

PUBLICATIONS
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HOUSING LAW IN MINNESOTA

1986-
Present Authored and update materials available at Housing Law in Minnesota at <http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html> including:

RESIDENTIAL EVICTION DEFENSE AND TENANT CLAIMS IN MINNESOTA, an over 600 page manual used by attorneys, law students, advocates, and tenants in Minnesota and around the country

Cited in:

- A. Moreno, *The Problems of Expanding Landlord-tenant Law in Minnesota Through Use of Legal Fiction*, 39 MITCHELL HAMLINE L.J. PUB. POL'Y & PRAC. 55, 78 n.170 (Spring, 2018)
- L. McDonough, *Wait a Minute! Residential Eviction Defense in 2009 Still is Much More than "Did You Pay the Rent?,"* 35 WM. MITCHELL L. REV. 762, 765 n.29 (2009)
- M. Gottesman, *End Game: Understanding the Bitter End of Evictions*, 8 Conn. Pub. Int. L.J. 63, 72 n.86, 107 n.332 (Fall/Winter 2008)
- M. Michael, *End Game: Understanding the Bitter End of Evictions*, at 14 n.68, (Yale Law School Student Scholarship Paper 48, 2007)
https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1048&context=student_papers
- L. McDonough, *Wait a Minute! Residential Eviction Defense is Much More than "Did You Pay the Rent?,"* 28 WM. MITCHELL L. REV. 65, 66 n.3 (2001)

Eviction Answer Forms
Expungement Forms
In Forma Pauperis Forms
SECURITY DEPOSITS IN MINNESOTA
Law journal articles

Slide shows on repairs, lockouts, and ethics

BOOKS

- 2015 Contributing Editor, THE LANDLORD'S GUIDE TO MINNESOTA LAW (HOME Line 2015)
- 2012 Contributor, Chapter 11, *Eviction and Subsidy Terminations*, in HUD HOUSING PROGRAMS: TENANTS' RIGHTS (National Housing Law Project, 4th ed. 2012, 5th ed. 2018)

LAW REVIEW ARTICLES

- 2013 *Then and Now: The Uniform Residential Landlord and Tenant Act of 1972 and the Current Revision Process – Still Bold and Relevant?*, 35(4) ARK. LIT. ROCK L. REV. 975 (Summer 2013)
- 2012 *To Be or Not to Be Unpublished: Housing Law and the Lost Precedent of the Minnesota Court of Appeals*, 35 HAMLIN L. REV. 1 (2012), on Westlaw at 35 HAMLIN 1

Cited in:

- Justice David L. Lillehaug and Nathan J. Ebnet, *A Fresh Look at the Problem of Unpublished Opinions*, Bench & Bar of Minnesota (Dec. 2016)
<http://mnbenchbar.com/2016/12/unpublished-opinions/>
<http://mnbenchbar.com/wp-content/uploads/2016/12/1216-Digital-Editio n.pdf>
- L. Wood, *Comment: Out of Cite, Out of Mind: Navigating the Labyrinth That Is State Appellate Courts' Unpublished Opinion Practices*, 45 U. Balt. L. Rev. 561 (2016)
- S. Rempell, *Unpublished Decisions and Precedent Shaping: A Case Study of Asylum Claims*, 31 Geo. Immigr. L.J. 1 (2016)
- V. Frank, *The U.S. Court of Appeals for Veterans Claims Rule 30(a): Amending the Rule to Allow Citation to Nonprecedential CAVC Opinions for Precedential and Persuasive Authority*, 24 Fed. Cir. B.J. 157 (2014-15)

- 2009 *Wait a Minute! Residential Eviction Defense in 2009 Still is Much More than "Did You Pay the Rent?"*, 35 WM. MITCHELL L. REV. 762 (2009), on Westlaw at 35 WMLR 762; also at <http://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1306&context=wm lr;>

Reviewed in M. Levin, *Digest of Selected Articles*, 38 Real Est. L. J. 510

(Spring 2010):

Unlawful detainer (summary eviction) laws often lull landlords, tenants, and lawyers into thinking that all eviction cases are simple matters of whether the tenant paid the rent or breached the lease or failed to vacate in a timely manner. This article challenges this notion by examining the complex mixture of potentially applicable laws: state statutes governing evictions and general landlord-tenant relations, the common law of property and contracts, municipal ordinances, and a variety of potentially applicable federal laws governing fair housing and public and subsidized housing programs. While this article focuses on applications of the law in Minnesota, it is representative of how the confluence of several legal sources makes the areas of eviction and general landlord-tenant law confusing and challenging.

