

The Landlord's Guide to Minnesota Law



HOME Line

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Introduction

There is a commonly held belief that landlords and tenants are natural enemies. It's not unusual to hear statements like, "Being a landlord is great . . . except for the tenants." But it doesn't have to be this way. Problems don't have to be the norm; they can be the exception. A landlord who understands and responds to legitimate concerns will attract and retain good tenants, which is essential for growing and maintaining a successful property rental business of any size.

Who Is This Book For?

The Landlord's Guide to Minnesota Law was written for any landlord renting in Minnesota. According to the U.S. Census, Minnesota has nearly 580,000 known rental units. We wanted to write a book for both the first-time landlord renting half of a duplex and the sophisticated landlord managing five thousand units. This book might apply to your situation if:

- You rent properties but are not a professional landlord. You might refer to yourself as an "accidental" or "amateur" landlord. You have other jobs or time commitments and another source of income beyond your rental income. There are tens of thousands of Minnesota landlords who fit this description.
- You are already a landlord, and this is your profession. The Minnesota Attorney General's Office publishes a well-written booklet (*Landlords and Tenants: Rights and Responsibilities*). But this guide is brief and attempts to be as neutral as possible. *The Landlord's Guide to Minnesota Law*, however, is written for landlords. Even if you have been a landlord for thirty years, it is likely you'll learn something new about the law. Being a landlord doesn't mean that you read leases all day and ponder landlord-tenant legal issues. You

have many other duties and roles requiring your focus. At HOME Line, our hotline staff think about these issues each day. It's all we do, and we're offering our expertise to you. We want good landlords.

- You are a lawyer representing landlords. As mentioned in various portions of this book, there are not many attorneys who practice exclusively in landlord-tenant law. In parts of Minnesota, it may be impossible to find a lawyer who has any substantial landlord-tenant legal experience.
- You want to understand landlord-tenant law in Minnesota as thoroughly as possible.

Why Buy a Book Written by Tenant Attorneys?

HOME Line has been operating a tenant hotline since 1992. Starting with just the suburbs of Hennepin County, the tenant hotline has expanded to cover the entire state. As of the publication of this book, HOME Line has advised over 180,000 Minnesota renters. We have no income guidelines or other restrictions. The people we serve range from tenants who have government subsidies and pay no out-of-pocket rent to tenants who pay \$5,000 a month. Our staff attorneys have over sixty years of exclusive landlord-tenant law experience. This is all we do. Mike Vraa, HOME Line's Managing Attorney and the lead author of this book, has worked in the Minnesota landlord-tenant law arena since 1996. However, as a landlord, you may be asking why you should be reading a book written by tenant attorneys. Here are a few reasons:

Expertise

Relatively few attorneys practice landlord-tenant law. As mentioned above, our lawyers exclusively practice landlord-tenant law. While most lawyers can pick up the basics quickly, it is a highly regulated industry with layers of issues that only experience can help solve.

Landlord Trainings

HOME Line has always educated the key players in the landlord-tenant community. We have given over two thousand landlord-tenant trainings to tenants, social workers, police officers, government officials, students (in high school, college, and law school), lawyers, and of course, landlords. We have given over one hundred trainings to landlords in Minnesota. This wide variety of audiences and our tenant hotline's massive call volume keeps us informed on the landlord-tenant legal scene. (If you want to arrange for a HOME Line attorney to speak to your group, contact us through our website at homelinemn.org.)

Experience

This is not our first landlord-tenant law book. HOME Line published *How to be the Smartest Renter on Your Block: A Minnesota Tenants' Rights Guide* in 2011. It has sold over two thousand copies and remains the most thorough examination of Minnesota tenant rights to date.

We also know what tenants complain about, and we can help you avoid these common issues. Here are the top ten reasons renters called HOME Line in 2014:

1. Repairs
2. Security-Deposit Disputes
3. Evictions
4. Notice to Vacate
5. Break Lease Questions
6. Bedbugs or Infestations
7. Privacy or Landlord Intrusions
8. Lease Questions
9. Neighbor Problems
10. Roommate Issues

This book covers these topics and more while answering the most common questions about landlord-tenant disputes.

