Residential Eviction Defense and Tenant Claims in Minnesota
Sixteenth Edition

July 3, 2025

This revision is in progress.
See the note below on unpublished decisions.

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(manual and forms only)

Note
Landlord and tenant laws were revised in 2023 and effective in 2024, and in 2024, mostly effective in 2025. A few were revised in 2025 effective for 2026, but some effective in 2025.
2023 Housing Laws 2024 Housing Laws 2025 Housing Laws
These laws have not been incorporated into this manual. Stay tuned.

Unpublished Decisions

New appendices beyond Appendix 628 will be posted at Pro Justice MN and PBWorks when done. Before then, new appendices are available from the author.

Appendices up to Appendix 628 are available from the following sites:

Pro Justice MN
Manual, Forms and Scanned Unreported Decisions Filed under
Library, Substantive Law, Housing, Eviction Defense

PBWorks

They also linked in the Wiki Version.
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Pandemic Eviction Evictions
Covering 2020-2023 under Emergency Executive Orders.

QUICK FINDER

Sixteenth Edition, 2019

Thanks again to the attorneys, law students, advocates, legislators, judges, and referees who continue to assert and expand the law for the benefit of tenants. I especially wish to thank Drew Schaffer, Luke Grundman, and Paul Birnberg, who continue to move the law toward a better balance of landlord and tenant rights and obligations, and research assistance from many fine attorneys at Dorsey and Whitney, LLP, including Angela E. Dralle, Pavlina Kochankovska Rafter, Vanessa J. Szalapski, Kelvin Kesse, Kent J. Schmidt, Bryan M. McGarry, Megan K. Baker, Craig Ritchey, Lindsey M. Sadler, Brad J. Hattenbach, Claire Smith, Natasha Wells, and Paula N. Kanne.

Fourteenth Edition, 2015

Thanks again to the attorneys, law students, advocates, legislators, judges, and referees who continue to assert and expand the law for the benefit of tenants. I especially wish to thank again Drew Schaffer and Paul Birnberg, who continue to move the law toward a better balance of landlord and tenant rights and obligations.

Thirteenth Edition, May 2013

Thanks again to the attorneys, law students, advocates, legislators, judges, and referees who continue to assert and expand the law for the benefit of tenants. I especially wish to thank Drew Schaffer and Paul Birnberg, who continue to move the law toward a better balance of landlord and tenant rights and obligations, and John Freeman, Erik Williamsen and the staff at the Minnesota Legal Services Coalition for their technical support at www.projusticemn.org.

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Thanks again to the attorneys, law students, advocates, legislators, judges, and referees who continue to assert and expand the law for the benefit of tenants. I especially wish to thank Drew Schaffer, whose analysis is reflected in much of the next text; John Freeman, for his technical support at www.projusticemn.org; and Alice Engstrom and Christa Lord, for word processing support.

Ninth Edition, March 2004

Thanks to the attorneys, law students, advocates, legislators, judges, and referees who continue to expand the law for the benefit of tenants. I especially wish to thank Paul Birnberg, whose analysis once again is reflected in many sections of this manual, and Sharon Elmore and Jaya Shoffner of the Minnesota Legal Services Coalition, who managed the placement of this manual, forms, and cases on www.projusticemn.org.

Eighth Edition, July 2000

I am grateful to Lila Talvitie-Zamora, who helped process the updates for this edition, and the attorneys

and advocates who continue to expand the law for the benefit of tenants. I especially wish to thank Paul Birnberg, whose analysis is reflected in many sections of this manual, and Bricker Lavik and Candee Goodman, who first developed the idea of an annual housing law institute, for which I first prepared this manual. Finally, thanks to the Minnesota State Bar Association and Nancy Kleeman, Dorsey and Whitney, and Probono.net, for providing the encouragement and technical support to make this manual and the many unpublished decisions discussed in it available on the internet.

Seventh Edition, November 1996

I would like to thank Chris Nelson, who helped process this edition, and the attorneys and advocates who developed many creative arguments that resulted in the decisions reported here. As I put these materials together I can see the wonderful work all of you are doing to make life a little more just for tenants.

Sixth Edition, November 1995

I wish to thank and acknowledge the work of Peggy Armour, who spent many hours processing this edition; and the attorneys and advocates from legal services, volunteer attorney programs and other agencies, which provided important court decisions for these materials. I especially want to thank Paul Birnberg, Robin Williams, Charlene D'Cruz, and Doug Clark, who helped me develop some of the arguments and forms in these materials. Finally, I wish to dedicate this edition to Dawn Carlson, a legal services attorney in Moorhead, Minnesota, who recently passed away. While she was with Legal Services only for a few short years, her dedicated work benefitted her clients, the law, and those of us who knew her.

Fifth Edition, November 1994

The author again wishes to thank Kaylen Randle, who spent many hours processing this edition; and the attorneys and advocates from legal services, volunteer attorney programs and other agencies dedicated to the protection of tenants.

Fourth Edition, November 1993

The author wishes to thank Kaylen Randle, who had the thankless task of processing this edition from the previous edition, two supplements and additional material.

Third Edition, April 1991

This article is dedicated to all of the Legal Services and volunteer attorneys whose advocacy continues to expand legal protection for tenants. Many of the statutes and court decisions discussed in this article are a result of their work. The author also wishes to thank Mescal Urich, who again devoted countless hours to processing this continuously expanding article.

Second Edition, October 1989

The author wishes to thank Peter Brown, Richard Fuller, Bricker Lavik, Candace Rasmussen, Galen Robinson, Randall Smith, Timothy L. Thompson, Thomas Vasaly, and John Whitelaw, Esquires, whose written materials and/or comments formed the basis for portions of this article; and Mescal Urich, who devoted many hours to formatting and processing numerous drafts of this article.

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CHAPTER I: INTRODUCTION TO EVICTION ACTIONS AND LANDLORD-TENANT RELATIONSHIPS

A. STATUTES AND CASES

0. History of Landlord and Tenant Laws in Minnesota

Minn. Stat. Ch. 504B is titled Landlord and Tenant, and contains most of the state laws concerning landlords and tenants. A few landlord and tenant statutes are contained in other chapters, such as Chapters 484 and 557. *See* Minn. Stat. §§ 484.014, 557.08, 557.09. The predecessors of current landlord and tenant statutes date back to the Territorial Laws of Minnesota. *See* Minn. Terr. Stat. Chs. 74, 87 (1851); Minn. Stat. Chs. 64, 77 (1858); Minn. Stat. Chs. 504, 566 (1941); Minn. Stat. Chs. 504, 566 (1998). The statutes were consolidated into Chapter 504B in 1999. The author was one of five attorneys appointed to draft Chapter 504B.

The Minnesota Office of the Revisor of Statute maintains the current version of Minn. Stat. Ch. 504B and its predecessors.

Minn. Stat. Ch. 504B
https://www.revisor.mn.gov/statutes/?id=504B

The versions of the predecessors to Chapter 504B, Chapters 504 and 566, before conversion into Chapter 504B in 1999
https://www.revisor.mn.gov/statutes/?id=504&year=1999
https://www.revisor.mn.gov/statutes/?id=566&year=1999

Other previous versions of statutes as far back as Minnesota Territorial Laws
https://www.revisor.mn.gov/statutes/?view=archive

The initial statutes were few, and governed creation and termination of tenancies, and remedies. The Legislature gradually began a piecemeal expansion of tenant and landlord protections. The earliest statutes governed actions concerning real property, including eviction actions, then called forcible entry and detainer, and defenses. Minn. Terr. Stat. Chs. 74, 87 (1851). Conduct on the property also was regulated, including nuisances, waste, removal of wood, and unlawful eviction. Minn. Terr. Stat. Ch. 74, §§ 15, 16, 18, 21-22 (1851). When Minnesota became a state, it incorporated the laws. Minn. Stat. Chs. 64, 77 (1858); Minn. Stat. Chs. 75, 84 (1863). *See* Paul Birnberg & Samuel Spaid, *Not with Strong*

Hands, nor with a Multitude of People: The Statutory History of the Eviction Procedure in Minnesota Statutory History of the Eviction Procedure in Minnesota, 28 MITCHELL HAMLINE L.J. PUB. POL'Y & PRAC. 27 (2020).

The first chapter titled Landlords and Tenants appeared in 1905, prohibiting distress for rent and providing an forcible entry and detainer action for nonpayment of rent along with a tenant right to redeem, constructive eviction, termination of tenancies at will, and implied urban holdover tenancies. Minn. Rev. Laws Ch. 62 (1905). The Legislature retained forcible entry and detainer laws in Minn. Rev. Laws Ch. 76. In 1917, the Legislature added a notice requirement in the winter months. Minn. Stat. Ch. 62, § 6812-1 (Supp. 1917).

In 1941, the Legislature moved these chapters to Minn. Stat. Chs. 504 and 566, the predecessors to the current Minn. Stat. Ch. 504B. Chapter 504 added detailed provisions on notices to cancel and terminate different types of leases and several emergency statutes. Minn. Stat. §§ 504.09-504.17 (1941). Chapter 566 retained earlier forcible entry and detainer statutes. Minn. Stat. Ch. 566 (1941). In 1945, the Legislature repealed the emergency statutes of Chapter 504. Minn. Stat. Ch. 504 (1945).

Landlord and tenant regulation remained the same until the 1970s when the Legislature greatly expanded tenant rights. Significant enactments included:

a. habitability, security deposits, and retaliation in 1971, Minn. Laws 1971 Ch. 219 §1, creating Minn. Stat. § 504.18, now § 504B.161; Minn. Laws 1971 Ch. 784, §§ 1-2; and Minn. Laws 1971 Ch. 240 § 1, creating Minn. Stat. § 566.03, Subd. 2, now § 504B.285, Subd. 2;

b. security deposits, automatic renewals, and tenant remedies actions in 1973, Minn. Laws 1973 Ch. 561 § 1, creating Minn. Stat. § 566.20, now § 504B.178; Minn. Laws 1973 Ch. 603 § 1, creating Minn. Stat. § 504.21, now § 504B.145; and Minn. Laws 1973 Ch. 611 §13, creating Minn. Stat. § 566.18, *et. seq.*, now § 504B.395, *et. seq.*;

c. landlord's disclosure of address in 1974, Minn. Laws 1974 Ch. 370 § 1, creating Minn. Stat. § 504.22, now § 504B.181;

d. abandoned personal property, unlawful ouster crime, utility termination, and unlawful exclusion action in 1975, Minn. Laws 1975 Ch. 410, creating Minn. Stat. §§ 504.24, 504.25, 504.26, 566.175, now §§ 504B.271, 504B.225, 504B.221, 504B.375;

e. family status discrimination in 1980, Minn. Laws 1980 Ch. 531 § 9, creating Minn. Stat. § 504.265, now § 504B.315;

f. death of tenant in 1981, Minn. Laws 1981 Ch. 168 § 2, creating Minn. Stat. § 504.28, now § 504B.265;

g. unlawful ouster damages in 1984, Minn. Laws 1984 Ch. 612 § 1, creating Minn. Stat. § 504.255, now § 504B.231;

h. condemned property actions in 1988, Minn. Laws 1988 Ch. 526 § 1, creating

Minn. Stat. § 504.245, now § 504B.204;

i. housing courts, rent escrow action, emergency tenant remedies action, tenant screening regulation, unlawful activity, and more, Minn. Laws 1989 Ch. 214, Ch. 305, and Ch. 328 Art. 2, creating or amending Minn. Stat. §§ 484.013; 504.181, now 504B.171; 504.255, now 504B.231; 504.26, now 504B.221; 504.29-504.31, now 504B.235-504B.245; 566.175, now 504B.375; 566.34, now 504B.385; and 566.205, now 504B.381; based for the most part on the Recommendations of the Governor's Commission on Affordable Housing for the 1990's. https://www.leg.state.mn.us/docs/pre2003/other/890122.pdf

The author was a member of a Commission task Force on landlord and tenant law and lobbyist for the statutes;

j. housing court permanency, landlord disclosure of inspection orders, and pets in subsidized handicapped accessible rental housing units in 1993, Minn. Laws 1993 1993 Ch. 265 § 6, amending Minn. Stat. § 484.013; Minn. Laws 1993 Ch. 317 § 4, creating Minn. Stat. § 504.246, now § 504B.195; and Minn. Laws 1993 Ch. 369 § 145, creating Minn. Stat. § 504.36, now § 504B.261. The author was a lobbyist for these statutes;

k. privacy in 1995, Minn. Laws 1995 Ch. 226 Art. 4 § 21, creating Minn. Stat. § 504.183, now § 504B.211. The author was a lobbyist for this statute;

l. police and emergency calls in 1997, Minn. Laws 1997 Ch. 133 § 1, creating Minn. Stat. § 504.215, now § 504B.205. The author was a lobbyist for this statute;

m. pre-lease deposits and application fees in 1999, Minn. Laws 1999 Ch. 97 § 1, creating Minn. Stat. § 504.301, now § 504B.175; and Minn. Laws 1999 Ch. 150 § 1, creating Minn. Stat. § 504.38, now § 504B.173. The author was a lobbyist for this statute;

n. in 2007, right of victims of domestic abuse to terminate the lease, Minn. Laws 2007 Ch. 54, § 3, Minn. Stat. § 504B.206; and removal of forms for the summons and writ of recovery, Minn. Laws 2007 Ch. 54, § 12, Minn. Stat. § 504B.361;

o. the 2010 HOME Line Tenants Bill of Rights on expungement, receipts, attorney's fees, late fees, deposits, utility metering, abandoned person property, foreclosure notice, and money orders, Minn. Laws 2010 Ch. 315, creating or amending Minn. Stat. §§ 484.014, 504B.118, 504B.172, 504B.173, 504B.177, 504B.178, 504B.271, 504B.285, 504B.291, 504B.365. The author was a lobbyist, along with HOME Line and the Legal Aid Society for the Tenants Bill of Rights;

p. in 2014, recognizing expungement under the court's inherent authority and providing for expungement when the court enters judgment for a defendant, Minn. Laws 2014 Ch. 246, § 5, amending Minn. Stat. § 504B.345; added domestic violence, criminal sexual conduct, and harassment to the unlawful activities, Minn. Laws 2014 Ch. 188, § 1, amending Minn. Stat. § 504B.171; and amending the notice requirement for victims of domestic abuse to terminate the lease, Minn.

Laws 2014 Ch. 188, § 2, amending Minn. Stat. § 504B.206; and

q. lease requirements regarding start and end dates, and notices to increase rent and terminate the lease, in 2019, Minn. Laws 1Sp2019 Ch. 1, Art. 6, §§ 57-58, creating Minn. Stat. §§ 504B.146-504B.147.

See Paul Birnberg & Samuel Spaid, *Not with Strong Hands, nor with a Multitude of People: The Statutory History of the Eviction Procedure in Minnesota Statutory History of the Eviction Procedure in Minnesota*, 28 MITCHELL HAMLINE L.J. PUB. POL'Y & PRAC. 27 (2020).

1. Recodification of Landlord-Tenant Laws

The 1998 legislature passed a recodification of the existing landlord-tenant statutes in Chapters 504 and 566 into a new chapter 504A. The legislature delayed the effective date of Chapter 504A and the repeal date of Chapters 504 and 566 one year to allow for study and comment of the recodification. The purpose of Chapter 504A was to make landlord-tenant laws more accessible to the public by placing them in one chapter, and rewriting them in a more understandable form. A committee of landlord and tenant attorneys reviewed Chapter 504A, and proposed in its place Chapter 504B, *which* was an attempt to reach the goals of Chapter 504A while better ensuring that the recodification does not change state law.

In 1999 the legislature passed 504B. It replaces both 504A, which never went into effect, and 504 and 566, which it consolidated. Tenants should cite to both 504B (the current statutes) and either 504 or 566 (the old statutes), since case law up to 1999 cited the old statutes. This manual contains cites to both the new statute and it old counterpart. Tenants can review and download a copy of 504B, 504, and 566 from the Minnesota Legislature at http://www.leg.state.mn.us/leg/statutes.htm. Tenants also should review the Statute Cross Reference Charts.

The purpose was to modernize the language and to make the statutes easier to read. In *Occhino v. Grover,* 640 N.W.2d 357 (Minn. Ct. App. 2002), the statutes in chapter 504B and in the old Chapters 504 and 566 are meant to have the same meaning. *Id.* at 362.

As part of the recodification creating Chapter 504B, the term unlawful detainer was replaced with eviction. Minn. Stat. § 504B.001. This manual will use both terms, often with a cross reference to the other term, since all cases before 1999 used the term unlawful detainer.

The Minnesota Office of the Revisor of Statute maintains the current version of Minn. Stat. Ch. 504B and its predecessors.

- Minn. Stat. Ch. 504B https://www.revisor.mn.gov/statutes/?id=504B

- The versions of the predecessors to Chapter 504B, Chapters 504 and 566, before conversion into Chapter 504B in 1999
  https://www.revisor.mn.gov/statutes/?id=504&year=1999
  https://www.revisor.mn.gov/statutes/?id=566&year=1999

Housing Law Minnesota contains statute cross reference tables:

- From Minn. Stat. Ch. 504B to Predecessor Statutes

http://povertylaw.homestead.com/files/Reading/1acrossfrom504B.pdf

- From Predecessor Statutes to Minn. Stat. Ch. 504B

http://povertylaw.homestead.com/files/Reading/1crossto504B.pdf

See Paul Birnberg & Samuel Spaid, *Not with Strong Hands, nor with a Multitude of People: The Statutory History of the Eviction Procedure in Minnesota Statutory History of the Eviction Procedure in Minnesota*, 28 MITCHELL HAMLINE L.J. PUB. POL'Y & PRAC. 27 (2020).

2. Cases

Many cases interpreting landlord-tenant law are unreported, either at the state district court or Court of Appeals levels. Unreported district court decisions are in an appendix to this manual. Given the rise of tenant screening agencies reporting information on eviction cases, recent decisions discussed in this manual do not contain the tenant's name in the citation.

This manual also refers to some unpublished district court decisions contained in *Minnesota Residential Tenant Remedies* and its appendix (TR), which covers actions brought by tenants to enforce tenant rights. Unreported Court of Appeals decisions can be reviewed and downloaded from the Minnesota State Courts, as well as online legal research services.

3. Effect of Unpublished Court of Appeals Decisions

Minn. Stat. § 480A.08, subd. 3, provides:

> Unpublished opinions of the Court of Appeals are not precedential. Unpublished opinions must not be cited unless the party citing the unpublished opinion provides a full and correct copy to all other counsel at least 48 hours before its use in any pretrial conference, hearing, or trial. If cited in a brief or memorandum of law, a copy of the unpublished opinion must be provided to all other counsel at the time the brief or memorandum is served, and other counsel may respond.

In 2017, the Court of Appeals limited the obligation to provide copies in Rule 4 of the Special Rules of Practice for the Minnesota Court of Appeals.

> Unpublished opinions are not precedential and may not be cited by counsel at an oral argument unless notice is given to the court and other counsel at least 48 hours before the oral argument. If unpublished opinions are cited in a brief or other written submission, copies must be provided to any self-represented litigants at the time the brief or written submission is served, unless a self-represented litigant indicates that no copies are desired. Unless specifically requested, copies of unpublished opinions need not be provided to the court or to other counsel.

Minn. Ct. App. Spec. R. of Prac. 4.
https://www.revisor.mn.gov/court_rules/ap/subtype/spec/id/4/

Since creation of the Minnesota Court of Appeals, most appellate decisions discussing residential landlord-tenant law have been unpublished decisions of the Court of Appeals, rather than published decisions of the Court of Appeals or Minnesota Supreme Court. Unpublished decisions of the Court of Appeals may be of persuasive value, but are not precedential. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796 (Minn. Ct. App. 1993). The *Dynamic Air* Court noted that the trial court "committed error by relying

upon an unpublished [Court of Appeals] opinion ...." The court added that "a party may cite to an unpublished opinion affirming a trial court's exercise of discretion to persuade a trial court to exercise discretion in the same manner. It is, however, improper to rely on unpublished opinions as binding precedent." *Id.* at 800.

In *State v. Gunderson*, 812 N.W.2d 156, 161-62 (Minn. Ct. App. 2012), the court suggested that it was error for the trial court to rely on one published and several unpublished decisions of the Court of Appeals that were in conflict with a Minnesota Supreme Court decision.

Counsel may have an ethical obligation to cite unpublished opinions adverse to counsel's client if that authority is the only opinion on point in the jurisdiction. M. Johnson, *Advisory Opinion Service Update*, BENCH & BAR OF MINN. at 13 (Oct. 1993). *See generally* 3 E. MAGNUSON, D. HERR & R. HAYDOCK, MINN. PRAC. § 117.3 at 95 (Supp. 1994).

4. Preemption of Ordinances by State Statutes

Ordinances passed by municipalities in the exercise of their policy power "will generally be upheld if they are not inconsistent with state law." *Mangold Midwest Co. v. Village of Richfield,* 143 N.W.2d 813, 815 (Minn. 1966). Cities do not have inherent power. They possess powers expressly conferred by statute or by implication from powers expressly conferred. *Id.* at 820. Within these powers, cities have a great deal of latitude to act.

> It is also true that a municipality can act to protect the security of the community and that in so doing it is not limited to the things enumerated in the general welfare clause in its charter. It would therefore seem that, generally stated, the rule would be that once the municipality is granted a charter with a general welfare clause, as the village has been, that clause will be construed liberally to allow effective self-protection by the municipality.

Id.

A home rule charter city, such as Minneapolis, has the same regulatory authority within its boundaries as the state, unless state law has limited or otherwise withheld that power. *See* Minn. Const., art XII, sec. 4; Minn. Stat. §410.07; *Dean v. City of Winona,* 843 N.W.2d 249, 256 (Minn. App. 2014), appeal dismissed, 868 N.W.2d 1 (Minn. 2015); *Nordmarken v. City of Richfield,* 641 N.W.2d 343, 347 (Minn. App. 2002).

Preemption of a local ordinance can occur in three ways: (1) express preemption, when a statute explicitly defines the extent to which its enactments preempt local regulation; (2) field preemption, when a city ordinance attempts to regulate conduct in a field that the state legislature intended for state law to exclusively occupy; and (3) conflict preemption, when a city ordinance permits what a state statute forbids or forbids what a state statute permits. *State v. Kuhlman,* 722 N.W.2d 1, 4 (Minn. App. 2006), citing *English v. General Elec. Co.,* 496 U.S. 72, 78-80 (1990) (federal preemption); *Mangold Midwest Co.,* 143 N.W.2d at 816, 819-820 (state field and conflict preemption).

a. *Express preemption*

When a statute explicitly forbids local regulation that imposes greater restrictions, any ordinance doing so will conflict with state statute. For example, in *State v. Apple Valley Redi-Mix, Inc.,* a state statute provided that "No local government unit shall set standards of air quality which are more

stringent than those set by the pollution control agency." 379 N.W.2d 136, 138 (Minn. Ct. App. 1985), citing Minn. Stat. § 116.07, subd. 2. When a St. Louis Park Ordinance set a more stringent standard for air quality than that of the statute, the Minnesota Court of Appeals held that the ordinance conflicted with the statute because it violated the statutory mandate. *Id.* The court also noted that a party could violate the air quality standards of the ordinance, while being in compliance with the air quality standards in the state statute, which also is a conflict. *Id.*

In *City of Morris v. Sax Invs., Inc.,* 749 N.W.2d 1 (Minn. 2008), the court considered whether the City of Morris Rental Licensing Ordinance conflicted with the State Building Code. The court noted:

> In this case, the relevant language of the State Building Code expresses the legislature's specific intent to supersede municipal building codes. In enacting a statewide building code, the legislature recognized that a single, uniform set of building standards was necessary to lower costs and make housing more affordable. See Act of May 26, 1971, Ch. 561, § 1, 1971 Minn. Laws 1018, 1019 (noting that multiple laws, ordinances, and rules regulating the construction of buildings "serve to increase costs without providing correlative benefits of safety to owners, builders, tenants, and users of buildings"). The statute therefore provides:
>
> > The State Building Code applies statewide and supersedes the building code of any municipality. A municipality must not by ordinance or through development agreement require building code provisions regulating components or systems of any residential structure that are different from any provision of the State Building Code.
>
> Minn. Stat. § 16B.62, subd. 1.

Id., 749 N.W.2d at 7. The court concluded that the Rental Licensing Ordinance impermissibly regulated ground fault interrupter receptacles, bathroom ventilation, and egress window covers in a way that conflicted with the State Building Code, because those were all properly under the State Building Code's purview since they governed the construction or design of buildings. *Id.* at 10-12.

> The court noted that the State Building Code permitted some local regulation.
>
> Local governing bodies, however, are specifically authorized to adopt more restrictive smoke detector requirements for single-family homes: "Notwithstanding subdivision 7, or other law, a local governing body may adopt, by ordinance, rules for the installation of a smoke detector in single-family homes in the city that are more restrictive than the standards provided by this section." Minn. Stat. § 299F.362, subd. 9 (emphasis added). If the building at issue in this case is a single-family home, the smoke detector provision of the Rental Licensing Ordinance would be expressly permitted by section 299F.362, subdivision 9, and would therefore not be different than the State Building Code.

Id., 479 N.W.2d at 13. The court then concluded:

> But because the record in this case does not reveal whether the building owned by Sax is a single-family home, we cannot determine whether the ordinance provision requiring the installation of smoke detectors in each sleeping room is invalid under state law. Accordingly, we remand this issue to the district court for further proceedings.

Id.

b. *Field preemption*

"Local regulation will be preempted when the legislature has fully and completely covered the subject matter, clearly indicated that the subject matter is solely of state concern, or the subject matter itself is of such a nature that local regulation would have unreasonably adverse effects on the general populace." *Hannan,* 623 N.W.2d at 285. Full and complete coverage of subject matter by the State, often called field preemption, can be express or implied. *Mangold Midwest Co.,* 143 N.W.2d at 820-21.

(1) Express field preemption

Provisions requiring uniformity and statewide applications will sometimes expressly preempt ordinances. *See State v. Kuhlman,* 729 N.W.2d 577, 580 (Minn. 2007) (quoting Minn. Stat. § 169.022, "which imposes a uniformity requirement on traffic regulations throughout the state"); *City of Morris,* 749 N.W.2d at 7 (State Building Code). Statutes that expressly allow for limited local regulation do not negate state occupation of a field. *Mangold Midwest Co.,* 143 N.W.2d at 823.

(2) Implied field preemption

In *Mangold,* the court set forth four questions that are relevant in determining whether the area is one the legislature has impliedly declared to be an area solely of state concern:

> (1) What is the 'subject matter' which is to be regulated? (2) Has the subject matter been so fully covered by state law as to have become solely a matter of state concern? (3) Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern? (4) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state?

143 N.W.2d at 820.

The court noted previous decisions concerning field preemption. *Id.* at 821-23. Those finding field preemption included *Minnetonka Elec. Co. v. Village of Golden Valley,* 141 N.W.2d 138 (Minn. 1966) (adverse effects upon the electrical contractors of the state outweighed the policy of allowing local regulation); *State v. Hoben,* 98 N.W. 2d 813 (Minn. 1959) (provision requiring uniformity and statewide application regarding traffic regulation clearly showed the legislative intent to preempt this field except for the limited local regulation the statute expressly permitted); and *Village of Brooklyn Center v. Rippen,* 96 N.W. 2d 585 (Minn. 1959) (boat licensing was of such a nature that there would be unreasonably adverse effects upon the general populace of the state if local licensing were allowed).

Those finding no field preemption included *State ex rel. Sheahan v. Mulally,* 99 N.W. 2d 892 (Minn. 1959) (legislature had not acted comprehensively on disorderly conduct and had not expressly indicated that it was a matter of state concern; there were no adverse effects of local regulation); and *State v. The Crabtree Co.,* 15 N.W. 2d 98 (Minn. 1944) (statute expressly allowed cities to regulate cigarette sales disposed of the issue).

c. *Conflict preemption*

If an ordinance and statute address "separate and distinct aspects" of a subject matter, "the plan and ordinance can be reconciled." *Canadian Connection v. New Prairie Tp.,* 581 N.W.2d 391, 396 (Minn. Ct. App. 1998). In *Canadian Connection,* a state management plan set standards for "storing,

processing, monitoring, and applying manure," along with a requirement "to take wind patterns into account" when placing manure storage bins. *Id.* The ordinance "impos[ed] setback requirements for the feedlot facility." *Id.* The court held that the two regulations did not conflict. The state plan and the township ordinance "address[ed] separate and distinct aspects of feedlot odor," one addressing wind patterns, and the other a setback requirement. Accordingly, "the plan and ordinance can be reconciled." *Id.*

In *Hannan v. City of Minneapolis,* 623 N.W.2d 281, 284-85 (Minn. Ct. App. 2001), the Minnesota Court of Appeals upheld a city ordinance providing for the classification and regulation of dangerous-animal behavior. The relevant state statute included two scenarios that allowed for the destruction of a dangerous dog. *Id.* at 284. The ordinance added another circumstance for destruction, with some provisions that were "more severe" than the statute. *Id.* Because "the state ha[d] not expressly precluded local regulation," the court found no conflict between the statute and ordinance. Local government may provide additional regulations that create "consequences greater than those already provided [in the state statute]" without a conflict. *Id.* at 285.

A city ordinance requiring a license and permit to install heating systems specifically required the plans to be prepared by a registered engineer. *State v. Clarke Plumbing & Heating, Inc.,* 56 N.W.2d 667, 672 (Minn. 1952). Although a state statute existed on the same subject, with narrower coverage, the Minnesota Supreme Court upheld the ordinance. *Id.* The court recognized that it was valid for the city to decide that a greater restriction was necessary in a city the size of Minneapolis. *Id.*

In another case, the state granted a permit amendment to a company allowing it to burn a mixture of coal and fluid at a plant in Granite Falls. *Northern States Power Co. v. City of Granite Falls,* 463 N.W.2d 541, 542 (Minn. Ct. App. 1990). The city, however, had an ordinance which in effect prohibited the application of the state amendment. *Id.* Because the "ordinance and statute contain irreconcilable express and implied terms," the Minnesota Court of Appeals held that the ordinance conflicted with the statute. *Id.*

d. *Most landlord and tenant ordinances should not be preempted*

(1) Express preemption

Only two statutes in Chapter 504B expressly preempt local regulation. The first is Minn. Stat. § 504B.205, concerning a residential tenant's right to seek police and emergency assistance.

> Subd. 3. Local preemption. This section preempts any inconsistent local ordinance or rule including, without limitation, any ordinance or rule that:
>
> (1) requires an eviction after a specified number of calls by a residential tenant for police or emergency assistance in response to domestic abuse or any other conduct; or
>
> (2) provides that calls by a residential tenant for police or emergency assistance in response to domestic abuse or any other conduct may be used to penalize or charge a fee to a landlord.
>
> This subdivision shall not otherwise preempt any local ordinance or rule that penalizes a landlord for, or requires a landlord to abate, conduct on the premises that constitutes a nuisance or other disorderly conduct as defined by local ordinance or rule.

The second is Minn. Stat. § 504B.111, concerning landlords of larger properties having to provide written leases. This statute provides:

> A landlord of a residential building with 12 or more residential units must have a written lease for each unit rented to a residential tenant. Notwithstanding any other state law or city ordinance to the contrary, a landlord may ask for the tenant's full name and date of birth on the lease and application. A landlord who fails to provide a lease, as required under this section, is guilty of a petty misdemeanor.

Id.

Several statutes in Chapter 504B contain non-waiver provisions that prohibit waiver of statutory requirements. See Minn. Stat. §§ 504B.145 (automatic renewal of leases); 504B.161 (covenants of habitability); 504B.171 (tenant's covenant not to manufacture, sell or distribute illegal drugs); 504B.178 (security deposits); 504B.204 (rental of condemned residential premises); 504B.205 (prohibiting penalty on tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct); 504B.211 (notice of landlord entry onto premises); 504B.215 (landlord's nonpayment of utility or essential services; shared meters); 504B.221 (unlawful termination of utilities); 504B.231 (unlawful eviction); 504B.271 (abandoned property); 504B.365 (execution of eviction writ of restitution).

Non-waiver provisions are not the same as express preemption, as they focus on the parties not waiving the statutory requirements. For instance, Minn. Stat. § 504B.161, Subd. 2 states

> Tenant maintenance. The landlord or licensor may agree with the tenant or licensee that the tenant or licensee is to perform specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in a conspicuous writing. *No such agreement, however, may waive the provisions of subdivision 1 or relieve the landlord or licensor of the duty to maintain common areas of the premises*.

Id. (emphasis added). Non-waiver provisions should not prevent local ordinances that provide more protection to tenants.

As noted above, the State Building Code also preempts conflicting ordinances. Minn. Stat. § 16B.62, subd. 1; *City of Morris v. Sax Invs., Inc.,* 749 N.W.2d 1 (Minn. 2008).

Ordinances outside of the topics of these statutes should not be expressly preempted.

(2) Field preemption

(a) Express field preemption

Minn. Stat. Ch. 504B contains no express preemption of the field of landlord and tenant relations, or the subfield of tenancy termination and eviction. As noted above, the only preemptive provisions in Chapter 504B concern a residential tenant's right to seek police and emergency assistance and the obligation of landlords of certain properties to use written leases. Minn. Stat. §§ 504B.205, Subd. 3; 504B.111. As noted above, non-waiver provisions should not prevent local ordinances that provide more protection to tenants.

(b) Implied Field Preemption

Again, the Mangold factors are:

> (1) What is the 'subject matter' which is to be regulated? (2) Has the subject matter been so fully covered by state law as to have become solely a matter of state concern? (3) Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern? (4) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state?

143 N.W.2d at 820.

(I) What is the 'subject matter' which is to be regulated?

That would depend on the ordinance at issue.

(ii) Has the subject matter been so fully covered by state law as to have become solely a matter of state concern?

The Territory of Minnesota and later this State only marginally regulated landlords and tenants. See Minn. Terr. Stat. Chs. 74, 87 (1851); Minn. Stat. Chs. 64, 77 (1858). While the number of statutes has increased, it did not occur at one time but rather has resulted from a gradual evolution. There is no point in time where one could conclude that the State moved beyond treating landlord and tenants as not a matter of sole state concern.

A number of cities already regulate landlord and tenants. Mpls. Code of Ord. Title XII, Chs. 240-44. Some of the Minneapolis ordinances cover topics that are governed by state statutes.

