

# **THE CURRENT STATE OF LANDLORD-TENANT LAW: The Landlord's Perspective**

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# MYTH: LANDLORDS ARE EVIL



# OBSERVATIONS

- Evictions have been getting factually and legally more complex and expensive
- If it was not before, law is very lopsided in favor of tenants
- Lots of “accidental” landlords who either
  - inherit a property with a tenant in it
  - Have let someone move in
- Landlords can almost always count on having a trial or proving that they meet an exception
- Attorneys on both landlord and tenant side have had to get more aggressive and less collegial
- Lots of misinformation out there, despite efforts to educate both landlords and tenants

# BACKGROUND CHECKS

- Landlords are well advised to screen tenants and conduct background checks
- Why: tenants may be with you for a long time
- Treat all applicants exactly the same
- Have written guidelines for accepting or rejecting an application
- Get consent from applicant in writing that using public and nonpublic resources to conduct background check
  - Public: MNCIS, BCA
  - Nonpublic: Private Tenant Screening Businesses
- Look for red flags:
  - Recent eviction or multiple evictions
  - Felony conviction, especially for crime of deceit

# NOTICE

- If Periodic Tenancy, then tenancy ends on date specified in lease, and can only be terminated in accordance with lease
- If Tenancy At Will, then Minn. Stat. § 504B.135 controls Notice
  - 1 full rental period + 1 day in advance
  - If tenant does not pay rent when due, then can give 14 days notice to terminate
  - If no rent is due, then 90 days in advance notice is required
- If No Tenancy At All, then occupant is squatting and has no rights under Minn. Stat. Ch. 504B.

# EXECUTIVE ORDER 20-79

- Suspends residential landlord's right to bring evictions against residential tenant(s) as long as peacetime emergency exists
- Exceptions for violations of Minn. Stat. 504B.171, seriously endangering health or safety of other tenants, if landlord or landlord's relative needs to move into the property, or for significant damage to rental premises
- Must give appropriate notice before bringing eviction
- No exception or help for commercial tenants
- Currently expires on March 12, 2021

# CDC EVICTION MORATORIUM

- Extended until March 31, 2021
- Does not apply to state with more restrictive moratorium
- Tenant has to certify to landlord that they
  - Have used “best efforts” to obtain all government assistance for rent or housing;
  - Meet income requirements
  - Are unable to pay the full rent due to a loss in income
  - Is using “best efforts” to make timely partial payments
  - Eviction would likely render the tenant homeless

# WHEN CAN YOU BRING AN EVICTION?

- During peacetime emergency, as long as Executive Order 20 – 79 remains in effect
- Need to meet exception to Executive Order
- Landlord should:
  - Pull police reports
  - Ask police to do a welfare check if there are no police reports
  - Photograph any visible damage to property and report seem to police
  - Do actions of target seriously endanger other tenants?
    - Curious because “others” must be in danger
    - Tenant can seriously endanger themselves all they want
  - Does landlord or landlord’s family member need to move?
- If landlord can meet an exception, then must give requisite notice
- After peacetime emergency or expiration of Executive Order 20 – 79, then federal eviction moratorium will take effect



# WHAT HAPPENS WHEN YOU BRING AN EVICTION?

- File Eviction Action Complaint
- Complaint is reviewed to make sure that you meet an exception to Executive Order 20 – 79
  - If you meet an exception, Court Administrator will schedule a hearing within two weeks of the date of the Summons, and issue the Summons
  - If you do not meet an exception, case will be scheduled when peacetime emergency is lifted
- You are responsible for serving the summons and complaint in accordance with Minn. Stat. § 504B.331
  - Must be served at least 7 days prior to the hearing
  - Personal or substitute service
  - May post service if
    - Attempt personal or substitute service on two separate days, once after 6 PM
    - File Affidavit of Plaintiff, Affidavit of Not Found, and Affidavit of Mailing with Court administrator prior to posting

# ALTERNATIVES TO EVICTION

- Encourage landlords to explore alternatives
  - Cheaper, easier, and faster for landlord and tenant
    - Cash for Keys
    - Report Delinquency to Credit Agencies
    - Demand Letter
    - Harassment Restraining Order, Order for Protection, or DANCO
    - Ejectment
    - Involuntary Bankruptcy
- Voluntary settlement whenever possible
  - But what you do if tenant owes you \$50,000 and will not communicate
  - How get tenant's attention?