State-Specific Advice

There are numerous legal guidebooks for landlords available for purchase on the Internet. We looked at many of these books. To be honest, some of these guidebooks offer useful insights into a landlord's world, but none focuses exclusively on being a Minnesota landlord. A Minnesota focus is critical because almost all landlord-tenant law is state-specific, or even city-specific. A landlord guide that is designed to cover all fifty states will gloss over key issues that only a Minnesota landlord will face. In some cases, the books we read offered advice that, if followed in Minnesota, would have created legal and financial disasters for landlords.

Exclusive Features

At the end of each chapter, you will find "Tips from a Tenant Attorney." These are less formal statements of the law and are some of the most practical tips that you should know about each topic. Also, in Appendix I, we offer our exclusive line-by-line analysis of the Minnesota State Bar Association Standard Residential Lease, which is the lease HOME Line recommends you use. Instead of wondering what your "Internet" or "Form" lease means, you can look in our lease guide to know exactly why each clause is used and what it means. HOME Line has not seen any other online lease that conforms completely to Minnesota law.

Main Goal

HOME Line works with and represents tenants. We do not advise, nor do we represent, landlords. However, we are not anti-landlord. One of this book's contributing authors is a landlord, and landlords occasionally volunteer with us. We all have friends who are landlords. We want informed landlords. If landlords know the rules and regulations, they are more likely to follow them. Without landlords, there are no places for our clients to live. We want landlords to understand the law and do well because landlords who do well are good for tenants.

Before We Get Started

This book follows the rental process from the beginning to end. We start with how to prepare for listing a rental unit, how to get a quality lease, and then how to find a tenant. Next, we address the most common legal issues that arise between landlords and tenants, including repair issues and when the landlord can enter the unit, among others. We then address common end-of-tenancy issues, such as how to handle a tenant wanting to leave early or sublet, how to give a notice to vacate, and even how to file an eviction properly. Last, we deal with post-tenancy issues like the return of the security deposit and how to deal with any property left behind by the tenant. We also address foreclosures, where many landlords forfeit more than they should.

There are a few common terms that are useful to know throughout this book. We have defined them below.

What Is Rental Housing?

Rental housing is any dwelling that is provided for a person to live in for some type of compensation.ⁱ This seems basic, but there are many types of rental housing. Apartment complexes are the most common, but single-family homes, duplexes, condominiums, and townhouses can be rentals as well.

Other types of housing are more difficult to classify. Assisted living facilities, nursing homes, cooperative housings, “sober houses,” dormitories, homeless shelters, and transitional housing may be covered by state landlord-tenant law, depending on the situation. These specific types of housing are not the focus of this book.

Who Is a Tenant?

A tenant is anyone occupying a living space as a result of an agreement where he or she pays rent or exchanges services for the space.ⁱⁱ Usually this

agreement takes the form of a written or verbal lease between the tenant and a formal landlord (an apartment or specifically designated rental housing). But informal agreements to stay with family and friends may create landlord-tenant relationships as well. The easiest way to start to answer this question is to ask: does someone owe something in exchange for staying in housing?ⁱⁱⁱ If yes, a tenancy is probably formed.

Who Is a Landlord?

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

When the term “landlord” is used in this book, it can mean any of the following groups that represent the owner or the owner’s interests:

- A single property owner: John Smith
- A group of investors organized as a company: John & Cathy’s Apartments.
- A business or corporation that owns the property: Rental Apartments, LLC.
- An agent hired by the owner. Note: while these people may interact with renters on a day-to-day basis, they are usually not in charge of legal decisions and disputes. Agents can include:
 - A management company, like Apartments & More Management Company. Property owners frequently hire management companies to do most of the day-to-day work and interaction with residents. In most cases, the management company has no ownership interest in the property.
 - An individual person such as a property manager, caretaker, maintenance worker, building superintendent or leasing

agent. These people may work for a management company or may work directly for the property owner.

