Comprehensive Summary of New Landlord Tenant Laws Enacted in Previous Legislative Session

Updated January 22, 2024

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The most recent legislative session saw what have been heralded as unprecedented changes to landlord-tenant Law in Minnesota. This article will attempt to summarize and comment on those changes.

PRELIMINARY OBSERVATIONS

For the most part, the changes reflect best practices for landlords – things that landlords are or should be doing already. Unless otherwise noted, the statutes become effective on January 1, 2024.

Without further ado, let's dive into the changes that were enacted. For the sake of organization, I'm going to divide these new laws into three categories: laws that directly affect the landlords, laws that directly affect leases, and laws that directly affect evictions.

Really, all of the new laws affect all three categories, but there are so many changes that some sort of systematic organization has to be imposed. The summary of the new law is printed in *italics*, and my reaction or recommendation is printed in regular type.

EVICTIONS

504B.268: Right to Counsel in Public Housing Breach of Lease Eviction Actions *On the first page of an eviction complaint in public housing cases, the landlord must include the following notice in bold 12 point type: "if financially unable to obtain counsel, the defendant has the right to court-appointed attorney."*

This statute applies only to public housing cases. Before not including the requisite language, the landlord should make sure that the case does not involve public housing. For my part, I'm going to recite the language from the statute in my standard eviction complaint Most counties are providing some sort of court or volunteer attorney for tenants anyway, so I don't think that this change will be a big deal.

The effective date of this statute is somewhat confusing. This session law states that "this section is effective August 1, 2023." However, another part of the statute says that it is effective January 1, 2024. I think that smart landlords who rent public housing units would go with the August 1, 2023 date. I certainly am.

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504B.285, subd. 5: Combining Allegations: *Tenants are no longer required to pay rent, interest, and costs in order to get a trial.*

This statute conflicts with another statute, that says that tenants are required to pay back rent, interest, and cost in order to get a trial if the trial is scheduled more than 10 days out.

Tenants often ask for trials, even if such a request is frivolous, as a way of getting additional time to move out. Instead, I would respectfully suggest that tenant simply ask the landlord. They may be very surprised at the answer.

504B.291, subd. 1, Action to Recover: *If the landlord brings an eviction based on nonpayment of rent, tenants have the right to redeem the property by providing a written agency guarantee.*

Most landlords that I know would agree to this anyway, almost as a matter of course.

What follows are the most substantial changes to landlord tenant law, at least in my humble opinion. There is a lot to unpack here, and we will take it item by item.

504B.321: Complaint and Summons

Notice Requirement

Before bringing an eviction action alleging nonpayment of rent, a landlord must provide a notice to the tenant specifying:

(1) the total amount due;

(2) a specific accounting of the amount of the total due from unpaid rent, late fees, and other charges under the lease;

(3) the name and address of the person authorized to receive rent and fees on behalf of the landlord;

(4) the following statement: "You have the right to seek legal help. If you can't afford a lawyer, free legal help may be available. Contact Legal Aid or visit www.LawHelpMN.org to know your rights and find your local Legal Aid office.";

(5) the following statement: "To apply for financial help, contact your local county or Tribal social services office, apply online at MNBenefits.mn.gov or

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call the United Way toll-free information line by dialing 2-1-1 or 800-543-7709"; and

(6) the following statement: "Your landlord can file an eviction case if you do not pay the total amount due or move out within 14 days from the date of this notice. Some local governments may have an eviction notice period longer than 14 days.

The notice must be given at least 14 days prior to filing an eviction based on nonpayment. Local municipalities may require longer than 14 days advance notice.

As a general rule, landlords should have month-to-month leases, and only evict based on notice and holding over. However, if the landlord decides to bring an eviction based on nonpayment of rent, the landlord should provide the requisite notice, and attach that notice to the complaint. Most landlords that I represent would send such a notice anyway before bringing an eviction based on nonpayment.

Emergency Assistance

Receipt of the notice is sufficient evidence of an emergency to qualify the tenant for emergency assistance from the county or another government authority. Further, the notice must be attached to the complaint.

This is actually good news for landlords, because sending a notice of nonpayment will help the tenant qualify for emergency assistance, assuming that they are otherwise eligible. If the landlord is more concerned about the money that the tenant owes and does not want to get rid of the tenant, then I would send the notice of nonpayment. However, if the landlord decides that the landlord would prefer to get rid of the tenant and have the tenant leave, then I think I would give the requisite notice required under the lease.