This article is presented as a follow-up to a 2001 article by the same author that focused on state landlord and tenant statutes and common law. In this article, the author addresses an exhaustive range of matters relevant to defenses in eviction proceedings. I have chosen not to elaborate here, but merely to provide a representative list of topics addressed: situations of uncertainty regarding the existence of a landlord and tenant relationship, special rules regarding public and subsidized housing, jurisdictional issues, stay of evictions pending other litigation, satisfying technical preconditions to recovery of the property, special rules regarding tenants who are in military service, covenants of habitability, rental licenses, rent issues (e.g. conditions precedent, notices regarding rent increases, late fees, waiver, accepting partial payments, amount due, utilities and other charges), tenant redemption rights, violation of tenant privacy and security, illegal activity, potential application of the Fair Debt Collection Practice Act, whether multiple tenants have joint liability, rights and responsibilities regarding foreclosed properties, retaliatory evictions, issues regarding notices, discrimination, manufactured home park lots, potential application of the Uniform Relocation Act, specific issues regarding breach of lease defenses (e.g. no right of entry clause, implied waiver or modification of a lease term, unilateral modification, waiver of breaches by acceptance of rent, reasonable accommodation of disabilities, unconscionability, materiality of breach, cure of lease violations, tenant guest and trespass rules, eviction for emergency police calls, evicting one tenant among others, combining actions for nonpayment of rent and lease violations), post trial issues (e.g. motions for costs, disbursements, and attorney fees), and appeals.

An eviction case can be as simple as determining whether the tenant paid the rent. This is far too narrow a view, however, in many cases. One needs to fully appreciate the complex mix of potentially related laws to properly evaluate the rights of landlords and tenants.

Cited in:

- J. Olson and D. MacGregor, 2-26 MINNESOTA RESIDENTIAL REAL ESTATE §§ 26.12, 26.17 (Matthew Bender 2017)
- V. Wiebe, *The Immigration Hotel*, 68 Rutgers L. Rev. 1673 (2016)
- L. McDonough, *Then and Now: The Uniform Residential Landlord and Tenant Act of 1972 and the Current Revision Process – Still Bold and Relevant?*, 35(4) ARK. LIT. ROCK L. REV. 975, n.7 (Summer 2013)
- L. McDonough, *To Be or Not to Be Unpublished: Housing Law and the Lost Precedent of the Minnesota Court of Appeals*, 35 HAMLINE L. REV. 1, 42 (2012)
- *Remote Deletion Technology, License Agreements, and the Distribution of Copyrighted Works*, 97 Va. L. Rev. 1223, 1261 n.127 (2011)
- *How Evictions from Subsidized Housing Routinely Violate the Rights of Persons with Mental Illness*, 5 NORTHWESTERN JOURNAL OF LAW & SOCIAL POLICY 118, n 87 (2010)
- A. Juergens, *Forward*, 35 WM. MITCHELL L. REV. 754, 759 n.21 (2009)
- Lexis Advance, Research References & Practice Aids for Minn. Stat. §§ 117.51, 303.3, 325N.18, Ch. 327C, 333.01, 363A.09, 481.02, 484.014, Ch. 504B, 513.075, 523.01, 541.05, 549.02, 549.04, 558.02, 559.02, 559.21, 580.23, 588.01, 609.02, 609.5317, 645.15, and 645.44.