- Another contracted agent such as a plumber, a mechanic, or other outside company hired to perform work on rental housing.

Rental Housing Is a Business—A Heavily Regulated Business

When property owners ask for money in exchange for letting someone occupy a property, they are probably entering the landlord business. Rental housing is a business or an asset used to generate a profit for the owner. HOME Line has dealt with landlords who are in charge of thousands of rental units; HOME Line has also dealt with thousands, of landlords who rent a single rental unit or even a single room in a house.

In most cases, the rules are the same whether the landlord owns thousands of units or a single rental. We have tried to point out the few exceptions to this rule where applicable, but Minnesota statutes rarely differentiate between “big” and “small” landlords.

How Leases, Law, and Courts Work

Landlords should understand how laws and leases work. Federal, state, and local laws provide the framework for how landlords can resolve legal problems. State law outlines the overwhelming majority of landlords’ rights and responsibilities. Cities can pass further regulations, hire housing inspectors and require landlords to be licensed. In addition to the law, rental agreements or leases are the contracts that specify rules for renting a space for a certain amount of time.

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

What Is Not Covered in This Book

Commercial Rentals

Commercial rentals (people renting space for a business) have many similarities to residential leasing (people renting space to live in). But there are many key differences as well, and the laws are not always the same. This book should not be used as a reference for commercial landlords.

Storage Lockers

These have proliferated in the last twenty years. The laws governing storage lockers will not be covered here; they are very different from residential tenancies.

Tax Consequences of Being a Landlord

The expertise that our staff has to offer is limited to Minnesota landlord-tenant law. We do not advise landlords on the advantages of renting a property under an LLC or whether they are better served by keeping the property in their name. Due to the issues surrounding tax liability and benefits, you should consult a tax professional on this topic.

Manufactured Home Parks

Tenants living in manufactured home parks (or mobile homes) comprise a decent percentage of the tenants in Minnesota.^v While many of the rules are the same, there are unique rules that cover these parks. Most, but not all, of these additional rules are covered in Minnesota Statute § 327C and the Attorney General's free handbook on manufactured home parks.

Hotels and Motels

Hotels and motels sound like they could be landlords. They collect money for the right to occupy a premises. However, most Minnesota cities have specific innkeeper licensing requirements. Note that a hotel or motel can be a landlord if the resident stays long-term and some other basic requirements are met.^{vi}

Notes

- i. Minn. Stat. § 504B.001, subd. 12
- ii. Minn. Stat. § 504B.001, subd. 12
- iii. Minn. Stat. § 504B.001, subd. 12
- iv. Minn. Stat. § 504B.001, subd. 7
- v. About 3% of Minnesotans live in manufactured homes. Manufactured Housing in Minnesota: Overview and Policy Challenges by Kim Skobba, Ph.D. and Leigh Rosenberg (2008) used census and other data to estimate that in 2005 there were about 68,300 manufactured homes in Minnesota with an average of 2.47 persons per home. This 168,701 persons in manufactured homes would have been approximately 3.3% of the total Minnesota population in 2005 of about 5,120,000 as determined by the census bureau. The Skobba paper is available here: <http://nlihc.org/sites/default/files/SIRR-MN-2008.pdf>
- vi. Minn. Stat. Chap. 327



Photo by Anna Holtman

Finding a Tenant

To be a landlord, you need a tenant. Otherwise, you are just someone who owns a vacant building. Finding a tenant is more than the first necessary step to being a landlord. Finding the *right* tenant is crucial to your success as a landlord. Turnover is not your friend. Turnover will happen, but finding long-term tenants who pay on time is the best way to achieve continued success.

What You'll Learn

- How to prepare for renting
- How to advertise
- What to look for in a tenant
- How to use pre-lease deposits

What to Think About before You Advertise

Before you start showing your property, you need to prepare your property. You want tenants who will stick around long-term and pay rent on

time. These tenants are good tenants. Good tenants generally have both the financial means and the background to give them plenty of renting options, so you have to stand out. Your property needs to look the same or better than competing properties without costing significantly more.