- Section 244.80 prohibits landlord retaliation against tenants and goes beyond Minn. Stat. §§ 504B.285, Subds. 2-3, and 504B.441.
- Section 244.265 requires landlords to notify tenants of mortgage foreclosure or contract for deed cancellation and goes beyond Minn. Stat. § 504B.151, which the ordinance predated.
- Section 244.280 requires the landlord to give a tenant a copy of a written lease within five days of signing and goes beyond Minn. Stat. § 504B.115.
- Section 244.285 requires the landlord to notify a tenant before entering the dwelling and goes beyond Minn. Stat. § 504B.211.
- Section 244.1840 requires landlords to disclose address and contact information, including a contact within the metropolitan area, and goes beyond the requirement of Minn. Stat. § 504B.181.
- Section 244.2020 prohibits various types of activity on rental property and goes beyond Minn. Stat. §§ 504B.165, 504B.171, and 504B.285.

Other ordinances regulate landlords and tenants on which state statutes are silent. Sections 244.1800-244.2020 require landlords to obtain rental dwelling licenses. Minn. Stat. 504B contains no provisions on rental licenses.

Another example of the coexistence of state and local regulation of landlords and tenants is in city civil-rights law. For many years, the state has extensively regulated discrimination in the area of housing. Minnesota Human Rights Act ("MHRA"), Minn. Stat. Chap. 363A (originally Minn. Stat. Chap. 363). Since 1961, the MHRA has prohibited landlords from evicting Minnesota tenants based on race, color, creed, religion, or national origin. 1961 Minn. Laws Ch. 428, Minn. Stat. § 363.03, subd. 2

(1962). Over the next few years other protected classes were added so that in 1974 the state statute prohibited landlords from terminating the leases of Minnesota tenants based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability. Minn. Stat. § 363.03, subd. 2 (1974).

Absent from this list was "sexual orientation". In 1974 the Minneapolis City Council, which had subsequent to 1961 created its own civil rights ordinance, added to the protected-class list within Minneapolis "sexual orientation." Minneapolis Code of Ordinances 99-68 (1974) (now codified in Minneapolis Code of Ordinances 139.10 et seq.) It was not for almost another two decades before Minnesota added "sexual orientation" to the list of protected classes. 1993 Minn. Laws Ch. 22 s. 1-2 (now codified in Minn. Stat. §§ 363A.02, 363A.03, Subd. 44, 363A.09).

In other words, for almost two decades, landlords throughout all of Minnesota could evict a tenant based on sexual orientation but could not do so in Minneapolis. The availability of local regulation of discriminatory evictions within the context of the extensive regulation of the MHRA is consistent local regulation of tenancy terminations within the context of more limited regulation in Chapter 504B.

Another example is local regulation requiring landlords to evict tenants when not required by state law. A number of cities require landlords to terminate tenants in situations where state law imposes no such requirement. Many cities in the 7-county Twin Cities metro area that regulate conduct and/or nuisances within rental housing, most of which penalize landlords in some fashion if they do not pursue lease termination and/or eviction for certain activities. In a number of unique examples, cities require that landlords include detailed lease language or lease addendums that outline specific "good causes" for termination of the tenancy. *See* Brooklyn Park: Code of Ordinances, Title XI, Chapter 117, 117.491 ©; Golden Valley: City Code, Chapter 6, § 6.29 Subd 4 (I) (1); Maple Grove: Code of Ordinances, Chapter 10, Article X, § 10-358 (e) (1); Robbinsdale: City Code, Chapter 4, 425.31, Subd. 5; St. Louis Park: City Code, Chapter 8, Subd. VIII, § 8-331 (a); Wayzata: City Code, Part VII, Section 815.18; Falcon Heights: Code of Ordinances, Part II, Chapter 105, Article IV, 105-96 (a); Little Canada: Code of Ordinances, Municipal Code, Chapter 3200, 3200.40 (I) (1) & (2); North Oaks: Rental Properties Ordinance No 121 § 114.80 (M & N); Shoreview: City Code, Chapter 700 § 714.040 (H); South St. Paul: City Code, Subpart B, Chapter 106, Article VII, § 106-237 (4); West St. Paul: Code of Ordinances, Title XV, Chapter 150, § 150.037 (A) (M).

For example, under Saint Louis Park Ordinance § 3-331, a St. Louis Park landlord's lease shall permit termination for drug-related activity not just on the premises (as required by Minn. Stat. § 504B.171) but also near the premises; for other crimes not regulated by Minn. Stat. Chap. 504B; and for a range of "disorderly uses" not regulated by Minn. Stat. Chap. 504B. The landlord must enforce these lease provision whether the landlord likes it or not. Id.; Saint Louis Park Ordinance §§ 3-326 - 3-335.

In summary, for many years state law and local ordinances have co-existed to address landlord and tenant concerns, such that landlord and tenant relationships are not solely of state concern.

(iii) Has the legislature in partially regulating the subject matter indicated that it is a matter solely of state concern?

Chapter 504B contains no general provision precluding local regulation. The only statutes in Chapter 504B that expressly preempts local regulation are Minn. Stat. §§ 504B.111 and 504B.205 concerning written leases and a residential tenant's right to seek police and emergency assistance.

Several other statutes include non-waiver provisions. Minn. Stat. §§ 504B.145, 504B.161, 504B.171, 504B.178, 504B.204, 504B.205, 504B.211, 504B.215, 504B.221, 504B.231, 504B.271. It would be redundant for Chapter 504B to contain these provisions if landlord and tenant law was solely of state concern. Chapter 504B is in sharp contrast to the State Building Code, which expressly precludes local regulation. *See City of Morris,* 749 N.W.2d at 7, citing Minn. Stat. § 16B.62, subd. 1.

As noted above, non-waiver provisions should not prevent local ordinances that provide more protection to tenants.

(iv) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state?

The rental of an apartment is a necessarily local activity, as the apartment and tenant reside in only one city. The landlord and tenant relationship differs from others that are not geographically specific that the courts have held cannot be locally regulated, such as electrical contractors, *Minnetonka Elec. Co. v. Village of Golden Valley,* 141 N.W.2d 138, traffic regulation, *State v. Hoben,* 98 N.W. 2d 813, and boat licensing, *Village of Brooklyn Center v. Rippen,* 96 N.W. 2d 585. The subject is more like local regulation of disorderly conduct that the Court upheld in *State ex rel. Sheahan v. Mulally,* 99 N.W. 2d 892.

(3) Conflict preemption

Whether an ordinance presents a conflict requires an analysis of the ordinance and any statute with which it might conflict. One question is whether the relationship between the ordinance and the statute is best categorized as different but merely additional or complementary, or an actual conflict.

Another question is whether the ordinance would prevent the application of the statute, like the conflicting ordinance in Northern State Power, 463 N.W.2d at 542. On the other hand, if an ordinance and statute address separate and distinct aspects of a subject matter, they can be reconciled. *See Canadian Connection,* 581 N.W.2d at 396.

As noted above, non-waiver provisions should not prevent local ordinances that provide more protection to tenants.

5. Preemption of State Statutes and Local Ordinances by Federal Law

Federal preemption challenges to state and local housing law are uncommon, as most regulation of landlord and tenant relationships is by states and localities. Federal law does regulate public and subsidized housing, *see* discussion, *supra*, at I.A.4., so it has the potential for conflicts with state and local law. *See generally* HUD HOUSING PROGRAMS: TENANTS' RIGHTS §13.8.1.5 at 812-16 (National Housing Law Project, 4th ed. 2012 and Supplements) (also known as the Green Book). https://www.nhlp.org/trainings-publications/

Like preemption analysis under state law, *see* discussion, *supra*, at I.A.4., federal law can preempt state law in three ways: through express preemption, field preemption, and conflict preemption. *Housing and Redevelopment Authority of Duluth v. Lee,* 852 N.W.2d 683, 687 (Minn. 2014) (citing *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta,* 458 U.S. 141, 152-54, 102 S.Ct. 3014, 73 L.Ed.2d 664 (1982).

a. *Express preemption*

If a federal statute includes an express preemption clause, the court should "focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' preemptive intent." *In re Consol. Hosp. Surcharge Appeals,* 867 N.W.2d 513, 518 (Minn. Ct. App. 2015), quoting *Chamber of Commerce of United States v. Whiting,* 563 U.S. 582 (2011).

In *In re Consol. Hosp. Surcharge Appeals,* the Court held that an express preemption provision that prohibited state taxes on payments from the Federal Employees Health Benefits Act (FEHBA) to insurance carriers did not expressly preempt a state law that imposes a tax on a provider that receives payment from a carrier that receives payment from the FEHBA fund.

In *Leonard v. Northwest Airlines, Inc.*, No. C0-99-948, 605 N.W.2d 425 (Minn. Ct. App. 2000), the Court of Appeals analyzed whether federal statute preempted claims that airline ticket reissuing charges were illegal penalties under state law. In concluding that the federal statute preempted the state claims, the court noted that it first must review the text of the statute, and if the text does not resolve the preemption question, then analyze the structure and purpose of the act. The statute in question contained a preemption clause stating that a state "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier." 49 U.S.C. § 41714(b)(l).

Express preemption in federal public and subsidized is extremely rare, with an exception being preemption of local rent control. 24 C.F.R. § 246.1 (2012) (formerly 24 C.F.R. § 403.1). *See* HUD HOUSING PROGRAMS: TENANTS' RIGHTS §13.8.1.5 at 814 (National Housing Law Project, 4th ed. 2012 and Supplements) (also known as the Green Book).
https://www.nhlp.org/trainings-publications/

In *Milwaukee City Housing Authority v. Cobb,* 849 N.W.2d 920, 354 Wis.2d 603 (2014), the Court of Appeals held that federal law does not preempt a Wisconsin statute that provides tenants the right to notice and cure where Congress did not explicitly mandate preemption of state law, Congress did not implicitly indicate an intent to occupy an entire field of regulation to the exclusion of state law, and state law did not actually conflict with federal law.

b. *Field preemption*

"If Congress evidences an intent to occupy a given field, any state law falling within that field is pre-empted." *Flynn v. Am. Home Prods. Corp.,* 627 N.W.2d 342, 347 (Minn. Ct. App. 2001), quoting *Silkwood v. Kerr-McGee Corp.,* 464 U.S. 238 (1984). In *Flynn*, the Court concluded that the Food and Drug Administration's comprehensive enforcement statutes precluded state fraud-on-the-FDA common-law tort and statutory consumer fraud claims. *Id.* at 348-49, citing *Buckman Co. v. Plaintiffs' Legal Comm.,* 531 U.S. 341 (2001).

In contrast, federal public and subsidized housing regulations and handbooks have state that the federal statutes and regulations work in tandem with state law. For public housing, *see* Public Housing Occupancy Guidebook, Part 5, and ¶17 Overview (United States Department of Housing and Urban Development, June 2003). For subsidized housing buildings and projects, *see* 24 C.F.R. §§ 880.607(b)(1)(iv), 882.511(e); HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs, 8-13(A)(5)(b), 8-13(B)(2)(d), 8-15(B)(2) (United States Department of Housing and Urban Development, Nov. 2013). For Section 8 Vouchers, *see* State and Local Law

Applicability to Lease Terminations in the Housing Choice Voucher (HCV) Program, PIH 2009-18(HA) (June 22, 2009). *See* HUD HOUSING PROGRAMS: TENANTS' RIGHTS §13.8.1.5 at 813-14 (National Housing Law Project, 4th ed. 2012 and Supplements) (also known as the Green Book). https://www.nhlp.org/trainings-publications/

The Minnesota Supreme Court discussed the interplay between federal and state law when it analyzed conflict preemption in *Housing and Redevelopment Authority of Duluth v. Lee,* 852 N.W.2d 683 (Minn. 2014). The Court noted:

> Congress declared that it is also federal policy "to assist *States* ... to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families" and "to assist *States* ... to address the shortage of housing affordable to low-income families." 42 U.S.C. § 1437(a)(1)(A)-(B) (emphasis added). The statute therefore demonstrates congressional intent to have state regulations exist side-by-side with federal regulations of subsidized housing.
>
> ...
>
> Pursuant to HUD's interpretation of its regulations, federal statutes and regulations provide a floor of protection for tenants in public housing, not a ceiling, and states may forbid lease provisions that federal law would permit.

Id., citing *Barrientos v. 1801-1825 Morton LLC,* 583 F.3d 1197 (9th Cir.2009) (rejected a preemption challenge to a Los Angeles ordinance that gave tenants in federally subsidized housing greater protection from eviction than did federal law). *See* L. McDonough and M. MacCreight, *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REVIEW 55 (May/June 2007) and updated slide show.
http://povertylaw.homestead.com/WaitAMinute.html

c. *Conflict preemption*

The Minnesota Supreme Court analyzed conflict preemption in *Housing and Redevelopment Authority of Duluth v. Lee,* 852 N.W.2d 683 (Minn. 2014), where the Court was asked to determine whether federal subsidized housing law preemption application of state law limitation on late fees applied to public housing authority (PHA) subsidized housing. The Court began by discussing conflict preemption law. "Conflict preemption may arise in two different ways. First, a state law is preempted by means of conflict preemption if a party cannot simultaneously comply with both state and federal law. Second, a state law is preempted by means of conflict preemption if the state law is an obstacle to achieving the purpose of a federal law." *Id.*, at 687-88 (citations omitted).

The Court then summarized the allegedly preemptive federal statute and regulation.

> The "federal reasonableness standard" to which the HRA refers derives from the combination of a federal statute and a federal regulation. The relevant federal statute is 42 U.S.C. § 1437d(l)(2), which requires every PHA to "utilize leases which ... do not contain unreasonable terms and conditions." Notably, the statute does not mandate the inclusion of reasonable terms and conditions in a PHA's lease; it simply forbids the inclusion of any unreasonable terms and conditions. The relevant federal regulation is 24 C.F.R. § 966.4(b)(3) (2013), which provides that "[a]t the option of the PHA," a lease "may pro-vide for payment of penalties for late payment." (Emphasis added.) The language of the regulation is permissive, not mandatory.

> Taken together, the statute and the regulation permit a PHA to include in a lease a provision specifying a reasonable late fee for overdue rent, but they do not require the inclusion of such a provision. Accordingly, a PHA can easily comply both with the applicable federal laws and regulations and with Minn.Stat. § 504B.177(a), either by specifying no late fee at all in a lease, or by specifying a late fee of eight percent or less that is not unreasonable.

Id. at 688.

The state statute at issue was Minn. Stat. § 504B.177. In 2010 the Minnesota Legislature enacted Minn. Stat. § 504B.177 to regulate late fees. Previously late fees were regulated by the common law of liquidated damages. *See* discussion, *infra*, at VI.E.10.b.

Minn. Stat. § 504B.177 provides:

> (a) A landlord of a residential building may not charge a late fee if the rent is paid after the due date, unless the tenant and landlord have agreed in writing that a late fee may be imposed. The agreement must specify when the late fee will be imposed. In no case may the late fee exceed eight percent of the overdue rent payment. Any late fee charged or collected is not considered to be either interest or liquidated damages. For purposes of this paragraph, the "due date" does not include a date, earlier than the date contained in the written or oral lease by which, if the rent is paid, the tenant earns a discount.
>
> (b) Notwithstanding paragraph (a), if a federal statute, regulation, or handbook permitting late fees for a tenancy subsidized under a federal program conflicts with paragraph (a), then the landlord may publish and implement a late payment fee schedule that complies with the federal statute, regulation, or handbook.

Id.

The Court rejected three arguments of the Housing and Redevelopment Authority of Duluth (HRA) that the statute conflicted with federal law. First, it argued that if it determined that a reasonable late fee is greater than eight percent of an overdue payment, it is impossible to comply with both the federal reasonableness standard and Minn. Stat. § 504B.177(a). The Court concluded that a public housing authority (PHA) "can easily comply both with the applicable federal laws and regulations and with Minn. Stat. § 504B.177(a), either by specifying no late fee at all in a lease, or by specifying a late fee of eight percent or less that is not unreasonable." 852 N.W.2d at 688.

The HRA next argued that the statute was an obstacle to achieving the purposes of federal law in that the late fee limitation interfered with congressional intent to give maximum flexibility to PHAs and to increase the supply of public housing. The Court noted:

> Congress declared that it is also federal policy "to assist *States* ... to remedy the unsafe housing conditions and the acute shortage of decent and safe dwellings for low-income families" and "to assist *States* ... to address the shortage of housing affordable to low-income families." 42 U.S.C. § 1437(a)(1)(A)-(B) (emphasis added). The statute therefore demonstrates congressional intent to have state regulations exist side-by-side with federal regulations of subsidized housing.
>
> ...

> Pursuant to HUD's interpretation of its regulations, federal statutes and regulations provide a floor of protection for tenants in public housing, not a ceiling, and states may forbid lease provisions that federal law would permit.

Id., citing *Barrientos v. 1801-1825 Morton LLC,* 583 F.3d 1197 (9th Cir.2009) (rejected a preemption challenge to a Los Angeles ordinance that gave tenants in federally subsidized housing greater protection from eviction than did federal law).

The HRA then argued that the state statute permitted its late in excess of 8% of unpaid rent by providing:

> If a federal statute, regulation, or handbook providing for late fees for a tenancy subsidized under a federal program conflicts with paragraph (a), then the landlord may continue to publish and implement a late payment fee schedule that com-plies with the federal statute, regulation, or handbook.

Minn. Stat. § 504B.177(b).

The Court concluded that

> the plain and ordinary meaning of "conflicts with" in Minn. Stat. § 504B.177(b) refers to an incompatibility between the state standard for late fees for overdue rent in paragraph (a) and the federal standard referred to in paragraph (b). In other words, under section 504B.177(b), "a federal statute, regulation, or handbook providing for late fees ... conflicts with paragraph (a)" only if the state statute contains provisions that are incompatible with federal law.

852 N.W.2d at 693 (citations omitted). The Court found no conflict.

> It is true that the federal and state standards differ, but the eight percent limitation on late fees (state standard) is not incompatible with the federal standard. Indeed, federal law does not expressly authorize any particular amount of fees or prohibit a state from setting a limitation on late fees that is more favorable to the tenant. The HUD Guidebook explicitly permits states to prohibit lease provisions beyond those prohibited by federal law and indicates that, in the case of a conflict, the provision most beneficial to the tenant prevails. Thus, the federal scheme allows individual states to have a different state standard on late fees, provided that the state standard does not permit late fees that are unreasonable under federal law.

Id. at 693-94.

Preemption has been raised a couple of times in evictions alleging drug-related criminal activity. In *Public Housing Agency for the City of St. Paul v.* _____, No. HG-CV-08-4518, Order (Minn. Dist. Ct. 2nd Dist. Jan. 22, 2009) (Appendix 615) (Judge Monahan), the public housing landlord authority filed an eviction action, claiming that the police responded to call from the tenant about serious fight between tenant and guest involving knives, and found small amount of marijuana. The tenant claimed self defense and that she did not know about marijuana. The court concluded possession of a small amount of marijuana is not criminal activity under state law, and that the landlord presented no evidence of criminal conduct, disturbance, or impairment of the physical or social environment, health, safety, or enjoyment. The landlord also claimed that defense under Minn. Stat. § 504B.171 was preempted federal

and state decisions interpreting the federal criminal activity statute. The court declined to rule on the issue, as it found that the landlord had not proven a breach of lease under federal law. In *Maryland Park Apartments v. _____,* No. CX-02-4044 (Minn. Dist. Ct. 2nd Dist. June 17, 2002) (Appendix 533), the court held that federal law and *Rucker* do not preclude Minnesota statute with greater tenant protection.

For more on conflict preemption, *see* L. McDonough and M. MacCreight, *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REVIEW 55 (May/June 2007) and updated slide show.
http://povertylaw.homestead.com/WaitAMinute.html

See also HUD HOUSING PROGRAMS: TENANTS' RIGHTS §13.8.1.5 at 812-16 (National Housing Law Project, 4th ed. 2012 and Supplements) (also known as the Green Book).
https://www.nhlp.org/trainings-publications/

B. SUMMARY OF EVICTION ACTIONS AND COURT PROCEDURE

1. Commencing the Action

The unlawful detainer action is now called an eviction action under Minn. Stat. § 504B.001, Subd. 4. It is a summary proceeding, created by statute, to allow the landlord or owner of rental property to evict the tenant or possessor of the property. The plaintiff prepares a complaint, often using a form. The plaintiff files the case with the court administrator, who prepares a summons. The Minnesota Courts website contains the complaint and other housing forms.
http://www.mncourts.gov/GetForms.aspx?cat=Housing+-+Landlord-Tenant

The defendant must be served at least seven days before the initial hearing, either by personal or substitute service. Service should be carefully scrutinized, since Minn. Stat. § 504B.331 (formerly § 566.06) requires strict compliance in service, not merely substantial compliance. *Color-Ad Packaging, Inc. v. Kapak Industries, Inc.*, 285 Minn. 525, 526 n.1, 172 N.W.2d 568, 569 n.1 (1969), overruled on other grounds by *In re Lake Valley Twp. Bd., Traverse Cnty. v. Lewis*, 305 Minn. 488, 234 N.W.2d 815 (1975); *Bloom v. American Express Co.*, 222 Minn. 249, 253, 23 N.W.2d 570, ____(1946); *Koski v. Johnson*, 837 N.W.2d 739 (Minn. Ct. App. 2013); *Nieszner v. St. Paul Sch. Dist. No. 625*, 643 N.W.2d 645, 649–50 (Minn. Ct. App. 2002). For more information on service defenses, *see* discussion at VI.C.

2. Answers and defenses

There are many defenses to eviction action, although defendants may assert them orally without a written answer. The Table of Contents lists defenses. The Poverty Law website contains various answer forms.
http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html.

3. Filing, E-filing, Fees and Waivers

The base filing fee for eviction actions is $285, but it can be as high as $299, which can include local district fees. The fee applies to both plaintiffs and defendants, and landlords and tenants, for the first document filed each party in a case. The court charges a separate fee for motions. The Minnesota Courts website lists court fees.
http://www.mncourts.gov/Help-Topics/Court-Fees.aspx

If a defendant does not file anything and orally presents an answer or response to the plaintiff's complaint, the court does not assess a fee to the defendant. Low income persons can request a fee waiver by filing an *in forma pauperis* application.

Attorneys are required to e-file documents in eviction and other landlord and tenant actions in district court as in other actions. Minn. Gen. R. Prac. 14. It often takes several hours for an attorney e-filing to receive confirmation from the court that the submission has been accepted. The court website includes information and training on e-filing.
http://www.mncourts.gov/File-a-Case/File-in-A-District-Trial-Court.aspx

Unrepresented defendants can file documents in person. An attorney representing a defendant can file quicker by having the defendant sign the document and file in-person, rather than having the attorney e-file it.

The Hennepin County Housing Court accepts both the answer and *in forma pauperis* affidavit by e-filing. Counsel should be careful to list the affidavit as a confidential document, while the answer is a public document. Given the delays involved with e-filing, counsel should plan to complete e-filing the day before the arraignment.

Recently there have been a number of *in forma pauperis* orders issued by a referee in Hennepin County that have required defendants to pay part of the filing or sheriff service fees even though they meet the statutory requirements for a fee waiver, such as receipt of means-tested public assistance, representation by a civil legal services program or volunteer attorney program based on indigency, or family income less than 125% of the Federal Poverty Line. Low-income defendants should be as complete as possible about income and expenses, including completing the second page of the affidavit, and even attaching a more detailed list of expenses than listed in the form.

The Poverty Law website contains *in forma pauperis* forms, including a table of detailed debt and expenses that can be attached to the affidavit.
http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html

4. Arraignment and First Appearance

In most courts, the initial hearing serves as an arraignment. If the defendant does not appear, the court will find for the plaintiff and issue a Writ of Recovery, formerly Writ of Restitution. If the defendant appears to contest the action, the court generally will schedule a trial for another day, usually within a week. While a written answer is not required, the courts require a filing fee if the defendant files an answer, unless the defendant obtains in forma pauperis status. If the defendant appears and does not contest the action, the court will find for the plaintiff, but might stay issuance of the Writ of Recovery for seven days.

a. Hennepin County, Fourth Judicial District

In the Fourth Judicial District for Hennepin County, a referee presides over the arraignment, which could include as many as 50 cases scheduled on the calendar. Cases are heard in Minneapolis at 1:15 (previously 12:45 pm., and before that 8:45 and 10:30 am.) Monday, Wednesday and Friday at the Hennepin County Government Center, C-300, 300 South 6th Street, Minneapolis, MN 55487.
http://www.mncourts.gov/Find-Courts/Hennepin/Housing-Court.aspx
http://www.mncourts.gov/Find-Courts/Hennepin.aspx.

The clerk does a roll call before the arraignment begins. The order of cases in Hennepin County is judge requests, defaults, settled cases, disputed cases with counsel, and disputed cases without counsel. *See* Memorandum to Housing Court Staff from Sue Daigle (Oct. 3, 1996) (Appendix 173). If a trial is necessary, the referee generally will schedule it for another day. The court also may schedule an evidentiary hearing if needed to resolve pre-trial motions, such as motions for dismissal for improper service. Referees usually hear all motions and trials.

b. Ramsey County, Second Judicial District

In the Second Judicial District for Ramsey County, a referee presides over the arraignment. The cases are heard in St. Paul at 8:15 a.m. on Tuesday and Thursday at the Ramsey County Courthouse, 15 West Kellogg Boulevard, Saint Paul, MN 55102, on the 1st floor.
http://www.mncourts.gov/Find-Courts/Ramsey/RamseyCivilCourt.aspx

If a trial is necessary, the referee generally will schedule it for another day. The court also may schedule an evidentiary hearing if needed to resolve pre-trial motions, such as motions for dismissal for improper service. Judges and not referees usually hear all motions beyond the arraignment, and trials.

c. Anoka County, Tenth Judicial District

In the Anoka County in the Tenth Judicial District, a judge presides over the arraignment, hearing cases in Anoka on Monday and Wednesday mornings 8:30 a.m. at the Anoka County Courthouse, 2100 3rd Ave., Anoka, MN 55303-2489. If a trial is necessary, the referee generally will schedule it for another day.
http://www.mncourts.gov/Find-Courts/Anoka.aspx

d. St. Louis County, Sixth Judicial District

In St. Louis County in the Sixth Judicial District, a referee presides over the arraignment. The cases are heard in Duluth on Monday afternoon and Friday morning at Duluth Courthouse, 100 North 5th Avenue West, Duluth, MN 55802-1285. Trials are held on the following Mondays and Fridays.
http://www.mncourts.gov/Find-Courts/Duluth.aspx

5. Removal of the Judicial Officer

a. Hennepin and Ramsey County Housing Courts

A party may opt out of a Housing Court referee hearing by filing a written request the day before the first hearing, and the case will be referred to a judge. Minn. R. Gen. Prac. § 602 provides this right. Removal under this rule allows a party to remove a referee have a judge assigned to the case, but still could remove the judge as discussed below.

In 2014 the Minnesota Legislature amended Minn. Stat. § 484.013, which created housing courts in Hennepin and Ramsey Counties. Subdivision 3 used to provide "Section 484.70, subdivision 6, applies to the housing calendar program." Minn. Stat. § 484.70 covers court referees in general, and provides: "Subd. 6.Objection to referee. No referee may hear a contested trial, hearing, motion or petition if a party or attorney for a party objects in writing to the assignment of a referee to hear the matter. The court shall by rule, specify the time within which an objection must be filed." The amended

§ 484.013, Subd. 3 now states "Section 484.70, subdivision 6, does not apply to the housing calendar program."

While it was the intention of the Minnesota Legislature to eliminate removal of housing court referees, Minn. R. Gen. Prac. § 602 has not been amended.

A party still may remove a specific referee or judge from a case upon a written notice of removal. "The notice shall be served and filed within ten days after the party receives notice of which judge or judicial officer is to preside at the trial or hearing, but not later than the commencement of the trial or hearing." Minn. R. Civ. P. 63.03. Unless the parties receive a notice of judicial assignment, which does not happen in eviction cases in the Second and Fourth Districts, the deadline for a judicial officer removal is before the hearing begins. *Citizens State Bank of Clara City v. Wallace*, 477 N.W.2d 741, 742 (Minn. Ct. App. 1991). Once a party appears before that officer, the party may not remove the officer. *State v. Pierson*, 368 N.W.2d 427, 432 (Minn. Ct. App. 1985).

When a party files a notice of removal, the court assigns the case to either another referee or a judge. The Poverty Law website contains forms.
http://povertylaw.homestead.com/RemovingRefereesandJudges.html

b. Greater Minnesota

Housing courts outside of Hennepin and Ramsey are not governed by the Housing Court Rules. Minn. Gen. R. Prac. 601. Referees still are governed by Minn. Stat. § 484.70, which covers court referees in general, and provides: "Subd. 6.Objection to referee. No referee may hear a contested trial, hearing, motion or petition if a party or attorney for a party objects in writing to the assignment of a referee to hear the matter. The court shall by rule, specify the time within which an objection must be filed."

6. Hennepin and Ramsey County Housing Courts Administration Offices

Hennepin County Housing Court administrative services are divided into two offices, with one office on the Second Floor skyway public service level handling eviction action case filings and public service information, and the Third Floor Housing Court (formerly on the Seventeenth Floor), which houses courtrooms and clerks office handling other services. *See* Hennepin County District Court, Access, Filing & Information Are Moving (Appendix 174). The Housing Court issued a May 15, 1996, Order approving acceptance of uncertified checks from Legal Aid and other law firms. The Housing Court retains discretion to decide whether to accept uncertified checks from social service agencies. It takes quite a bit longer for the court to process and disperse uncertified funds, so if quick dispersal of funds is important to the tenant, the tenant or tenant's attorney should submit funds by certified check. (Appendix 174A). The address is Hennepin County Government Center, C-300, 300 South 6th Street, Minneapolis. The court website is
http://www.mncourts.gov/Find-Courts/Hennepin/HennepinHousingCourt.aspx

The Ramsey County Housing Court is at Ramsey County Courthouse, Room 170, 15 West Kellogg Boulevard, Saint Paul. The website is
http://www.mncourts.gov/Find-Courts/Ramsey/RamseyCivilCourt.aspx

7. Trial

The court usually schedules trials within a week of the arraignment, but the parties can agree to a later date. At trial, the plaintiff has the burden of proof by preponderance of the evidence, and the defendant may raise numerous statutory and common law defenses. If the defendant prevails, the plaintiff may not evict the defendant at this time.

8. Execution and enforcement of the writ of recovery

If the plaintiff prevails, the court may immediately issue a writ of recovery, which is a 24-hour eviction notice, or stay issuance of the writ for up to seven days. A judgment for rent is not available.

The plaintiff then must purchase the writ from the court and arrange for the sheriff or police to deliver the writ. If the defendant does not move within 24 hours after delivery of the writ, the plaintiff must (1) schedule the sheriff or police to return to evict the tenant and (2) send a letter to the tenant stating the date and time when the sheriff will return.

When the sheriff or police return with the plaintiff, the plaintiff then can change the locks. The plaintiff must store remaining personal property. The landlord must prepare an inventory of the property in the presence of the sheriff.

The plaintiff must store the defendant's property, either on site for 28 days (formerly 60 days), or with a storage company for 60 days. If the plaintiff stores the property on-site, the defendant has 28 days to return to retrieve it without charge from the plaintiff. Afterward the plaintiff has a lien on the property for moving and storage costs. The plaintiff should send the defendant a 14 day letter stating the date, time, and location of sale or disposal of remaining property.

If the tenant removes some but not all of the property during this process, the landlord should continue and complete the process unless the landlord can confirm that the tenant has abandoned living there.

For more information, *see* discussion at VIII.B.

9. Judge Review and Appeal

a. Appeal

Either party may appeal to the Court of Appeals from entry of judgment, within 15 days of entry of judgment, expanded in 2013 from 10 days. Minn. Stat. § 504B.371 (formerly § 566.12). For more information on appeal, *see* discussion at IX.

b. Judge Review of Referee Decisions

If the case was heard by a referee in the Second or Fourth Judicial Districts (Ramsey and Hennepin Counties), a party may request district court judge review of the decision within "10 days after an oral announcement in court by the referee of the recommended order or, if there is no announcement of the order in court, within 13 days after service by electronic means or mail of the adopted written order." Minn. Gen. R. Prac. 611.

Outside of Ramsey and Hennepin Counties, referee decisions are governed by Minn. Stat. § 484.70, Subd. 7, providing for review with "notice served and filed within ten days of effective notice of the recommended order or finding." Minn. Stat. § 484.70, Subd. 7(d).

For more information on judge review, *see* discussion at IX. The Poverty Law website contains judge review forms.
http://povertylaw.homestead.com/JudgeReviewofHousingCourtRefereeDecisions.html

10. Expungement

The court has common law and statutory power of expunge or seal court files. For more information, *see* discussion at VIII.E.5. The Poverty Law website contains expungement forms.
http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html

11. Housing Advice Clinics

There are several court-based housing advice clinics in Minnesota. *See* Referral List for Clinics.
http://povertylaw.homestead.com/files/Reading/0Referrals.htm

Professional rules allow attorneys to provide limited service at pro bono advice clinics without checking for conflicts. Minnesota Rules of Professional Conduct 6.5 provides:

Rule 6.5 Pro Bono Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program offering pro bono legal services, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by the rule.

Comment

[1] Legal services organizations, courts and various organizations have established programs through which lawyers provide short-term limited legal services - such as advice or the completion of legal forms - that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rule 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rule 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this rule except as provided by paragraph (a)(2). Paragraph(a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rule 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

Minn. R. Prof'l. Cond. 6.5. Rule 1.10 governs conflicts of interest.

See L. McDonough, "Ethical Representation of Landlords and Tenants." http://povertylaw.homestead.com/files/Reading/ETHICAL_CONCERNS_IN_REPRESENTING_LANDLORDS_AND_TENANTS_REVISED.pptx

B1. EVICTION REMEDY IN OTHER ACTIONS

Minn. Stat. § 504B.001, Subd. 4 provides "'Evict' or 'eviction' means a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property by the process of law set out in this chapter. Minn. Stat. §§ 504B.281-504B.371 describe the action and the availability of the eviction writ of recovery.

The statutes do not provide for the writ of recovery in actions other than evictions as discussed above, or in rent escrow actions in limited circumstances. Minn. Stat. § 504B.385, Subd. 2.

Ejectment actions are discussed briefly in Minn. Stat. Ch. 559, specifically §§ 559.07, 559.08, 559.10, and 559.14. Owners use ejectment actions to obtain possession of the property and damages, while the eviction action can provide possession or rent, but not both.

Absent one of the above actions, eviction is not a remedy.