2009 *The Practical Impact of the Court of Appeals: A Panel Discussion*, 35 WM. MITCHELL L. REV. 1334 (2009), on Westlaw at 35 WMLR 1334

Cited in:

- L. McDonough, *To Be or Not to Be Unpublished: Housing Law and the Lost Precedent of the Minnesota Court of Appeals*, 35 HAMLINE L. REV. 1, 42 (2012)

2009 *Minnesota Tenants Gain More Rights in Foreclosure Through Effective Legislative Task Force Collaboration*, 42 CLEARINGHOUSE REVIEW 596 (March-April 2009)

2007 *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REVIEW 55 (May/June 2007), posted at <http://povertylaw.homestead.com> under Reading, and Housing Law

Reviews:

- R. Hornstein, *Litigating Around the Long Shadow of Department of*

Housing and Urban Development V. Rucker: the Availability of Abuse of Discretion and Implied Duty of Good Faith Affirmative Defenses in Public Housing Criminal Activity Evictions, 43 U. TOL. L. REV. 1, 22 n.184 (Fall 2011):

“Lawrence R. McDonough and Mac McCreight have co-written an insightful article on criminal activity evictions that explores the regulatory framework for One-Strike evictions in public housing, Section 8 programs and other federally assisted housing programs. Their article examines a number of defenses that are available in One-Strike evictions.”

- Legal Services of Northern California, <http://lsnc.net/housing-programs>: “[The] definitive article by Larry McDonough, adjunct law professor and Managing Attorney at Legal Aid Society of Minneapolis, on practical steps to defending evictions based on alleged criminal activity in most major federal housing programs, including Public Housing and Section 8 programs.”

Cited in:

- F. Fuchs, *Defending Families and Individuals threatened with Eviction from Federally Subsidized Housing, HOME-Funded Properties, § 515 Rural Rental Housing, § 8 Moderate Rehabilitation, Shelter Plus Care Housing, Supportive Housing for the Elderly and Persons with Disabilities, Continuum of Care Housing, HOPWA, Tax Credit Housing, Section 8 Housing Choice Voucher Program, Public Housing, Project-Based Voucher Program, and Section 811 Project Rental Assistance* at 41 n.145, 98 n.440 (Texas Rio Grande Legal Aid 2018)
- *Roadmap to Reentry*, n.2994 (Root & Rebound 2018)
<https://roadmap.rootandrebound.org/understanding-cleaning-up-your-criminal-record/cleaning-up-your-criminal-record-later-in-reentry/california-expungement-of-state-convictions/what-does-expungement-do/>
- *The Eviction Process in Kentucky*, Legal Aid University CLE Seminar, at 17 (Kentucky Bar Association Young Lawyers Division Feb. 14, 2014)
https://cdn.ymaws.com/www.kybar.org/resource/group/c0caebd7-fad3-4c8e-a8c9-51de0e5122d3/Seminar_Materials/yld_winter_2014.pdf
- L. McDonough, *Then and Now: The Uniform Residential Landlord and Tenant Act of 1972 and the Current Revision Process – Still Bold and Relevant?*, 35(4) ARK. LIT. ROCK L. REV. 975, n.145 (Summer 2013)
- W. Kaplan & D. Rossman, *Called “Out” at Home: the One Strike Eviction Policy and Juvenile Court*, 112 DUKE FORUM FOR LAW & SOCIAL CHANGE, Vol. 3:109, 119 n.68, 120 n.74 (2011)
<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1019&context=dfllsc>
- D. Brown, *One Strike and You're Out: Padilla Advisement About Public*

Housing Eligibility (November 30, 2011)

<https://ssrn.com/abstract=1966545>

<http://dx.doi.org/10.2139/ssrn.1966545>

- B. Millstein, *Housing Series: Finding Housing for People with Criminal Histories* (Projects for Assistance in Transition from Homelessness (PATH))
- J. Smith, *From Arrest to Reintegration: A Model for Mitigating Collateral Consequences of Criminal Proceedings*, 24-FALL CRIM. JUST. 42, 47 (2009)
- L. McDonough, *Wait a Minute! Residential Eviction Defense in 2009 Still is Much More than "Did You Pay the Rent?"*, 35 WM. MITCHELL L. REV. 762, 845, 847-48, n.487, 493-95 (2009)
- J. McGregor Smyth, Jr., *From Arrest to Reinte Grantion: a Model for Mitigating Collateral Consequences of Criminal Proceedings*, 24 CRIM. JUST. 42, 48, 51, 54 (2009)
- *An Affordable Home on Re-entry: Federally Assisted Housing and Previously Incarcerated Individuals*, at 7 n.1, 32 n.46, 157 n.7, 158 n.14 (National Housing Law Project 2008)
https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=19&ved=2ahUKEwj_55602OXmAhWDWc0KHQL8B1I4ChAWMAh6BAGJEAc&url=http%3A%2F%2Fwww.reentry.net%2Fny%2Fsearch%2Fdownload.149254&usg=AOvVaw2oeUrqlqhcRfYDAzoshgrw
- M. Michael, *End Game: Understanding the Bitter End of Evictions*, at 4 n.11 (Yale Law School Student Scholarship Paper 48, 2007)
https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1048&context=student_papers
- S. Fischlowitz & P. Knapp, *From Here to Next Tuesday: the Minnesota Public Service Program, Ten Years After*, 26 HAMLIN J. PUB. L. & POL'Y 223, 236 n.15 (2005)