Maintaining and Renovating

Tenants who will accept dirty and run-down units are the type of tenants who will leave dirty and run-down units. They are also more likely to be tenants who will cause other problems during the tenancy. To find good tenants, you need a property free of any obvious defects. Even better is a property that looks and feels as if someone has taken care of it. You need to be concerned not only about the unit itself, but the building's exterior. First impressions are hard to reverse. Tenants who care about where they live probably plan to live there for a while. These are exactly the type of tenants you want.

Tip | To maximize your rent, you need to maximize the property's appearance. Fresh paint and curb appeal can be the difference between \$1,000 and \$1,200 per month.

Turnover is the term for losing one tenant and gaining another. On average, about 45% of apartments turn over each year.ⁱ Successful landlords minimize turnover, because turnover costs money, in some cases as much as a full month's rent.

There are both advantages and disadvantages to showing an occupied unit. On the plus side, a staged home can be more

appealing. It may also be necessary if a tenant is occupying the unit, and you want to rent without any downtime. On the minus side, you need to respect your current tenant's privacy (see Chapter 6, Privacy). Additionally, state law does not require the current tenant to clean or help show the property.ⁱⁱ The tenant is likely to be in the process of moving and may have boxes everywhere. If the tenant does not like you, they might try to sabotage your showings. There is no right answer for every situation, but the above factors should be considered before showing a unit.

Some landlords conduct "open houses." This practice can minimize the hassle for the current tenant. Instead of multiple showings, there is one

long showing. This can make it easier for the tenant to plan and clean. You can entice the current tenant to help by paying them to show the place. You could even offer a bonus if the unit is re-rented the day after the tenant leaves.

Cost

What you charge for rent is one of your most important decisions. You need to decide how much to charge in order to make a profit, and you must learn how much you can charge without driving customers away. These questions are ultimately business questions and not something we can answer in this book, but there are few things worth considering. There is a limited supply of quality rental housing. Vacancy rates affect the amount of rent landlords expect tenants to pay. When there are fewer units available, landlords can increase the rent. Charge a rate comparable with other prop-

Caution | Be careful about charging a per-head rent. It's rare, and this practice may be a violation of the Fair Housing Act. Even if it is not, it may lead to you defending a costly court case. See Chapter 3, *Discrimination*, for more information.

erties in your area. If you are going to charge more, you need to offer more. Offering more amenities can make the difference. Consider the price you will advertise. If you list a higher price, you may offer some type of concession. Retail businesses have been using the practice of marking up merchandise and then offering it on sale for years. People like getting things on sale.

Basic Ways to Advertise

Advertising a rental unit is easier and cheaper than ever before. While some landlords still pay for newspaper classified ads, most choose a much cheaper route. Putting a sign on a local community board, like in a grocery store or coffee shop, or putting a "For Rent" sign on the outside of the building, is cheaper and may be just as effective as the newspaper. Many larger apartment complexes, especially in the metro area, will advertise in rental listing magazines, frequently found in the entrance or exit area of pharmacies or grocery stores.

The majority of landlords who have ten rental units or less will advertise on the Internet. Craigslist has become the cheapest way for a landlord to advertise a rental unit in a somewhat controlled setting. Unlike newspaper advertising, there is no need for the bizarre abbreviations frequently employed when you pay by the word. Other online resources may include community message boards and neighborhood Facebook pages.

When creating a listing, focus on the positives in your rental unit. Something as specific as a dishwasher or a claw-foot bathtub can be the reason a prospective tenant chooses your unit over another.

Tip | Pretend that you are a tenant trying to find rental property in your area. Try some Google searches and see what you find. Consider posting an advertisement on those sites.

If you are an established landlord, consider offering a referral incentive to existing tenants. If you have good tenants, their friends are more likely to be good tenants as well. Every referral you get is less money and effort you must spend on advertising.

Screening a Tenant

Advertising rental housing may have become both simpler and cheaper, but finding renters who will pay on time each month remains complicated. There are no “guaranteed tenants,” but you can minimize your risks by finding tenants with good rental, criminal, and credit history. You should also check with a prospective tenant’s past landlord.