C. CREATION OF A LANDLORD-TENANT RELATIONSHIP.

A landlord-tenant relationship arises when one person occupies the premises owned by another with or without consent, in subordination to the other person's title. *Gates v. Herberger*, 202 Minn. 610, 612, 279 N.W. 711, 712 (1938). The relationship is created by a conveyance of property for a period less than the conveying party has in the premises, in consideration of rent, leaving the landlord a reversionary interest. *State v. Bowman*, 202 Minn. 44, 46, 279 N.W. 214, 215 (1938). *See* 10B DUNNELL MINN. DIGEST 2D *Landlord and Tenant* § 1.00.

The term "lease" generally is used to refer to the physical document creating the tenancy, although it is common to refer to a tenancy created by an oral agreement as an "oral lease". The lease is both a conveyance of the right to possession of real property and a contract creating the terms for the landlord-tenant relationships. *Local Oil Company, Inc. v. City of Anoka*, 303 Minn. 537, 539, 225 N.W. 2d. 849, 851 (1975). Often the term "lease" and "tenancy" are used interchangeably to describe the relationship between the landlord and tenant. The tenant's interest in the property is a leasehold interest. *Sanford v. Johnson*, 24 Minn. 172, 173 (1877). While a tenancy may be created by an oral or written lease, it also may be created by operation of law.

D. TYPES OF PRIVATE TENANCIES

0. Definition of tenancy, lease or leasehold interest

A lease is a conveyance of lands or tenements for a term less that the party conveying for rent or other consideration. *Gruman v. Investors Diversified Services, Inc.,* 247 Minn. 502, 78 N.W.2d 377 (1956); *Place v. St. Paul title Ins. & Trust co.,* 67 Minn. 126, 69 N.W. 706 (1897). *See* discussion, *supra*, at I.C.

While Minn. Stat. § 504B.001 defines landlord and tenants of residential properties for the purposes of the rights and obligations provided in Chapter 504B, *see* discussion, *infra*, at I.E, it does not eliminate earlier definitions in the common law.

1. Fixed term

A tenancy for a fixed term also is called a tenancy for years, and can be for any duration. Generally, during the term of the lease, the terms of the agreement cannot be changed without the consent of the parties. The landlord cannot evict the tenant unless the tenant has breached (violated) the lease. The tenant cannot terminate the lease before the end of the term without the landlord's consent, unless a constructive eviction occurs or the tenant enters the miliary service and gives written notice to the landlord.

Some term leases allow the landlord and tenant to terminate the lease before the end of the term with notice. However, in some cases, the notice period may be unconscionable. *See Pickerign v. Pascal Marketing, Inc.*, 303 Minn. 442, 446, 228, N.W. 2d 562, 565 (1975) (lease providing for 30-day notice to service station operator may be unconscionable). If a term lease becomes void under the statute of frauds, the law will imply the creation of a tenancy at will. *Fisher v. Heller*, 174 Minn. 233, 236, 219 N.W. 79, 80 (1928).

When a landlord has proposed a written term lease, but the tenants took occupancy without signing it and the landlord did not provide a copy to the tenants, the written lease is not applicable to the

tenancy, leaving the landlord and tenant in a month-to-month oral tenancy. *Ochoa v. Kenneth*, UD-1950919505 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1995) (Appendix 79). *But see Line v. Reynolds*, Number UD-1960612512 (Minn. Dist. Ct. 4th Dist. Aug 12, 1996) (Appendix 175) (Consolidated unlawful detainer (now called eviction) and rent escrow actions; landlord could require tenant to sign a term lease rather than continue as a month-to-month tenant).

A term tenancy should not terminate upon sale of property by the owner, *Fisher v. Heller*, 174 Minn. 233, 236, 219 N.W. 79, 80 (1928) (tenancy at will).

1.a. Tenancy for life

In *Jacobson v. Meinen Holdings, LLC,* No. 28-CV-16-645 (Minn. Dist. Ct. 3rd Dist., Houston County, Feb. 15, 2017) (Appendix 807) (Judge Sturino), the landlord in an email offered a tenancy for life, but the proposed lease which was not signed proposed a termination provision. The subsequent email and mail correspondence confirmed the former and that the landlord would continue to participate in the Section 8 program. After the tenant complained about conditions, the landlord attempted to terminate the tenancy. The tenant filed a rent escrow action, with the court ordering that (1) landlord is required to make repairs, (2) tenant has the right to lease the property for life, through the part performance exception to the statute of frauds, (3) landlord is required to participate in section 8 program for remainder of lease, (4) the landlord shall reimburse the tenant for expenses incurred in connection with repair issues, (5) the corporate veil was pierced to make the entity and the shareholder liable, and (6) $500 statutory attorneys' fees for tenant.

1b. Written lease terms and provisions may continue after lease expiration

See discussion, *infra*, at VI.G.27.

2. Month-to-month, year-to-year, and other periodic tenancies

A periodic tenancy is a tenancy made up of an indefinite series of rental periods, which either party may terminate by giving written notice before the last rental period. A periodic tenancy also is created where a tenant of urban real estate holds over after expiration of a lease, with a period of the tenancy being the period between payments. Minn. Stat. §§ 504B.135 (formerly 504.06), 504.141 (formerly § 504.07). Upon expiration of an initial term lease, without any action by the parties to renew the lease, the parties' continuation of the landlord-tenant relationship becomes a month-to-month tenancy and cannot be based on the original written lease. *Urban Investments, Inc. v. Thompson*, No. UD-1950626525 (Minn. Dist. Ct. 4th Dist. Aug. 10, 1995) (Appendix 80). When a landlord has proposed a written term lease, but the tenants took occupancy without signing it and the landlord did not provide a copy to the tenants, the written lease is not applicable to the tenancy, leaving the landlord and tenant in a month-to-month oral tenancy. *Ochoa v. Kenneth*, UD-1950919505 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1995) (Appendix 79).

If the interval between rent payments is a month, a 30-day notice is not adequate if there are 31 days in the month. *Johnson v. Schoen*, 2004 WL 614857 at *1 (Minn. Ct. App. Mar. 30, 2004) (unpublished) ("Johnson was obligated to give a one-month (not 30 days) advance notice to effectively terminate her tenancy. The record clearly shows that she did not do this.").

In the most common form, the month-to-tenancy, written notice must be given *and received* before the last month of the tenancy. Minn. Stat. § 504B.135 (formerly 504.06); *Johnson v. Ceil Hamm*

Brewing Company, 213 Minn.12, 16, 4 N.W.2d 778, 781 (1942); *Oesterreicher v. Robertson*, 187 Minn. 497, 501, 245 N.W. 825, 826 (1932). *See Mako v. Naditch & Sons*, 303 Minn. 6, 7, 226 N.W.2d 289, 290 (1975) (strict compliance required); *Eastman v. Vetter*, 57 Minn. 164, 166, 58 N.W. 989, 989-90 (1894) (defective notice void and not effective at end of next month). A periodic tenancy does not terminate upon the death by either party. *State Bank of Loretto v. Dixon*, 214 Minn. 39, 43, 7 N.W.2d 351, 353 (1943).

In *State v. Lilienthal,* 889 N.W.2d 780 (Minn. Feb. 1, 2017) the appellant met the victim through a mutual friend and, after learning that the victim needed a place to stay, agreed to rent a room in his house to the victim for $100 per week. The victim and the appellant had a disagreement and appellant asked victim to move out. That same day, because victim refused to move out, appellant poured gasoline on the victim and lit the gasoline on fire. The appellant was convicted of first-degree premeditated murder. He appealed arguing, among other things, that the district court erred in denying his request to give a jury instruction on defense of dwelling. The Minnesota Supreme Court found that the district court did not abuse its discretion because the defense of dwelling cannot be asserted against those with "rights to the dwelling" and the victim had a tenancy at will with the appellant which entitled him to written notice of the termination of the tenancy. The court explained that the appellant's arguments that (I) the victim's tenancy terminated when the appellant expressed that he did not want the victim to continue to live with him and (ii) the victim had not paid rent in a while both failed because the appellant did not provide a notice in writing to the victim to terminate the tenancy.

In *Shirk v. Hoffman,* 57 Minn. 230, 58 N.W. 990 (Minn. 1894), John Hoffman and Frank Hoffman ("the Hoffman's") leased a house from Shirk, on a month-to-month basis, beginning on December 1, 1890. The Hoffman's continued to reside at the property, and continued to pay rent, until February 1, 1892. The Hoffman's then vacated and stopped paying rent without providing any notice to Shirk. Shirk filed suit seeking rent for the remainder of the year. The trial court entered judgment for Shirk and awarded him two month's rent. The Minnesota Supreme Court reversed, holding that when a month-to-month tenant holds over after that month and continues to pay rent without entering into a new agreement, a month-to-month tenancy is created. The appellate court further held that the month-to-month tenancy can only be terminated upon reasonable notice by either party.

In *Bongard v. Premium Tax Servs., Inc.,* No. 27CVHC 12-6392 207 (Minn. Dist. Ct. 4th Dist. Dec. 5, 2012) (Appendix 695), in a commercial eviction action, the court granted partial summary judgment in favor of the tenant and dismissed the landlord's claims for eviction for breach of lease due to the lack of a right of re-entry clause in the lease, and termination of lease for public nuisance due to the lack of notice from a prosecuting attorney as required by Minn. Stat. § 617.81. The court noted the lease was year-to-year rather than month-to-month requiring a three month notice under Minn, Stat. § 504B.135, but if the effective date was after the action was commenced, the action would not have accrued. Because the lease's starting date remained a disputed fact, the issue was set for termination at trial.

It is unclear whether the landlord has the right to unilaterally modify the terms of a periodic tenancy by giving the same kind of notice as is required to terminate the tenancy. Landlords argue that it is a common practice for landlords to give notice of changes in the rent or building rules, and for these changes to be accepted as part of the lease without the need for specifically terminating the existing tenancy or informing the tenant that the tenant must move if the tenant does not accept the new terms. Alternatively, landlords argue that such a notice is actually a notice to terminate the old periodic tenancy combined with an offer to re-rent the premises on new terms.

Tenants argue that if the tenant objects to the rent increase, the tenant cannot be bound to a new lease by implication. *See Urban Investments, Inc. v. Thompson,* UD-1950626525 (Minn. Dist. Ct. 4th Dist. Aug. 10, 1995) (Appendix 80) (additional provisions that were not part of the original lease do not create additional obligations on the part of the tenant, without an agreement to make the additional provisions part of a new lease); FUNDAMENTALS OF LANDLORD/TENANT LAW AND PRACTICE, *supra*, § 4.1-02(3) at 3-4 (MCLE 1988). However, a notice that explicitly terminates an existing tenancy, offers to renew the lease at an increased rent, and specifies that the offer may be accepted by remaining in possession past the expiration of the original term should be effective.

For notice defenses, *see* discussion, *infra*, at VI.F.

3. Tenancy at will

Historically there was some disagreement over whether a periodic tenancy was a tenancy at will. *See State Bank of Loretto v. Dixon*, 214 Minn. 39, 43 n.1, 7 N.W.2d 351, 353 n.1 (1943). *Compare* 10B DUNNELL MINN. DIGEST 2D *Landlord and Tenant* § 1.02 *and* FUNDAMENTALS OF LANDLORD/TENANT LAW AND PRACTICE, § 4.1-02(4) at 4. In any event, a tenancy at will generally has the same legal effect as a periodic tenancy.

A tenancy at will has an uncertain term, and is created where the parties agree to a tenancy without a fixed term, *Weidemann v. Brown*, 190 Minn. 33, 40-41, 250 N.W. 724, 727 (1933); where the lease is void, *Hagen v. Bowers*, 182 Minn. 136, 137-38, 233 N.W. 822, 823 (1931); or where a tenant remains on the property after expiration or termination of the lease (holdover tenant) and continues to pay rent, *Paget v. Electrical Engineering*, 82 Minn. 244, 246, 84 N.W. 800, 801 (1901). Where the parties relationship was a personal and domestic partnership, rather than a relationship of landlord-tenant, vendor-vendee, or arms-length contracting parties, the relationship may be a tenancy-at-will. *Charboneau v. Johnson*, UD-1950817510 (Minn. Dist. Ct. 4th Dist. Aug. 30, 1995) (Appendix 81). Where there is a landlord-tenant relationship, but the term is indefinite and the rent is unclear, the relationship may be a tenancy-at-will. *Hansen v. Trom,* UD-1950926503 (Minn. Dist. Ct. 4th Dist. Nov. 6, 1995) (Appendix 82).

Permission is all that is needed from an owner to create a tenancy-at-will, and rent or other obligations are not needed. *Thompson v. Baxter,* 107 Minn. 122, 119 N.W. 797 (1909); *Lee v. Regents of the University of Minnesota*, 672 N.W.2d 366 (Minn. Ct. App. 2003) (followed *Thompson*).

Either party may terminate a tenancy at will in the same manner as a periodic tenancy. Minn. Stat. § 504B.135 (formerly 504.06). A tenancy at will does not terminate upon sale of property by the owner, *Fisher v. Heller*, 174 Minn. 233, 236, 219 N.W. 79, 80 (1928) or upon death of either party. *See* R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT, § 10.3 (Bancroft-Whitney 1980 and Supp. 2008).

In *State v. Lilienthal,* 889 N.W.2d 780 (Minn. Feb. 1, 2017) the appellant met the victim through a mutual friend and, after learning that the victim needed a place to stay, agreed to rent a room in his house to the victim for $100 per week. The victim and the appellant had a disagreement and appellant asked victim to move out. That same day, because victim refused to move out, appellant poured gasoline on the victim and lit the gasoline on fire. The appellant was convicted of first-degree premeditated murder. He appealed arguing, among other things, that the district court erred in denying his request to give a jury instruction on defense of dwelling. The Minnesota Supreme Court found that the district court did not abuse its discretion because the defense of dwelling cannot be asserted against those with

"rights to the dwelling" and the victim had a tenancy at will with the appellant which entitled him to written notice of the termination of the tenancy. The court explained that the appellant's arguments that (I) the victim's tenancy terminated when the appellant expressed that he did not want the victim to continue to live with him and (ii) the victim had not paid rent in a while both failed because the appellant did not provide a notice in writing to the victim to terminate the tenancy.

In *Wajda v. Schmeichel,* No. A18-0060, 2018 Minn. App. Unpub. LEXIS 981, 2018 WL 6165295 (Minn. Ct. App. Nov. 26, 2018) (unpublished), *rev. den.* (Minn. Feb. 19, 2019), the court reversed the district court decision awarding eviction. The court held that an eviction for breach of lease was improper where the lease is void on public-policy grounds because the landlord had rented the property without a license required by Minneapolis. *Id.* at *5-8. The court then noted that because the lease was void, the parties created a tenancy at will by paying and accepting rent. The court held the eviction for holdover after notice to quit was improper because landlord did not give proper written notice to the tenant appellant terminating the tenancy at will by giving only 8 days notice. *Id.* *8-9.

In *Ricks v. _____,* No. 27-CV-HC-14-6380 (Minn. Dist. Ct. 4th Dist. Dec. 18, 2014) (Appendix 797), the court granted judgment and costs for tenant where the parties had a written lease with no end date and no rent, creating a tenancy at will requiring three month written notice, so the one month notice was ineffective. The parol evidence rule precluded evidence of landlord's intent of a term lease.

For notice defenses, *see* discussion, *infra*, at VI.F.

4. Tenancy at sufferance

A tenancy at sufferance describes the legal limbo which exists when a tenant holds over after expiration or termination of the lease and the landlord does not accept rent. *Weidemann v. Brown*, 190 Minn. 33, 40-41, 250 N.W. 724, 727 (1933). It is not a true tenancy because there is no landlord/tenant relationship between the parties, but the landlord must bring an eviction (formerly unlawful detainer) action to evict the tenant. Minn. Stat. § 504B.285 (formerly § 566.03), 504B.301 (formerly § 566.02).

In *Shirk v. Hoffman,* 57 Minn. 230, 58 N.W. 990 (Minn. 1894), John Hoffman and Frank Hoffman ("the Hoffman's") leased a house from Shirk, on a month-to-month basis, beginning on December 1, 1890. The Hoffman's continued to reside at the property, and continued to pay rent, until February 1, 1892. The Hoffman's then vacated and stopped paying rent without providing any notice to Shirk. Shirk filed suit seeking rent for the remainder of the year. The trial court entered judgment for Shirk and awarded him two month's rent. The Minnesota Supreme Court reversed, holding that when a month-to-month tenant holds over after that month and continues to pay rent without entering into a new agreement, a month-to-month tenancy is created. The appellate court further held that the month-to-month tenancy can only be terminated upon reasonable notice by either party.

4a. Analyzing holder over tenancies

When the tenant remains on the property following the end of the tenancy, either after a term lease expires or a periodic or at-will tenancy if terminated with proper notice, several relationships between the parties can be implied based on their conduct.

a. *Tenants does not pay or landlord does not accept rent: tenancy at sufferance (no tenancy)*

The tenant remaining on the property without payment and acceptance of create does not create an ongoing tenancy. The result is a tenancy at sufferance, which actually is not a tenancy. If the tenant does not vacate the property, the landlord must commence an eviction action. *See* discussion, *supra*, at I.D.4.

The landlord could sue the tenant after vacating the property for rent due under the lease. *See* discussion, *infra*, at XII.C.1.

b. *Tenant pays and landlord accepts rent: month-to-month tenancy*

Minn. Stat. § 504B.141 provides:

> URBAN REAL ESTATE; HOLDING OVER.
> When a tenant of urban real estate, or any interest therein, holds over and retains possession after expiration of the lease without the landlord's express agreement, no tenancy for any period other than the shortest interval between the times of payment of rent under the terms of the expired lease shall be implied.

The statute and its predecessors date back to 1901. 1901 Minn. Laws Ch. 31; Minn. Stat. § 3333 (1905); Minn. Stat. § 68.12 (1913); Minn. Stat. § 504.07 (1927), recodified to the current statute in 1999.

Prior to the enactment of 1901 Minn. Laws Ch. 31, the origin of Minn. Stat. § 504B.141, if a tenant for a term remained in possession and paid rent after the termination of the lease, the law implied a lease for another term upon the same conditions. *Shirk v. Hoffman,* 57 Minn. 230, 231, 58 N.W. 990 (1894). "The purpose of the act was to remove the hardships of the rule as to those cases where the parties had not made any provisions in the lease with reference to a renewal." *Slafter v. Siddall,* 97 Minn. 291, 292, 106 N.W. 308 (1906).

The resulting tenancy is a month to month tenancy. *Mid Continent Management Corporation v. Donnelly,* 372 N.W.2d 814, 816 (Minn. App. 1985) (interpreting Minn. Stat. § 504.07, the predecessor of Minn. Stat. § 504B.141). Either party can terminate the tenancy with a one-month written notice. Minn. Stat. § 504B.135 (formerly § 504.06); *Johnson v. Theo Hamm Brewing Co.,* 213 Minn. 12, 16, 4 N.W.2d 778, 781 (1942). *See* discussion, *supra*, at I.D.2, and *infra*, at VI.F.1.

c. *Automatic renewal clauses*

See discussion, *infra,* at I.D.10.

5. Subtenancies and assignments

A subtenancy is created when a tenant transfers the tenant's possessory interest under the lease to another for less than the whole term of the lease. *Warnert v. MGM Properties*, 362 N.W.2d 364, 367 (Minn. Ct. App. 1985). A subtenancy creates a landlord tenant relationship between the tenant-sublessor and subtenant. Privity of estate exists between the landlord and the tenant, and the sublessor and the subtenant, but not between the landlord and the subtenant. *See* R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT, §§ 8.11-8.12 (Bancroft-Whitney 1980 and Supp. 2008). Generally, termination of the prime lease terminates the subtenant's possessory rights under the sublease, but surrender of the prime lease does not terminate the sublease. It simply causes the lessor to "step down" to the position of the sublessor on the sublease. *Warnert*, 362 N.W.2d at 367-69. A tenant may not create a sublease for a

time period identical to the tenants lease with the landlord, and co-tenants of a landlord may not create a sublease between themselves. *Hansen v. Trom*, UD-1950926503 (Minn. Dist. Ct. 4th Dist. Nov. 7, 1995) (Appendix 82).

The writ cannot be enforced against a subtenant who was not a party to the eviction (unlawful detainer) action nor named in the writ of restitution. *See Kowalenko v. Haines*, No. C6-85-1365 (Minn. Ct. App., July 24, 1985) (attached as Appendix 4). In *Kowalenko*, the petitioner had subleased the apartment from the former tenants. The writ was enforced against the petitioner, pursuant to an unlawful detainer action against former tenants, but not the petitioner. The petitioner was not named in the writ. The court ordered the landlord to return possession of the apartment and petitioners personal property to her, pursuant to Minn. Stat. § 504B.375 (formerly § 566.175).

An assignment is created when a tenant transfers the tenant's possessory interest under the lease for the full remaining term of the lease. *Kostakes v. Daly*, 246 Minn. 312, 315-16, 75 N.W.2d 191, 193-94 (1956). Where a third person is in possession of the premises under a lease, the law presumes that the lease has been assigned by the lessee to such person, but the presumption is rebuttal. *O'Neal v. A.F. Oys & Sons*, 216 Minn. 391, 394, 13 N.W.2d 8, _____(1944). However, the reservation of the right to collect rents, reenter in case of default, and enter to make repairs creates a sublease, rather than an assignment. *Judd v. Landin*, 211 Minn. 465, 472, 1 N.W.2d 861, 865 (1942).

An assignment leaves privity of estate only between the landlord and the assignee, and privity of contract between the tenant-assignor and the assignee. *Kostakes*, 246 Minn. at 316, 75 N.W.2d at 194. However, in some cases the assignee may be an equitable assignee, subject to the covenants and obligations of the agreement between the landlord and tenant-assignor. *Baehr v. Penn-O-Tex Oil Corp.*, 258 Minn. 533, 536, 104 N.W.2d 661, __ (1960). The assignee is liable for rent only during the time the assignment. *O'Neil v. A.F. Oys & Sons*, 216 Minn. 394-95, 13 N.W.2d at __. However, the landlord and the assignee could agree that the assignee would pay prior rent. Additionally, if the assignee vacated before the end of the assignment period, the assignee could be liable for rent for the balance of the assignment period.

A landlord may prohibit assignment and subletting by the terms of the lease, or limit assignment and sublet to the landlord's sole consent. A landlord has no duty to agree to an assignment or sublease where the tenant desires an early termination of the lease and proposes an assignment or sublease to mitigate damages. *Gruman v. Investors Diversified Services, Inc.*, 247 Minn. 502, 505-08, 78 N.W.2d 377, ____ (1956). A landlord may condition consent to assignment on specific terms or restrictions. *Leonard, Street & Deinard v. Marquette Assocs.*, 353 N.W.2d 198, 200-01 (Minn. Ct. App. 1984). However, acceptance by the landlord of rent from the assignee with knowledge of the assignment waives a provision requiring consent of the landlord to any assignment. *O'Neal v. A.F. Oys & Sons*, 216 Minn. at 394, 13 N.W.2d at__.

In *Southcross Commerce Center, LLP v. Tupy Properties, LLC*, 766 N.W.2d 704 (Minn. Ct. App. 2009), the court addressed whether the warehouse occupant was a subtenant or assignee. The district court granted the occupant's motion for summary judgment, concluding that the occupant was a subtenant and not an assignee and did not have liability to the landlord. The court first reviewed the case law.

> "A lease is both an executory contract and a present conveyance, and creates a privity of contract and a privity of estate between the lessor and the lessee." *Davidson v. Minn. Loan & Trust Co.*, 158 Minn. 411, 415, 197 N.W. 833, 834 (1924). When the lessee transfers all of its interest in the

lease to another for the entire term of the lease, an assignment of the lease occurs and privity of estate is created between the original lessor and assignee, "giv[ing] the original lessor the right to enforce against the [assignee] all the covenants which run with the land, including the covenant to pay rent." *Id*. at 415-16, 197 N.W. at 834-35; *see also Baehr v. Penn-O-Tex Oil Corp.*, 258 Minn. 533, 536, 104 N.W.2d 661, 664 (1960) (stating that "[a]n assignment occurs where, and only where, a lessee transfers his entire interest" and that "the liability of an assignee arises by privity of estate."); *Anderson v. Ries*, 222 Minn. 408, 414, 24 N.W.2d 717, 721 (1946) ("Where a lessee transfers the whole term for which premises were leased to him, leaving no reversionary interest in himself, it amounts to an assignment....").

But when a tenant transfers less than its entire interest under the lease, or transfers its interest for less than the whole term of the lease, it creates a subtenancy. *Warnert v. MGM Props.*, 362 N.W.2d 364, 367 (Minn. Ct. App.1985), *review denied* (Minn. Apr. 18, 1985); *see also Anderson*, 222 Minn. at 414, 24 N.W.2d at 721 ("[W]here the transfer is a lease of the premises for only a portion of the unexpired balance of the term, the transaction is a sublease...."). "Neither privity of estate nor privity of contract exist[s] between the subtenant and the [original] lessor." *Warnert*, 362 N.W.2d at 367.

Accordingly, in order for appellant to hold RHS liable for the unpaid rent under the lease, appellant must establish that RHS was an assignee to the lease and not just a subtenant of Tupy. Appellant acknowledges that there is no written assignment of the lease between Tupy and RHS, but it contends that RHS was an assignee by operation of law. The district court concluded that appellant put forth no facts to support a claim of assignment by operation of law. We disagree.

"Even without a formal assignment, one in pos-session may be an equitable assignee and subject to the covenants and obligations of the lease." *Baehr*, 258 Minn. at 536, 104 N.W.2d at 664. There is a re-buttable presumption that a third party in possession of leased premises is there as an assignee of the lessee. *O'Neil v. A.F. Oys & Sons*, 216 Minn. 391, 394, 13 N.W.2d 8, 10 (1944) (" 'When a third person is in possession of leased premises under the lessee, the law presumes that the lease has been assigned by the lessee to such person.' " (quoting *Dickinson Co. v. Fitterling*, 69 Minn. 162, 164, 71 N.W. 1030, 1031 (1897))). "In all civil actions ..., a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption." Minn. R. Evid. 301.

Appellant put forth uncontroverted evidence that RHS began occupying the leased space on or about October 1, 2006, and continued to occupy the space until April 2007. The district court specifically found that "RHS Realty occupied all or a portion of [the leased space] from October 2006 to April 2007." Under *Baehr*, this undisputed evidence conclusively established a rebuttable presumption that RHS was an assignee to the lease, requiring RHS to come forward with evidence to rebut the presumption of assignment. Therefore, the district court erred by holding that appellant failed to put forth facts to support a claim of assignment by operation of law.

Id. at 707-08. The court then held that when a nonmoving party to a summary judgment motion puts forth undisputed evidence that conclusively establishes a rebuttable presumption in its favor, the moving party is precluded from obtaining summary judgment. *Id.* at 708.

See generally 10B DUNNELL MINN. DIGEST 2D *Landlord and Tenant*, §§ 2.01-2.02, 7.04; R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT, |Ch. 8 (Bancroft-Whitney 1980 and Supp. 2008).

6. Domestic partners

Domestic partners may or may not be in a landlord-tenant relationship, and if not, an eviction (formerly unlawful detainer) action not be an appropriate forum to determine their possessory interests in the property.

a. *Ownership interest*

In *Shustarich v. Fowler*, UD 1960604520 (Minn. Dist. Ct. 4th Dist. July 5, 1996) (Appendix 176), Plaintiff and defendant first lived in defendant's home. Then plaintiff and defendant moved from her home to a second property, and the parties then living at the second property moved to defendant's old home. Plaintiff took title to the new property, and defendant contributed several thousand dollars from the sale of her home to a new roof and appliances. The parties kept separate expenses. After defendant obtained an order for protection, plaintiff gave notice and filed an unlawful detainer action. The court concluded that plaintiff failed to establish a landlord-tenant relationship, defendant was entitled to assert an interest in the premises, and an unlawful detainer action was a summary remedy inappropriate to try issues of title or to substitute for an action in ejectment, and denied restitution of the premises. *See In re Estate of Ericksen,* 337 N.W.2d 671 (Minn. 1983). *See also* discussion, *infra*, at I.H.4.

b. *Tenancy*

Some domestic partners are in landlord and tenant relationships. *Stock v. Beaulieu* (Minn. Dist. Ct. 9th Dist. Mar. 9, 1995) (Appendix 140) (domestic partners were in landlord-tenant relationship; plaintiff retaliated against defendant for reporting a crime of domestic abuse committed by the plaintiff in which the defendant was the victim). If the parties have not agreed to rent, a termination notice would have to be 90 days. *See* discussion, *infra*, at VI.F.1.b.

c. *Domestic violence*

In 2014, the Minnesota Legislature enacted new rights for tenant who are victims of domestic violence, including (1) an expedited process for tenant termination of the lease and rent obligation, Minn. Stat. § 504B.206; and (2) and eviction defense where basis of the eviction is that the tenant or authorized occupant in the household has been a victim of domestic abuse, criminal sexual conduct, or stalking, Minn. Stat. §§ 504B.285, Subd. 1 (b); 504B.206, Subd. 1 (a).

d. *Guests*

Adult members of the same family in the same dwelling might or might not be in a landlord and tenant relationship. If one member owns the property and the other does not pay rent or provide services in lieu of rent under Minn. Stat. § 504B.001, the latter is not a tenant. *See* discussion at I.E.

The owner could file an eviction action to evict the other person as one unlawful detaining the property under Minn. Stat. § 504B.301 (formerly § 566.02). *See DePetro v. DePetro*, No. A03-727, 2004 WL 885552 (Minn. Ct. App. April 27, 2004) (unpublished) (affirmed eviction by owner of her adult daughter who was not a rent-paying tenant). *See* Subject Matter Jurisdiction, *infra*, at III.

For owner options for excluding non-tenants, *see* discussion at XII.C.4.

7. Implied tenancy and terms

When the parties have neither a written nor oral agreement of undisputed terms but act as if there is a rental agreement by continuing all the indicia of a landlord/tenant relationship, the court must determine the applicable terms by their actions and the surrounding circumstances. The landlord's regular acceptance of a specific sum from the tenant based on the tenant's written offer to pay that sum, and the landlord's acceptance of it for the following eight months without any written or oral objections to it, establishes the parties' agreement to rent at that sum. *Orchestra Hall Associates v. Crawford*, No. UD-1960119508 (Minn. Dist. Ct. 4th Dist. Feb. 13, 1996) (Appendix 177).

8. New owners: covenants run with the land

In general, basic covenants that touch the land run with the land, including covenants to pay rent and maintain the property. R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT Ch. 8 (Bancroft-Whitney 1980 and Supp. 2008). A new landlord takes the land with the rights and liabilities which existed between the old landlord and the tenant. *Glidden v. Second Avenue Investment Co.*, 125 Minn. 471, 473-74, 147 N.W. 658, 659 (1914). *See Whitney v. Leighton*, 225 Minn. 1, 11, 30 N.W.2d 329, 334 (1947) (assignee of a landlord's interest in a lease had a duty to pay property taxes based on his privity of estate with the owners of the fee); *1975 Robert Street Partners v. SR Shingle Creek LLP*, No. A07-0844 (Minn. Ct. App. May 13, 2008) (Unpublished) (rejection of lease by tenant in bankruptcy operated as a breach, rather than a termination, of the lease, allowing tenant to enforce the lease covenants against purchaser); *Farmers Insurance Exchange v. Ouellette*, No. C8-97-1504 (Minn. Ct. App. Feb. 24, 1998) (Appendix 330) (Unpublished) (new landlord assumed terms of modified lease under the terms of the lease, and Minnesota case law). The old landlord's rights and obligations transfer over to the new landlord, if the tenant had notice of the change. *See Pillsbury Investment Co. v. Otto*, 242 Minn. 432, 437, 65 N.W.2d 913, __ (1954). *See also Borer v. Carlson*, 450 N.W.2d 592, 594 (Minn. Ct. App. 1990); *Snortland v. Olsonawski*, __ Minn.__, __ 238 N.W.2d 215, 217-18 (1976).

9. Covenants implied by statute

All oral and written leases include implied statutory covenants on habitability and illegal activity. Minn. Stat. §§ 504B.161 (formerly § 504.18), 504B.171 (formerly § 504.181). *See* discussion at VI.E.1. (habitability), VI.G.16. (unlawful activities).

10. Lease renewal or extension: actual, automatic, and implied

If a term for the duration of the lease's extension is indefinite, any extension due to holdover and payment is limited to the duration of the original lease. *Hildebrandt v. Newell*, 199 Minn. 319, 272 N .W. 257 (1937); *Hallin v. Hallin*, No. C3-02-910, 2002 WL 31893031 (Minn. Ct. App. Dec. 31, 2002) (unpublished). Acceptance of rent following expiration of lease creates a month-to-month lease, but not a lease renewal where negotiations still were underway. *Stoneburner v. Dubow*, No. CX-01-2160, 2002 WL 1051700 (Minn. Ct. App. May 28, 2002) (unpublished).

In *Excelsior Devel. LLC v. Musse,* No. 27-CV-HC-09-20, Second Amended Order (Minn. Dist. Ct. 4th Dist. June 15, 2009) (Appendix 645) (Judge Karasov), the judge reversed the decision of the referee in a commercial eviction, concluding that the (1) the landlord failed to rebut tenant's evidence of exercise of lease renewal option; (2) the lease offered by landlord to tenant and signed by tenant but not landlord was binding lease; (3) the copy of alleged termination notice of tenant offered into evidence by landlord but denied by tenant lacked consideration and was invalid; (4) the tenant had been given 30

days to vacate one commercial space under one expired lease but allowed to retain possession of two other spaces under other leases until expiration.

a. *Implied renewal*

In *Caley v. Thornquist*, 94 N.W. 1084 (Minn. 1903), Thornquist rented a saloon building from the building's owner, Caley. The original written lease was for a term of one year, with the term expiring on February 1, 1901. The lease contained an option for Thornquist to renew the lease for a period of two years, with the same terms, following the lease's original expiration. Following the expiration of the lease, Thornquist continued to remain in possession of the saloon and continued to pay rent, which Caley accepted without dispute, until February 1902. On February 11, 1902, Caley served notice of his intention to have Thornquist vacate the saloon by April. Thornquist refused to vacate the saloon and continued to pay rent. Caley brought an action for eviction, which was granted by the trial court. On appeal, the Minnesota Supreme Court reversed, holding that Thornquist's continuance of paying rent for a substantial period (14 months) after the option to renew was active was conclusive evidence of his intention to exercise his option to renew the lease for the additional two years. The court held that Thornquist's actions, and Caley's continued acceptance of rent, created vested rights to the renewal of the lease for the full two-year period contained in the original lease, and therefore Thornquist had a continued right to occupancy of the saloon.

b. *Automatic renewal*

Minn. Stat. § 504B.145 (formerly § 504.21) restricts automatic renewals of leases.

