitutionality of Sec. 481.02, subd.5 (13) do:

- Address the court in a court hearing unless the judge asks a direct question.
- Sign a settlement agreement as the attorney for the client.
- Sign a motion or pleading which would be sent to the LL's attorney or filed with the court.

# Post Tenancy Issues

# Security Deposits

- Landlord has 3 weeks from:
  - Termination of the tenancy: and
  - Receipt of tenant's forwarding address
- Within 3 weeks, Landlord must send:
  - Either the full deposit plus interest, or
  - A security deposit disposition letter
  - Postmark sufficient

# Sample Deposit Penalty

|                     |         |
|---------------------|---------|
| Withheld deposit    | \$1,000 |
| + Interest (1 Year) | \$10    |
| Multiplied by 2     | \$2020  |
| + 500 Punitive      | \$500   |

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Total:  
\$2,520

# Deductions from Deposits

- Landlord can only deduct for physical damages beyond “ordinary wear and tear”
  - Landlord does not have to paint or change carpets between tenants
- If debt still owed by tenant
- Security Deposits covered in Minn. Stat. § 504B.178. Any contrary lease terms unenforceable. For example, forfeiture is not allowed. *Kaeding v. Auleciems*, 886 N.W.2d 658 (Minn. Ct. App. 2016)

# Abandoned Property

- No Eviction
  - Landlord must store property for 28 days, on or off premises
  - Tenant can recover property by giving landlord 24 hour written demand (48 hours if stored off site)
  - Covered by Minn. Stat. § 504B.271
- Following Eviction
  - Landlord must do inventory of property pursuant to Minn. Stat. § 504B.365
  - Landlord must store property same as if by no eviction or store in bonded warehouse (sheriff removes)
- After 28 days landlord can dispose of property
  - If warehouse used, landlord & warehouse have lien for storage costs

# Questions?

Contact Information:

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