In Minnesota, most landlords screen tenants in at least these three categories: rental, criminal, and credit history. Some cities require you to do a criminal background check before renting to a tenant, although cities do not typically name particular convictions or crimes that would automatically exclude renters.ⁱⁱⁱ

Should You Charge a Screening Fee?

Many landlords hire a screening agency to investigate potential tenants. Many do not. Some landlords insist on calling previous landlords to ask their opinion of the applicant. Many landlords are savvy enough to research

criminal and eviction records on their own.^{iv} It is possible to do this type of screening work before hiring a screening agency. However, as a search expands into multiple states, it becomes more difficult to do an effective search on your own. Due to the drawbacks involved with screening tenants, many landlords hire tenant-screening companies to perform broad checks into the background of prospective applicants.

Tenant-screening companies are covered by the Fair Credit Reporting Act (FCRA).^v Some of the companies are locally based, while others have a central office outside of Minnesota. There are less than ten active tenant-screening companies in Minnesota currently, but some of those companies have not been in business very long. (See Appendix IV.) These companies typically charge \$15–\$75 per back-

Note | While charging an applicant-screening fee does subject you to more rules, the rules are very straightforward and easy to follow. And checking tenants' backgrounds through a screening company can help you learn what you otherwise might have missed on your own.

ground check for each adult applicant. It is legal for you to pass this cost on to the prospective tenant.^{vi} You can also include a slight increase for your own administrative costs associated with processing the application. If you charge an application fee and do not spend all of it, you must return the balance.^{vii}

If you decide to charge an applicant-screening fee, Minnesota law creates several additional obligations. You cannot charge a fee when you know or should know that no rental unit is available or will become available in a reasonable time period. You cannot collect or hold a fee without giving a written receipt for the fee. You cannot use, cash, or deposit a fee until all prior applicants have either been screened and rejected or have been offered the unit and declined to enter into a rental agreement. If two applicants apply, you have to refuse the first applicant before you can move on to the second.^{viii}

You must disclose in writing prior to accepting the applicant-screening fee the name, address, and telephone number of the screening service and, most importantly, the criteria on which the decision to rent to the prospective tenant will be based.^{ix}

The written criteria you choose and disclose are very important. You can always reject an applicant for something not listed in the written criteria, but if you do so, you must return the applicant-screening fee.^x Landlords almost never do this. Imagine applicants' surprise when you tell them that they met all of your written criteria but they are still denied. They are likely to question your decision and may suspect you are illegally discriminating against them. It is best to carefully consider your written criteria before you ever advertise.

Why Should You Have Selection Criteria?

Renting to a bad tenant is worse than having a vacant unit. An empty unit means no income, but a bad tenant can cost you money *and* provide zero income. It is not hard to find landlord horror stories about tenants. Maybe you even have some of your own. The better your selection process, the less likely you are to experience a bad tenant firsthand.

There are other reasons to establish selection criteria, too. Selection criteria let applicants know:

- That you are familiar with and complying with fair housing laws
- What to expect from your application process
- That all applicants are evaluated consistently and fairly
- Whether the applicant can expect to qualify or not

Your selection criteria should help you establish that the prospective tenant pays rent on time, treats rental property well, is a good neighbor, plans on renewing the lease, and will eventually leave the premises in good condition when their lease terminates and they move out.

Note | Past landlords can be a great source of information, but calling can take time. Additionally, many landlords will refuse to answer questions about past tenants. This likely has more to do with their internal policies than whether or not the tenant was a good or bad tenant.

Rental History

Rental history should be the first category you look at. Credit and criminal history are important, but rental history tells you how this tenant treated prior landlords. The first thing to check is whether a previous landlord filed an eviction against this tenant. Many landlords have no interest in the outcome of a prior eviction case; they only want to know if an eviction was filed. Some landlords also consider how long it has been since an eviction was last filed against the applicant. Many landlords ignore older, isolated evictions. Note that screening companies are limited in reporting evictions. If the eviction is over seven years old, they are not allowed to report it;^{x1} however, you can find out about Minnesota evictions older than seven years by searching the state court's free online database yourself.