> Notwithstanding the provisions of any residential lease, in order to enforce any automatic renewal clause of a lease of an original term of two months or more which states, in effect, that the term shall be deemed renewed for a specified additional period of time of two months or more unless the tenant gives notice to the landlord of an intention to quit the premises at the expiration of the term due to expire, the landlord must give notice to the tenant as provided in this section. The notice must be in writing and direct the tenant's attention to the automatic renewal provision of the lease. The notice must be served personally or mailed by certified mail at least 15 days, but not more than 30 days prior to the time that the tenant is required to furnish notice of an intention to quit.

There is little appellate case law interpreting it. In *Mid Continent Management Corporation v. Donnelly,* 372 N.W.2d 814 (Minn. App. 1985), Barbara and Arthur Donnelly ("the Donnelly's") entered into a written lease for an apartment managed by Mid Continent Management Corporation ("Mid Continent"). The lease, which included a rental amount of $550 per month, was for a six-month period beginning on October 1, 1979 and terminating on March 31, 1980. The lease contained an automatic renewal provision stating that following the expiration of the lease, the lease automatically renewed indefinitely for successive 12-month periods based on the same terms. On June 18, 1981, Mid Continent notified the Donnelly's that effective on August 1, 1981, the rent would be increasing to $640 per month. The notification included three options for the tenants: (1) to remain on a month-to-month lease at the new rental rate; (2) to remain on a six month lease at the new rental rate; or (3) to vacate following a 30 day written notice. The Donnelly's chose to remain on a six month lease at $640 per month. On October 28, 1982, Mid Continent notified the Donnelly's that, effective December 1, 1982, rent would be increasing to $750 per month. Mid Continent also included a statement regarding the automatic renewal clause that was in the original lease agreement, notifying the Donnelly's that Minnesota law prohibited Mid Continent from automatically renewing the lease, and that the Donnelly's had been month-to-month

tenants since March 30, 1982. The Donnelly's never objected to the notification, and continued to reside at the apartment and pay the increased rent. On March 29, 1984, Mid Continent again notified the Donnelly's that rent would be increasing. The new increase to $910 per month was to become effective on June 1, 1984. The Donnelly's refused to pay the new rental amount and Mid Continent sued for unpaid rent and unlawful detainer. The trial court ruled in favor of the Donnelly's, but the appellate court reversed. The appellate court based its decision on Minnesota Statute § 504.21 (1984), which stated that no automatic renewal clauses could be enforced unless, 30 days prior the expiration of the lease, the lessor directs the tenant's attention to the automatic renewal provision of the lease. It was undisputed that Mid Continent failed to meet this requirement, and therefore the Donnelly's argument that the lease had automatically been renewed on the same terms failed. Therefore, because no definite term was ever subsequently agreed to by the parties, the appellate court held that the Donnelly's had been month-to-month tenants since March 1982, and because Mid Continent gave reasonable notice of the rental increase, the rent increase to $910 per month went into effect in June 1984.

In *Knight v. McGinty*, 868 N.W.2d 298 (Minn. Ct. App. 2015), the tenant had signed a month-to-month lease with a clause prohibiting notice to move out ("no-move-out clause") between November 1st and February 28th or 29th. After renting the property approximately four years, the landlord sent the tenant a new lease with a $15 increase in rent. The tenant did not sign the new lease but increased his monthly rent payments by $10, which the landlord accepted. Two years later, in November 2006, the tenant paid rent and gave notice to vacate and did vacate. The landlord did not re-lease the apartment until after February 2007. The landlord brought claims for three months' rent and other damages in conciliation court, and, following an adverse ruling, removed the case to district court. The district court found that the no-move out clause constituted an automatic renewal and invalidated the lease pursuant to Minn. Stat. § 504B.145. Therefore the parties' arrangement was a standard month-to-month lease with a 30 day notice. The landlord appealed, and the Court of Appeals held that (1) the no-move-out clause did not constitute an automatic renewal because the lease was not two months or more, would not renew for a specified period of two months or more absent notice that the tenant would move out at the specified time, and nothing in the record suggested that it was intended to automatically renew the lease if the tenant failed to give notice of his intent to vacate; and (2) because the rent increased with the consent of both parties, all other terms of the lease remained in effect.

Fixed term leases often include a provision that following expiration of the original lease term, the tenancy will continue on a month-to-month basis. Such provisions do not trigger the notice requirement of the automatic renewal statute, Minn. Stat. § 504B.145 (formerly § 504.21), since it only applies to leases of an original term of at least two months and a renewal period of at least two months.

However, it is unclear how § 504B.145 (formerly § 504.21) applies a periodic tenancy where the parties have agreed to a two month or 60 day notice period. On one hand, the parties have mutually agreed to the longer notice period in order to give both parties more time to respond to a notice to quit, and the parties should be bound to the agreement. *See Control Data Corp., v. Metro Office Parks, Co.*, 208 N.W.2d 738, 740 (Minn. 1973) (after commercial tenant exercised option to extend lease, tenant was bound by 12 month notice requirement of the lease). On the other hand, § 504B.145 (formerly § 504.21) requires that in leases with an original term of at least two months, and then an automatic renewal period of at least two months if the tenant does not give a notice to quit, the landlord must give a reminder notice to the tenant at least 15 days before the tenant is required to give the notice to quit. In theory, this would require the landlord to give such a reminder notice every two months. This interpretation would appear to conflict with Minn. Stat. § 504B.135 (formerly 504.06), which provides that a periodic tenancy with a rental period of three months or more may be terminated by three months notice, thus a revolving three month periodic tenancy. Perhaps the applicability of § 504B.145 (formerly §

504.21) to a two month periodic tenancy rests on how one analyzes operation of the tenancy. On one hand it is a tenancy that continues on a one month-to-one month basis, but a two month termination notice is required. On the other hand, it is a two month-to-two month tenancy, since at any point in time a two month termination notice is required to terminate it.

11. Relatives and Guests

The Court of Appeals discussed the difference between licensees and guests in *Lee v. Regents of the University of Minnesota,* 672 N.W.2d 366 (Minn. Ct. App. 2003):

> If a licensee has property on the premises in question, she is entitled to "reasonable notice" of the revocation of her right to use the premises. *Ingalls v. St. Paul, Minneapolis & Manitoba Ry. Co.*, 39 Minn. 479, 481, 40 N.W. 524, 525 (1888). Here, the district court ruled that appellant was a "guest" but applied the licensee "reasonable notice" analysis. The facts of this case make it clear that the appellant was a licensee rather than a guest. *Compare* Black's Law Dictionary 932 (7th ed.1999) (defining licensee as "[o]ne who has permission to enter or use another's premises, but only for one's own purposes and not for the occupier's benefit"), *with* Black's Law Dictionary 714 (7th ed.1999) (defining guest as "[a] person who is entertained or to whom hospitality is extended"). Therefore, while the district court incorrectly labeled appellant's status, it used the correct notice analysis by concluding appellant was entitled to reasonable notice.

Id. at 373-74.

Adult members of the same family in the same dwelling might or might not be in a landlord and tenant relationship. If one member owns the property and the other does not pay rent or provide services in lieu of rent under Minn. Stat. § 504B.001, the latter is not a tenant. *See* discussion at I.E.

The owner could file an eviction action to evict the other person as one unlawful detaining the property under Minn. Stat. § 504B.301 (formerly § 566.02). *See DePetro v. DePetro*, No. A03-727, 2004 WL 885552 (Minn. Ct. App. April 27, 2004) (unpublished) (affirmed eviction by owner of her adult daughter who was not a rent-paying tenant). *See* Subject Matter Jurisdiction, *infra*, at III.

For owner options for excluding non-tenants, *see* discussion at XII.C.4.

12. Curtilage and Common Areas

In *State v. Milton*, 821 N.W.2d 789 (Minn. 2012), the court discussed the distinction between the curtilage and common areas for the purposes of police searches, as tenants have an expectation of privacy in the former but not the latter. *Id.* at 799.

> The United States Supreme Court has explained that courts determine whether an area constitutes curtilage, "as did the common law, by reference to the factors that determine whether an individual reasonably may expect that an area immediately adjacent to the home will remain private." *Oliver v. United States*, 466 U.S. 170, 180, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984). Still, what constitutes curtilage often "defies precise definition." *Sorenson*, 441 N.W.2d at 458. Thus, we have sought guidance from the Supreme Court and we have described curtilage in our case law as the court has described it-"the 'area to which extends the intimate activity associated with the sanctity of a man's home and the privacies of life.' " *Id*. at 458 (quoting *Oliver*, 466 U.S. at 180, 104 S.Ct. 1735). Because curtilage is "so immediately and intimately connected to

the home," a resident has a reasonable expectation of privacy in the curtilage of his home. *Garza v. State*, 632 N.W.2d 633, 639 (Minn. 2001).

But, a resident of a multifamily residence has a "diminished" expectation of privacy in the common areas surrounding the residence. *See State v. Krech*, 403 N.W.2d 634, 637 (Minn. 1987) (discussing the backyard of a duplex in a suburban neighborhood). More specifically, we have explained that this "di-minished" expectation of privacy in the common areas of multifamily residences is due to the fact that the common areas are " 'not subject to the exclusive control of one tenant and [are] utilized by tenants generally and the numerous visitors attracted to a multiple-occupancy building.' " *Id*. at 637 (quoting 1 W. LaFave, *Search and Seizure* § 2.3(f) at 414 (1987)); *see also United States v. Brooks*, 645 F.3d 971, 975-76 (8th Cir. 2011) (holding that a stairway leading to a common area of a multifamily residence was not curtilage).

Id. The court concluded that the police officer was in legitimate position to view shell casings on platform of duplex and stairway leading up to defendant's residence. *Id.* at 799-800.

13. Lease interpretation and construction

The rules of contract interpretation also apply to leases. *Carlson Real Estate Co. v. Soltan,* 549 N.W. 2d 376, 379 (Minn. Ct. App. 1996); *Minneapolis Public Housing Authority v. Lor,* 591 N.W.2d 700,704 at fn. 20 (Minn. 1999).

In *Knight v. McGinty,* 868 N.W.2d 298, 300 (Minn. Ct. App. 2015), the Court of Appeals stated:

"[L]eases are contracts to which [appellate courts] apply general principles of contract construction." *RAM Mut. Ins. Co. v. Rohde,* 820 N.W.2d 1, 14 (Minn. 2012). "Contract interpretation is . . . a question of law that [appellate courts] review de novo." *City of Duluth v. Fond du Lac Band of Lake Superior Chippewa,* 843 N.W.2d 577, 581 (Minn. 2014). "[L]eases should be construed so as to give effect to the intention of the parties." *Snyder's Drug Stores, Inc. v. Sheehy Props., Inc.,* 266 N.W.2d 882, 884 (Minn. 1978). "Great weight should be given to the intention of the parties regarding the purpose of the lease." *Orme v. Atlas Gas & Oil Co.,* 217 Minn. 27, 30, 13 N.W.2d 757, 760 (1944).

In *Waterworth v. Eckman, et al.*, No. A15-1206 (Minn. Ct. App. Mar. 28, 2016) (unpublished), the matter at issue for the Court of Appeals was whether the lessee's option to purchase encompassed the entirety of the landlord's property or just the portion leased pursuant to the agreement. The district court found that the lease agreement, which was drafted by the lessee, was ambiguous because the parties' intent could not be determined by the plain language therein, and in light of the fact that ambiguity is resolved against the drafter, the district court held that the option applied to only the previously leased land. The Court of Appeals affirmed, finding that the antecedent phrase relating to the term "this land" was susceptible to more than one meaning. The court further held that when a contract is ambiguous, the parties' intentions should control, but it is the mutual intention that should be given effect, not the intention of one party if the other's intent is unknown. The court found that, in addition to the construing the provision against the drafter, if the lessee's position was adopted, it would lead to the unreasonable conclusion that the landlord was obligated to convey property that she did not own, which could not reasonably have been her intent.

14. Parol Evidence

The parol evidence rule precludes considering extrinsic evidence to construe the terms of an unambiguous, fully-integrated lease. *See, generally, Apple Valley Red-E-Mix, Inc. v. Mills-Winfield Engineering Sales, Inc.,* 436 N.W.2d 121 (Minn. Ct. App. 1989); *Hruska v. Chandler Associates, Inc.,* 372 N.W.2d 709 (Minn. 1985).

In *Arrow Southampton, LLC v. Akinnola*, No. A15-0731, 2016 WL 363487 (Minn. Ct. App. February 1, 2016) (unpublished), Akinnola alleged that oral promises regarding lease renewals were made to him both prior to and after execution of a written one-year lease agreement, which included an express lease renewal term, a non-waiver provision, and an integration clause. Prior to the expiration of the initial lease term, the landlord sent a nonrenewal notice, but then offered, via letter, to enter into a new one-year lease with an increased rent term. Akinnola responded that he wished to renew and sent the new rent payment, but did not sign a new lease because he wanted to negotiate one of its provisions. When the original lease expired, Akinnola did not vacate the apartment, and the landlord filed an eviction complaint. The housing court held that any oral representations made before the lease was signed were subsumed by the lease terms and that because the lease expired of its own terms (not terminated by the landlord), the retaliation defense (regarding Akinnola's complaints about un-leashed large dogs on the property and other safety issues) did not apply.

The Court of Appeals affirmed, holding that: (1) the alleged oral agreements made prior to lease execution were not conditions precedent because Akinnola did not use them to show that the written agreement never became operative, but instead to contradict the lease he was trying to enforce; (2) the alleged oral agreements were inconsistent with the express terms of the written lease and the parol-evidence rule prohibited their admission; (3) the oral promises made after lease execution were merely reassurances of the original oral agreements and did not constitute the clear and convincing evidence needed to alter the terms of the contract; (4) an express contract covering the same subject matter as alleged promise will preclude application of the promissory estoppel doctrine; and (5) even if the oral promises were made and were enforceable, the landlord abided by them by offering a renewal, which Akinnola refused to sign. The Court of Appeals also held that the landlord did not waive its right to evict by accepting rent payments because the agreement contained a nonwaiver provision and there was no history of conduct alleged to support modification of that lease provision. Finally, the Court of Appeals declined to decide whether a notice of nonrenewal qualifies as a Notice to Quit under the Minnesota Statues prohibiting retaliatory eviction because Akinnola could not demonstrate any retaliation and was actually given a chance to sign a new lease, but refused to do so.

In *Ricks v. _____,* No. 27-CV-HC-14-6380 (Minn. Dist. Ct. 4th Dist. Dec. 18, 2014) (Appendix 797), the court granted judgment and costs for tenant, finding that a written lease with no end date and no rent was a tenancy at will requiring three month written notice, so the one month notice was ineffective. The court added that the parol evidence rule precluded evidence of landlord's intent of a term lease.

15. Caretakers as employees, tenants and landlords

a. *Tenants*

Caretakers traditionally were reviewed as occupying the premises incidentally to the caretaker's employment, and once the landlord terminated the employment, the employee who did not vacate immediately became a trespasser who could be evicted without court process. *See Lighbody v. Truelsen*, 39 Minn. 310, 40 N.W. 67 (1888); *Trustees v. Froislie*, 37 Minn. 447, 35 N.W. 216 (1887).

However, Section 504B.001 (formerly § 566.18) now includes caretakers in the definition of tenant.

> "Residential tenant" means any person who is occupying a dwelling in a building. . . under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of money or *exchange of services as rent* for the use of the dwelling unit, and all other regular occupants of that dwelling unit, or any resident of a manufactured home park.

Minn. Stat. § 504B.001, Subd. 12 (emphasis added). *See State Auto Insurance Company v. Knuttila*, 645 N.W.2d 475 (Minn. Ct. App. 2002) (caretaker was a tenant under Minn. Stat. § 504B.001 (formerly § 566.18)). *See Mountainview Place Apartments v. Ford*, No. 94CV1492 (Colo. Cty. Ct. Mar. 24, 1994) (Appendix 179) (Section 8 project tenancy was unaffected by employment agreement; termination of employment was not good cause for eviction).

b. *Landlords*

Minn. Stat. § 504B.001, Subd. 7 provides:

> "Landlord" means the owner or owners of the free hold of the premises or lesser estate therein, contract vendee, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation directly or indirectly in control of a building.

This expansive definition of landlord includes caretakers as lessees, agents, or any other person directly or indirectly in control.

16. Residency hotels

Some owners of hotels that often long-term residency assert that they are not governed by landlord and tenant law. Whether landlord and tenant law regulates the hotel depends on whether the resident has housing elsewhere.

A hotel is a building which is kept, used and advertised, or held out to the public as a place for sleeping or housekeeping accommodations or supplied for pay to guests for transient occupancy. Transient occupancy means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, if the unit occupied is the sole residence of the guest, the occupancy is not transient. There also is a rebuttable presumption that, if the unit occupied is not the sole residence of the guest, the occupancy is transient. Minn. Stat. § 327.70, subds. 3, 5.

If the occupancy is not transient, it would be a tenancy. Minn. Stat. § 504B.001, Subd. 12 provides:

> "Residential tenant" means any person who is occupying a dwelling in a building. . . under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of money or exchange of services as rent for the use of the dwelling unit, and all other regular occupants of that dwelling unit, or any resident of a manufactured home park.

In *Stone v. Clow*, A13-0984, 2014 WL 902724 (Minn. Ct. App. March 10, 2014) (unpublished),

the property owner Clow a document entitled "Extended Stay-Residential Lease" to rent to the resident Stone. After a dispute, the owner locked out the resident. The district court concluded that Clow unlawfully excluded Stone from the apartment by locking Stone out. The district court required Clow to pay certain monetary damages and awarded Stone attorney's fees.

The Minnesota Court of Appeals affirmed. The Court allowed the owner to raise application of Minn. Stat. Ch. 327 on appeal even though he did not before the district court when he appeared pro se.

> "Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald,* 629 N.W.2d 115, 119 (Minn.App.2001). Typically we consider only those issues and theories "presented and considered" by the district court. *Thiele v. Stich,* 425 N.W.2d 580, 582 (Minn.1988) (quotation omitted). But because Clow was pro se at the district court hearing and because he did claim that Stone was a hotel guest, we will consider his arguments on appeal in the interests of justice. See Minn. R. Civ.App. P. 103.04. Even so, for the reasons set forth below, we find Clow's arguments unpersuasive.

Id. at *3.

The Court then discussed the standard for determining whether the parties had a landlord-tenant or an innkeeper-guest relationship.

> [W]e look to the specific circumstances of their particular relationship. *Asseltyne,* 222 Minn. at 99, 23 N.W.2d at 362 (considering whether plaintiff and defendant's relationship was that of innkeeper-guest or that of a proprietor and residential lodger to determine the duty that defendant owed to plaintiff). "The length of the stay, the existence of a special contract, the rate or method of payment, and the possession or nonexistence of a home or permanent residence elsewhere are all material, but not necessarily controlling, factors to be considered in determining the question." Id. (quotations omitted).
>
> The innkeeper statute that Clow cites provides further guidance. A "hotel" is "a hotel, ... or other building, which is ... a place where sleeping or housekeeping accommodations are supplied for pay to guests for transient occupancy." Minn.Stat. § 327.70, subd. 3 (2012) (emphasis added). "Transient occupancy" means "occupancy when it is the intention of the parties that the occupancy will be temporary." *Id.,* subd. 5 (2012). The statute further provides that a rebuttable presumption is established that the occupancy is not transient "if the unit occupied is the sole residence of the guest." *Id.*

Id. at *3-4. The Court concluded the parties had a landlord and tenant relationship.

> Applying these principles, we conclude that the district court correctly ruled that a landlord-tenant relationship existed between Clow and Stone. Even recognizing that Riverside Suites operated as a hotel for some guests, the undisputed facts concerning Stone show that the rental unit at Riverside Suites was his only residence, creating a rebuttable presumption that his occupancy was not transient. See id. Stone was in college, he intended to rent the unit until the end of the semester, he moved all his belongings into the rental unit, and he had nowhere else to live after he was locked out of Riverside Suites.
>
> Moreover, other pertinent facts support this presumption that the relationship was not one of

> innkeeper-guest, and they show that a landlord-tenant arrangement existed. The nature of the extended-stay agreement itself showed that it was a lease agreement. Entitled "Extended Stay-Residential Lease," the six-page agreement covered a three-month period, it required insurance, it provided for late fees for late payment, and it permitted utility billing, all factors consistent with a landlord-tenant arrangement. In addition, the extended-stay agreement specifically refers to the possibility of eviction for failure to pay or for other violations of the agreement. Further, the security-deposit agreement references Minnesota landlord-tenant law. Finally, Stone paid the first month's rent and a security deposit before he moved in-practices consistent with a landlord-tenant arrangement. In sum, we conclude that, given these circumstances, the district court properly applied landlord-tenant law to the parties' relationship.

Id. at *4.

In *Gutierrez v. Eckert Farm Supply, Inc.*, No. C5-02-1900, 2003 WL 21500161 (Minn. Ct. App. July 1, 2003) (unpublished), the Court affirmed the district court conclusion that a hotel resident was a tenant and not a hotel guest. *See In re Mid-City Hotel Assoc.,* 114 B.R. 634 (D. Minn. 1990) ("Chapter 504 [now Chapter 504B], governing landlord-tenant relationship, does not in its own terms exclude the innkeeper-guest relationship from its governance; nor do MINN. STAT. §§ 327.01-.13, the statutes governing hotel operations, expressly exclude landlord-tenant relationships from their regulation.").

17. Shelters

Owners of shelters often are housed in old hotels and like hotel owners, assert that they are not governed by landlord and tenant law. Like hotels, whether landlord and tenant law regulates the shelter depends on whether the resident has housing elsewhere. *See* discussion, *supra*, at I.D.16.

In *Luten v. Salvation Army*, No. UD-1860324520 (Minn. Dist. Ct. 4th Dist. March 24, 1986) (Appendix 603) even though the respondent considered itself a hotel and not a landlord, the court noted that the nature of the tenancy is created by the conduct of the parties, as well as the written documents, and concluded that the petitioner was a tenant where he paid monthly rent for two years and reasonably understood that he was a tenant. *See Residential Tenants' Remedies*, Appendix 18.

Lockouts of tenants are prohibited and can subject the landlord to civil and criminal liability. *See* discussion, *infra*, at XII.B.1.

18. Nursing homes residents are tenants

Residents of nursing homes are tenants. Minn. Stat. § 144A.13, Subd. 2, provides that "no nursing home resident may be denied any right available to the resident under chapter 504B." Minn. Stat. Chapter 504B governs the landlord and tenant relationship. Lockouts of tenants are prohibited and can subject the landlord to civil and criminal liability. *See* discussion, *infra*, at XII.B.1.

In addition to landlord and tenant law, tenants who also are patients have protections. Minn. Stat. § 144.651 (Health Care Bill of Rights). *See* Patient, Resident and Home Care Bill of Rights (Minnesota Department of Human Services).
http://www.health.state.mn.us/divs/fpc/consumerinfo/index.html

Residents can complain to the Office of Health Facility Complaints of the Minnesota Department of Health, 651-201-4200 or 1-800-369-7994.

https://www.health.state.mn.us/facilities/regulation/ohfc/contohfc.html

19. Assisted living and other housing with services for seniors and disabled persons

Most residential settings with services for seniors and disabled persons are covered by landlord and tenant law. Lockouts of tenants are prohibited and can subject the landlord to civil and criminal liability. *See* discussion, *infra*, at XII.B.1.

In addition to landlord and tenant law, tenants who also are patients have protections. Minn. Stat. § 144.651 (Health Care Bill of Rights). *See* Patient, Resident and Home Care Bill of Rights (Minnesota Department of Human Services).
http://www.health.state.mn.us/divs/fpc/consumerinfo/index.html

Residents can complain to the Office of Health Facility Complaints of the Minnesota Department of Health, 651-201-4200 or 1-800-369-7994.
https://www.health.state.mn.us/facilities/regulation/ohfc/contohfc.html

a. *Housing with services through August 1, 2021*

Minn. Stat. § 144D.01, Subd. 4 defined a housing with services establishment as:

> (1) an establishment providing sleeping accommodations to one or more adult residents, at least 80 percent of which are 55 years of age or older, and offering or providing, for a fee, one or more regularly scheduled health-related services or two or more regularly scheduled supportive services, whether offered or provided directly by the establishment or by another entity arranged for by the establishment; or
> (2) an establishment that registers under section 144D.025.

Minn. Stat. § 144D.025 adds that

> An establishment that meets all the requirements of this chapter except that fewer than 80 percent of the adult residents are age 55 or older, or a supportive housing establishment developed and funded in whole or in part with funds provided specifically as part of the plan to end long-term homelessness required under Laws 2003, chapter 128, article 15, section 9, may, at its option, register as a housing with services establishment.

Minn. Stat. § 144D.06 provides: "In addition to registration under this chapter, a housing with services establishment must comply with chapter 504B."

Chapter 144D was repealed by Laws 2019, chapter 60, article 1, section 48, effective August 1, 2021. Laws 2019, chapter 60, article 1, section 48.

a1. *Assisted living - effective August 1, 2021*

Minn. Stat. Ch. 144G governs assisted living, defined as "a service or package of services advertised, marketed, or otherwise described, offered, or promoted using the phrase "assisted living" either alone or in combination with other words, whether orally or in writing, and which is subject to the requirements of this chapter." Minn. Stat. § 144G.01, Subd. 2.

Minn. Stat. § 144G.11 provides that assisted living facilities "are subject to and must comply th chapter 504B."

Minn. Stat. § 144G.03, Subd. 6 provides:

Subd. 6.Termination of housing with services contract.

If a *housing with services establishment* terminates a housing with services contract with an assisted living client, the establishment shall provide the *assisted living* client, and the legal or designated representative of the assisted living client, if any, with a written notice of termination which includes the following information:

(1) the effective date of termination;

(2) the section of the contract that authorizes the termination;

(3) without extending the termination notice period, an affirmative offer to meet with the assisted living client and, if applicable, client representatives, within no more than five business days of the date of the termination notice to discuss the termination;

(4) an explanation that:

(i) the assisted living client must vacate the apartment, along with all personal possessions, on or before the effective date of termination;
(ii) failure to vacate the apartment by the date of termination may result in the filing of an eviction action in court by the establishment, and that the assisted living client may present a defense, if any, to the court at that time; and
(iii) the assisted living client may seek legal counsel in connection with the notice of termination;

(5) a statement that, with respect to the notice of termination, reasonable accommodation is available for the disability of the assisted living client, if any; and

(6) the name and contact information of the representative of the establishment with whom the assisted living client or client representatives may discuss the notice of termination.

Id. (emphasis added).

Minn. Stat. § 144G.52 governs assisted living contract terminations.

Subdivision 1. Definition.

For purposes of sections 144G.52 to 144G.55, "termination" means:

(1) a facility-initiated termination of housing provided to the resident under the contract; or

(2) a facility-initiated termination or nonrenewal of all assisted living services the resident receives from the facility under the contract.

Subd. 2. Prerequisite to termination of a contract.

(a) Before issuing a notice of termination of an assisted living contract, a facility must schedule and participate in a meeting with the resident and the resident's legal representative and designated representative. The purposes of the meeting are to:

(1) explain in detail the reasons for the proposed termination; and

(2) identify and offer reasonable accommodations or modifications, interventions, or alternatives to avoid the termination or enable the resident to remain in the facility, including but not limited to securing services from another provider of the resident's choosing that may allow the resident to avoid the termination. A facility is not required to offer accommodations, modifications, interventions, or alternatives that fundamentally alter the nature of the operation of the facility.

(b) The meeting must be scheduled to take place at least seven days before a notice of termination is issued. The facility must make reasonable efforts to ensure that the resident, legal representative, and designated representative are able to attend the meeting.

(c) The facility must notify the resident that the resident may invite family members, relevant health professionals, a representative of the Office of Ombudsman for Long-Term Care, or other persons of the resident's choosing to participate in the meeting. For residents who receive home and community-based waiver services under chapter 256S and section 256B.49, the facility must notify the resident's case manager of the meeting.

(d) In the event of an emergency relocation under subdivision 9, where the facility intends to issue a notice of termination and an in-person meeting is impractical or impossible, the facility may attempt to schedule and participate in a meeting under this subdivision via telephone, video, or other means.

Subd. 3. Termination for nonpayment.

(a) A facility may initiate a termination of housing because of nonpayment of rent or a termination of services because of nonpayment for services. Upon issuance of a notice of termination for nonpayment, the facility must inform the resident that public benefits may be available and must provide contact information for the Senior LinkAge Line under section 256.975, subdivision 7.

(b) An interruption to a resident's public benefits that lasts for no more than 60 days does not constitute nonpayment.

Subd. 4. Termination for violation of the assisted living contract.

A facility may initiate a termination of the assisted living contract if the resident violates a lawful provision of the contract and the resident does not cure the violation within a reasonable amount of time after the facility provides written notice of the ability to cure to the resident. Written notice of the ability to cure may be provided in person or by first class mail. A facility is not required to provide a resident with written notice of the ability to cure for a violation that threatens the health or safety of the resident or another individual in the facility, or for a violation that constitutes illegal conduct.

Subd. 5. Expedited termination.

(a) A facility may initiate an expedited termination of housing or services if:

(1) the resident has engaged in conduct that substantially interferes with the rights, health, or safety of other residents;

(2) the resident has engaged in conduct that substantially and intentionally interferes with the safety or physical health of facility staff; or

(3) the resident has committed an act listed in section 504B.171 that substantially interferes with the rights, health, or safety of other residents.

(b) A facility may initiate an expedited termination of services if:

(1) the resident has engaged in conduct that substantially interferes with the resident's health or safety;

(2) the resident's assessed needs exceed the scope of services agreed upon in the assisted living contract and are not included in the services the facility disclosed in the uniform checklist; or

(3) extraordinary circumstances exist, causing the facility to be unable to provide the resident with the services disclosed in the uniform checklist that are necessary to meet the resident's needs.

Subd. 6. Right to use provider of resident's choosing.

A facility may not terminate the assisted living contract if the underlying reason for termination may be resolved by the resident obtaining services from another provider of the resident's choosing and the resident obtains those services.

Subd. 7. Notice of contract termination required.

(a) A facility terminating a contract must issue a written notice of termination according to this section. The facility must also send a copy of the termination notice to the Office of Ombudsman for Long-Term Care and, for residents who receive home and community-based waiver services under chapter 256S and section 256B.49, to the resident's case manager, as soon as practicable after providing notice to the resident. A facility may terminate an assisted living contract only as permitted under subdivisions 3, 4, and 5.

(b) A facility terminating a contract under subdivision 3 or 4 must provide a written termination notice at least 30 days before the effective date of the termination to the resident, legal representative, and designated representative.

(c) A facility terminating a contract under subdivision 5 must provide a written termination notice at least 15 days before the effective date of the termination to the resident, legal representative, and designated representative.

(d) If a resident moves out of a facility or cancels services received from the facility, nothing in this section prohibits a facility from enforcing against the resident any notice periods with which the resident must comply under the assisted living contract.

Subd. 8. Content of notice of termination.

The notice required under subdivision 7 must contain, at a minimum:

(1) the effective date of the termination of the assisted living contract;

(2) a detailed explanation of the basis for the termination, including the clinical or other supporting rationale;

(3) a detailed explanation of the conditions under which a new or amended contract may be executed;

(4) a statement that the resident has the right to appeal the termination by requesting a hearing, and information concerning the time frame within which the request must be submitted and the contact information for the agency to which the request must be submitted;

(5) a statement that the facility must participate in a coordinated move to another provider or caregiver, as required under section 144G.55;

(6) the name and contact information of the person employed by the facility with whom the resident may discuss the notice of termination;

(7) information on how to contact the Office of Ombudsman for Long-Term Care to request an advocate to assist regarding the termination;

(8) information on how to contact the Senior LinkAge Line under section 256.975, subdivision 7, and an explanation that the Senior LinkAge Line may provide information about other available housing or service options; and

(9) if the termination is only for services, a statement that the resident may remain in the facility and may secure any necessary services from another provider of the resident's choosing.

Subd. 9. Emergency relocation.

(a) A facility may remove a resident from the facility in an emergency if necessary due to a resident's urgent medical needs or an imminent risk the resident poses to the health or safety of another facility resident or facility staff member. An emergency relocation is not a termination.

(b) In the event of an emergency relocation, the facility must provide a written notice that contains, at a minimum:

(1) the reason for the relocation;

(2) the name and contact information for the location to which the resident has been relocated and any new service provider;

(3) contact information for the Office of Ombudsman for Long-Term Care;

(4) if known and applicable, the approximate date or range of dates within which the resident is

expected to return to the facility, or a statement that a return date is not currently known; and

(5) a statement that, if the facility refuses to provide housing or services after a relocation, the resident has the right to appeal under section 144G.54. The facility must provide contact information for the agency to which the resident may submit an appeal.

(c) The notice required under paragraph (b) must be delivered as soon as practicable to:

(1) the resident, legal representative, and designated representative;

(2) for residents who receive home and community-based waiver services under chapter 256S and section 256B.49, the resident's case manager; and

(3) the Office of Ombudsman for Long-Term Care if the resident has been relocated and has not returned to the facility within four days.

(d) Following an emergency relocation, a facility's refusal to provide housing or services constitutes a termination and triggers the termination process in this section.
Subd. 10.Right to return.

If a resident is absent from a facility for any reason, including an emergency relocation, the facility shall not refuse to allow a resident to return if a termination of housing has not been effectuated.

Minn. Stat. § 144G.53 provides for nonrenewal of housing.

(a) If a facility decides to not renew a resident's housing under a contract, the facility must either (1) provide the resident with 60 calendar days' notice of the nonrenewal and assistance with relocation planning, or (2) follow the termination procedure under section 144G.52.

(b) The notice must include the reason for the nonrenewal and contact information of the Office of Ombudsman for Long-Term Care.

(c) A facility must:

(1) provide notice of the nonrenewal to the Office of Ombudsman for Long-Term Care;

(2) for residents who receive home and community-based waiver services under chapter 256S and section 256B.49, provide notice to the resident's case manager;

(3) ensure a coordinated move to a safe location, as defined in section 144G.55, subdivision 2, that is appropriate for the resident;

(4) ensure a coordinated move to an appropriate service provider identified by the facility, if services are still needed and desired by the resident;

(5) consult and cooperate with the resident, legal representative, designated representative, case manager for a resident who receives home and community-based waiver services under chapter 256S and section 256B.49, relevant health professionals, and any other persons of the resident's

choosing to make arrangements to move the resident, including consideration of the resident's goals; and

(6) prepare a written plan to prepare for the move.