2006

Still Crazy after All of These Years: Landlords and Tenants and the Law of Torts, 33 WM. MITCHELL L. REV. 427 (2006), on Westlaw at 33 WMLR 427.

Cited in:

- J. Olson and D. MacGregor, 2-26 MINNESOTA RESIDENTIAL REAL ESTATE §§ 26.06 (Matthew Bender)
- J. Backman, D. Thomas, and B. Daniels, 2-16 DISPUTES BETWEEN ADJOINING LANDOWNERS-EASEMENTS § 16.10 (Matthew Bender)
- 5-40 THOMPSON ON REAL PROPERTY, THOMAS EDITIONS §§ 40.20, 41.12 (David A. Thomas, ed. LexisNexis)
- M. Lonegrass, *Eliminating Landlord Retaliation in England and Wales--Lessons from the United States*, 75 La. L. Rev. 1071 (2015)
- A. Tritch, *Note: It's a Bird, It's a Plane! But Manufacturers Have No*

Duty to Train: When Finding No Duty in Minnesota Products Liability Led to Misstating Common Law Undertakings, 11 U. St. Thomas L.J. 331 (2014)

- L. McDonough, *Then and Now: The Uniform Residential Landlord and Tenant Act of 1972 and the Current Revision Process – Still Bold and Relevant?*, 35(4) ARK. LIT. ROCK L. REV. 975 (Summer 2013)
- *Cause of Action Against Landlord for Injury Caused by Dangerous or Defective Condition of Stairs or Steps on Residential Premises*, 41 CAUSES OF ACTION 2D 625 (2012)
- *Intentional Infliction of Emotional Distress by Landlord*, 46 Am. Jur. Proof of Facts 2d 429 (2012)
- *Childhood Lead-Based Paint Poisoning Litigation*, 66 Am. Jur. Trials 47 (2012)
- *Retaliatory Eviction Claims*, 99 Am. Jur. Trials 289 (2012)
- L. McDonough, *Wait a Minute! Residential Eviction Defense in 2009 Still is Much More than “Did You Pay the Rent?”*, 35 WM. MITCHELL L. REV. 762, 802 n. 255 (2009)
- Lexis Advance, Research References & Practice Aids for Minn. Stat. §§ 504B.121, 504B.161, 504B.211, 504B.285, 504B.291, and 504B.365.

Also listed in CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA) NEWSLETTER, Books and Publications, at 41 (May 2007)

2001 *Wait a Minute! Residential Eviction Defense is Much More than “Did You Pay the Rent?”*, 28 WM. MITCHELL L. REV. 65 (2001), on Westlaw at 28 WMLR 65

Cited and quoted in *Conseco Loan Finance Co. v. Boswell*, 687 N.W.2d 646, 2004 WL 2340107 (Minn. Ct. App. Oct. 19, 2004)

Also cited in:

- W. Ross, *Protecting the Unsophisticated Tenant: a Call for a Cap on Late Fees in the Housing Choice Voucher Program*, 34 SETON HALL LEGIS. J. 227, 236, 239 n. 51, 56-58, 80, 83 (2010)
- *Down and Out and Now Kicked Out: Residential Lease Evictions and the Automatic Stay*, 23 EMORY BANKR. DEV. J. 585, 588 n.27 (2007)
- *Recent Developments in Kansas Residential Landlord-tenant and Eviction Law*, 55 U. KAN. L. REV. 933 n.3, (2007)
- *State Court Rules and Practices Regarding Special Masters*, SM051 AMERICAN LAW INSTITUTE-AMERICAN BAR ASSOCIATION 87 (2006)
- L. Jokela & D. Herr, *Special Masters in State Court Complex Litigation: an Available and Underused Case Management Tool*, 31 WM. MITCHELL L. REV. 1299, 1325 (2005)
- R. Cockey, *Where Left Meets Right: a Case Study of Class-based*