Additionally, some screening agencies compile landlord references. They may report on specific comments past landlords have made about the applicant, or they may simply answer the question, "Would you rent to this tenant again?" This can be helpful, but you are likely to find out more if you call the former landlord directly.

Criminal Record

You can refuse to rent to an applicant for virtually anything discovered in a criminal record. Convictions, charges, and even arrests are all public records, and you can refuse to rent to a tenant for those reasons. (But be aware that holding something like an arrest or a criminal charge against a tenant could open you up to a discrimination claim if it disproportionately affects racial minorities.) Most landlords limit their screening to convictions, often only felony convictions. Like evictions, many landlords put a time limit on the importance of a conviction—such as refusing to rent to a tenant with a felony conviction in the last five years.

Some landlords focus on specific crimes as reasons for denying an applicant. The most common crimes that lead to rejected applications include arson, theft, drugs, violence, and crimes of a sexual nature.

Credit History

It is difficult for you to completely assess a prospective tenant's credit without the applicant's signature authorizing a credit check. It is also very difficult to get credit information about an applicant for free. If you decide to screen applicants based on credit, you should decide on a specific number for the lowest credit score you are willing to accept. How high you set the bar depends on how badly you need a tenant and how much risk you are willing to take.

When evaluating credit histories, landlords often look at what types of bills a tenant failed to pay on time. Many landlords will not rule out a tenant because of unpaid medical bills or foreclosures. To most landlords, the most disturbing credit problem is an outstanding bill owed to an old landlord. Some do not want to rent to anyone who has a bankruptcy, at least if it occurred within a certain time period.

Caution | Applicants may ask you to help them fill out the rental application. If you decide to do so, be careful. Only ask questions that are part of the application. Make sure you understand what type of questions may be construed as discriminatory. This also applies to anyone who works for you.

Note | Alternatively, tenants who have declared bankruptcy may be a better financial risk. They will have little-to-no debt, and they cannot declare bankruptcy again for seven years.

Income Requirement

In addition to the above process, most landlords ask to see copies of recent pay stubs or similar proof of income to show that the prospective tenant has the ability to pay rent. This is a good way to insure that a tenant is able to pay in the future, but not the only way. Some tenants may be students who have their room and board covered by financial aid checks or help from their parents. In many student rental situations, a landlord will require a parent as a co-signer on the lease if the applicant's credit and rental history is insufficient to qualify on their own. Other applicants

will have income from some type of governmental assistance, including Temporary Assistant for Needy Families (TANF), Social Security Disability Insurance (SSDI), or others.

Many landlords require that an applicant have a certain ratio of income-to-rent. While it is not required, and sometimes depending on the rental market may not be practical, many landlords require tenants to have two or three times the rent in income. Some landlords even require four times the rent in income. At present, there is no law forbidding a landlord from renting to someone with an inadequate income stream.

Caution | If you are going to set an income guideline, make sure it is consistent. Under state law, you must count public assistance as income. See Chapter 3, Discrimination, for more information.

If a tenant does not qualify on their own income, you may also need to consider a co-signer or guarantor. This is frequently the case with students. A co-signer or guarantor signs the lease along with the actual tenant but does not have the right to occupy. They are, however, responsible for the full rent payment. Some landlords will only allow in-state co-signers because it is more difficult to collect a debt when the debtor lives out of state. A guarantor signs a guarantee and promises to pay any unpaid debt owed by the tenant. The guarantee agreement should be clear about what debts are guaranteed—the guarantor could escape liability if the agreement is vague.^{xii}

Meeting the Applicant

Some landlords have completely abandoned the in-person, face-to-face interview with an applicant. Instead, tenants apply electronically, and a landlord can either approve or deny an applicant without ever meeting them. There is nothing illegal about this practice. In many ways, it eliminates some of the discrimination issues discussed in Chapter 3. However, most landlords still meet a tenant personally before renting to them. We have even heard of some landlords attempting to visit the applicant's current home to see how their prospective tenant really lives.