(d) A resident may decline to move to the location the facility identifies or to accept services from a service provider the facility identifies, and may instead choose to move to a location of the resident's choosing or receive services from a service provider of the resident's choosing within the timeline prescribed in the nonrenewal notice.

Minn. Stat. § 144G.54 governs appeals of contract terminations.

Subdivision 1. Right to appeal.

Residents have the right to appeal the termination of an assisted living contract.

Subd. 2. Permissible grounds to appeal termination.

A resident may appeal a termination initiated under section 144G.52, subdivision 3, 4, or 5, on the ground that:

(1) there is a factual dispute as to whether the facility had a permissible basis to initiate the termination;

(2) the termination would result in great harm or the potential for great harm to the resident as determined by the totality of the circumstances, except in circumstances where there is a greater risk of harm to other residents or staff at the facility;

(3) the resident has cured or demonstrated the ability to cure the reasons for the termination, or has identified a reasonable accommodation or modification, intervention, or alternative to the termination; or

(4) the facility has terminated the contract in violation of state or federal law.

Subd. 3. Appeals process.

(a) The Office of Administrative Hearings must conduct an expedited hearing as soon as practicable under this section, but in no event later than 14 calendar days after the office receives the request, unless the parties agree otherwise or the chief administrative law judge deems the timing to be unreasonable, given the complexity of the issues presented.

(b) The hearing must be held at the facility where the resident lives, unless holding the hearing at that location is impractical, the parties agree to hold the hearing at a different location, or the chief administrative law judge grants a party's request to appear at another location or by telephone or interactive video.

(c) The hearing is not a formal contested case proceeding, except when determined necessary by the chief administrative law judge.

(d) Parties may but are not required to be represented by counsel. The appearance of a party without counsel does not constitute the unauthorized practice of law.

(e) The hearing shall be limited to the amount of time necessary for the participants to expeditiously present the facts about the proposed termination. The administrative law judge shall issue a recommendation to the commissioner as soon as practicable, but in no event later than ten business days after the hearing.

Subd. 4. Burden of proof for appeals of termination.

(a) The facility bears the burden of proof to establish by a preponderance of the evidence that the termination was permissible if the appeal is brought on the ground listed in subdivision 2, clause (4).

(b) The resident bears the burden of proof to establish by a preponderance of the evidence that the termination was permissible if the appeal is brought on the ground listed in subdivision 2, clause (2) or (3).

Subd. 5. Determination; content of order.

(a) The resident's termination must be rescinded if the resident prevails in the appeal.

(b) The order may contain any conditions that may be placed on the resident's continued residency or receipt of services, including but not limited to changes to the service plan or a required increase in services.

Subd. 6. Service provision while appeal pending.

A termination of housing or services shall not occur while an appeal is pending. If additional services are needed to meet the health or safety needs of the resident while an appeal is pending, the resident is responsible for contracting for those additional services from the facility or another provider and for ensuring the costs for those additional services are covered.

Subd. 7. Application of chapter 504B to appeals of terminations.

A resident may not bring an action under chapter 504B to challenge a termination that has occurred and been upheld under this section.

Minn. Stat. § 144G.42, Subd. 5 governs final accounting and deposits.

Subd. 5.Final accounting; return of money and property.

Within 30 days of the effective date of a facility-initiated or resident-initiated termination of housing or services or the death of the resident, the facility must:
(1) provide to the resident, resident's legal representative, and resident's designated representative a final statement of account;
(2) provide any refunds due;
(3) return any money, property, or valuables held in trust or custody by the facility; and
(4) as required under section 504B.178, refund the resident's security deposit unless it is applied

to the first month's charges.

The references to both housing with services and assisted living in conjunction with provisions in Minn. Stat. Ch. 504B support the claim that the assisted residents also are tenants. Additionally, the statutory definitions of residential tenant, residential building, and landlord should apply to assisted living. *See* discussion, *infra*, at I.E. Lockouts of tenants without following the provisions of Minn. Stat. Ch. 144G may subject the landlord to civil and criminal liability. *See* discussion, *infra*, at XII.B.1.

Residents can complain to the Office of Health Facility Complaints of the Minnesota Department of Health, 651-201-4200 or 1-800-369-7994.
https://www.health.state.mn.us/facilities/regulation/ohfc/contohfc.html

b. *Board and lodging*

Board and lodging establishments are licensed under Minn. Stat. Chapter 157. Minn. Stat. § 157.15, provides:

> Subd. 4.Boarding establishment.
> "Boarding establishment" means a food and beverage service establishment where food or beverages, or both, are furnished to five or more regular boarders, whether with or without sleeping accommodations, for periods of one week or more.
>
> Subd. 8.Lodging establishment.
> "Lodging establishment" means: (1) a building, structure, enclosure, or any part thereof used as, maintained as, advertised as, or held out to be a place where sleeping accommodations are furnished to the public as regular roomers, for periods of one week or more, and having five or more beds to let to the public; or (2) a building, structure, or enclosure or any part thereof located within ten miles distance from a hospital or medical center and maintained as, advertised as, or held out to be a place where sleeping accommodations are furnished exclusively to patients, their families, and caregivers while the patient is receiving or waiting to receive health care treatments or procedures for periods of one week or more, and where no supportive services, as defined under section 157.17, subdivision 1, paragraph (a), or health supervision services, as defined under section 157.17, subdivision 1, paragraph (b), or home care services, as defined under section 144A.471, subdivisions 6 and 7, are provided.

Chapter 157 makes no mention of Chapter 504B or tenants but does not preclude application of Chapter 504B to board and lodging. However, the Chapter 504B definitions of residential tenant, residential building, and landlord might apply, making residents tenants. *See* discussion, *infra*, at I.E. Lockouts of tenants are prohibited and can subject the landlord to civil and criminal liability. *See* discussion, *infra*, at XII.B.1.

Residents can complain to the Office of Health Facility Complaints of the Minnesota Department of Health, 651-201-4200 or 1-800-369-7994.
https://www.health.state.mn.us/facilities/regulation/ohfc/contohfc.html

c. *Residences with services under Minn. Stat. Ch. 245D*

Residential settings for persons with developmental disabilities in which the services are licensed under Minn. Stat. Chapter 245D. Many programs are covered, including home and community-based

services to persons with disabilities and persons age 65 and older; basic support services and intensive support services; respite care services; community alternative care; community access for disability inclusion, developmental disability, and elderly waiver plans; adult companion services as defined under the brain injury, community access for disability inclusion, and elderly waiver plans; personal support as defined under the developmental disability waiver plan; 24-hour emergency assistance, personal emergency response; night supervision services as defined under the brain injury waiver plan; homemaker services as defined under the community access for disability inclusion, brain injury, community alternative care, developmental disability, and elderly waiver plans; individual community living support; intensive support services; *with some exceptions*. It does not cover does not apply to corporate or family child foster care homes that do not provide services licensed under Chapter 245D. Minn. Stat. § 245D.03.

Chapter 245D makes no mention of Chapter 504B or tenants but does not preclude application of Chapter 504B to residences with services. However, the Chapter 504B definitions of residential tenant, residential building, and landlord might apply, making residents tenants. *See* discussion, *infra*, at I.E. Lockouts of tenants are prohibited and can subject the landlord to civil and criminal liability. *See* discussion, *infra*, at XII.B.1.

Minn. Stat. § 245D.10, Subd. 3a provides for service termination, including a termination notice and right to appeal.

Residents can complain to the Office of Health Facility Complaints of the Minnesota Department of Health, 651-201-4200 or 1-800-369-7994.
https://www.health.state.mn.us/facilities/regulation/ohfc/contohfc.html

20. Housing Support, Formerly Group Residential Housing

Minn. Stat. Chapter 256I regulates Housing Support, Group Residential Housing (GRH). Chapter 256I makes no mention of Chapter 504B but does not preclude application of Chapter 504B to GRH. Chapter 256I does refer to tenancies as one of the factors for funding.

Minn. Stat. § 256I.03 Definitions.

Subd. 12. Professional statement of need.

"Professional statement of need" means a statement about an individual's illness, injury, or incapacity that is signed by a qualified professional. The statement must specify that the individual has an illness or incapacity which limits the individual's ability to work and provide self-support. The statement must also specify that the individual needs assistance to access or maintain housing, as evidenced by the need for *two or more of the following services:*

(1) *tenancy supports to assist an individual with finding the individual's own home, landlord negotiation, securing furniture and household supplies, understanding and maintaining tenant responsibilities, conflict negotiation, and budgeting and financial education;*

(2) supportive services to assist with basic living and social skills, *household management,* monitoring of overall well-being, and problem solving;

(3) employment supports to assist with maintaining or increasing employment, increasing

earnings, understanding and utilizing appropriate benefits and services, improving physical or mental health, moving toward self-sufficiency, and achieving personal goals; or

(4) health supervision services to assist in the preparation and administration of medications other than injectables, the provision of therapeutic diets, taking vital signs, or providing assistance in dressing, grooming, bathing, or with walking devices.

Minn. Stat. § 256I.03, Subd. 12 (emphasis added).

Minn. Stat. § 256I.04 Eligibility for Housing Support Payment.

Subd. 1a.County approval.
(a) A county agency may not approve a housing support payment for an individual in any setting with a rate in excess of the MSA equivalent rate for more than 30 days in a calendar year unless the individual has a professional statement of need under section 256I.03, subdivision 12.

The Chapter 504B definitions of residential tenant, residential building, and landlord might apply, making residents tenants. *See* discussion, *infra*, at I.E. Lockouts of tenants are prohibited and can subject the landlord to civil and criminal liability. *See* discussion, *infra*, at XII.B.1.

Here is the agency website.
https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=DHS-293567

E. STATUTORY DEFINITIONS

The definitions of tenants and buildings that now are in Minn. Stat. § 504B.001 were formerly in Minn. Stat. § 566.18 of the Tenants' Remedies Act, and had been incorporated in the Rent Escrow Act, § 566.34, and applied by § 504.27 to the following statutes: §§ 504B.271 (formerly § 504.24) (property abandonment), 504B.204 (formerly § 504.245) (action for rental of condemned residential premises), 504B.225 (formerly § 504.25) (criminal unlawful eviction or termination of utilities), 504B.231 (formerly § 504.255) (unlawful eviction), 504B.221 (formerly § 504.26) (unlawful termination of utilities), and 504B.315 (formerly § 504.265) (restrictions on eviction due to familial status).

1. Residential tenant

Minn. Stat. § 504B.001, Subd. 12 provides:

"Residential tenant" means any person who is occupying a dwelling in a building. . . under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of money or exchange of services as rent for the use of the dwelling unit, and all other regular occupants of that dwelling unit, or any resident of a manufactured home park.

In *Cocchiarella v. Driggs,* 884 N.W.2d 621 (Minn. Aug. 31, 2016), Cocchiarella had entered into an oral lease agreement and had paid the security deposit and first month's rent, but the landlord refused to allow her to move into the apartment. Cocchiarella had a present legal right to possess the premises, but had not obtained a key, entered the dwelling, or placed any belongings there. The question presented on appeal was whether a person must physically occupy a dwelling in a residential building to qualify as

a "residential tenant" under Minn. Stat. §504B.375, which protects tenants from unlawful exclusion or removal. The Minnesota Supreme Court reversed the District court and Court of Appeals and held that the legal right to present possession of the premises is sufficient to invoke the protections of the statute; physical occupancy is not required.

2. Person

Minn. Stat. § 504B.001, Subd. 10 provides:

"Person" means a natural person, corporation, limited liability company, partnership, joint enterprise, or unincorporated association.

3. Residential building

Minn. Stat. § 504B.001, Subd. 11 provides:

"Residential building" means any building used in whole or in part as a dwelling, including single family homes, multiple family units such as apartments, and structures containing both dwelling units and units used for non-dwelling purposes, and also includes a manufactured home park.

4. Housing-related neighborhood organization

Minn. Stat. § 504B.001, Subd. 5 provides:

"Housing-related neighborhood organization" means a nonprofit corporation incorporated under chapter 317A that:

(1) designates in its articles of incorporation or bylaws a specific geographic community to which its activities are limited; and

(2) is formed for the purposes of promoting community safety, crime prevention, and housing quality in a nondiscriminatory manner.

For purposes of this chapter, an action taken by a neighborhood organization with the written permission of a residential tenant means, with respect to a building with multiple dwelling units, an action taken by the neighborhood organization with the written permission of the residential tenants of a majority of the occupied units.

5. Landlord

Minn. Stat. § 504B.001, Subd. 7 provides:

"Landlord" means the owner or owners of the free hold of the premises or lesser estate therein, contract vendee, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation directly or indirectly in control of a building.

In *Barnes v. Alan Spaulding, Mike Cashill, At Home Apartments, Gateway Real Estate LLC, Cashill Spaulding Properties, and West River Commons,* No. 27-CV-HC-17-6053 (Minn. Dist. Ct. 4th

Dist. Dec. 22, 2017), in an emergency tenant remedies action, the court allowed the tenant to orally amend her complaint to add multiple people and entities as landlords and defendants under Minn. Stat. § 504B.001, and ordered that the landlords shall immediately repair the subject property to be fully compliant with the Minneapolis Codes of Ordinances and federal subsidized housing requirements, and the landlords shall immediately prepay the tenant to cover the costs of staying with her son at a hotel of her choosing in a room with kitchenette so that the tenant can avoid the costs of purchasing pre-made food.

In *Jacobson v. Meinen Holdings, LLC,* No. 28-CV-16-645 (Minn. Dist. Ct. 3rd Dist., Houston County, Feb. 15, 2017) (Appendix 807) (Judge Sturino), the court ordered in a rent escrow action that the corporate veil was pierced to make the entity and the shareholder liable because the two were one and the same.

In *Miller v. AZ Flatts,* No. 71-CV-16-653 (Minn. Dist. Ct. 10th Dist., Sherburne County, Jan. 31, 2017) (Appendix 725) (Judge Yunker), the district court found that two entities and one individual all were landlords under Minn. Stat. § 504B.001, Subd. 7 in the tenant's civil action.

In *Otzin v. Smith, Washington, Dubra, Renters Warehouse, and Zupfer,* No. 27-CV-HC-15-5433 (Minn. Dist. Ct. 4th Dist. April 6, 2016) (Appendix 804), the tenant of the property owners who rented the property to plaintiff later excluded the plaintiff without the participation of the owners. Neither the owners of their management company allowed the plaintiff to repossess the property. The court rejected the argument of the owners and their agent son that they were not liable for the exclusion because they did not rent to the plaintiff or initiate the exclusion. The court found plaintiff more credible than the owner on whether the owners and agent knew that the plaintiff was a tenant, and found that they participated in the exclusion by not taking action to end it. The court awarded damages for lost personal property of $2,900 and a penalty of $5,800 under Minn. Stat. § 504B.271, costs, and attorney's fees.

In *S&R Management v. _____, _____ v. Wones,* Nos. HC-#1000621500 and HC #1000627901 (Minn. Dist. Ct. 4th Dist. July 25, 2000) (Appendix 677), in consolidated eviction and rent escrow actions, the court concluded property co-owner, management company, and property manager all were landlords as defined by Minn. Stat. § 504B.001, Subd. 7; the lease contained no conspicuous writing supporting landlord's claim that tenant was required to paint and clean property; failure of the tenant to give written notice of repairs does not waive the landlord's covenant of habitability but court may consider it in determining rent abatement. The court dismissed the eviction action; awarded rent abatement of $125 per month out of $525 rent for numerous violations; ordered the landlord to make repairs; while court made no findings on privacy violations, ordered the tenant to not unreasonably deny access and authorized the landlord the give 24 hour notices for visits; and retained jurisdiction and scheduled a compliance hearing.

E1. LEASE REQUIREMENTS

1. Required Terms

Minnesota law only requires a few lease provisions: (1) landlord contact disclosure, *see* discussion, *infra*, at VI.D.2.; (2) habitability, *see* discussion, *infra*, at VI.E.1.; and (3) unlawful activity, *see* discussion, *infra*, at VI.G.16.

2. Prohibited Terms

A number of statutes and some case law provide for tenant rights that cannot be waived, rendering lease provisions that violate those rights unenforceable. *See* discussion, *infra*, at VI.G.12.

3. Regulated Terms

A few statutes regulate lease terms, including (1) habitability, *see* discussion, *infra*, at VI.E.1; (2) late fees, *see* discussion, *infra*, at VI.E.10; (3) manufactured home park tenancies, *see* discussion, *infra*, at VI.E.11, VI.F.7, VI.G.11; (4) utilities, *see* discussion, *infra*, at VI.E.18; (5) foreclosure, *see* discussion, *infra*, at VI.F.1.d.; (6) reentry, *see* discussion, *infra*, at VI.G.1.; (7) unlawful activity, *see* discussion, *infra*, at VI.G.16; (8) attorney's fee, *see* discussion, *infra*, at VIII.E.4; (9) domestic violence, *see* discussion, *infra*, at VI.G.38; (10) redemption, *see* discussion, *infra*, at VIII.A; (11) abandoned property, *see* discussion, *infra*, at VIII.C.2; (12) lockouts, *see* discussion, *infra*, at XII.B.1; (13) privacy, *see* discussion, *infra*, at XII.B.2; and (14) security deposits, *see* discussion, *infra*, at XII.B.8.

4. Lease Forms

The Minnesota Standard Residential Lease (Apartment) (RPF-41), drafted by the Residential Real Estate Committee, Real Property Section of the Minnesota State Bar Association, complies with Minnesota law.
http://my.mnbar.org/residentialrealpropertyforms/viewdocument/rpf41-minnesota-standard-residentia

F. MANUFACTURED (MOBILE) HOME PARK LOT TENANCIES

Minn. Stat. Ch. 327C governs rental of lots in manufactured or mobile home parks. A manufactured home park is land on which two or more occupied manufactured homes are located and where facilities are open for more than three seasons. §§ 327C.01, subd. 5, 327.14. The rental agreement must be in writing and include elements required by statute. § 327C.02, subd. 1. 60 days notice is required to change any park rules. However, a rule adopted or amended after a resident initially enters into a rental agreement can be enforced against that resident only if the new or amended rule is reasonable and is not a substantial modification of the original agreement. § 327C.02, subd. 2. A park owner may terminate the tenancy only for cause. § 327C.09. For more information on defenses, *see* discussion at VI.E.1.u., VI.E.10.e., VI.E.11., VI.E.20.f., VI.E.28., VI.F.3.f., VI.F.4.b., VI.F.7., and VI.G.11.

G. PUBLIC HOUSING AND OTHER GOVERNMENT SUBSIDIZED HOUSING TENANCIES

Tenancies in public and government subsidized housing are a hybrid of traditional periodic and fixed term tenancies. On one hand, the tenancy has an indefinite term without an expiration date. On the other hand, the landlord cannot terminate the tenancy simply by giving notice; the landlord must have good cause to terminate the tenancy.

See generally HUD HOUSING PROGRAMS: TENANTS' RIGHTS (National Housing Law Project, 4th ed. 2012 and Supplements) (also known as the Green Book).
https://www.nhlp.org/trainings-publications/

See also FRED 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 (Texas RioGrande Legal Aid, Nov. 2015) https://probonotexas.org/library/housing/defending-families-threatened-eviction-federal-housing-programs

There are several categories of public and government subsidized housing. In each of these housing programs, the tenant's rent usually is based on a percentage of the tenant's adjustable income. First, public housing is owned and operated by local housing authorities with assistance from the federal government. The housing authority may terminate the tenancy for serious violations of a material lease term or other good cause.

Second, a number of programs provide federal funds directly to landlords in connection with the building, renovation or operation of subsidized housing units. The landlord may terminate the tenancy for material noncompliance with the lease, material failure to meet obligations under state, landlord/tenant law or other good cause. These programs include Section 8 New Construction Substantial Rehabilitation, and Set-Aside; Section 8 administered by state housing finance agencies or owned and operated by the United States Department of Housing and Urban Development (HUD); and Section 236, 221 and 202 programs. Some of these programs, including the Section 8 Moderate Rehabilitation and Project Based Certificate programs, also provide for local housing authority inspection for compliance with its housing code, and allow the housing authority to terminate the tenancy if the unit is not in compliance. The Rural Housing Service of the United State Department of Agriculture funds similar projects.

Third, and similar to the second set of programs discussed above, the Federal Low Income Housing Tax Credit program provides assistance to landlords in connection with the building, renovation or operation of subsidized housing units. Most tenants may not know that they are in a low income housing tax credit project, because their rent may not be based on their income. The Minnesota Housing Finance Agency (MHFA), as well as redevelopment agencies in Minneapolis and St. Paul, have listings of low income housing tax credit projects. Recently, in *Bowling Green Manor L.P. v. Kirk*, the Ohio Court of Appeals held that the landlord could terminate the tenancy only for good cause, following a 30-day written notice of termination setting forth specific good cause for eviction. No. WD 94-125, 1995 WL 386,476, 1995 Ohio App. LEXIS 2707 (June 30, 1995) (Appendix 83).

Fourth, some programs provide the tenant with a housing certificate or voucher, which allows the tenant to find a landlord willing to participate in the program. These programs include the Section 8 Existing Housing Certificate and Section 8 Voucher Programs. The housing authority sends a monthly rent subsidy to the landlord and the tenant pays the remaining share of the rent. The landlord may terminate the tenancy for serious or repeated violations of the lease, violation of federal, state, or local law which imposes an obligation on the tenant in connection with occupancy of the unit, or other good cause. Also, the housing authority can terminate the tenancy if the unit is not in compliance with its housing code.

The Minnesota Housing Finance Agency (MHFA) administers the Rental Assistance for Family Stabilization (RAFS) Program in partnership with local housing organizations in Minnesota counties with high average housing costs as determined by the United States Department of Housing and Urban Development (HUD). In Minneapolis, the program is operated by the Section 8 Office of the Minneapolis Public Housing Authority (MPHA). The program is similar to the Section 8 Existing Housing Certificate and Voucher Programs, in that it provides subsidies to tenants who then use the subsidy in the private rental market. While the state subsidy in the RAFS Program are smaller than the

federal Section 8 subsidies, the program follows many of the requirements of the Section 8 programs, including federal Housing Quality Standards (HQS) for apartment conditions, and the requirement that the landlord notify the Section 8 Office of termination of tenancy and eviction actions. *See* RAFS Owners Handbook (Minneapolis Public Housing Authority May 1, 1999) (Appendix 414).

A table compares the different program. *See* Comparison of Minnesota Private Housing, Mobile Home Lot Rental, Public and Subsidized Housing Unlawful Detainer (Eviction) Action Defenses in Addition to Minnesota Private Landlord-Tenant Law.
http://povertylaw.homestead.com/files/Reading/a0atenancytable.htm

For more information on defenses, *see* discussion at VI.D.11., VI.E.1.h., VI.E.12., VI.F.10., and VI.G.10.

H. OTHER RELATIONSHIPS

1. Tenant versus hotel guest

A hotel is a building which is kept, used and advertised, or held out to the public as a place for sleeping or housekeeping accommodations or supplied for pay to guests for transient occupancy. Transient occupancy means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, if the unit occupied is the sole residence of the guest, the occupancy is not transient. There also is a rebuttable presumption that, if the unit occupied is not the sole residence of the guest, the occupancy is transient. Minn. Stat. § 327.70, subds. 3, 5.

In *Gutierrez v. Eckert Farm Supply, Inc.*, No. C5-02-1900, 2003 WL 21500161 (Minn. Ct. App. July 1, 2003) (unpublished), the Court of Appeals affirmed conclusion that hotel resident was a tenant and not a hotel guest. *See In re Mid-City Hotel Assoc.,* 114 B.R. 634 (D. Minn. 1990) ("Chapter 504 [now Chapter 504B], governing landlord-tenant relationship, does not in its own terms exclude the innkeeper-guest relationship from its governance; nor do MINN. STAT. §§ 327.01-.13, the statutes governing hotel operations, expressly exclude landlord-tenant relationships from their regulation.").

In *Luten v. Salvation Army*, No. UD-1860324520 (Minn. Dist. Ct. 4th Dist. March 24, 1986) (Appendix 603) even though the respondent considered itself a hotel and not a landlord, the court noted that the nature of the tenancy is created by the conduct of the parties, as well as the written documents, and concluded that the petitioner was a tenant where he paid monthly rent for two years and reasonably understood that he was a tenant.

2. Licenses versus profit a prendres

The Court of Appeals discussed the difference between licensees and guests in *Lee v. Regents of the University of Minnesota,* 672 N.W.2d 366 (Minn. Ct. App. 2003):

> If a licensee has property on the premises in question, she is entitled to "reasonable notice" of the revocation of her right to use the premises. *Ingalls v. St. Paul, Minneapolis & Manitoba Ry. Co.*, 39 Minn. 479, 481, 40 N.W. 524, 525 (1888). Here, the district court ruled that appellant was a "guest" but applied the licensee "reasonable notice" analysis. The facts of this case make it clear that the appellant was a licensee rather than a guest. *Compare* Black's Law Dictionary 932 (7th ed.1999) (defining licensee as "[o]ne who has permission to enter or use another's premises, but only for one's own purposes and not for the occupier's benefit"), *with* Black's Law Dictionary 714

(7th ed.1999) (defining guest as "[a] person who is entertained or to whom hospitality is extended"). Therefore, while the district court incorrectly labeled appellant's status, it used the correct notice analysis by concluding appellant was entitled to reasonable notice.

Id. at 373-74.

In *Minnesota Valley Gun Club v. North Line Corp.*, 207 Minn. 126, 290 N.W. 222 (1940), the court addressed the distinctions between licenses and profit a prendres, neither of which are tenancies.

> While there are divers kinds of licenses, it is sufficient to now state that a license is not an estate but a permission giving the licensee a personal legal privilege enjoyable on the land of another. 2 Tiffany, Real Property (2 ed.) § 349, p. 1201. It is destroyed by an attempted transfer if the licensor so elects. *Cameron v. Chicago etc. Ry.*, 60 Minn. 100, 61 N.W. 814. It is revocable at the licensor's will, see 4 Dunnell, Minn. Dig. (2 ed. & Supps.) § 5576, and cases, or by his death, see *Little v. Willford*, 31 Minn. 173, 17 N.W. 282. Normally payment of consideration does not render it irrevocable. *City of Hutchinson v. Wegner*, 157 Minn. 41, 195 N.W. 535.
>
> A profit a prendre is more substantial. It gives a right enforceable against others. 2 Tiffany, Real Property (2 ed.) § 381, p. 1391. If in gross (i.e. a profit which is held by one independently of his ownership of other land) it is generally transferable and inheritable. Id. p. 1393. Since a profit a prendre is an interest in realty, it must be created, in contrast to a license, by a properly executed writing. 2 Mason's Minn. St.1927, § 8459. One ancient form of profit a prendre is the granting of hunting rights. *Council v. Sanderlin*, 183 N.C. 253, 111 S.E. 365, 32 A.L.R. 1527; *St. Helen Shooting Club v. Mogle*, 234 Mich. 60, 207 N.W. 915; 12 R.C.L. p. 689; note 40 L.R.A.,N.S., 300. While it is true that wild life is not part of the soil as many common forms of profits a prendre are, yet the right to hunt and take game appertains to the land and is a profit flowing from the ownership. It is an incorporeal right allied so closely to the fee, probably for historical reasons, that it justifiably can be regarded as a profit a prendre. This is true although wild life is a subject of ownership only when reduced to possession, *Liesner v. Wanie*, 156 Wis. 16, 145 N.W. 374,50 L.R.A.,N.S., 703; *see Missouri v. Holland*, 252 U.S. 416, 40 S.Ct. 382, 384, 64 L.Ed. 641, 11 A.L.R. 984 (Holmes, J., '* * * possession is the beginning of ownership.') While title is in the state as trustee, 1 Mason's Minn. St.1927, § 5496, the owner of the land has a qualified property interest in that it is he who has the exclusive right to reduce game to possession. *L. Realty Co. v. Johnson*, 92 Minn. 363, 100 N.W. 94, 66 L.R.A. 439, 104 Am.St.Rep. 677; *Lamprey v. Danz*, 86 Minn. 317, 90 N.W. 578.
>
> ....
>
> Although customary words of grant are absent, it must be remembered the draftsman was a layman. The confusing use of 'landlord,' 'license,' 'indenture,' 'right' and 'privilege' leaves little to rely upon as a basis for decision. In addition, it is a persuasive reason why too much reliance cannot be placed upon the language employed. Reading the instrument as a unit, it satisfactorily conveys the conception that a more substantial relationship was intended than defendant concedes. The particular items mentioned, on the whole, lead to the conclusion that a profit a prendre was granted.

Id. at 128-29, 290 N.W. 224-25. The notice to terminate a license should be reasonable. *City of Hutchinson v. Wegner*, 157 Minn. 41, 47, 195 N.W. 535, 538 (1923). *See generally* 11A DUNNELL MINN. DIGEST *Licenses in Real Property*.

Some landlord tenant statutes specifically include licenses. *See e.g.* Minn. Stat. §§ 504B.161 (formerly § 504.18) (covenants of habitability), 504B.171 (formerly § 504.181) (covenant not to manufacture or traffic drugs).

3. Caretakers as employees, tenants and landlords

Caretakers traditionally were reviewed as occupying the premises incidentally to the caretaker's employment, and once the landlord terminated the employment, the employee who did not vacate immediately became a trespasser who could be evicted without court process. *See Lighbody v. Truelsen*, 39 Minn. 310, 40 N.W. 67 (1888); *Trustees v. Froislie*, 37 Minn. 447, 35 N.W. 216 (1887).

However, Section 504B.001 (formerly § 566.18) now includes caretakers in the definition of tenant. *See* discussion, *supra*, at I.D.15.

4. Constructive trusts and property interests

In *Shustarich v. Fowler*, UD 1960604520 (Minn. Dist. Ct. 4th Dist. July 5, 1996) (Appendix 176), Plaintiff and defendant first lived in defendant's home. Then plaintiff and defendant moved from her home to a second property, and the parties then living at the second property moved to defendant's old home. Plaintiff took title to the new property, and defendant contributed several thousand dollars from the sale of her home to a new roof and appliances. The parties kept separate expenses. After defendant obtained an order for protection, plaintiff gave notice and filed an unlawful detainer action. The court concluded that plaintiff failed to establish a landlord-tenant relationship, defendant was entitled to assert an interest in the premises, and an unlawful detainer action was a summary remedy inappropriate to try issues of title or to substitute for an action in ejectment, and denied restitution of the premises. *See In re Estate of Ericksen,* 337 N.W.2d 671 (Minn. 1983). *But see Stock v. Beaulieu* (Minn. Dist. Ct. 9th Dist. Mar. 9, 1995) (Appendix 140) (domestic partners were in landlord-tenant relationship; plaintiff retaliated against defendant for reporting a crime of domestic abuse committed by the plaintiff in which the defendant was the victim).

In *Deems v. Gustafson*, No. C1-96-827 (Minn. Dist. Ct. 9th Dist. Nov. 26, 1997) (Appendix 324) (Rasmussen, J.), the plaintiff's mother, who also was the defendant's late wife, initially owned the property. Through several transactions, plaintiff acquired title to the property, but reserving a life estate for her mother, who later made a handwritten note stating that defendant could live on the property past her death. Following her mother's death without a will, plaintiff gave a one month notice to defendant and filed an unlawful detainer (now called eviction) action. The court amended the action to be an action for a ejectment. The court found that it would be a hardship for the defendant to move from his home of 22 years, where he had no substantial savings or resources and was close to his relatives, while on the other hand, plaintiff would be unjustly enriched by dispossessing the defendant where she had contributed little to the property. The court concluded that the property would be subject to constructive trust by the defendant for the remainder of his life or as long as he occupied the property on the condition that he maintain the property in good condition, be responsible for utilities and routine maintenance, and pay plaintiff $100 per month for taxes and insurance.

In *In re the Estate of Murphy,* No. A16–0661, 2017 WL 74388, 2017 Minn. App. Unpub. LEXIS 27 (Minn. Ct. App. Jan. 9, 2017) (unpublished), the appellant argued in a probate action that he had a one-half ownership in the house titled in the name of his late girlfriend. He argued that he bought a house with the decedent as joint tenant and signed (with her) six mortgages on the home over the subsequent years. He added that in 2002 he signed a quitclaim deed conveying his interest in the home to

decedent and did not dispute the fact that decedent issued him certificates of rent paid so that he could receive rent-related tax refunds for the years of 2008-2014. But he questioned the lack of such certificates prior to 2008. The decedent's will did not dispose of the home other than through a residuary clause. When decedent's son, the appointed personal representative, commenced a probate action to sell the home, the appellant objected claiming his one-half interest. The decedent's son argued that he personally paid sewer, water, and homeowner's insurance costs and that the estate was not unjustly enriched because the appellant benefitted from the contributions he made in the form of an improved residence in which he continued to live despite not being the owner of record. The district court found that the appellant had not presented clear and convincing evidence that unjust enrichment justified imposition of a constructive trust or that he was entitled to other equitable relief. He moved for a new trial or amended findings, which the district court denied. He then appealed. The Court of Appeals held that the district court did not err in declining to grant equitable relief and in finding that the appellant and decedent had a landlord/tenant relationship and that, in the absence of unjust enrichment, equity did not support the imposition of a constructive trust.

5. Post Dissolution

An eviction (formerly unlawful detainer) action is available to enforce a change in occupancy mandated by a dissolution decree. In *Swanson v. Wenzel*, Nos. C1-97-2185 and C5-97-1881 (Minn. Ct. App. May 26, 1998) (Appendix 369) (Unpublished), the decree provided that the parties would own the homestead as joint tenants but would sell it by July 6, the appellant was entitled to exclusive occupancy, but if the property was not sold by July 6, the respondent would be entitled to exclusive occupancy and would have the obligation to resell it. After the parties did not sell the property and the appellant refused to move, respondent brought an unlawful detainer (now called eviction) action and was awarded a judgment of restitution. The court affirmed the decision, concluding that strict construction of the sale provision in the decree was proper.

I. TAX FORFEITED PROPERTY

See O'Connor v. Miller, UD-1940211505 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1994) (Appendix 178) (tax forfeiture extinguishes prior leases; rent collection attempts created new leases). An eviction action would be needed to remove occupants from the property, similar to mortgage foreclosure cases. *See* discussion, *infra*, at VIII.B.3 and VI.B.3.

J. FORMS

During 1996 and 1997 the *Pro Se* Housing Court Subcommittee of the Conference of Chief Judges Pro Se Committee developed for various types of summary housing actions, including unlawful detainer (eviction), lock out, rent escrow, tenant remedies, and emergency tenant remedies actions. The Subcommittee also developed instructions for the forms. All of the forms and instructions were mailed to all of the district court administrators around the state.