Economic Discrimination Through Zoning in Salisbury, Maryland, 3 MARGINS: MD. L.J. RACE, RELIGION, GENDER & CLASS 71, 95 n.111 (2003)

- 1983 *Overcoming Barriers to Solar Energy Development in Minnesota*, 1 WM. MITCHELL ENV'T L. J. 1 (1983), posted at http://heinonline.org/HOL/Page?handle=hein.journals/wmelj1&div=4&g_sent=1&collection=journals
- 1982-83 Co-Executive Editor, 1 WM. MITCHELL ENV'T L. J. (1983), posted at http://heinonline.org/HOL/Page?handle=hein.journals/wmelj1&div=4&g_sent=1&collection=journals
- 1981-82 Staff Writer, 8 WM. MITCHELL L. REV. (1982)

MANUALS, ARTICLES, REPORTS, NEWSLETTERS, AND INTERNET MATERIALS

- 2011 *Hamline Trial Practice Clinic Highlights*, and *Public Service Work*, AALS Clinical Section Newsletter at 16-17, 47, (Spring 2011)
- 2011 *2010 Hennepin and Ramsey County Housing Court Judge Review Cases* (Report prepared for the Minnesota Senate Judiciary and Public Safety Committee. April 2011)
- 2000-2013 Advisor to www.projusticemn.org and www.probono.net, sites supporting public interest and *pro bono* work by attorneys and law students.
- 1996 Co-author, *Residential Landlord-Tenant Claims in Conciliation Court: A Bench Book for Conciliation Court Referees* (Minn. Dist. Ct. 4th Dist. 1996)
- 1993 Co-author, *Summary Residential Landlord-Tenant Actions in Housing Court: A Bench Book for Judges, Referees and Mediators* (Minn. Dist. Ct. 4th Dist. 1993)
- 1990-2013 Housing Fact Sheets for the Minnesota Legal Services Coalition, posted at <http://www.lawhelpmn.org/MN/index.cfm>

POTENTIAL FUTURE RESEARCH TOPICS

Book concept: separate treatise and casebook on landlord and tenant law: R. Schoshinski, *American Law of Landlord and Tenant* is dated and no longer particularly helpful to practitioners, legislators or scholars. I envision an analysis of the state of common and statutory law, including two- to three-page sections on each state, as so much of the area is state specific. Many attorneys occasionally practice in the law of landlord and tenant, but few specialize in it. Attorneys whose practice areas cross state lines are faced with regulatory schemes which appear similar but may be substantially different. Since landlord and tenant law covers so many areas of law, such as property, contracts,

consumer, as well as statutory, federal, and administrative law, it is difficult for a non-specialist to master. Such a book could be of great service, and could serve as the basis for a center on the law of landlord and tenant, or as part of public law center.

The case for extending the Gideon right to representation to cases of eviction of public housing tenants for alleged criminal activity: There are efforts around the county to extend the right to legal representation of low-income persons in civil actions. This article would expand on research I already have done regarding why public housing eviction cases involving claims of criminal activity would be a good first step in extending the right, given their similarity with criminal prosecution.

Use of regional substantive law mentors in doctrinal courses

Methods for supporting the work of adjunct clinicians

Comparison of laws around the country as to whether individual records can be admissible like business records, perhaps calling for a new exception to the hearsay rule to allow it

A call to reduce the penalties for innocent copyright violations adopted prior to broad use of the internet, which have been applied to children and young adults downloading small amounts of free music as a result of increased collection agency activity and litigation

An argument for spending more time refining the practice and art of giving advice, since most attorneys spend more time giving advice than writing briefs.

Review of common law and statutes requiring corporations and limited liability corporations to be represented in courts by attorneys

Comparison of state common law and statutes around the country concerning whether tenants can sue landlords in tort for injuries resulting from habitability problems

Application of the Fair Debt Collection Practices Act to eviction actions for rent filed by attorneys