Expedited Evictions

To qualify for an expedited eviction, the tenant must engage in behavior that seriously endangers the safety of other residents or intentionally and seriously damages the property of the landlord or another tenant. Expedited hearings are limited only to those claims, and cannot be combined with any additional claims, such as breach of lease, nonpayment of rent, or holding over.

If I were a landlord, I would not waste my time bringing in expedited eviction. The benefit that you get – having a hearing within 5 – 7 days – is far outweighed by the limitations, both in terms of what you can bring in expedited eviction for and the fact that you only get one shot at service. I

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have brought countless evictions, and can remember only one time when the facts warranted bringing an expedited eviction – and we brought that eviction only because the city asked us to, and we got really lucky on service.

Required Attachments to Eviction Complaint

An eviction complaint must include a copy of the current written lease and any relevant lease addenda, and accounting or statement listing the amounts of unpaid rent if the eviction is based on unpaid rent, identify the specific clauses in the lease that have been violated if the complaint alleges breach of lease, identify the conduct in question that constitutes a violation of 504B.171, attach a copy of the notice to vacate or notice to quit if alleging holding over, and state in the complaint whether the tenancy is affected by a federal or state housing subsidy program through Sec. 8, the low income housing tax credit program, or any other similar program, and include the name of the agency that administers the housing subsidy program.

I can't speak for other attorneys who represent landlords, but I tend to do this anyway, so it is no skin off my nose.

Dismissal and Expungement of Nonconforming Complaint

If landlord files a complaint that does not comply, the court must dismiss and expunge the eviction from the tenants record. However, if the complaint complies, the Court Administrator will issue a Summons that contains additional resources for tenants.

Landlords who are pro se – and attorneys who represent landlords – should make sure to attach the required addenda to the eviction complaint, or the complaint will be dismissed and expunged. However, even if the landlord files a nonconforming eviction complaint, I tend to think that there are opportunities for settlement discussions with the tenant.

Additional Requirements for Affidavit of Plaintiff

If filing an Affidavit of Plaintiff, the landlord must include that the landlord has communicated to the defendant that an eviction hearing has been scheduled, including the date, time, and place of the hearing specified in the summons, by a form of written communication that the plaintiff regularly uses to communicate with the defendant that have a time and date stamp.

I don't understand the necessity of this statute, because the Court administrator is already required to issue a Summons with exactly the same information. If a landlord files an Affidavit of Plaintiff, the landlord should include the requisite language. If the landlord communicates what is required to the tenant by letter, I would put it in big bold ALL CAPITAL

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letters "**DATE AND TIME STAMP**." I think I would file that letter with the court to show compliance with the statute.

Tenant Not Required To Post Bond or Other Security to Get a Trial Unless Trial Is More Than 10 Days Away

If a tenant requests a trial, the court may not require the tenant to post bond or other security, unless the date of the trial is more than 10 days away. In that case, the court may order security and an amount deemed appropriate by the court. Further, when scheduling a trial, the court must, thorough, and timely adjudication of the merits of the case, including the complexity of the matter, the need for the parties to obtain discovery, the need for the parties to ensure the presence of witnesses, the opportunity for the defendant to seek legal counsel and raise affirmative defenses, and any extenuating factors enumerated under section 504B.171.

Some unscrupulous tenants request a trial thinking that it will get them more time. Tenants who have decided that they need more time to move out should simply ask the landlord – they may be very surprised by the results. From the landlord's perspective, I would request that trial be scheduled more than 10 days in advance so that the landlord (or landlord's attorney) can ask the court under the statute to require that the tenant post the requisite security.

Stay of Writ of Recovery

The court can stay the Writ of Recovery for up to seven days, unless the eviction is brought for nonpayment, illegal activity, serious endangerment, or intentional and serious property damage

Currently, the Writ of Recovery can be stayed for up to 7 days, regardless of why the eviction is brought. However, under this statute, the Writ cannot be stayed for evictions based on nonpayment, illegal activity, serious endangerment, or intentional and serious property damage.

As such, this is a boon to landlords – and attorneys who represent landlords – who bring evictions for the reasons outlined in the statute. This statute will provide leverage to landlords to use in negotiating settlement agreements.