The screening process is a two-way street. For you, most screening happens on paper. For the tenant, screening happens in person. Getting tenants to tour a unit is one thing; getting them to sign the lease is another. As stated before, the best tenants have options and you need to stand out. When you rent a place, you are in sales. You are selling two things: the apartment and yourself as its landlord. Be available and sound professional, or risk losing prospective tenants. Try to be pleasant whether you are on the phone or in person. Every contact with an applicant should make a good impression. They are potential customers.

Mandatory Disclosures

Federal law requires you to disclose any known lead paint issues to your tenant (see Chapter 5, Leases).^{xiii} Additionally, you are required under state law to disclose if you are in the redemption period of a foreclosure.^{xiv} There is no obligation that you disclose other information about the rental property. However, if you do not disclose a hidden dangerous condition and the tenant is later hurt by it, you could be liable in a personal injury suit.^{xv} Over the years, HOME Line has been asked whether landlords must disclose a history of bedbugs, a death in the unit, or if the unit is haunted. The answer is the same in all three cases: only if the tenant asks. If the tenant asks before signing the lease, you are not allowed to lie to convince the tenant to sign the contract. So, if you know about a ghost and are asked, you cannot lie about it!

Denying an Applicant

Denying an applicant can be hard. You do not want to argue over the rejection, and it is even more important to avoid a fair-housing complaint. You also need to comply with state law.

If you have charged an applicant-screening fee, you must notify the applicant within fourteen days of rejecting their rental application and identify the criteria the applicant failed to meet.^{xvi} You are not required to do this in writing, but it is much better to do so. If you inform applicants by phone, you are more likely to get into an argument. You are also more likely to either misspeak or forget to say something important. Notifying the applicant in writing allows you time to make the letter short and professional,

and to convey the necessary information. Notifying the applicant in writing also allows you to document the reasons for the future, if necessary. A cautious landlord saves rejection letters.

Note that a tenant is not allowed to lie on an application.^{xvii} You can actually sue an applicant for \$500 for lying on an application, and you could try to convince the authorities to press fraud charges. However, this law went into effect in 2010, and we have not seen any landlords collect the \$500. It might be more useful to warn the applicant on the application form about the potential consequences of lying on their application.

Note | State law requires you notify an applicant of a denial within fourteen days. However, you are much better off notifying applicants as quickly as possible. Most tenants need to move within a month or two of the time they've started looking. If you wait fourteen days, prospective tenants may be upset over their loss of time. From personal experience, we can say that upset tenants are much more likely to sue than tenants who feel they were dealt with professionally and promptly.

Pre-Lease Deposits

A *pre-lease deposit*, also known as a *deposit to hold*, is money a prospective tenant pays in order to hold the apartment while you consider the tenant's application. The deposit is any money beyond the application fee paid before entering into a lease.^{xviii} Pre-lease deposits are less common now because of how quickly tenant screening companies work. Depending on the applicant, a screening company can send you the rental report within the day, if not within the hour. However, if you decide to charge a pre-lease deposit, there are a few rules you should follow.

Prior to signing a lease, you can only accept money beyond the applicant-screening fee if you have a conspicuously written agreement. That agreement must list at least one reason you will refund the money and state that the tenant will get the money back within seven days after that reason happens. You must also state in writing what will happen to the deposit if the applicant takes the rental unit. Small print on an application sheet will not qualify as "conspicuous."^{xix}

For example, the following is a common and legal pre-lease deposit clause: “If landlord denies prospective tenant, landlord will return the pre-lease deposit to tenant within seven days.” As long as that sentence is clearly visible and signed by the tenant, you can keep the pre-lease deposit unless you deny the prospective tenant. However, the following, “If landlord denies prospective tenant, landlord will return the pre-lease deposit,” is not sufficient because it does not say that it will be returned within seven days.