The courts website contains housing forms.
http://www.mncourts.gov/GetForms.aspx?cat=Housing+-+Landlord-Tenant

The Poverty Law website contains forms drafted by the author.
http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html

K. ETHICS ISSUES IN LANDLORD AND TENANT REPRESENTATION

Ethical issues for attorneys advising or representing landlord or tenants includes legal advice clinics, conflicts, diminished capacity, and competence. *See* L. McDonough, "Ethical Representation of Landlords and Tenants."
http://povertylaw.homestead.com/files/Reading/ETHICAL_CONCERNS_IN_REPRESENTING_LANDLORDS_AND_TENANTS_REVISED.pptx

CHAPTER II: SUMMARY PROCEEDING

A. SUMMARY PROCEEDING TO REPLACE SELF-HELP EVICTION

Self-help evictions are prohibited. *Berg v. Wiley*, 264 N.W.2d 145, 149-51 (Minn. 1978) (*Berg II*). *See also* Minn. Stat. §§ 504B.101 (formerly § 504.01), 504B.225 (formerly § 504.25), 504B.231 (formerly § 504.255), 504B.281 (formerly § 566.01), 504B.301 (formerly § 566.02), 504B.375 (formerly § 566.175).

The unlawful detainer (eviction) action is a summary proceeding, created by statute, which provides an alternative to the common law ejectment action. Minn. Stat. §§ 504B.301 (formerly § 566.02) *et. seq. Warnert v. MGM Properties*, 362 N.W.2d 364, 366-67 n.1 (Minn. Ct. App. 1985) ("The unlawful detainer is not designed for extensive litigation, and the proceeding should not be used as a substitute for the common-law remedy of ejectment. The issues of abandonment and surrender raised in this case are clearly not amenable or appropriate to a summary detainer proceeding. The postural difficulties presented in this case demonstrate the wisdom of this rule. Plaintiff's proper remedy was an ejectment action, where necessary legal procedures and equitable remedies were available and the right to possession and damages could be resolved in one action."). The action is for possession of the premises, and not for damages. Minn. Stat. §§ 504B.301 (formerly § 566.02), 504B.285 (formerly § 566.03).

A1. REMEDY FOR PLAINTIFF IS POSSESSION AND NOT JUDGMENT FOR RENT

See discussion, *infra*, at VI.B.5.

B. ACTION NOT APPROPRIATE FOR CERTAIN TYPES OF LITIGATION

1. Parallel or complex litigation

In *Rice Park Properties v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556 (Minn. 1995), the Minnesota Supreme Court decision reversed the Court of Appeals and affirmed the district court decision to stay an unlawful detainer (now called eviction) action pending final disposition of a related and earlier filed declaratory judgment action commenced by the tenant. In *Stein v. J.D. White, Inc.*, No. CO-91-2164 (Minn. Ct. App. Apr. 21, 1992), FINANCE & COMMERCE at B24 (April 24, 1992) (App. 0.F) (unpublished), the commercial tenant brought a declaratory judgment, breach of contract and misrepresentation action against the landlord to determine responsibility for payment of utilities under the lease. The landlord then filed an unlawful detainer action against the tenant alleging breach of the lease by failure to pay a share of the utility bill. The court affirmed dismissal of the action, noting that when a pending parallel action will properly resolve the dispute which has been incorrectly brought as an unlawful detainer action, trial courts may grant procedural dismissals without ruling on the merits. The court noted that in "[i]nterpretations of complex lease provisions, particularly when collateral to the basic rent obligation, are not a amenable or appropriate to the type of summary disposition envisioned by the unlawful detainer act." *Id.* (citing *Berg v. Wiley*, 303 Minn. 247, 250, 226 N.W.2d 904, 906-07

(1975)). The court added that decisions on the merits merely determine the right to present possession of the property and do not determine the ultimate rights of the parties. *Id.* (citing *William Weisman Holding Co. v. Miller*, 152 Minn. 330, 188 N.W. 732 (1922)). *See Bjur v. Burgmeier*, No. C2-92-409 (Minn. Ct. App. Aug. 18, 1992), FINANCE & COMMERCE at B45 (Aug. 21, 1992) (unpublished: because plaintiff, as the mortgagee's assignee, has presumptively good title and because defendants cannot litigate title in an unlawful detainer action, defendants are foreclosed from challenging plaintiff's title by reference to their collateral litigation) (Appendix 0.H).

In *Amresco Residential Mortgage Corp. v. Stange*, 631 N.W.2d 444 (Minn. Ct. App. 2001), the trial court ruled that it could not consider mortgage defects in the eviction action. On appeal, the court held that rather than order the trial court to hear the issues or convert the action to an ejectment action, the appellants could seek to enjoin prosecution of the eviction action in the separate proceeding in which they sought to set aside respondent's foreclosure which they commenced after dismissal of their counterclaims in the eviction action. While the court affirmed dismissal of the counterclaims, it ordered that the court's stay of the writ of restitution during the appeal be continued for a reasonable period of time in which appellants can assert, and the district court can determine in their pending proceeding, whether their right of possession should be protected by enjoining the writ until the court rules on their title claims.

In *Fraser v. Fraser*, 642 N.W.2d 34 (Minn. Ct. App., 2002), the husband's father, who sold house to husband and wife under contract for deed, gave notice of cancellation of contract after husband brought dissolution action. The wife sought to enjoin cancellation as part of dissolution proceedings, which was granted and later vacated. The father then brought an eviction action against wife, and the district court ruled in father's favor. The wife appealed in both cases and they were consolidated. The court held that there was no jurisdiction in the dissolution action jurisdiction to enjoin cancellation of contract for deed. In the eviction action, the court held that the trial court was not bound by findings on the contract for deed service from the dissolution action, given the lack of jurisdiction in the latter. As to whether the wife could litigate equitable real estate issues in the eviction case, relying on *Amresco Residential Mortgage Corp. v. Stange*, 631 N.W.2d 444 (Minn. Ct. App. 2001), the court held that if she has the ability to litigate her equitable mortgage and other claims and defenses in alternate civil proceedings where she could enjoin the eviction action, it would be inappropriate for her to seek to do so in the eviction action. However, since the court could not determine whether the eviction action was wife's only opportunity to address her claims and defenses, it remanded the case for the district court to address wife's service claims, address the propriety of entertaining wife's equitable defenses in the eviction action or in an alternate proceeding; and, if appropriate, decide the equitable defenses.

2. Domestic partners

Domestic partners may or may not be in a landlord-tenant relationship, and if not, an unlawful detainer (eviction) action not be an appropriate forum to determine their possessory interests in the property. In *Shustarich v. Fowler*, U.D. 1960604520 (Minn. Dist. Ct. 4th Dist. July 5, 1996) (App. 176), Plaintiff and defendant first lived in defendant's home. Then plaintiff and defendant moved from her home to a second property, and the parties then living at the second property moved to defendant's old home. Plaintiff took title to the new property, and defendant contributed several thousand dollars from the sale of her home to a new roof and appliances. The parties kept separate expenses. After defendant obtained an order for protection, plaintiff gave notice and filed an unlawful detainer action. The court concluded that plaintiff failed to establish a landlord-tenant relationship, defendant was entitled to assert an interest in the premises, and an unlawful detainer action was a summary remedy inappropriate to try issues of title or to substitute for an action in ejectment, and denied restitution of the premises. *See In re*

Estate of Ericksen, 337 N.W.2d 671 (Minn. 1983). *But see Stock v. Beaulieu* (Minn. Dist. Ct. 9th Dist. Mar. 9, 1995) (Appendix 140) (domestic partners were in landlord-tenant relationship; plaintiff retaliated against defendant for reporting a crime of domestic abuse committed by the plaintiff in which the defendant was the victim).

A. MINN. STAT. § 504B.285: HOLDING OVER, BREACH, AND RENT

Minn. Stat. § 504B.285 (formerly § 566.03), Subd. 1 provides the most common basis for subject matter jurisdiction:

1. Holding over after sale on an execution or judgment, expiration of the redemption period following mortgage foreclosure, or termination of a contract for deed.

2. Holding over after expiration of the term of the lease.

3. Breach of lease.

4. Nonpayment of rent.

5. Holding over after termination of the tenancy by notice to quit.

The landlord may combine actions for nonpayment of rent and material lease violations under § 504B.285 (formerly § 566.03), subd. 5. These claims shall be heard as alternative grounds. The hearing is bifurcated to first cover material violation of the lease, and then nonpayment of rent if the landlord does not prevail on the material lease violation claim. The tenant is not required to pay into court outstanding rent, interest or costs to defend against the material lease violation claim. If the court reaches the nonpayment of rent claim, the tenant shall be permitted to present defenses. The tenant shall be given up to seven days to pay any rent and costs determined by the court to be due, either into court or to the landlord.

A tenant cannot bring an unlawful detainer (eviction) action against the landlord who has wrongfully reentered the premises. The tenant's remedy is provided by the lockout statute, Minn. Stat. § 504B.375 (formerly § 566.175). *Berg v. Wiley*, 303 Minn. 247, 250-51, 226 N.W.2d 904, 906-07 (1975). (*Berg I*).

A state court does not have jurisdiction over an unlawful detainer (eviction) action involving the right of an enrolled member of an Indian tribe to possession of property held in trust for Indians by the United States. *White Earth Housing & Redevelopment Authority v. J.F.*, No. C8-91-224 (Minn. Dist. Ct. 9th Dist. Feb. 5, 1992) (Appendix 24); *All Mission Indian Housing Authority v. Silvas*, 680 F. Supp. 330 (C.D. Cal. 1987); 28 U.S.C. § 1360(b).

In *Eagan East Ltd. Partnership v. Powers Investigations, Inc.*, 554 N.W. 2d 621 (Minn. Ct. App. 1996) the commercial landlord demanded from the commercial tenant a prospective and retroactive rent increase after the square footage used by the tenant was remeasured. When the tenant failed to pay the additional rent, the landlord filed an eviction (formerly unlawful detainer) action. The trial court held that the rent increase clauses in the lease were ambiguous and could not be applied retroactively from the new square footage measurement, but could be applied prospectively. The landlord then announced a new prospective rent increase, and in a subsequent order of the trial court, the court ruled that the landlord was entitled to the rent increase and the tenant was not entitled to attorney's fees under the lease. On appeal, the Court of Appeals held that the trial court's jurisdiction was limited to determining present possessory rights of the parties, and that the trial court exceeded its jurisdiction by ruling on the prospective rent increase and attorney's fee issues. *But see Duling Optical Corp. v. First Union*

Management, Inc., No. C5-95-2718 (Minn. Ct. App. Aug. 13, 1996), FINANCE & COMMERCE at 66 (Aug. 16, 1996) (Appendix 181) (unpublished decision: affirmed the district court's conclusion in a separate damages action that it lacked jurisdiction to award attorney's fees for separate eviction (formerly unlawful detainer) actions, since the issue of attorney's fees should have been decided in the unlawful detainer actions).

B. MINN. STAT. § 504B.301: UNLAWFUL DETENTION AND DRUG SEIZURES

Minn. Stat. § 504B.301 (formerly § 566.02) provides jurisdiction for unlawfully detaining the premises after having entered unlawfully, forcibly, or peaceably. Unlawful detention includes a seizure on residential rental property of contraband or a controlled substance manufactured, distributed or acquired in violation of Chapter 152 (Prohibited Drugs) and with a retail value of $100.00 or more, if the tenant does not have a defense under § 609.5317. *See* discussion, *infra*, at VI.G.16. While Minn. Stat. § 504B.285 (formerly § 566.03), subd. 1 applies to tenants, this section would cover occupants who are not tenants in addition to tenants. *See DePetro v. DePetro*, No. A03-727, 2004 WL 885552 (Minn. Ct. App. April 27, 2004) (unpublished) (affirmed eviction by owner of her adult daughter who was not a rent-paying tenant).

CHAPTER IV: PERSONAL JURISDICTION

See discussion, infra, at VI.C.

CHAPTER V: PROCEDURE

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A. INITIAL HEARING

The hearing must be held within 7 to 14 days after issuance of the summons. Minn. Stat. § 504B.321 (formerly § 566.05).

A0. VENUE

Venue for evictions is not discussed in Chapter 504B. Venue is covered in Chapter 542. Section 542 provides:

> 542.02 ACTIONS RELATING TO LAND, SITUS TO GOVERN.
>
> Actions for the recovery of real estate, the foreclosure of a mortgage or other lien thereon, the partition thereof, the determination in any form of an estate or interest therein, and for injuries to lands within this state, shall be tried in the county where such real estate or some part thereof is situated, subject to the power of the court to change the place of trial in the cases specified in section 542.11, clauses (1), (3), and (4). If the county designated in the complaint is not the proper county, the court therein shall have no jurisdiction of the action.

The court can change venue in limited circumstances.

> 542.11 CHANGE OF VENUE BY ORDER OF COURT; GROUNDS.
>
> The venue of any civil action may be changed by order of the court in the following cases;
> (1) upon written consent of the parties;
> (2) when it is made to appear on motion that any party has been made a defendant for the purpose of preventing a change of venue under section 542.10;
> (3) when an impartial trial cannot be had in the county wherein the action is pending; or
> (4) when the convenience of witnesses and the ends of justice would be promoted by the change.

While Section 542.10 provides for trial in the wrong county if the defendant does not demand in writing that the action be tried in the proper county, it appears to apply to actions other than evictions, since Section 542.02 states at "If the county designated in the complaint is not the proper county, the court therein shall have no jurisdiction of the action."

A1. REMOVAL OF THE JUDICIAL OFFICER

1. Hennepin and Ramsey County Housing Courts

A party may opt out of a Housing Court referee hearing by filing a written request the day before the first hearing, and the case will be referred to a judge. Minn. R. Gen. Prac. § 602 provides this right. Removal under this rule allows a party to remove a referee have a judge assigned to the case, but still

could remove the judge as discussed below.

In 2014 the Minnesota Legislature amended Minn. Stat. § 484.013, which created housing courts in Hennepin and Ramsey Counties. Subdivision 3 used to provide "Section 484.70, subdivision 6, applies to the housing calendar program." Minn. Stat. § 484.70 covers court referees in general, and provides: "Subd. 6.Objection to referee. No referee may hear a contested trial, hearing, motion or petition if a party or attorney for a party objects in writing to the assignment of a referee to hear the matter. The court shall by rule, specify the time within which an objection must be filed." The amended § 484.013, Subd. 3 now states "Section 484.70, subdivision 6, does not apply to the housing calendar program."

While it was the intention of the Minnesota Legislature to eliminate removal of housing court referees, Minn. R. Gen. Prac. § 602 has not been amended.

A party still may remove a specific referee or judge from a case upon a written notice of removal. "The notice shall be served and filed within ten days after the party receives notice of which judge or judicial officer is to preside at the trial or hearing, but not later than the commencement of the trial or hearing." Minn. R. Civ. P. 63.03. Unless the parties receive a notice of judicial assignment, which does not happen in eviction cases in the Second and Fourth Districts, the deadline for a judicial officer removal is before the hearing begins. *Citizens State Bank of Clara City v. Wallace*, 477 N.W.2d 741, 742 (Minn. Ct. App. 1991). Once a party appears before that officer, the party may not remove the officer. *State v. Pierson*, 368 N.W.2d 427, 432 (Minn. Ct. App. 1985).

When a party files a notice of removal, the court assigns the case to either another referee or a judge. The Poverty Law website contains forms.
http://povertylaw.homestead.com/RemovingRefereesandJudges.html

2. Greater Minnesota

Housing courts outside of Hennepin and Ramsey are not governed by the Housing Court Rules. Minn. Gen. R. Prac. 601. Referees still are governed by Minn. Stat. § 484.70, which covers court referees in general, and provides: "Subd. 6.Objection to referee. No referee may hear a contested trial, hearing, motion or petition if a party or attorney for a party objects in writing to the assignment of a referee to hear the matter. The court shall by rule, specify the time within which an objection must be filed."

B. ANSWER

"At the court appearance specified in the summons, the defendant may answer the complaint .... Minn. Stat. § 504B.335 (formerly § 566.07). Since the statute uses "answer" as a verb rather than a noun, and since it does not require a written answer, the defendant can answer the complaint orally without a written answer. The Housing Court Rules do not require a written answer. Minn. Gen. R. Prac. 601-12. However, a written answer is useful to present to the court affirmative defenses and grounds for dismissal or summary judgment.

Forms drafted by the author are available at http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html. These forms have been prepared as a counterpart to complaint forms available to landlords. The tenant or tenant's attorney can check-off the defenses or grounds for dismissal or summary judgment which are applicable. A verified answer and motion for dismissal or summary judgment can serve as an answer, motion, and supporting

memorandum and affidavit. Additionally, counsel should consider submitting proposed orders on issues of dismissal or summary judgment. Many of the orders discussed herein were proposed orders submitted by the tenant's counsel.

A written answer may be needed to preserve the record for appeal. *See Andrzijek v. Hall,* No. C5-88-2134 (Minn. Ct. App. April 18, 1988) (unpublished decision: issue of trial court's refusal to allow defendant to present evidence of cause of disrepair and rent abatement not preserved for appeal where defendant did not file an answer, object, or request leave to file answer to conform to evidence). *But see Christy v. Berends,* No. A07-1451, 2008 WL 2796663 *2 (Minn.Ct. App. July 22, 2008) (unpublished) (failure to plead waiver of breach defense did not waive defense).

In *ARU Props., LLC v. Clark,* No. A16-1126, 2017 Minn. App. Unpub. LEXIS 288 (Minn. Ct. App. April 3, 2017) (unpublished), the owner filed an eviction action alleging breach and rent. The tenant asserted at trial that the owner had not registered its trade name but the referee ruled that the tenant could not raise the issue at trial. The Court of Appeals affirmed the referee's ruling to not consider the trade name claim as she did not assert it in her answer but raised it for the first time at trial. The court held the issue was not properly before it, citing *Antonson v. Ekvall,* 289 Minn. 536, 539, 186 N.W.2d 187, 189 (1971). However, in *Antonson,* the claim was not raised until *after* trial in a motion for new trial. The court then noted in *dicta* that a trade name violation does not bar an eviction action. The court did not discuss stay of an eviction action, the more common remedy for trade name violations. As *ARU Props., LLC* is unpublished, it is not precedential. *See* discussion at I.A.3.

B1. FILING FEE WAIVERS: *IN FORMA PAUPERIS*

The base filing fee for court actions, including eviction actions, is $287.
http://mncourts.gov/Help-Topics/Court-Fees/District-Court-Fees.aspx?cookieCheck=true

The addition of other fees can raise the total to $299.
http://mncourts.gov/Find-Courts/Hennepin.aspx

The fee applies to both plaintiff and defendants, and landlords and tenants, for the first document filed each party in a case. If a tenant does not file anything and orally presents an answer or response to the landlord's complaint, the court does not assess a fee to the tenant. Low income persons can request a fee waiver by filing an *in forma pauperis* application.
http://www.mncourts.gov/Help-Topics/Fee-Waiver-IFP.aspx

Recently there have been a number of *in forma pauperis* orders issued by the new referee in Hennepin County that have required tenants to pay part of the filing or sheriff service fees even though they meet the statutory requirements for a fee waiver, such as receipt of means-tested public assistance, representation by a civil legal services program or volunteer attorney program based on indigency, or family income less than 125% of the Federal Poverty Line. Low-income tenants should be as complete as possible about income and expenses, including completing the second page of the affidavit, and even attaching a more detailed list of expenses than listed in the form. The Poverty Law website contains a table that can be attached to the affidavit.
http://povertylaw.homestead.com/IFP.html

A tenant can seek judge review of a denial of the *in forma pauperis* application. Several judges have reversed referee denials. In *Odash v.* _____, No. 24-CV-HC-12-3214 (Minn. Dist. Ct. 4th Dist. Feb. 26, 2013) (Appendix 718) (Judge Meyer), the landlord brought an action against the tenant for

unlawful detainer. The parties ultimately reached a settlement, which stated that the tenant would pay the landlord $2,500 on or before July 7, 2012 and vacate the premises on or before that date. The settlement noted that the landlord believed the tenant owed her more than $2,500 in past due rent, late fees, and court costs, but that such claims would need to be pursued separately in conciliation court. The settlement also allowed for a writ of recovery to issue if tenant broke the terms of the agreement. The tenant vacated the premises on the designated date, but a dispute arose regarding items that belong to tenant that remained at landlord's property, specifically a snow plow that remained in landlord's garage. The tenant applied for an in frorma pauper fee waiver, but the housing court referee denied the application, finding that the action was frivolous because a writ of recovery had not issued, and therefore Minn. Stat. § 504B.365 was inapplicable. The district court reversed the decision, holding that there is no requirement for a writ of execution to issue before the issue of storage and disposal requests are triggered in Section 504B.271. The court reversed the denial of the IFP application, reasoning that holding that a writ must be executed to trigger Section 504B.365 would discourage settlements in housing court and force additional writs to be issued and executed. The district court further noted that Section 504B.365, Subd. 4 does not appear to require a writ of execution to have issued for the housing court to retain jurisdiction over stored property; it only requires an eviction action to have been heard. *See Homes for Now LLC v. _____,* No. 27-CV-HC- 09-46 (Minn. Dist. Ct. 4th Dist. Mar. 3, 2009) (Appendix 652) (referee decision reversed on judge review where defendant received income from MFIP, SSI, and Unemployment Insurance and claims were not frivolous).

When the court approves a fee waiver for the tenant, it can order the landlord to pay the court for the waived fees for a successful tenant. *Butler v. _____,* No. 27-CV-HC-07-4409 (Minn. Dist. Ct. 4th Dist. Jul. 27, 2007) (Appendix 630) (eviction dismissed and expunged where landlord did not prove partial payment of deposit, tenant proved habitability violations, tenant awarded $200 in costs, landlord ordered to pay the court for tenant's waived filing fees).

B2. CERTIFICATION CAN REPLACE VERIFICATION AND AFFIDAVITS CO-SIGNED BY NOTARY

Minn. Stat. § 358.116 now allows using the following certification as an alternative to verifications and affidavits cosigned by a notary: "I declare under penalty of perjury that everything I have stated in this document is true and correct."

Pleadings and motions also should include the certifications under Minn. R. Civ. P. 11:

Under Minn. R. Civ. P. 11, I certify that, to the best of my knowledge:

a. this document is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
b. the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
c. the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;
d. the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief; and
e. this document does not include any restricted identifiers and that all restricted identifiers have been submitted in a confidential manner as required by Minn. R. Gen. Prac. 11.

The answers and motions on the Poverty Law website contain these certifications. http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html

B3. APPEARANCE OF COUNSEL FOR DEFENDANT WITHOUT DEFENDANT AS AN APPEARANCE BY DEFENDANT

An appearance of counsel for the defendant with the defendant should constitute an appearance by defendant, and not a default. In *Croes v. Handlos,* 225 Minn. 247, 30 N.W.2d 471 (1948), in affirming an order denying a motion to open a default judgment, the Court noted that party had defaulted as the party "made no appearance either in person or by attorney," suggesting that an attorney appearance would not have been a default. *Id.* at 248, 30 N.W.2d 472.

However, in *In re Welfare of the Children of Coats,* 633 N.W.2d 505 (Minn. 2001), in affirming the district court and reversing the Court of Appeals, the Court affirmed the district court's order denying a motion to reconsider or vacate a default judgment where an attorney appeared for the party. The Court did not address the issue of whether the appearance by the attorney without the party was a default. In dissent, Justice Page asserted the appearance of the attorney was not a default. *Id.* at 513-17 (Page, J, dissenting).

C. THIRD PARTY PRACTICE, JOINDER AND INTERVENTION

1. Third Party Complaint

In some cases, the alleged breach of the lease on the part of the tenant may have been caused by a third party. For instance, tenants with Section 8 Existing Housing Certificates or Vouchers pay part of the rent themselves, but the remaining rent is paid by a public housing authority. If the public housing authority withholds its subsidy or incorrectly calculates the subsidy, the landlord might file an unlawful detainer (eviction) action for nonpayment of rent against the tenant. The tenant may wish to bring a third party complaint in conjunction with the tenant's answer. However, since the time periods provided in Minn R. Civ. P. 14 are inconsistent with the summary nature of the unlawful detainer (eviction) action, the tenant should request that the court continue the action to allow the tenant to serve a third party complaint, and order an expedited period, such as seven (7) days, for the third party defendant to appear and respond. Additionally, dismissal may be appropriate for failing to include an indispensable party. *See Wynmore Apartments v. Stellick*, No. UD-1920513525 (Minn. Dist. Ct. 4th Dist. June 23, 1992) (Appendix 182) (tenant alleged failure to join HRA as indispensable party and alternative claim for a continuance to join HRA as a third party defendant where HRA miscalculated tenant's income and rent; action settled); *Lilyerd v. Carlson*, 499 N.W.2d 803, 807 (Minn. Ct. App. 1993) (defendant raised third party claim but did not notify or serve third party and apparently did nut pursue claim). *See also* Indispensable Parties, *infra*, at VI.D.14.

2. Joinder

In some cases, affording complete relief to the tenant may require joining an indispensable party under Minn. R. Civ. P. 19. This may be more common in motions regarding disposition of property, where someone other than the plaintiff is retaining the property. *See Lang v. Terpstra*, No. UD-1940207512 at 2 (Minn. Dist. Ct. 4th Dist. June 12, 1994) (appendix 70) (storage company joined as necessary party on motion regarding property disposition).

In *CAMM Properties, Inc. v. Peacock*, No. C6-97-1128, C7-97-1168, C9-97-1365, C2-97-1420 (Minn. Ct. App. May 18, 1998) (Appendix 316) (Unpublished), the defendant in an unlawful detainer action following default on a contract for deed moved to join an assignee of the mortgage as an involuntary party plaintiff to the action. The district court granted the motion, and later found that cancellation of the contract for deed was effective.

3. Intervention

In *Hammann v. Wells Fargo Bank, N.A.,* 2017 Minn. App. Unpub. LEXIS 5 (Minn. Ct. App. Jan. 3, 2017) (unpublished), Hammann entered a one-year residential lease with landlords who later defaulted on their mortgage. The bank initiated a foreclosure by advertisement on the property and bought the property in a foreclosure sale. The bank then mailed a "demand for possession of property" letter to the former owners, Hammann, the "occupants," and to any known or unknown tenant. The bank then filed an eviction action and obtained a writ of recovery of premises. Hammann did not appear in the action and the bank recovered the property.

Months later Hammann sued the bank *pro se* alleging claims of ouster, unlawful exclusion or removal, and breach-of-landlord covenants arguing that he did not receive a copy of the bank's letter. The district court dismissed the Hammann's claims. Then Hammann moved in the eviction action to intervene and for relief from the eviction judgment. The district court in the eviction action denied his motion to intervene because he failed to serve all of the parties and because the motion was untimely. Later, the district court also denied his motion to review its prior opinion and did not address the merits of his motion for relief from judgment.

The Minnesota Court of Appeals held that: (i) Hammann's claim of ouster failed because the bank made numerous attempts to identify and include all occupants in the eviction action and Hammann chose to wait more than two years to challenge the district court's order and writ of recovery so he could not prove that the bank acted unlawfully or in bad faith; (ii) his claim of unlawful-exclusion failed because the bank had a writ of recovery and order to vacate; and (iii) his claim of breach-of-landlord-covenant failed because Hammann was unable to establish that a lease or license agreement existed between him and the bank. The court also decided that the district court did not err in denying Hammann's motion to intervene in the eviction action or in denying review because the service was ineffective and his motion and notice of review were untimely. Lastly, the court held that Hammann's motion for relief from judgment was improper citing precedent stating that "post-trial orders in unlawful detainer proceedings are non-appealable."

In *Barry v. Lane*, Nos. UD-1980629502 and UD-1980603900 (Minn. Dist. Ct. Sep. 15, 1998) (Appendix 310B), the total rent was $760, with the tenant's share of the rent being $257 and the Section 8 housing subsidy being $503. The court previously ordered a rent abatement of $500 per month, or 66% of the total rent and 195% of the tenant's share of the rent. The public housing authority apparently asserted that it was entitled to rent abatement beyond the tenant's share of the rent, but since it did not move to intervene, the court disbursed funds in escrow to the tenant.

D. INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS

1. Against tenant within eviction action

The court has the power to issue temporary restraining orders in unlawful detainer (eviction) actions. *Berg v. Wiley*, 264 N.W.2d 145, 151 (Minn. 1978); *Yager v. Thompson*, 352 N.W.2d 71, 74

(Minn. Ct. App. 1974). *See generally* Minn. R. Civ. P. 65. In *Sentinel Management Co. v. Kraft*, No. UD-1920806546 (Minn. Dist. Ct. 4th Dist. Aug. 12, 1992) (Appendix 11.I.3), the government subsidized housing project landlord served the tenant with the summons and complaint and motion for a temporary restraining order, which the landlord obtained the same day as service. The temporary restraining order evicted the tenant pending the hearing in the unlawful detainer action. The tenant moved for reconsideration of the temporary restraining order and for dismissal or summary judgment on the grounds that the landlord had failed to give the federally required eviction notice before commencing the action. The court vacated the temporary restraining order and dismissed the action. Minn. Stat. § 504B.325 (formerly § 566.051) also authorizes temporary relief by filing a harassment action under Section 609.748, or by filing a petition for a temporary restraining order in conjunction with an unlawful detainer (eviction) action.

2. Against landlord in another action to prevent filing of or stay eviction action

Tenants have had some success restraining landlords from filing unlawful detainer (eviction) actions. *See McNair v. Doub*, No. 1960708524 (Minn. Dist. Ct. 4th Dist. July 10, 1996) (Appendix 183) (temporary retraining order in rent escrow action against landlord filing separate unlawful detainer action and allowing landlord to raise any unlawful detainer issue in a counterclaim, to protect the tenant from a tenant screening listing of an unlawful detainer action); *Lumpkin v. Lewis*, No. 96-10295 (Minn. Dist. Ct. 4th Dist. July 12, 1996) (Appendix 184) (temporary restraining order in consumer fraud action restraining landlord from filing a second unlawful detainer action, where landlord in a separate unlawful detainer action was denied rent due to housing conditions, and landlord said that he would file a new action for the same rent and try to bypass the judge from the first case; motion was supported by an affidavit from Sharlyn LaPlace of Person to Person on the effect of unlawful detainer actions on a tenant's record).

The commercial tenant was unsuccessful in *Afro Deli & Coffee LLC v African Development Center,* No. 27-CV-16-9808 (Minn. Dist. Ct. 4th Dist. Aug. 25, 2016) (Appendix 715) (Judge Vasaly). The tenants filed a case in the district court asserting claims for declaratory relief, injunctive relief, tortious interference with business expectations, negligent and intentional misrepresentation, breach of fiduciary duty, breach of contract, breach of the duty of good faith and air dealing, unjust enrichment, and defamation. Approximately one month after this case was commenced; the landlord filed an eviction case against tenants in the housing court division of the district court seeking possession of the premises. The tenants filed a motion for a temporary restraining order to bar the landlord from pursuing an eviction action against tenants and ordering a stay of the eviction action pending determination of issues related to possession, control, and ownership of Afro Deli in the district court case. The landlords opposed the motion, asserting that the tenant's claims were speculative and that the tenant had not paid rent as required under the lease, justifying the eviction action. The court denied the tenant's motion for injunctive relief, determining that the tenants did not meet their burden for a temporary restraining order. In so doing, the court specifically noted that (1) because of the landlord/tenant relationship, the housing court is an appropriate venue to hear the eviction case and consider the arguments of the parties; (2) the tenants failed to show irreparable harm, especially in light of assurance by the landlord that it will not use the Afro Deli name or other intellectual property belong to Afro Deli after the eviction, while the landlord would suffer actual harm if it is not allowed to pursue the eviction case; (3) the court could not determine that there was a likelihood of success on the merits due to the complexity of the factual background and claims; and (4) there were no significant public policy considerations applicable to the motion.

E. CONTINUANCE AND STAYS BY THE COURT HEARING THE EVICTION ACTION

1. Continuances under Minn. Stat. § 504B.341 or the common law

The court may continue the trial for up to six (6) days without consent of the parties; or, in certain circumstances, up to three (3) months for a material witness if a bond is paid. Minn. Stat. § 504B.341 (formerly § 566.08). While some courts regularly hold the trial at the initial appearance, others regularly will treat the initial hearing as an arraignment and schedule the trial at a later time or date. *But see Minneapolis Public Housing Authority v. Demmings*, No. C5-94-2045 (Minn. Ct. App. May 9, 1995), FINANCE & COMMERCE at 20 (May 12, 1995) (Appendix 159) (denial of continuance to obtain counsel upheld where result of trial would not have been different).

The court has discretion to continue the trial longer in the interests of judicial administration and economy. *Rice Park Properties v. Robins, Kaplan, Miller and Cieresi*, 532 N.W.2d 556 (1995); *Thompson v. Stevens*, No. C6-96-650 (Minn. Ct. App. Dec. 10, 1996), FINANCE AND COMMERCE at 76 (Dec. 13, 1996) (Appendix 299) (Unpublished: followed *Rice Park Properties*).

In *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312 (Minn. Ct. App. 2008), the record titleholder and commercial landlord filed an eviction action to evict the commercial tenant of 30 years. The tenant moved for stay pending resolution of a pending action for damages that another party already had filed against the landlord and tenant, which the district court denied. *Id.* at 314-15. The tenant then asserted affirmative defense of possession by purchase and filed counterclaims for breach of contract, specific performance, promissory estoppel, unjust enrichment, constructive trust, fraudulent transfer, and forcible entry, which mirrored allegations it asserted by cross claim in the first action against the landlord. *Id.* at 315. The landlord moved for summary judgment and to strike the counterclaims, which the district court denied. *Id.* at 316. While the court allowed the tenant to offer evidence to support its defenses and counterclaims, the court rejected all of the tenant's proposed jury instructions on its claims. The jury ruled for the landlord and the tenant appealed. *Id.* at 316-17. The Court of Appeals first noted that "because eviction actions now originate in district court, the district court may, despite the statutory description of eviction actions as 'summary,' expand the scope of such an action to address defendant's equitable defenses to title. *Id.* at 316 n.2, citing *Fraser v. Fraser*, 642 N.W.2d 34, 40-41 (Minn. Ct. App. 2002). The court then noted that "'[g]enerally, whether to stay a proceeding is discretionary with the district court, [and] its decision on the issue will not be altered on appeal absent an abuse of that discretion.'" *Id.* at 317, quoting *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 358 (Minn. Ct. App. 2006). The court then concluded that the district court abused its discretion by denying a motion to stay an eviction action when an existing, separate district court action would be dispositive of the issues of possession and title to commercial real property involved in the eviction action, and the district court in the eviction action had concluded that some of the claims asserted in the first-filed action are essential to the defense of the eviction action. 753 N.W.2d at 317-20.