New Requirements for the Writ of Recovery under 504B.361

The Writ of Recovery must include the following language:

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"You have the right to seek legal help. If you can't afford a lawyer, free legal help may be available. Contact Legal Aid or visit www.LawHelpMN.org to know your rights and find your local Legal Aid office."; and

(2) the following statement: "To apply for financial help, contact your local county or Tribal social services office, apply online at MNBenefits.mn.gov, or call the United Way toll-free information line by dialing 2-1-1 or 800-543-7709."

504B.361 also provides that the Court Administrator will develop uniform forms for the Summons and Writ/Order to Vacate. However, until that happens, I expect that tenants will bring a lot of motions to quash based on the fact that the Writ of Recovery does not conform to the statute.

Appeals

If the defendant appeals, court may order the defendant to pay a bond but cannot include back rent, late fees, disputed charges or any other amount in excess of regular rent as it accrues each month.

This statute limits the authority of the court to require a tenant to pay a bond for more than the amount of monthly rent as it accrues if the tenant appeals. The law will have the effect of encouraging tenants to appeal as a way of getting more time. I suspect that attorneys who represent tenants will threaten appeals as a way of forcing a landlord to agree to a settlement agreement that the landlord might not otherwise agree to.

484.014: Expungement

The court may order expungement if the interest of judgment are not outweighed by the public knowing about the eviction. A court will, without motion of either party, order expungement for the following additional reasons:

(2) if the defendant prevailed on the merits;

(3) if the court dismissed the plaintiff's complaint for any reason;

(4) if the parties to the action have agreed to an expungement;

(5) three years after the eviction was ordered; or

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(6) upon motion of a defendant, if the case is settled and the defendant fulfills the terms of the settlement.

An eviction filing is not accessible to the public until the court enters a final judgment on the matter.[1]

This statute is both positive and negative for landlords. As a general rule, I do not encourage landlords to oppose expungement except in extraordinary circumstances. I do not mind expungement at all, unless there are good reasons to oppose expungement.

However, both parties have to agree to expunge an eviction, and this may encourage more settlement discussions. Nevertheless, I think that making eviction filings nonpublic takes away a significant amount of leverage from the landlord.

LEASES

504B.114: Pet Declawing and Vocalization Prohibited *Landlords cannot refuse to rent to or require that a tenant have a pet declawed or devocalized. Landlords who do so will face a civil penalty of $1,000.*

My recommendation is that landlords should not allow pets, and if they do, they should comply thoroughly with this law. Where this will get really interesting is in the case of service or companion animals. Although a thorough discussion of service or companion animals is beyond the scope of this article, landlords are required to make a reasonable accommodation upon a showing by a tenant that the animal in question qualifies as a service or companion animal. If a tenant makes such a showing, the landlord should comply fully with this law.

504B.120: Prohibited Fees: *Landlords must disclose all non-optional fees on the first page of the lease agreement. Landlords must also disclose in the lease agreement whether utilities are or are not included in the rent. Landlords who fail to make those disclosures are liable to tenants for triple damages and reasonable attorney fees.*

Landlords should simply incorporate all fees into the amount of monthly rent, but make sure to thoroughly and accurately disclose what is included in the amount of monthly rent. If the landlord decides to charge non-optional

[1] In an order dated August 8, 2023 (ADM 10 – 8050), the Minnesota Supreme Court abrogated the portion of the statute relating to eviction filings being nonpublic, presumably on Separation of Power grounds, saying that "[e]viction records are public except as authorized by court rules or court order."

fees to a tenant, I would comply thoroughly with this law, and disclose all non-optional fees on the first page of the lease.

504B.182: Initial and Final Inspections Required*: The landlord must notify the tenant of the right to request a move in and move out inspection. The move-in inspection must occur within 14 days, and the move out inspection must not incur earlier than five days before the termination of the tenancy. However, with the agreement of the tenant, a landlord may provide photos or videos of a rental unit in lieu of the move-in inspection. If the tenant does not request a move out inspection, the obligations of the landlord in that regard are discharged. The landlord and tenant may waive these inspection requirements only in accordance with the statute, but not in the lease. In other words, a provision in the lease that says the tenant waives the right to inspection is void.*

The easiest way for a landlord to comply with this law is to disclose these inspection rights in the lease, and have the tenant initial that paragraph. If the tenant waives either of these rights to a move-in or move out inspection, that waiver should be in a writing that is separate from the lease.