While it is unnecessary to state when you will keep the pre-lease deposit, most landlords do to prevent later arguments. Consider the following clause: “If landlord approves prospective tenant, and prospective tenant decides not to rent from landlord, landlord may keep the pre-lease deposit. If landlord denies prospective tenant, landlord will return the pre-lease deposit to tenant in seven days.” To comply with the statute, you must have the correct language in writing. If you do not follow the requirements and keep the money, the tenant could sue you for 150% of the amount you collected.^{xx}

Tips from a Tenant Attorney

We have consistently alluded to discrimination here without actually discussing it in depth. This is because we have an entire chapter devoted to discrimination and fair housing. However, it is very important to understand that most housing-discrimination cases arise from the application process. Even the appearance of discrimination can lead to a costly lawsuit, so make sure to understand fair housing laws and how they apply to you.

While you may want to meet a tenant before you agree to rent to him or her, your decision to choose one applicant over another should be based on independently verifiable things like rental history, credit history, and criminal records.

Summary: Finding a Tenant

You must:

- Prior to accepting an applicant-screening fee, disclose the name, address, and telephone number of any tenant screening service you will use and provide the prospective tenant with the written criteria you will use to evaluate the tenant.
- If you charged a fee, notify the applicant within fourteen days of rejecting them of the criteria he or she failed to meet.
- If you charge a pre-lease deposit, have a conspicuously written agreement stating at least one condition in which you will return money to the tenant. The agreement must state that the tenant will receive the money within seven days of that occurrence.
- Meet all lead paint disclosure requirements.

You may:

- Choose not to charge an applicant-screening fee.

You may not:

- Discriminate against a protected class.
- Charge an applicant-screening fee when you know or should know that no unit is available or will be available within a reasonable time.
- Collect or hold a fee without providing a receipt.
- Use, cash, or deposit a fee until all prior applicants have either been screened and rejected or have been offered the unit and have declined.

Notes

- i. LEIGH ROBINSON, *LANDLORDING: A HANDY MANUAL FOR SCRUPULOUS LANDLORDS AND LANDLADIES WHO DO IT THEMSELVES* (El Cerrito: Express, 12th ed. 2014).
- ii. *See generally* Minn. Stat. § 504B.161 (placing the onus to maintain the rental unit on the landlord).
- iii. *See, e.g.*, Hopkins City Code § 407.05, subd. 2.
- iv. For an example of a tool landlords can use to search criminal and eviction records on their own, see <http://pa.courts.state.mn.us/>.
- v. 15 U.S.C. § 1681 et seq.
- vi. *See generally*, Minn. Stat. § 504B.173.
- vii. Minn. Stat. § 504B.173, subd. 2(b).
- viii. Minn. Stat. § 504B.173, subd. 1.
- ix. Minn. Stat. § 504B.173, subd. 3(1).
- x. Minn. Stat. § 504B.173, subd. 2(a)(1).
- xi. *See* 15 U.S.C § 1681c(a)(2) (a consumer reporting agency may not make a consumer report containing “accounts placed for collection or charged to profit and loss which antedate the report by more than seven years”).
- xii. *American Tobacco Co. v. Chalfen*, 108 N.W.2d 702, 704 (Minn. 1961) (guarantee contract must be strictly construed in favor of the guarantor (the co-signer)).
- xiii. 42 U.S.C. § 4851 et seq.
- xiv. Minn. Stat. § 504B.151, subd. 1(b).
- xv. *Harpel v. Fall*, 65 N.W. 913, 914 (Minn. 1896), *abrogated by Johnson v. O'Brien*, 105 N.W.2d 244, 246-47 (Minn. 1960) (Exceptions to no landlord tort liability include: (1) the landlord committed fraud or concealed the property’s condition; (2) the landlord kept defects in the property secret; (3) the landlord failed to disclose a danger which a tenant would not discover; (4) the landlord agreed to repair the property).
- xvi. Minn. Stat. § 504B.173, subd. 3(2).
- xvii. Minn. Stat. § 504B.173, subd. 4(b).
- xviii. *See* Minn. Stat. § 504B.175, subd. 1.
- xix. Minn. Stat. § 504B.175, subd. 2.
- xx. Minn. Stat. § 504B.175, subd. 4.