



Tenant Hotline
Phone: 612-728-5767
Online: homelinemn.org/email

How the Bankruptcy Code Impacts Tenant/Landlord Laws

Special Guest Speaker:
Drew Glasnovich

February 15, 2023 — 1:30-3:00pm
HOME Line Housing Attorney, Rachael Sterling

What is HOME Line?

- HOME Line is a statewide nonprofit organization providing free legal, educational, and advocacy services to Minnesota renters. We have advised over 290,000 renters since 1992.
- Our primary program is a free and confidential legal hotline any Minnesota renter can contact us to receive legal advice specific to their situation, in 4 languages.
- HOME Line has a staff of 32, including attorneys, tenant advocates, and tenant organizers. We also rely on volunteers and interns.



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



Housekeeping

- 1.5 CLE credits being applied for
- Session is being recorded and will be available on HOME Line's website in a few days
- Please ask questions through the Q&A function



BANKRUPTCY AND RESIDENTIAL LEASING



PRESENTED BY DREW GLASNOVICH

Associate, Bankruptcy & Creditors Rights Division

Stinson, LLP Minneapolis Office

BANKRUPTCY 101

AUTOMATIC STAY

LEASES IN BANKRUPTCY

SPECIAL TENANT PROTECTIONS

SPECIAL LANDLORD PROTECTIONS

SECURITY DEPOSITS

BANKRUPTCY 101



Image credit: *Seagulls eating chips stolen from humans.* REUTERS/Dylan Martinez,
<https://www.reuters.com/article/us-britain-seagulls/staring-at-seagulls-can-stop-them-stealing-food-research-shows-idUSKCN1UX1I2>

AUTOMATIC STAY

11 U.S.C. § 362(a)

- No lawsuits, collections, or attempts to control Debtor or its property.

Writ in Hand Exception 11 U.S.C. § 362(b)(22)

- **LANDLORDS ARE ALLOWED** to continue evictions if the landlord obtained a judgment for possession of such property against the debtor prior to the bankruptcy

Debtor Allowed to Cure 11 U.S.C. § 362(l)(1),(2).

- If the state court would allow the Debtor to cure the default; AND
- Debtor deposits next 30 days of rent; AND
- The Debtor cures all the pre-bankruptcy monetary defaults within 30 days.

Danger and Drugs Exceptions 11 U.S.C. § 362(b)(23)

- **LANDLORDS ARE ALLOWED** to continue evictions that seeks possession of the residential property based on endangerment of the property or the illegal use of controlled substances.
- Statutory process for the Debtor to contest the Landlord's assertions (11 U.S.C. § 362(m)).

BANKRUPTCY COURTS AND EVICTIONS

“Courts have generally indicated that state courts are better able to respond to actions primarily involving state law such as the instant eviction proceeding. Adjudication of the eviction proceeding requires the application of New York State's complex landlord and tenant law. Disputes arising under this body of law are most efficiently and appropriately determined by state courts.”

In re Riverside Nursing Home, 144 B.R. 951, 956 (S.D.N.Y. 1992).

11 U.S.C. § 365 – UNEXPIRED LEASES

ASSUME

- Reaffirm and cure any pre-bankruptcy defaults

CURE

- Bring current on monetary defaults
- Subjective test on non-monetary defaults

REJECT

- Permitted Breach
- Breach “occurs” prior to the bankruptcy
- Does not terminate the contract

REJECTION DAMAGES

- Special calculation of damages for rejecting.
11 U.S.C. § 502(g)

ASSIGN

- After assuming, the Debtor can assign leases notwithstanding anti-assignment provisions

TENANT PROTECTIONS 11 U.S.C. § 365(h)

If the term of such lease has commenced, the tenant may retain possession under the lease for the balance of the term and for any renewal of right.

The tenant can offset against rent the value of any damage caused by the nonperformance of any obligation of the debtor-landlord under the lease.

The tenant does not have any other right against the debtor-landlord on account of any damage occurring after such date caused by such nonperformance.

LANDLORD PROTECTIONS 11 U.S.C. § 365(d)

In chapter 7, a tenant must assume/reject within 60 days.

In all other chapters, a tenant must assume/reject on or before confirmation of a plan.

File a claim for rejection damages.

Security Deposits and Other Tenant Claims

File a claim before the claims deadline

- Deadline provided on the Notice of the 341 Meeting of Creditors.

Who Owns the Security Deposit? 11 U.S.C. § 541(d)

- “Property in which the debtor holds only legal title and not an equitable interest ... becomes property of the estate ... only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.”
- Security deposits held in trust for tenants under state law do not become part of landlord's bankruptcy. *Real Estate West*, 170 B.R. 736, 743-44 (Bankr. N.D. Ga. 1993)

Minn. Stat. § 504B.178 Subd. 2. Interest.

- Any deposit of money shall not be considered received in a fiduciary capacity ...but shall be **held by the landlord for the tenant** who is party to the agreement.



Drew Glasnovich

Drew.Glasnovich@Stinson.com

DISCLAIMER: This presentation is designed to give general information only. It is not intended to be a comprehensive summary of the law or to treat exhaustively the subjects covered. This information does not constitute legal advice or opinion. Legal advice or opinions are provided by Stinson Leonard Street LLP only upon engagement with respect to specific factual situations.



Questions?



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Thank You