In *Minneapolis Public Housing Authority v. _____,* No. HC 1020213525 (Minn. Dist.Ct. 4th Dist. Mar. 21, 2002) (Appendix 544), the parties agreed to a continuance of 19 days for trial. The landlord then sought another continuance beyond the date of a criminal trial concerning the tenant's son, and when it could not locate a witness. When the court would not grant another continuance, the landlord moved to dismiss without prejudice. The court dismissed the action with prejudice, holding that a dismissal without prejudice would circumvent the statutory limitation on continuances to 6 days.

2. Stays in mortgage foreclosure eviction actions

Minnesota Statutes § 325N.18 requires the court to issue an automatic stay without imposition of a bond if a defendant makes a prima facie showing that the defendant has commenced an illegal foreclosure reconveyance action. *See* discussion at VI.F.12.a1.

A number of decisions in mortgage foreclosure evictions discuss stays of eviction, with most requests for stays being unsuccessful. *See* discussion at VI.F.12.a2.

F. DISCOVERY

The Housing Court Rules provide for discovery. Minn. Gen. R. Prac. 612 (Appendix 0.B). *Swanson v. Ivie*, No. UD-1950411541 (Minn. Dist. Ct. 4th Dist. Apr. 21, 1995) (Appendix 171); *Sage Mgmt. Co. v. Hughes*, No. UD-1930129502 (Minn. Dist. Ct. 4th Dist. Feb. 23, 1993) (Appendix 0.E.1). The court also can sanction a party for not complying with a discovery order. *Lynch v. Hart*, No. UD-1960610529 (Minn. Dist. Ct. 4th Dist. Jun. 27, 1996) (Appendix 185) (tenants could not introduce evidence not in compliance with the discovery order). Before the Rules became effective, in *Seward Handicap Housing Associates v. Wells*, No. UD-1911002516 (Minn. Dist. Ct. 4th Dist. Oct. 16, 1991) (Appendix O.E), the court granted defendant's motion for expedited discovery, including the landlord's file on the tenant and a list of the landlord's witnesses and the facts on which they would testify. (Appendix 0.F). Counsel can argue that even outside of the Second and Fourth Judicial Districts, defendants are entitled to such basic information in order to prepare a minimal defense in the summary proceeding.

Given the expedited nature of discovery in an unlawful detainer action, if the landlord fails to comply with the discovery order, the tenant should argue that documents or testimony introduced at trial in violation of the discovery order should be excluded. Under Minn. R. Civ. P. 37.02(b), the court may refuse to allow the party who violated the discovery order to support or oppose certain claims or defenses, or prohibit that party from introducing designated matters into evidence. *See Minneapolis Public Housing Authority v. Eberhardt*, No. UD-1970204642 (Minn. Dist. Ct. 4th Dist. Mar. 17, 1997) (Appendix 275) (After admitting city chemist drug report conditionally during trial, court later excluded the report based on the landlord's violation of discovery order, delay in submission for testing, the small weight of the substance, and lack of testimony from the chemist); *Larson v. Anderson*, No. C9-96-416 (Minn. Dist. Ct. 9th Dist. Nov. 8, 1996) (Appendix 264) (attorney's fees denied on motion to compel discovery).

In *Stewart v. _____,* No. 27-CV-HC-06-1916 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 662) (Judge Crump), the landlord filed a combination eviction action and conciliation court action in housing court, and the tenant answered alleging habitability. At trial, the tenant attempted to testify about her observations about how her dryer worked, and rodent infestation. The housing court referee did not accept her testimony, since she was not an expert in dryer repair or pest control. After the referee ruled for the landlord, the tenant sought review by a district court judge. The court reversed the referee's grant of eviction writ where referee did not equally allow late exhibits from parties and disallowed tenant to testify about her habitability observations because she was not an expert. The court dismissed the action with prejudice and expunged; awarded the tenant awarded all rents of $1618 paid into court and a credit of $525 against future rent where tenant testified about rodent infestation and a clothes dryer damaging clothes; awarded costs and credited against future rent; ordered the landlord to complete repairs; and not future rent abatement was available if repairs not completed. On appeal, the Court of Appeals held that the district court correctly found that the referee had erred. *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007) (unpublished).

G. HOUSING COURT: RAMSEY AND HENNEPIN COUNTIES

0A. Enabling Statute: Minn. Stat. § 484.013

In 1989, the Minnesota Legislature provided that the second and fourth judicial districts court create a three-year pilot project consolidate the hearing and determination of matters related to residential rental housing and to ensure continuity and consistency in the disposition of cases. Minn. Stat. § 484.013 (1989). In 1993, the Legislature made the program permanent. Minn. Laws 1993 Ch. 265 § 6.

It does not preclude other districts from creating housing courts. Currently, Minn. Stat. § 484.013, provides:

> 484.013 HOUSING CALENDAR CONSOLIDATION PROGRAM.
> https://www.revisor.mn.gov/statutes/cite/484.013
>
> Subdivision 1. Establishment.
>
> (a) A program is established in the Second and Fourth Judicial Districts to consolidate the hearing and determination of matters related to residential rental housing and to ensure continuity and consistency in the disposition of cases.
>
> (b) Outside the Second and Fourth Judicial Districts, a district court may establish the program described in paragraph (a) in counties that it specifies in the district.
>
> Subd. 2. Jurisdiction.
>
> The housing calendar program may consolidate the hearing and determination of all proceedings under chapter 504B; criminal and civil proceedings related to violations of any state, county or city health, safety, housing, building, fire prevention or housing maintenance code; escrow of rent proceedings; and actions for rent abatement. A proceeding under sections 504B.281 to 504B.371 may not be delayed because of the consolidation of matters under the housing calendar program.
>
> The program must provide for the consolidation of landlord-tenant damage actions and actions for rent at the request of either party. A court may not consolidate claims unless the plaintiff has met the applicable jurisdictional and procedural requirements for each cause of action. A request for consolidation of claims by the plaintiff does not require mandatory joinder of defendant's claims, and a defendant is not barred from raising those claims at another time or forum.
>
> Subd. 3. Referee.
>
> The chief judge of district court may appoint a referee for the housing calendar program. The referee must be learned in the law. The referee must be compensated according to the same scale used for other referees in the district court. Section 484.70, subdivision 6, does not apply to the housing calendar program.
>
> Subd. 4. Referee duties.

The duties and powers of the referee in the housing calendar program are as follows:

(1) to hear and report all matters within the jurisdiction of the housing calendar program and as may be directed to the referee by the chief judge; and

(2) to recommend findings of fact, conclusions of law, temporary and interim orders, and final orders for judgment.

All recommended orders and findings of the referee are subject to confirmation by a judge.

Subd. 5. Transmittal of court file.

Upon the conclusion of the hearing in each case, the referee shall transmit to the district court judge, the court file together with the referee's recommended findings and orders in writing. The recommended findings and orders of the referee become the findings and orders of the court when confirmed by the district court judge. The order of the court is proof of the confirmation.

Subd. 6. Confirmation of referee orders.

Review of a recommended order or finding of the referee by a district court judge may be had by notice served and filed within ten days of effective notice of the recommended order or finding. The notice of review must specify the grounds for the review and the specific provisions of the recommended findings or orders disputed, and the district court judge, upon receipt of the notice of review, shall set a time and place for the review hearing.

Subd. 7. Procedures.

The chief judge of the district must establish procedures for the implementation of the program, including designation of a location for the hearings. The chief judge may also appoint other staff as necessary for the program.

0. Jurisdiction

In *Cty. of Hennepin v. 6131 Colfax Lane,* 2018 Minn. App. LEXIS 100 (Minn. Ct. App. Jan. 29, 2018), the Court held that the Housing Court did not have jurisdiction to hear cases not involving residential leases.

The Fourth District Court (Hennepin County) responded with an order appointing referees to hear such cases. Standing Order re Certain Real Property-Related Civil Cases (Minn. Dist. Ct. 4th Dist. Mar. 5, 2018) (Appendix 815). Unless that order is overturned, the effect is that in Hennepin County, the housing court referees will hear these cases but the housing court rules do not apply, and the case designation is other civil.

The Second District Court (Ramsey County) does not have a standing order on jurisdiction. Referees are hearing only residential rental matters.

1. Housing Court Rules

In 1989 the Legislature provided for creations of housing courts in the Second and Fourth Judicial Districts (Ramsey and Hennepin Counties). Minn. Stat. § 484.013. The Housing Court Rules went into effect on January 1, 1992. Minn. Gen. R. Prac. 600-12. (Appendix 0.B). The major changes from old FOURTH JUD. DIST. SPEC. R. PRAC. 13 and 17 are that:

a. In holding over cases, the landlord must include the termination notice with the complaint or provide it to the tenant at the initial appearance, unless the landlord does not possess a copy of the notice or at the hearing the tenant acknowledges receipt of the notice, Minn. Gen. R. Prac. 604(c);

b. In breach of lease cases, the landlord must include with the complaint a copy of the lease or provide it to the tenant at the initial appearance, unless the landlord does not possess a copy of it, Rule 604(d);

c. The affidavit of service must contain the printed or typed name of the person who served the summons, Rule 605;

d. If the landlord does not file the affidavit of service by 3:00 p.m. three business days before the hearing, the court may, rather than must, strike the action, *id.*;

e. No written answer is required;

f. The court has more discretion in determining whether the tenant must pay into court withheld rent, and the amount that must be paid, Rule 608;

g. motions may be made orally or in writing, with the requirements of service of notice of motions and time periods in the Minnesota Rules of Civil Procedure not applying, Rule 610; and

h. that the parties shall cooperate with reasonable and formal discovery requests, and that upon the request of any party to a matter scheduled for trial, the court may issue an order for an expedited discovery scheduled, Rule 612.

A housing court referee shall preside over all hearings and trials concerning matters scheduled on the unlawful detainer (eviction) calendar. A party may remove the referee. *See* discussion, *supra*, at V.A1.

Orders and findings recommended by a referee become effective only when countersigned or confirmed by district court judge. A judgment based entirely on a referee's orders that have not been countersigned, reviewed or confirmed by a district court judge is unauthorized. *Griffis v. Luban*, 601 N.W.2d 712 (Minn. Ct. App. 1999).

In the Fourth District Court, First Division (Minneapolis), a hearing officer had presided over the initial appearance, and referred contested cases to the referee. Starting in the Fall of 1996, the Housing Court eliminated the hearing officer position and had the Housing Court Referee consolidate the arraignment and hearing calendars. Counsel should check in with the court clerk before the arraignment begins, since the order of cases is judge requests, defaults, settled cases, disputed cases with counsel, and disputed cases without counsel. *See* Memorandum to Housing Court Staff from Sue Daigle (Oct. 3, 1996) (Appendix 173). Beginning around December 16, 1996, housing court administrative services

were divided into two offices, with one office on the skyway public service level handling unlawful detainer (eviction) case filings and public service information, and the eighth floor (and now the 17th floor) office handling other services. *See* Hennepin County District Court, *Access, Filing & Information Are Moving* (Appendix 174).

The initial appearance is at the "calendar call." When a case is called, the defendant will be asked whether the defendant admits or denies the charges in the complaint. A request for trial by jury must be made at that time, and the jury fee must be paid before the jury is impaneled. Contested cases shall be set for trial the same day as the initial hearing, if possible, or set on the first available calendar date. Rule 607. In the Fourth District Court, First Division, (Minneapolis), the unlawful detainer (eviction) calendar is scheduled for Tuesday through Friday mornings. If a trial cannot be heard at that time, the referee normally schedules the trial for Tuesday, Wednesday or Friday afternoons, or Monday morning or afternoon.

Rule 610 allows motions to be made orally or in writing at any time including the day of trial. Whenever possible, oral or written notice of any dispositive motions must be provided to all the parties prior to the hearing. All motions would be heard by the court as soon as possible. The court may grant a request for time to prepare a response to any motion for good cause or by agreement of the parties. The requirements of service of notice of motions and time periods in the Minnesota Rules of Civil Procedure do not apply.

Rule 612 provides that the parties shall cooperate with a reasonable and formal discovery request by another party. Upon the request of any party to a matter scheduled for trial, the presiding referee or judge shall issue an order for an expedite discovery schedule. *Id*.

2. Judge Review

See discussion, *infra*, Chapter IX.

3. Consolidation of actions

Minn. Stat. § 484.013 provides for consolidation of actions:

> Subd. 2. Jurisdiction. The housing calendar program may consolidate the hearing and determination of all proceedings under chapter 504B; criminal and civil proceedings related to violations of any state, county or city health, safety, housing, building, fire prevention or housing maintenance code; escrow of rent proceedings; and actions for rent abatement. A proceeding under sections 504B.281 to 504B.371 may not be delayed because of the consolidation of matters under the housing calendar program.
>
> The program must provide for the consolidation of landlord-tenant damage actions and actions for rent at the request of either party. A court may not consolidate claims unless the plaintiff has met the applicable jurisdictional and procedural requirements for each cause of action. A request for consolidation of claims by the plaintiff does not require mandatory joinder of defendant's claims, and a defendant is not barred from raising those claims at another time or forum.

Rules for Conciliation Court are in Minn. R. Gen. Prac. 501 *et. seq.*

For more on consolidation of housing actions, *see*:

- Consolidating the Eviction Action with Other Actions at V.S.
- Attorney's fees in consolidated actions at VIII.E.4.(a)(2)(d).
- Statutory privacy claims in consolidated eviction and tenant actions at XII.B.2.c.
- Rent escrow actions:
  - Consolidated with eviction actions at XII.B.3.a.(2)(i).
  - Appeals: Consolidation with eviction action at XII.B.3.a.(2)(w).
- Emergency tenant remedies actions: Consolidation with eviction action at XII.B.3.b.(3)(d).

G1. COPIES OF COURT FILES

Given the limited amount of time to prepare a defense, sometimes the tenant's attorney or advocate can prepare quicker by reviewing the court file before meeting with the tenant. The Fourth Judicial District Court (Hennepin County) issued a standing order waiving housing court photocopying charges to legal services attorneys and voluntary attorneys through the Legal Advice Clinic (now called Volunteer Lawyers Network (VLN)). Order Waiving Housing Court Photocopying Charges to Legal Services and Legal Advice Clinic Attorneys (Minn. Dist. Ct. 4th Dist. June 8, 1992) (Appendix 0.G). However, court staff regularly charge for copies.

There are a couple of alternatives to get copies without charge. The Fourth Judicial District Court (Hennepin County) offers the Housing Court Project Clinic that provides legal assistance to low-income tenants in two offices, one staffed by attorneys from Mid-Minnesota Legal Aid and the other staff by attorneys from Volunteer Lawyers Network. Each office has a computer with access to court file documents that can print documents.

Another option is to use public computers at a courthouse that have access to court documents, photograph the document pages with a smart phone, and then download the pictures to another computer.

H. TRIAL AND EVIDENCE

1. The right to a *real* jury or bench trial

The parties are entitled to a full trial, and may demand a trial by jury. Minn. Stat. § 504B.335 (formerly § 566.07). Given the large volume of cases in some courts, it is common for the courts to conduct the trial as a summary hearing at the bench, especially where both parties are unrepresented by counsel. Counsel should be careful to give notice to the court and the opposing party at the beginning of any summary discussion of the case that the right to a full trial is not being waived by such a discussion. *See Gutsch v. Hyatt Legal Services*, 403 N.W.2d 314, 315-16 (Minn. Ct. App. 1987) (damages action removed from conciliation court to district court: right to trial includes right to be heard, to produce witnesses and documents, to examine and cross-examine witnesses, to present arguments, and to have case decided on the merits).

In *Soukup v. Molitor*, 409 N.W.2d 253, 254-55 (Minn. Ct. App. 1987), plaintiff and defendant settled an eviction (formerly unlawful detainer) action by agreeing to dismiss the action, and that if defendant defaulted on future rental payments, plaintiff could apply for a writ of restitution without further court action. Plaintiff later filed another unlawful detainer action alleging nonpayment of rent, holding over after notice, and breach of the lease. The trial court entered judgment for plaintiff without a

trial. The Court of Appeals held that while the agreement may have waived defendant's right to a jury trial on the issue of nonpayment of rent, but it did not waive his right to a jury trial on all issues.

2. Documents

Landlords and tenants often submit public documents to support their cases, such as landlords submitting police reports in breach cases, and tenants submitting inspection reports in habitability cases. While both documents probably comply with the public records exception to the hearsay rule in Minn. R. Evid. 803(8), they still must be authenticated or be self-authenticating under Rules 901 and 902. *State v. Northway*, 588 N.W.2d 180 (Minn. Ct. App. 1999) (affirmed trial court exclusion of federal report which was not authenticated).

3. Hearsay

Hearsay statements in testimony or within documents should be excluded unless they meet an exception to the hearsay rule. *Countryview Mobile Home Park v. Oliveras*, No. A04-160, 2004 WL 20049986 (Minn. Ct. App. Sept. 14, 2004) (unpublished) (affirmed from district court ruling sustaining objection to police report containing observations of officers who were not present in court); *Liedtke vs Timberland Partners,* 19AV-CV-14-468 (Minn. Dist. Ct. 1st Dist. June 20, 2014) (Judge Carter) (Appendix 780) (in rent escrow action tenant awarded rent abatement for noise from business operating in neighboring apartment, notice to terminate lease retaliatory, landlord failed to rebut retaliation presumption with evidence of breach, property manager's testimony of complaints from other tenant inadmissible hearsay, landlord ordered to renew lease); *Minneapolis Public Housing Authority v.* _____, No. HC 10306313566 (Minn. Dist.Ct. 4th Dist. July 31, 2003) (Appendix 539) (Judge Doty) (landlord's knowledge of alleged altercation was from a police report whose authors did not testify, and did not connect tenant to the incident).

3a. Business records

See Brooklyn Park Leased Housing Associates III, LP. v. _____, No. HC 020712528 (Minn. Dist. Ct. 4th Dist. Nov. 7, 2002) (Appendix 633) (eviction dismissed where HUD subsidized project landlord did not prove repeated minor violations where rent payments were inconsistent but fully paid, landlord did not prove tenant recertification violations but landlord violated program rules, landlord failed to prove disturbance based on business record, landlord failed to prove non-cooperation, tenant awarded costs and disbursements)

4. Lay witness v. expert testimony

a. *Tenants and other law witnesses*

Tenants and other lay witnesses have the right to testify about their observations of habitability problems. In *Stewart v.* _____, No. 27-CV-HC-06-1916 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 662) (Judge Crump), the landlord filed a combination eviction action and conciliation court action in housing court, and the tenant answered alleging habitability. At trial, the tenant attempted to testify about her observations about how her dryer worked, and rodent infestation. The housing court referee did not accept her testimony, since she was not an expert in dryer repair or pest control.

After the referee ruled for the landlord, the tenant sought review by a district court judge. The court reversed the referee's grant of eviction writ where referee did not equally allow late exhibits from

parties and disallowed tenant to testify about her habitability observations because she was not an expert. The court dismissed the action with prejudice and expunged; awarded the tenant awarded all rents of $1618 paid into court and a credit of $525 against future rent where tenant testified about rodent infestation and a clothes dryer damaging clothes; awarded costs and credited against future rent; ordered the landlord to complete repairs; and not future rent abatement was available if repairs not completed. On appeal, the Court of Appeals held that the district court correctly found that the referee had erred. *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007) (unpublished).

In *Strohmeirer v. Akinsipe,* No. 27-CV-HC- 13-5163 (Minn. Dist. Ct. 4th Dist. Sep. 18, 2013) (Appendix 800) (rent escrow action), the court concluded excluded the tenant's lay testimony on medical causation but noted that expert testimony could have been offered.

b. *Housing inspectors*

Housing inspectors do not need to be qualified as experts to testify as fact witnesses about the condition of the property. Minn. R. Civ. P. 702-703 applies to qualifying experts to give opinions. If the housing code requires an apartment to have a deadbolt lock and it does not, the housing inspector is testifying as a fact witness about the code provision and the apartment's lack of the lock. On the other hand, if the inspector is stating an opinion interpreting the code and where the apartment complies with it, then the inspector must be qualified as an expert.

5. Credibility

When opposing parties and witnesses testify to different facts, the court should make express credibility determinations. In *Bassett Creek Partners LP v. _____,* No. 27-CV-HC-15-4352 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2015) (Appendix 808), the public housing landlord commenced an eviction action alleging breach of lease by "using threatening and assaultive behavior towards another resident; chasing resident with a knife". The court found the testimony of the tenant more credible than the landlord's witnesses, and demonstrated that the tenant was bringing food to another tenant when she was accosted by another tenant. The court rejected the post-trial submission of fact affidavits by the landlord. The court found that landlord failed to produce any credible evidence to demonstrate by a preponderance of the evidence that tenant materially breached a term of the lease agreement. The court determined tenant was entitled to costs and disbursements.

The landlord sought judge review of the referee's decision in *Bassett Creek Partners LP v. _____,* No. 27-CV-HC-15-4352 (Minn. Dist. Ct. 4th Dist. April 6, 2016) (Appendix 810) (Judge Chou). The court found the referee was in the best position to make those determinations and supported his findings. The court affirmed the referee's rejection of post-trial fact affidavits. The court also rejected the tenant's submission of facts occurring after the referee's decision as outside the scope of review. The judge determined the referee's findings were clearly not erroneous and shall not be set aside. The decision was sealed due to the previous order that the court file and all records herein be expunged.

In *681 Properties LLP v. _____,* No. 27CVHC 16708 (Minn. Dist. Ct. 4th Dist. Feb. 24, 2016) (Appendix 811), the trial was bifurcated and the court heard the breach of lease claim, but not the nonpayment of rent claim. The court determined the landlord failed to prove by a preponderance of the evidence that the tenant materially breached the lease by: (1) acting in a loud, boisterous, unruly or thoughtless manner; (2) loitering while waiting for a ride to work on a snowy day; (3) and that the tenant assaulted the landlord's agent. The court found that video showed that the agents were louder than the tenant, waiting for a ride was not loitering, and that the tenant pushing away the agent's cell

phone/camera was not an assault. The court noted that the tenant was very credible, and the landlord's agent at trial nodded and shook her head during witness testimony, in violation of Minn. Trialbook § 10(k). The court ordered the parties to appear at the next hearing date to argue the nonpayment of rent and ordered tenant to deposit future rent with the court, and ordered the landlord's counsel to instruct agents and witnesses on complying with the Minn. Trialbook regarding conduct at trial. Minnesota Civil Trialbook is in Minn. R. Gen. Prac. Part H.

See Andersen v. ____, No. 27-CV-HC-15-198 (Minn. Dist. Ct. 4th Dist. Jan. 28, 2015) (Appendix 786) (landlord was not credible where his attorney repeatedly used leading questions; landlord has burden of proving provisions of lease and violations of it; landlord did not prove that oral lease included right of reentry and a valid driver's license; right of reentry provision is required by *Bauer v. Knoble,* distinguishing *C & T Properties v. McCallister;* oral notice did not terminate month-to-month lease; possible future violation does not support present claim for breach of lease; priority writ statute Minn. Stat. § 504B.361 created a remedy but not a cause of action); *Okeakpu v. _____,* No. HC 1020603511 (Minn. Dist. Ct. 4th Dist. July 2, 2002) (Appendix 554) (Judge Sagstuen) (landlord failed to rebut presumption of retaliation for tenant's refusal to pay illegal side payments on top of the Section 8 rent where his claim that when he purchased the property he thought the tenant's rent was higher was not credible; expungement granted); *Reis v. Clayburn,* No,. H991102507 (Minn. Dist. Ct. 4th Dist. Apr. 13, 2000) (Appendix 417), (just because a tenant prevails may not be sufficient to expunge, however expungement is appropriate where a notice to quit was retaliatory and plaintiff's credibility was questioned); *Kahn v. Greene,* No. UD-1940330506 at 5 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46) (no credible evidence that defendants did not pay rent).

6. Burden of proof: preponderance of the evidence

While it may go without saying, the plaintiff must prove claims supporting eviction by a preponderance of the evidence.

a. *Rent claims*

In *Lewandoski v. _____,* No. 27-CV-HC-15-3209 (Minn. Dist. Ct. 4th Dist. Aug. 6, 2015) (Appendix 783), the court granted dismissal at the close of the plaintiff's case where landlord testified about lease, $18,000 in unspecified rent, and termination notice but provided no exhibits and tenant testified she paid rent and utilities and received no notice. The also grant expungement and costs. *See Butler v. _____,* No. 27-CV-HC-07-4409 (Minn. Dist. Ct. 4th Dist. Jul. 27, 2007) (Appendix 630) (eviction dismissed and expunged where landlord did not prove partial payment of deposit, tenant proved habitability violations, tenant awarded $200 in costs, landlord ordered to pay the court for tenant's waived filing fees); *Brooklyn Center Leased Housing v. _____,* No. HC 030819518 (Minn. Dist. Ct. 4th Dist. Sep. 16, 2003, and Mar. 10, 2004) (Appendix 480) (ambiguities in lease concerning the deposit, rent and pro-rated rent and lack of documentation construed against landlord, no late fees if not contained in lease, redemption; later expunged); *Brooklyn Center Leased Housing v. _____,* No. HC 031216540 (Minn. Dist. Ct. 4th Dist. Mar. 10, 2004) (Appendix 481) (expungement granted where landlord's accounting records resulted in confusion of amount of rent due). *Kahn v. Greene*, No. UD-1940330506 at 5 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46) (no credible evidence that defendants did not pay rent); *Hanson v. Trom*, No. UD-1950926503 (Minn. Dist. Ct. 4th Dist. Nov. 6, 1995) (Appendix 82); *Public Housing Authority v. Vang*, No. UD-1951003612 (Minn. Dist. Ct. 4th Dist. Oct. 17, 1995) (Appendix 94).

Where the landlord claims rent due, the tenant claims rent was paid, and the landlord has no business records to support the claim, the landlord may not have proven that the rent is due. In *Genie Management Co. v. Wilson*, No. UD-1980707541 (Minn. Dist. Ct. 4th Dist. Jul. 29, 1998) (Appendix 334), the tenant claimed payment in June of $240.00 by money order, with a money order receipt submitted as evidence. The landlord claimed that the payment did not appear in the company's ledger or bank accounts. The court found that the payment was not received. *See Ricke v. Villebrun*, No. UD-1961112566 (Minn. Dist. Ct. 4th Dist. Dec. 5, 1996) (Appendix 289) (No business records; landlord did not prove rent was due). *Clark v. Urban Investments*, No. UD-1970821901 (Minn. Dist. Ct. 4th Dist. Sep. 10, 1997) (Appendix 145) (No testimony to specify or explain rent claim); *Espeland v. Fondren*, No. UD-1961112556 (Minn. Dist. Ct. 4th Dist. Dec. 26, 1996) (Appendix 252) (Landlord did not prove that rent on oral lease was $650 where tenant claimed rent was $600 and landlord accepted $600 rent without verbal or written objection); *Hemraj v. Hicks*, No. UD-1970306508 (Minn. Dist. Ct. 4th Dist. Apr. 8, 1997) (Appendix 259) (Landlord offered no records to support claim of January rent being due).

b. *Notice claims*

In *Gisslen v. _____,* No. 27-CV-HC-15-3756 (Minn. Dist. Ct. 4th Dist. Oct. 2, 2015) (Appendix 730), the landlord alleged breach of lease and holding over after notice. On the breach claim, the court found that the tenants had not materially breach the residential use limitation in the lease by operating a business with the knowledge and support of the landlord, the tenants had not materially breach the lease requirement to pay utility bills when there had been not disruptions and the accounts were current, and the land provided no evidence of denial of entry by the tenants. On the notice claim, the landlord provided no information on the notice or a copy of it, and the tenants moved for judgment on the claim. The court entered judgment for the tenants, awarded costs and disbursements, granted expungement, and allowed the tenants to move for attorney's fees under Minn. Stat. § 504B.172.

In *Lewandoski v. _____,* No. 27-CV-HC-15-3209 (Minn. Dist. Ct. 4th Dist. Aug. 6, 2015) (Appendix 783), the court granted dismissal at the close of the plaintiff's case where landlord testified about lease, $18,000 in unspecified rent, and termination notice but provided no exhibits and tenant testified she paid rent and utilities and received no notice. The also grant expungement and costs.

c. *Breach claims*

In *Chancellor Manor v. Thibodeaux*, 628 N.W.2d 193, 197 (Minn. Ct. App. 2001), the Court of Appeals held that the trial court must make specific finding on material noncompliance of the lease and that the landlord must prove the alleged lease violation of failure to report income was fraudulent by a preponderance of the evidence.

In *Bloomington Associates LP v. _____,* No. 27-CV-HC-16-5638 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2017) (Appendix 739), the landlord filed an eviction action against the tenant alleging breach of lease for failure to notify landlord as required in the lease that tenant's unit was infested with bed bugs and failure to pay the cost of the pest control remediation bill. The court found that the tenant's cognitive abilities were limited, that landlord failed to prove that tenants knew of bed bugs in his apartment and that landlord treated the building numerous times for bed bugs without inspecting all of the apartment units every time they treated the building for bed bugs. The court held that because of that, landlord was unable to prove that tenant breached the lease by failing to notify landlord of bed bugs in his leased property and therefore could not argue that the cost of treating the bed bugs was a direct cause of the carelessness, misuse or neglect of the tenant. The court ordered tenant to remain in possession of the premises and granted him costs and disbursements.

In *Gisslen v. _____,* No. 27-CV-HC-15-3756 (Minn. Dist. Ct. 4th Dist. Oct. 2, 2015) (Appendix 730), the landlord alleged breach of lease and holding over after notice. On the breach claim, the court found that the tenants had not materially breach the residential use limitation in the lease by operating a business with the knowledge and support of the landlord, the tenants had not materially breach the lease requirement to pay utility bills when there had been not disruptions and the accounts were current, and the land provided no evidence of denial of entry by the tenants. On the notice claim, the landlord provided no information on the notice or a copy of it, and the tenants moved for judgment on the claim. The court entered judgment for the tenants, awarded costs and disbursements, granted expungement, and allowed the tenants to move for attorney's fees under Minn. Stat. § 504B.172.

In *LHB Properties LLC v. _____,* No. 27CVHC 14-582 (Minn. Dist. Ct. 4th Dist. Feb. 28, 2014) (Appendix 726), the district court issued judgment in favor of the Section 8 tenants to remain in possession of the premises, denying the landlord's eviction action. The court found that the landlord failed to prove material breaches of the lease or of Section 8 to support eviction. The court concluded that to support an eviction, "[a] breach of lease must be material - and not merely de minimis." The court found that witness testimony, while credible, did not establish material breaches, noting that some neighbors had no first-hand knowledge of events, some were unusually sensitive to noise, and some had an "axe to grind" with the tenant.