I am afraid that a savvy tenant might take advantage of the move-out inspection. More specifically, a unit might be in pristine condition when a landlord inspects before the tenant moves out, but after the landlord leaves – and before the tenant moves out – the tenant will trash the place. In the old days, tenants use to do relatively benign things like cut the copper piping out of the walls and sell it for scrap. However, these days, tenants who want to get back at their landlords, for whatever reason, pour concrete mix down the drains, let it dry, and then leave the water running when they vacate. This creates a huge mess for the landlord.

504B.211: Right to Privacy*: The landlord must provide a residential tenant with 24 hours advance notice before entering the property, may only enter between the hours of 8 AM and 8 PM, the landlord must provide the tenant with an anticipated time or window of time of entry. Although a tenant may agree to allow the landlord to enter sooner than 24 hours, the tenant cannot waive this right as a condition of entering into or maintaining the lease. The penalty is increased to $500 for each violation and reasonable attorney fees.*

Smart landlords should provide a tenant with a 24-hour notice of intent to enter, only enter for a reasonable business purpose, and provide a window of time for entry. This is the best business practice for landlords anyway, so the change should not be that big of a deal. Landlords can still enter

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without notice in the event of an emergency, but should avoid doing so if possible and always make an effort to notify the tenant of entry in writing.

LANDLORDS

504B.161: Implied Covenant of Habitability (Temperature): *The landlord is required to supply or furnish heat at a minimum temperature of 68°F from October 1 through April 30. Like all covenants of habitability, this requirement cannot be waived by the tenant.*

Landlords should make sure to supply heat at a minimum temperature of 68°F from October 1 through April 30. Landlords, providing appropriate notice, should test the heating system in September and throughout the heating months to make sure that the requisite temperature is met.

504B.375: Unlawful Exclusion or Removal; 504B.381, subds. 1 and 5: *Tenants can seek emergency relief for the following items:*

(i) a serious infestation;

(ii) the loss of running water;

(iii) the loss of hot water;

(iv) the loss of heat;

(v) the loss of electricity;

(vi) the loss of sanitary facilities;

(vii) a nonfunctioning refrigerator;

(viii) if included in the lease, a nonfunctioning air conditioner;

(iv) if included in the lease, no functioning elevator;

(x) any conditions, services, or facilities that pose a serious and negative impact on health or safety; or

(xi) other essential services or facilities.

Tenants do not have to provide any particular proof that they are provided notice of necessary repairs to the landlord, and the filing fee is reduced to the amount required for a conciliation court complaint.

Landlords are required to provide most of these services anyway, but I would recommend making it clear in the lease what services the landlord is

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responsible for providing and maintaining. For example, I once helped a client who had in his lease that the rental premises currently had central air conditioning, but that the landlord was not responsible for repairing or maintaining that service.

I don't know about you, but I am troubled that tenants do not have to provide any particular proof that they provided notice to the landlord, because you will get a lot of rent escrow cases filed claiming that notice was given when in fact notice was never given. Most landlords that I know would take care of the problem if they know about it.

The reduced filing fee means that tenants have less skin in the game. Tenants would be real smart to communicate with their landlords about repair issues, and include the notice in their petition. If tenants notify the landlord about repair issues before hauling off and filing a petition, they might actually get those issues resolved without having to go to court.

504B.135: Terminating Tenancy at Will: *When a tenant neglects or refuses to pay rent, the section authorizing the landlord to provide 14 days advance notice to quit is deleted.*

Landlords should only enter into month-to-month leases with tenants, unless there is a good reason for doing otherwise.

504B.144: Early Renewal of Lease: *If the lease is for a period of time longer than 10 months, a landlord must wait until at least six months from the expiration of the current lease before requiring a tenant to renew. The statute says that nothing prevents the landlord from waiting until closer to the date of expiration, but any attempt to waive this provision is contrary to public policy and void.*

Landlord should do the math, follow the statute, and not attempt to waive its provisions.