# WHAT HAPPENS AT THE HEARING?

- Will be required to prove that meet exception
- The tenant will not show up and you win by default
- The tenant shows up and you are able to work out a settlement agreement
- The tenant shows up and you are **not** able to work out a settlement agreement, but the tenant admits the violation anyway
- The tenant requests a trial
- Most exceptions are fact-based, so expect tenant to request trial

# WHAT'S IN THE FUTURE?

- No inside baseball here: just some thoughts
- After Executive Order 20 – 79 expires, CDC eviction moratorium will apply, but
  - Gov. Walz might sign a different EO
  - State legislation
  - Federal eviction moratoria
  - Federal legislation
- State or federal eviction moratoria or legislation will probably expand permissible scope
- I support various eviction moratoria and laws, even though they make my life more difficult

# ANTICIPATE

- “Flood” of evictions once moratorium is lifted
- Landlords might be able to give notice, then evict based on notice
- Right to evict based on unpaid rent will continue to be curtailed
- Landlords and tenants have to cooperate
- Tenants should continue to pay rent, regardless of eviction moratoria or laws
- Tenants should let the landlord know if they anticipate challenges in paying the full amount of rent due

# SECURITY DEPOSITS

- Security Deposits
  - Governed by Minn. Stat. 504B.178
  - Landlord can deduct from security deposit only damages beyond ordinary wear and tear
  - security deposit must be returned within
    - 21 days after tenant moves out **AND**
    - after tenant provides forwarding address or delivery instructions in writing
    - by language of statute, 21-day clock does not start running until after forwarding address or delivery instructions
    - But see: *Mungall v. Garry*, File No. A18-2020 (Minn. Ct. App. June 17, 2019) (unpublished)

# ABANDONED TENANT PROPERTY

- Potentially governed by two statutes:  
504B.271 and 504B.375
  - If stored on-site: 28 days
  - If stored off-site, 60 days
- Landlord may dispose of or sell property after expiration of time period
  - If tenant abandons property, then 504B.271 applies
  - If Sheriff removes tenant, then 504B.375 applies

# PRACTICE HINTS

- Landlord must meet an exception to eviction moratorium 20 – 79
- Question landlord extensively and review police reports
- Judge can only give the tenant 7 days to pay up or move out
- If a settlement involves an agreement, I do not go out further than 1 – 2 months, but will go out further if necessary
- If the tenant requests a trial, don't panic
  - Tenant has right to request trial
  - Trial will be scheduled within 7 days
  - If eviction is brought for unpaid rent alone, ask the judge to condition the trial on the payment of unpaid rent into Court
  - If the judge orders the tenant to pay unpaid rent into court to get a trial, and the tenant does not, then the tenant is in contempt – and the trial will be canceled



# EXAMPLE: NON-PAYMENT OF RENT

- Tenant has not paid rent
  - Are there any police reports?
  - If not, have landlord do welfare check.
  - Does landlord meet exceptions to Executive Order 20–79?
    - If not, is landlord willing to consider alternatives?
  - Beware partial payment
    - accepting partial payment of rent waives right to evict unless “magic language” found in 504B.291, subd. 1(c)
    - However, landlord might accept payment plan or just want to put money in landlord’s pocket

# EXAMPLE: NOTICE

- Tenant lives in parents' house
- Landlord has inherited house with tenant or squatter
  - has permission, but does not rent or provide any services, then 504B.135(a): 90 day notice
  - Not difficult to “manufacture” permission
  - However, if tenant pays rent, 30 + 1 day notice
  - If tenant is supposed to pay rent but doesn't, then 504B.135(b): 14 day notice
  - But 504B.265, subd. 1 appears to conflict
- What would I do?
  - Depends on what client wants
  - Have client get tenant to say they are going to be out by a certain date, and put that date in writing (email, text, etc.)
  - Bring eviction if not out by that date

# Thank You!

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