504B.171: Limitation on a Crime Free Drug Free Lease Provisions: *Conduct of a tenant, household member of the tenant, or a guest of the tenant that occurs off the premises or curtilage of the premises is not grounds for eviction unless (1.) the conduct would constitute a crime of violence against another tenant, the tenant's guest, the landlord, or the landlord's employees, regardless of whether a charge was propped or condition contained or (2.) the conduct results in a conviction of a crime of violence against a person unrelated to the premises.*

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Criminal conduct away from the rental premises that does not harm another tenant, that tenant's guest, the landlord, or the landlord's property is not a grounds for eviction. Landlords should be evict only based on notice, and be extremely careful before bringing an eviction based on conduct constituting a crime of violence.

I may be biased here, but I would recommend that landlords seek the advice of competent legal counsel before bringing an eviction on the grounds referenced in this statute.

New subsection(c)for cannabis: *Landlords can only prohibit consumption of cannabis products by smoking or vaping. The statute specifically says that landlords can prohibit tenants from consuming cannabis products "by combustion or vaporization of the product and inhalation of smoke, aerosol, or vapor from the product." Landlords cannot prohibit tenants from legally possessing cannabis, but can be held liable for failing to enforce a lease that prohibits smoking and they been cannabis.*

This puts landlords in a awkward position because, on the one hand, landlords have to prohibit the smoking or vaping of cannabis, but on the other hand can be held liable for failing to enforce a lease that prohibits such smoking and vaping. In other words, a tenant who is "who is injuriously affected or whose personal enjoyment is lessened by a nuisance" by the actions of a different tenant who is smoking or vaping cannabis can sue the landlord for "injunctive relief and the greater of the person's actual damages or a civil penalty of $500." The text in quotations is from Minn. Stat. § 342.82.

I bet that unscrupulous tenants will take advantage of the language in the statute to sue landlords when what those tenants should do is call the police to report the nuisance and then notify the landlord. Again, and I will see it until I am blue in the face, communication is key – and tenants will be much better served by reporting a nuisance and suspected drug use to the proper authorities then by suing a landlord civilly. Even though the statute authorizes the affected tenant to obtain injunctive relief, I bet that the landlord will have difficulties proving the landlord's case.

504B.172: Recovery of Attorney Fees: *If the lease says that the prevailing party gets attorney fees and court costs under 549.02, the tenant does too if the tenant prevails.*

Under the legal principle of what is good for the goose is good for the gander, this makes a lot of sense. Tenants have been able to get attorney fees and court costs for a long time under a lease provision that gives the

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landlord the right to collect them, so I don't really see the purpose of this change. Maybe someone can enlighten me?

504B.266: Termination of Lease upon Infirmity of Tenant: *If certain conditions are met, a tenant or "authorized" representative may terminate the lease by providing at least two months written notice. This requirement cannot be waived.*

The tenant is responsible for paying rent and any damages that have occurred to the rental premises beyond ordinary wear and tear that might occur during the notice. Landlord should take note of this, and make sure that any notice received is "written." I would recommend that landlords have the tenant appoint an agent in the lease for purposes of this statute and to take charge of the tenant's personal property.

This statute is fairly similar to the termination of the lease upon the death of a tenant, and will not come as a surprise to many landlords. It certainly does not come as a surprise to me.

CONCLUSION

The key takeaways here are that landlords should only enter into month to month leases, and evict based only on notice. Minnesota is a very tenant friendly state these days, and that the social climate in Minnesota definitely favors tenants.

What bothers me most about these changes is that they were enacted without consulting with a very important group of stakeholders: namely, property owners and landlords. Had that group been consulted, I think that the changes would have been a lot better, both for landlords and tenants.

The effect of these changes will be to push smaller landlords – who might overlook a recent eviction, a felony criminal conviction, or other detrimental information – out of the rental market. I would challenge attorneys who represent tenants to answer the question: Do you want to deal with huge, behemoth, corporate landlords who will not overlook deficiencies in the application, and will not give a prospective tenant who has negative information on the rental application a chance?

As an attorney who represents landlords, I would much rather settle a case as opposed to litigate it to death. I know that I don't want to face that scenario, but that is where we are headed – and these laws are going to shove us societally in that direction.

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Big, corporate landlords will have the resources to fight and be less likely to settle an eviction case on terms that are objectively favorable to the defendant. Is that really what attorneys who represent tenants want?