See Andersen v. ____, No. 27-CV-HC-15-198 (Minn. Dist. Ct. 4th Dist. Jan. 28, 2015) (Appendix 786) (landlord was not credible where his attorney repeatedly used leading questions; landlord has burden of proving provisions of lease and violations of it; landlord did not prove that oral lease included right of reentry and a valid driver's license; right of reentry provision is required by *Bauer v. Knoble,* distinguishing *C & T Properties v. McCallister;* oral notice did not terminate month-to-month lease; possible future violation does not support present claim for breach of lease; priority writ statute Minn. Stat. § 504B.361 created a remedy but not a cause of action); *Brooklyn Park Leased Housing Associates III, LP. v. _____*, No. HC 020712528 (Minn. Dist. Ct. 4th Dist. Nov. 7, 2002) (Appendix 633) (eviction dismissed where HUD subsidized project landlord did not prove repeated minor violations where rent payments were inconsistent but fully paid, landlord did not prove tenant recertification violations but landlord violated program rules, landlord failed to prove disturbance based on business record, landlord failed to prove non-cooperation, tenant awarded costs and disbursements); *Ford v. _____,* No. HC-1020325505 (Minn. Dist. Ct. 4th Dist. Apr. 26, 2002) (Appendix 500) (Section 8 voucher, plaintiff failed to prove that loud cars belonged to tenant's guests, that defendant knew or should have known that guests had firearms, that children hanging around the property were defendant's guests, that trash in the yard was from defendant's apartment, that a basement electrical fire resulted from defendant's conduct, that the notice of intent to condemn resulted from defendant's conduct, and that the smell of marijuana came from defendant's apartment; plaintiff failed to allege drug use with any particularity; action dismissed and defendant awarded costs and disbursements); *Floy v. _____,* No. HC-010821507 (Minn. Dist. Ct. 4th Dist. Sep. 13, 2001) (Appendix 499) (combined eviction and emergency tenant remedies action: dismissal of eviction breach claim since tenant actions did not violate the lease; dismissal of notice claim since notice was not attached to complaint and there was no evidence of when notice was given; tenant raising condemnation as a habitability defense did have to pay rent into court; landlord who rented out condemned property was liable for $1900 in rent and deposit paid plus $5700 additional treble damages, plus $500 in moving expenses, for $8100; deadlines for payment; expungement of eviction case); *Brooklyn Park Housing Assoc. LLP. v. _____,* No. HC001114522, (Minn. Dist. Ct. 4th Dist. Nov. 28, 2000) (Appendix 632) (eviction dismissed where landlord alleged breach of lease but did not attach or provide lease, and complaint allegation of breach by "police activity" was vague); *D & D Real Estate Investment, L.L.P. v. Hughes*, Nos. UD-1990311505 (Minn. Dist. Ct. 4th Dist. Mar. 30, 1999) (Appendix 323A) (Dismissal of breach of lease claim where no

convincing evidence as to the dollar amount of damage to a door to determine whether damage was material or *de minimis*, and the landlord failed to prove that the tenant or one of her guests damaged the door where the tenant claimed damage was caused by a burglar); *Okoiye v. Washington*, No. UD-1980909564 (Minn. Dist. Ct. 4th Dist. Oct. 2, 1998) (Appendix 354A) (Despite some discussion between the landlord and tenant regarding extra payment for additional residents, there was no agreement between the parties to supplement the written lease); *Thomas v. Dobyne*, No. U-1980616536 (Minn. Dist. Ct. 4th Dist. Jul. 8, 1998) (Appendix 370B) (Combined action for breach and rent; breach claims dismissed for lack of a right of re-entry clause, and where landlord failed to prove tenant conduct on the property which amounted to breach of lease; matter rescheduled for trial on rent issues); *Little v. Katzovitz,* No. UD-1970902903 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1997) (Appendix 268) (Landlord did not prove tenants should be evicted for unreasonable pedestrian traffic); *Rogers v. Stewart*, No. UD-1961029511 (Minn. Dist. Ct. 4th Dist. Jan. 6, 1997) (Appendix 290) (Landlord proved that tenant, family or guests intentionally or negligently damaged the apartment).[1]

d. *Unlawful and criminal activity*

The plaintiff must prove a violation of the unlawful activity covenant in Minn. Stat. § 504B.171 by preponderance of the evidence. *See Reprise Associates v. _____*, No. 27-CV-HC-08-4325 (Minn. Dist. Ct. 4th Dist. July 10, 2008) (Appendix 617) (breach of lease claim dismissed where landlord showed only that police came to building for disturbance, but tenant was not arrested of involved but guest was arrested, and in response to anonymous call to police alleging illegal narcotics use, police found no evidence of use and made no arrest); *Johnson v. _____*, No. HC 1001005514 (Minn. Dist. Ct. 4th Dist. Oct. 18, 2000) (Appendix 526) (directed verdict entered on drug claim where witness testified no drugs were found in raid, and testimony on earlier controlled purchase of drugs was not pled; nonpayment of rent was by Section 8 and not tenant, so tenant not required to pay filing fee to redeem); *Boone v. Huff*, No. UD-1940509508 (Minn. Dist. Ct. 4th Dist. May 24, 1994) (Appendix 69) (plaintiff failed to prove drugs were found on premises of the defendant). However, some Minnesota courts have found that under federal public housing regulations, the tenant is strictly liable for illegal drugs found on

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[1]Earlier decisions include *Lloyd Management, Inc. v. Ajayi*, C-395-2636 (Minn. Ct. App. June 4, 1996), FINANCE AND COMMERCE at 56 (June 7, 1996) (Appendix 241) (unpublished: record supported the findings and conclusions of material breach of lease, and the trial court was within its discretion to refuse evidence of selective lease enforcement); *McNair v. Doub*, No. UD-1960708524 (Minn. Dist. Ct. 4th Dist. Aug.12, 1996) (Appendix 205) (children fighting does not equal unreasonable disturbance of neighbors; landlord waived right to evict tenant for possession of pets by accepting rent after knowledge of and acquiescence to possession of a pet; claim of "thirty-five police calls" was not proven); *JHCJ Associates v. Bryant*, No. UD-1960606502 (Minn. Dist. Ct. 4th Dist. Jul. 31, 1996) (Appendix 217) (Section 8 certificate: landlord did not prove tenant damaged property); *Anya v. Rulford*, UD-1960501506 (Minn. Dist. Ct. 4th Dist. May 24, 1996) (Appendix 220) (insufficient evidence of breach following acceptance of rent, including dates, nature and effect of alleged over occupancy and disturbances); *Sammon v. Mayo*, No. UD-1960405521 (Minn. Dist. Ct. 4th Dist. Apr. 24, 1996) (Appendix 239) (landlord did not prove that teenager's coloring of apartment wall later cleaned by the tenant, violated leased provisions prohibiting property damage and painting without consent); *Kahn v. Greene*, No. UD-1940330506 (Minn. Dist. Ct. 4th Dist. May 5, 1994) (Appendix 65) (plaintiff did not meet burden of proof by preponderance of evidence that defendants damaged property in violation of the lease); *O'Connor v. Miller*, UD-194-0211505 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1994) (Appendix 178) (good faith resisting improper citizen arrest is not breach). *See generally*, discussion, *supra*, at VI.G.10-11, 16, 19, 21 (Breach of lease: public and subsidized housing, allegations of illegal drugs, manufactured (mobile) home park lot rental, breach is not material, and combined actions for nonpayment of rent and material lease violations).

the premises. *Minneapolis Public Housing Authority v. Greenlaw*, No. UD-1940413507 (Minn. Dist. Ct. 4th Dist. June 8, 1994); *Minneapolis Public Housing Authority v. Smith*, No. UD-1940304518 (Minn. Dist. Ct. 4th Dist. Mar. 25, 1994).

For more information on unlawful and criminal activity cases, *see* discussion at VI.G.10. (criminal activity in public and subsidized housing) and VI.G.16. (state unlawful activity statute).

7. Motion for summary judgment after plaintiff's case

In *Lewandoski v. _____,* No. 27-CV-HC-15-3209 (Minn. Dist. Ct. 4th Dist. Aug. 6, 2015) (Appendix 783), the court granted dismissal at the close of the plaintiff's case where landlord testified about lease, $18,000 in unspecified rent, and termination notice but provided no exhibits and tenant testified she paid rent and utilities and received no notice. The also grant expungement and costs.

H1. REOPENING THE RECORD

In *Winhaven Court Apartments v. Carney*, No. A14-1819, 2015 WL 5089020 (Minn. Ct. App. August 31, 2015)(unpublished), the HUD Subsidized Project tenant had received written warnings for policy violations regarding removing items from the property's recycling bins and depositing cat litter in the trash room, ultimately resulting in a notice of termination for non-compliance with the lease agreement. When the tenant did not vacate the premises, the landlord commenced an eviction action. The tenant moved to dismiss the action because the termination notice did not provide enough specificity. The district court determined that the termination notice was sufficient, the case proceeded to trial, and the district court took the case under advisement. Two weeks later, the district court granted the landlord's motion to reopen the trial record to include evidence of continued violations by the tenant. The district court ultimately entered judgment in favor of the landlord. The Court of Appeals affirmed, holding that: (1) based on applications of similar language in the context of professional misconduct and criminal matters, the termination notice alleging that the tenant removed items from recycling bins was sufficient enough to enable her to prepare a defense; and (2) the decision to reopen the trial record was not an abuse of discretion because the additional testimony concerned the same type of behavior and was relevant to the decision about whether the eviction was justified.

I. POSTING RENT OR SECURITY

In limited circumstances, the court may require the defendant to post rent or other security as a precondition to a trial or to raising a defense.

1. Continuance beyond six (6) days for lack of a material witness: bond to cover rent which may accrue while the action is pending. Minn. Stat. § 504B.341 (formerly § 566.08). The court may require the rent to be paid into court as it becomes due. *See* discussion, *supra*, at V.E.

2. Retaliatory rent increase defense: payment to the court or the plaintiff of the pre-increase rent. Minn. Stat. § 504B.285 (formerly § 566.03), Subd. 3. *See* discussion, *infra*, at VI.E.9.

3. Breach of the covenants of habitability defense: payment of withheld rent into court or in escrow, or adequate security which is more suitable. *Fritz v. Warthen*, 298 Minn. 54, 61-62, 213 N.W.2d 339, 343 (1973). *See* discussion, *infra*, at VI.E.1.c.

4. Rule 608 provides that in any unlawful detainer (eviction) action where a tenant withholds rent and relies on a defense, "the defendant shall deposit forthwith an amount . . . . equal to the rent due as the same accrues or other such amount as determined by the court to be appropriate as security for the plaintiff, given the circumstances of the case." Rule 608 appears to require payment of rent as it "accrues", rather than the rent withheld prior to commencement of the action. While some courts require payment of past due rent as a condition to litigating a defense, this practice is of questionable validity, as well as bad public policy. *See* discussion, *infra*, at VI.E.1.C. In *Ted Glassrud Assoc. v. Balsimo*, No. C6-85-1821 (Minn. Ct. App. Oct. 1, 1985), the trial court required the defendant to post the full amount of past due rent alleged by the plaintiff, even though the defendant disputed the arrearage. The Court of Appeals granted a writ of prohibition, and remanded the case to the trial court for consideration of Minn. Stat. § 566.08 (now § 504B.341) (bond for continuances beyond six (6) days).

5. Combined actions for nonpayment of rent and breach of the lease: no payment unless the court finds that the tenant owes rent. *See* discussion, *supra* and *infra*, at III., VI.E.20.c, VI.G.21.

The Fourth District (Hennepin County) Housing Court issued a May 15, 1996, Order approving acceptance of uncertified checks from Legal Aid and other law firms. The Housing Court retains discretion to decide whether to accept uncertified checks from social service agencies. It takes quite a bit longer for the court to process and disperse uncertified funds, so if quick dispersal of funds is important to the tenant, the tenant or tenant's attorney should submit funds by certified check. (Appendix 174(A).

J. NON-ATTORNEY ADVOCATE EXCEPTIONS TO THE UNAUTHORIZED PRACTICE OF LAW

An authorized management company or agent may commence and conduct the action in its own name or on behalf of the owner of the property. Minn. Stat. § 481.02, subd. 3(12).

> (12) any authorized management agent of an owner of rental property used for residential purposes, whether the management agent is a natural person, corporation, partnership, limited partnership, or any other business entity, from commencing, maintaining, conducting, or defending in its own behalf any action in any court in this state to recover or retain possession of the property, except that the provision of this clause does not authorize a person who is not a licensed attorney-at-law to conduct a jury trial or to appear before a district court or the Court of Appeals or Supreme Court pursuant to an appeal.

The tenant or landlord may be represented by a person who is not a licensed attorney. Minn. Stat. § 481.02, subd. 3(13).

> (13) any person from commencing, maintaining, conducting, or defending on behalf of the plaintiff or defendant any action in any court of this state pursuant to the provisions of section 504B.375 or sections 504B.185 and 504B.381 to 504B.471 or from commencing, maintaining, conducting, or defending on behalf of the plaintiff or defendant any action in any court of this state for the recovery of rental property used for residential purposes pursuant to the provisions of section 504B.285, subdivision 1, or 504B.301, except that the provision of this clause does not authorize a person who is not a licensed attorney-at-law to conduct a jury trial or to appear before a district court or the Court of Appeals or Supreme Court pursuant to an appeal, and provided

that, except for a nonprofit corporation, a person who is not a licensed attorney-at-law shall not charge or collect a separate fee for services rendered pursuant to this clause.

See Letter from Honorable Thomas F. Haeg, 4th District Housing Court Referee, to Sherry Coates (July 13, 1994) (Appendix 25).

However, except for a nonprofit corporation, a person who is not a licensed attorney-at-law shall not charge or collect a separate fee for services in representing a party. *Id.* Some for profit businesses represent plaintiffs in actions and charge a separate fee for such representation. Defendant should move to dismiss the action. *See* Standing Order Regarding Court Appearances by Non-attorney Non-managing Agents, C4-90-11340 (Minn. Dist. Ct. 2nd Dist. June 9, 1995) (Appendix 84) (person and company which admitted that a non-attorney, non-managing agent collected fees for filing and maintaining unlawful detainer (now called eviction) actions were prohibited from filing and maintaining such actions).

Corporations, limited partnerships, and limited liability companies must be represented by an attorney. *Nicollet Restoration, Inc. v. Turnham,* 486 N.W.2d 753 (Minn. 1992) (Corporation); *Westfalls Housing Ltd. Partnership v. Scheer*, No. C8-93-227 (Minn. Dist. Ct. 5th Dist. Nov. 30, 1993) (limited partnership) (Appendix 26); *Remas Properties, LLC v. Student*, No. UD-1940705517 (Minn. Dist. Ct. 4th Dist. July 19, 1994)(limited liability co.) (Appendix 27). *See* discussion, *infra*, VI.D.7 (unauthorized practice of law defense).

K. AMENDING THE COMPLAINT

It is not uncommon for the plaintiff to raise additional issues not pleaded in the complaint at the initial hearing or trial. The court should not hear such additional issues, since:

1. The summary nature of the action and Minn. Stat. § 504B.285 (formerly § 566.03), subd. 1 require specificity in pleading, *see* discussion, *infra*, at VI.D.6, and

2. The plaintiff may be entitled to restitution based only upon the unlawful possession alleged in the complaint. *See Mac-Du Properties v. LaBresh*, 392 N.W.2d 315, 318 (Minn. Ct. App. 1986).

In *Langenberger v. Moss*, Partial Transcript, UD-1950912529 (Minn. Dist. Ct. 4th Dist. Sept. 28, 1995) (Appendix 85), the court denied the landlord's motion to amend the complaint to add an additional issue. The court noted that while an unlawful detainer (eviction) action is a summary proceeding where parties often appear without counsel, the parties are expected to be prepared for trial and obtain counsel ahead of time if necessary. In *Northern Management, Inc. v. Bade*, C9-94-3915 (Minn. Dist. Ct. 7th Dist. Nov. 25, 1994) (Appendix 86), the court denied the landlord's motion to amend the complaint of breach of lease to include alleged lease violations occurring after the landlord filed the action. The court held that only matters detailed in the complaint may be considered in the action. *See Valley Investment & Management, Inc. v. _____,* No. HC 000927525 (Minn. Dist.Ct. 4th Dist. Nov. 1, 2000) (Appendix 589a) (14 day notice requirement for termination of month-to-month tenancy for nonpayment of rent in Minn. Stat. § 504B.135 (formerly § 504.06) is not required for a nonpayment of rent eviction action; landlord's acceptance of part payment without a written agreement to retain an eviction claim for the balance waives the eviction claim; plaintiff cannot amend complaint once defendant has served an answer); *Brooklyn Park Housing Associates I, LLP v. _____*, No. HC 1010124505 (Minn. Dist.Ct. 4th Dist. Feb. 7, 2001) (Appendix 482) (landlord may pursue claim for part payment of rent only if there is a

written document reserving that right; landlord may amend complaint to claim current rent claim not waived by part payment, with tenant retaining right to redeem); *Hurt v. Johnston*, No. HC-000103513 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 398) (Landlord's motion to amend complaint denied and action dismissed where landlord failed to attach the lease to the complaint to support a claim of breach of lease, and the landlord's claims of breach by unsanitary conditions in that tenant knew information about the landlord required by statute to be disclosed to the tenant were not pled with sufficient specificity).

The defendant in an unlawful detainer (eviction) action is given very little time to prepare a response and it is essential that they are given both sufficient notice of the allegations and adequate time to prepare a defense. Allowing matters arising after the date of filing of the complaint would severely prejudice a tenants ability to prepare an adequate defense. On the other hand, very little prejudice results to a plaintiff, as the plaintiff is free to file a new action in unlawful detainer (now called eviction) based on any violations which may occur after the filing of an unlawful detainer action. *Id.* at 6. *See Lynch v. Hart*, No. UD-1960610529 (Minn. Dist. Ct. 4th Dist. Jun. 27, 1996) (Appendix 185) (landlord could not introduce evidence about lease violations not included in the complaint of non-payment of rent).

In *Public Housing Agency of City of St. Paul v. Simpkins*, No. C7-97-2137 (Minn. Dist. Ct. 2d Dist. Jan. 30, 1998) (Appendix 359) (Faricy, J.), the public housing authority gave the tenant a 14 day non-payment of rent notice for $25.00. The tenant then paid the rent and a late fee. However, the PHA applied the payments to an alleged arrearage for previous months, and filed an unlawful detainer action claiming non-payment of the February rent. The referee allowed the PHA to orally amend its claim, and ordered the tenant to pay $209 and court costs within seven days or move. The tenant moved and later obtained bank verification of deposit of the tenant's payment. The tenant moved to vacate the judgment, which was first denied by another referee, and then granted on judge review. The court concluded the first referee erred by going beyond the pleadings and ordering the tenant to pay more than had been pled, and the second referee erred in denying the motion to vacate. The court noted that it would be unjust to evict another tenant who moved into the unit vacated by the tenant, so the court ordered the PHA to place the tenant's name immediately at the top of the waiting list for the next available vacancy without requiring her to address claims for past due rents.

On the other hand, the courts in some cases have allowed the landlord to amend the complaint where the amendment allegedly does not prejudice the tenant. This occurs most often where the landlord has claim nonpayment of rent and the case extends into the next month. *See Lowe v. Cotton*, No. UD-01990224515 (Minn. Dist. Ct. 4th Dist. Oct. 7, 1999 (Appendix 404) (Breach of lease claim dismissed where there was no written lease, parties recently entered into a written agreement that defendant would not have a pet but the memo did not include a right of reentry; plaintiff granted leave to amend complaint for nonpayment of rent as defendant admitted the claim; landlord agreed to give tenant eight days to redeem.; *Phoenix Group, Inc. v. Phonseya*, UD-1951004-508 (Minn. Dist. Ct. 4th Dist. Nov. 1, 1995) (Appendix 87) (court considered November rent in case filed in October, where decision was issued in November); *BRI Associates v. Gangl*, C4-95-845 (Minn. Dist. Ct. 10th Dist. Apr. 24, 1995) (Appendix 88) (landlord allowed to amend case caption to avoid trade name registration penalty). *But see Ridgewood Arches v. Williams*, No. UD-1950201501 (Minn. Dist. Ct. 4th Dist. Feb. 22, 1995) (Appendix 165) (complaint alleged only breach of lease, landlord testified about rent due; court found against landlord on breach claim and noted that the parties could resolve the rent issue independent of the court).

While the summary nature of the action argues against allowing the plaintiff to amend the complaint, should the court allow amendment, it should require the same period of notice to the defendant, as if the plaintiff had commenced another action.

L. SUMMARY JUDGMENT AND DISMISSAL

An unlawful detainer action may be determined by summary judgment. *Federal Land Bank v. Obermoller,* 429 N.W.2d 251, 256 (Minn. App. 1988), *pet. for rev. denied* (Minn. Oct. 26, 1988). Even if state or local district court rules place time requirements on such motions that are inconsistent with the unlawful detainer (now called eviction) statute, counsel should pursue and the court should entertain summary judgment and dismissal where (1) there are no genuine issues as to any material fact, (2) judgment must be ordered for one party as a matter of law, (3) the opposing party is not prejudiced from lack of notice or other procedural irregularities, and (4) the opposing party had a meaningful opportunity to respond to the motion. *Id.* at 254-55.

In Housing Courts in the Fourth and Second Districts (Hennepin and Ramsey Counties), Minn. R. Gen. Prac. 610 deletes the time requirements for a motion practice in other rules.

1. Summary judgment granted to defendant

In *5th Street Ventures, LLC v. Frattallone's Hardware Stores, Inc.,* No. A03-2036, 2004 WL 1878822 (Minn. App. Aug. 24, 2004) (unpublished), the original landlord and tenant entered into a ten-year lease to operate a hardware store, and the tenant wanted to install, among other things, a fence in the front of the store. The landlord sent a letter to the tenant objecting to the chain-link style of the fence, allowing it to be completed, but reserving the right to contribute to improving the aesthetics, if needed. The tenant continuously occupied the fenced-in outdoor space until the new landlord objected to the use of the common areas in violation of the lease and filed the unlawful detainer suit. The tenant argued that the original landlord's letter constituted a written modification to the lease. The district court granted summary judgment in favor of the tenant, and 5th Street Ventures appealed. The Court of Appeals reversed and remanded, holding that questions of fact existed regarding the intent of the alleged lease modification and the new landlord's actual knowledge of the modification, which precluded summary judgment. The Court of Appeals further stated that the letter may satisfy the statute of frauds and that specific performance may be compelled when there has been part performance. Finally, the Court of Appeals cautioned that if the new landlord had actual knowledge of the unrecorded lease, it cannot later seek protection of the Torrens statute as a good-faith purchaser.

The court can full or partial summary judgment for the defendant when the plaintiff does not meet its burden of proof in the plaintiff's case in chief. *See* discussion at V.H.8.

2. Summary judgment granted to plaintiff

In *CAMM Properties, Inc. v. Peacock*, No. C6-97-1128, C7-97-1168, C9-97-1365, C2-97-1420 (Minn. Ct. App. May 18, 1998) (Appendix 316) (Unpublished), the defendant in a contract for deed unlawful detainer action raised the issue of which of several parties had the vendor's interest in the property. The trial court granted summary judgment for the plaintiffs, concluding that collateral estoppel and res judicata barred her from arguing issues which she raised in an earlier action against plaintiffs. The court affirmed the decision, concluding that the district court did not err in granting summary judgment. *See DePetro v. DePetro*, No. A03-727, 2004 WL 885552 (Minn. Ct. App. April 27, 2004)

(unpublished) (affirmed eviction summary judgment for plaintiff under doctrine of collateral estoppel, where plaintiff was unable to execute writ of recovery in first eviction action and commenced second eviction action on the same grounds and defendant did not raise any new claims or defenses); *Bjur v. Burgmeier,* No. C2-92-409 (Minn. Ct. App. Aug. 21, 1992) (unpublished: summary judgment for plaintiff) (Appendix O.H.).

It is common for district courts to grant summary judgments to plaintiffs in mortgage foreclosure evictions. *See* discussion at XI.F.12.

3. Summary judgment denied to plaintiff

It is reversible error for the district court to enter summary judgment in an eviction action where there were contested issues of fact. *Soukup v. Molitor*, 409 N.W.2d 253, 254-55 (Minn. Ct. App. 1987) (reversal of summary judgment granted *sua sponte*).

M. FINDINGS AND CONCLUSIONS

The summary nature of the action does not relieve the court of the obligation to find facts specially and state separately its conclusions of law. *MCDA v. Mark Lee Productions, Inc.* 411 N.W.2d 599, 601 (Minn. Ct. App. 1987) (citing Minn. R. Civ P. 52.01). Failure to include findings usually requires reversal, unless the decision necessarily decides all disputed facts, or the undecided issues are immaterial. *Id. See Gear Properties v. Jacobs*, No. C1-97-2266, 1998 WL 550762 (Minn. Ct. App. Sep. 1, 1998) (unpublished) (Appendix 322) (in nonpayment of rent case, no further findings were required beyond that complaint was true); *Northstar Estates Manufactured Home Community v. Thompson*, No. C3-98-2005 (Minn. Ct. App. April 22, 1999) (unpublished opinion which shall not be cited as precedent)(District Court, which was not alerted to application of § 327C.02, erred in its determination of material breach because of rule violations where the court made no findings as to the reasonableness of rules or whether the rules substantially modified a prior agreement, and the residents were not given ten days to comply with the rule by the court; district court reversed.

The Court of Appeals also may remand the action to the trial court for further findings. *Nicollet Towers, Inc. v. Georgiff*, C5-94-1364 (Minn. Ct. App. Feb. 7, 1995), FINANCE AND COMMERCE 53 (Feb. 10, 1995) (Appendix 89); *Minneapolis Public Housing Authority v. Holloway*, C0-94-736 (Minn. Ct. App. Nov. 15, 1994), FINANCE AND COMMERCE 36 (Nov. 18, 1994) (Appendix 90) FINANCE AND COMMERCE 36 (Nov. 18, 1994) (Appendix 90); *Housing and Redevelopment Authority of Winona v. Fedorko*, C4-94-884 (Minn. Ct. App. Nov. 22, 1994), FINANCE AND COMMERCE 43 (Nov. 25, 1994) (Appendix 91). Counsel should consider preparing proposed orders to accompany motions for dismissal or summary judgment (Appendix 5.H), or after trial.

N. COLLATERAL ESTOPPEL AND RES JUDICATA

1. Effect of the eviction action on subsequent actions

An unlawful detainer (now called eviction) judgment does not prevent the tenant from raising in another action:

a. An issue which could have been raised in the unlawful detainer (now called eviction) action, but was not raised, or was raised but later withdrawn, *Steinberg v. Silverman*, 186 Minn. 640, 642, 244, N.W. 105, 105-106 (1932).

b. An issue raised in the eviction (unlawful detainer) action which the court declined to rule on. *See Seifred v. Zabel*, 369 N.W.2d 571, 574 (Minn. Ct. App. 1985).

c. Issues of title. *Pushor v. Dale*, 242 Minn. 564, 568-69, 66 N.W.2d 11, 14 (1954); *Hargreaves v. FDIC*, No. C9-89-1966 (Minn. Ct. App. June 15, 1990) FINANCE & COMMERCE at B12 (July 15, 1990) (unpublished).

While the summary nature of the eviction (unlawful detainer) action limits its collateral estoppel effect, *Cole v. Paulson*, 380 N.W.2d 215, 218 (Minn. Ct. App. 1986), the judgment is conclusive of the facts upon which the right of possession rested. *Id.* at 218-19 (tenant barred from re-litigating adequacy of notice). *See Gollner v. Cram*, 258 Minn. 8, 10-13, 102 N.W.2d 811, 820 (1960), *cert. denied*, 364 U.S. 894 (tenant barred from re-litigating breach and waiver of breach); *Wurdemann v. Hjelm*, 257 Minn. 450, 464, 102 N.W.2d 811, 820 (1960), *cert. denied*, 364 U.S. 894 (tenant barred from re-litigating breach and waiver of breach); *Ferch v. Hiller*, 210 Minn. 3, 7-8, 297 N.W. 102, 104 (1941) (defendant barred from re-litigating cancellation of a contract for deed); _____ *v. Tran*, No. AC-03-13965 (Minn. Dist.Ct. 4th Dist. Nov. 19, 2003) (Appendix 456) (repairs litigated in previous emergency relief action cannot be relitigated in subsequent action for property damage; landlord claiming tenant damage must prove the condition of the property when the tenant moved to the property, and a connection between repairs and tenant damage; landlord failed to comply with security deposit statute).

The court in the eviction (unlawful detainer) action also can specifically state which issues were litigated, and direct the parties to not attempt to re-litigate the issues in another form. *Ochoa v. Kenneth*, UD-1950919505 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1995) (Appendix 79) (landlord may not pursue litigated rent claim in conciliation court or by security deposit setoff); *Lewis Properties v. Pruitt*, UD-1950315516 (Minn. Dist. Ct. 4th Dist. Sept. 22, 1995) (Appendix 92) (landlord may not claim litigated rent against tenants' security deposit); *The Hornig Company v. Mmubango*, UD-1950213513 (Minn. Dist. Ct. 4th Dist. Mar. 6, 1995) (Appendix 93)(landlord may not raise litigated rent claim in conciliation court, but damage claim was not determined).

"If, however `the judgment might have been based upon one or more of several grounds, but does not expressly rely upon any one of them, then none of them is conclusively established under the doctrine of collateral estoppel, since it is impossible for another court to tell which issue or issues were adjudged by the rendering court.'" *Hauser v. Mealey*, 263 N.W.2d 803, 808 (Minn. 1978), quoting 1 B. MOORE'S FEDERAL PRACTICE at 3915 (2d ed. 1948).

However, there may be some issues which should have been litigated in the eviction (unlawful detainer) action which cannot be litigated later in a separate damages action. In *Duling Optical Corp. v. First Union Management, Inc.,* No. C5-95-2718 (Minn. Ct. App. Aug. 13, 1996), FINANCE & COMMERCE at 66 (Aug. 16, 1996) (Appendix 181) (unpublished decision), the Court of Appeals affirmed the District Court's conclusion in a separate damages action that it lacked jurisdiction to award attorney's fees for separate unlawful detainer actions, since the issue of attorney's fees should have been decided in the unlawful detainer actions. *But see* In *Eagan East Ltd. Partnership v. Powers Investigations, Inc.*, 554 N.W. 2d 621 (Minn. Ct. App. 1996) (trial court's jurisdiction was limited to determining present possessory rights of the parties, and that the trial court exceeded its jurisdiction by ruling on a prospective rent increase and attorney's fee issues).

A landlord who brought second unlawful detainer action to correct errors made in first unlawful detainer action over the same subject matter was not barred by lack of jurisdiction while the first case was appealed, or collateral estoppel since unlawful detainer actions have limited collateral effect. *Jordan v. Peterson*, No. C7-96-1757 (Minn. Ct. App. Mar. 18, 1997, FINANCE AND COMMERCE at 49 (Mar. 21, 1997) (Appendix 263) (Unpublished). In *CAMM Properties, Inc. v. Peacock*, No. C6-97-1128, C7-97-1168, C9-97-1365, C2-97-1420 (Minn. Ct. App. May 18, 1998) (Appendix 316) (Unpublished), the defendant in a contract for deed unlawful detainer action raised the issue of which of several parties had the vendor's interest in the property. The trial court granted summary judgment for the plaintiffs, concluding that collateral estoppel and res judicata barred her from arguing issues which she raised in an earlier action against plaintiffs. The court affirmed the decision, concluding that the district court did not err in granting summary judgment. *See Franklin v. Rae*, No. HC-000121503 (Minn. Dist. Ct. 4th Dist. Feb. 4, 2000) (Appendix 392) (Judge Albrecht: dismissal based on *res judicata*) (Memorandum by Paul Birnberg attached arguing that dismissal was on the merits under MINN. R. CIV. P. 41.02).

A second eviction action brought on grounds different from the first is not barred. *Anoka County Community Action Program v. Solmonson*, No. A05-1251, 2006 WL 1320332 (Minn. Ct. App. May 16, 2006) (unpublished) (*res judicata* did not apply to second eviction case where first case involved different grounds, and was dismissed by plaintiff voluntarily). On the other hand, a second action brought on the same grounds as the first where the landlord could not enforce the writ of recovery in a timely manner is not barred, and summary judgment for the landlord may be appropriate where the tenant has no new defenses to raise in the second action. *See DePetro v. DePetro*, No. A03-727, 2004 WL 885552 (Minn. Ct. App. April 27, 2004) (unpublished) (affirmed eviction summary judgment for plaintiff under doctrine of collateral estoppel, where plaintiff was unable to execute writ of recovery in first eviction action and commenced second eviction action on the same grounds and defendant did not raise any new claims or defenses).

Minnesota law encourages a settlement of disputes and generally presumes the validity of releases of claims. Since a release is a contract, interpretation of the release is a question of law, governed by principles of contract construction. *The Regents of the University of Minnesota v. Scheurer*, No. C2-99-1065 (Minn. Ct. App. Dec. 28, 1999) (unpublished) (The general release in the parties' unlawful detainer settlement agreement discharged all claims and liabilities, not just housing related claims.

a. *Discrimination claims*

In *Ellis v. Minneapolis Commission on Civil Rights*, 319 N.W.2d 702, 704 (Minn. 1982), the court held that the issue of illegal discrimination, which was litigated in an eviction (unlawful detainer) action, could not be litigated in a subsequent discrimination action. The court noted that in the unlawful detainer action, the proceeding was not summary in nature, where the tenant had significantly more time to prepare than in the typical case, the tenant introduced extensive evidence, and the jury trial lasted for four days. The court concluded that "[i]n this unique fact situation, [the tenant] had a full and fair opportunity to litigate [the issue]." *See Jacobs v. Gear Properties*, No. 00-1257MN, 2001 WL 87440 (8th Cir. Feb. 2001) (unpublished) (affirmed dismissal of federal court action claiming discriminatory eviction following loss in state court eviction action where tenant did not raise discrimination, on the grounds that discrimination could have been raised in the eviction).

In *Russell v. Popper*, 914 F.2d 1494 (6th Cir. 1990), the Sixth Circuit Court of Appeals affirmed dismissal of a housing discrimination suit filed by a tenant who unsuccessfully raised identical allegations in a state court eviction proceeding. The Court of Appeals concluded that the tenant had a

full and fair opportunity to litigate her discrimination claim. *But see Seifred,* 369 N.W.2d at 574 (discrimination raised but not ruled upon does not bar subsequent discrimination action). For a general discussion of whether litigation of discrimination in eviction actions bars later litigation by a government agency, *see* Memorandum of Harry L. Carey, (Appendix 407).

b. *Habitability claims*

In an eviction (unlawful detainer) action based upon nonpayment of rent, a judgment for the plaintiff on default or where the defendant did not raise breach of the covenants of habitability, does not bar a subsequent action for breach of the covenants. *Mayse v. Nordlie*, No. 84-13390 (Minn. Dist. Ct., 4th Dist., 1985) (Appendix 1).

In *Braddick v. Marlin Manor LLC,* No. 69VI-CO-15-463 (Minn. Dist. Ct. 6th Dist., St. Louis County, Mar. 22, 2016) (Appendix 736), the tenant filed a breach of implied covenant of habitability claim against landlord arguing that the water provided to the apartment was occasionally too hot (ranging from 140-215 degrees Fahrenheit) for use and requesting $200 rent abatement per month for every month the water temperature was in need of repair. The landlord argued that the case was barred by res judicata or claim preclusion. The conciliation court stated that res judicata did not apply because although the previous claim was brought under the same set of factual circumstances and between the same parties, there was no final judgment on the merits and the plaintiff did not have a full and fair opportunity to litigate the matter. The court explained that a tenant "may continue to rent and bring his own action to recover damages for breach of the covenants by the landlord" and that "[u]npredictable and unregulated hot water not only prevents a tenant from making reasonable use of a residence but, indeed, materially affects his or her health and safety." The court held that plaintiff was entitled to rent abatement as reasonable damages of $50 per month for a total of $350.

In *Huffman v. Ellis*, No. UD-1991119518 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2000) (Appendix 397), the parties settled an unlawful detainer action for nonpayment of rent with habitability defenses for rent abatement and a deadline to complete repairs. When the landlord did not complete repairs by the deadline, the tenant moved for relief based on breach of the settlement agreement. The court found the breach of the agreement, diminished use of enjoyment of the premises, and awarded rent abatement. After taking testimony on damage to the tenant's car allegedly caused by repair problems not contemplated in the settlement agreement, the court concluded that the damages were excluded from rent abatement and would not be considered *res judicata* as to future claims.

c. *Mortgage foreclosure*

In *Hagle v. The Bank of New York Mellon,* No. A14-0473, 2015 WL 648300 (Minn. Ct. App. Feb. 17, 2015) (unpublished), the defendant foreclosed on the plaintiffs' mortgage and won the eviction action, afterward the plaintiffs filed this action for damages. The district court dismissed some of plaintiffs' claims and entered summary judgment against the plaintiffs on the remaining claims. The Court of Appeals held in part that the district court erred by dismissing the plaintiffs' claim regarding personal property held on the premises following the eviction action, as res judicata did not bar the claim where the court in the eviction action expressly declined to consider the personal property claims.

In *Federal Home Mortgage Corp. v. Kinzer*, No. A14–1013, 2015 WL 134201 (Minn. Ct. App. Jan. 12, 2015) (unpublished), the defendant challenged the grant of summary judgment in an eviction proceeding. The defendant argued that the mortgage and mortgage foreclosure were fraudulent where her ex-husband had allegedly forged her signature to execute the mortgage. The defendant did not

dispute that the mortgage was foreclosed, she did not redeem the property, she continued to possess the property after redemption period expired, the property was then sold at a sheriff's sale or that the interest was then conveyed to plaintiff. The defendant instead argued that plaintiff did not have standing to bring the eviction action. The Court of Appeals disagreed, finding that plaintiff had legal capacity to bring the eviction action because it held the sheriff's certificate, which is prima facie evidence of title in fee. Further, though troubled by the allegations of the forged signature, the court pointed out that defendant had brought a separate action regarding the forged power-of-attorney form. The defendant objected to the court reviewing that settlement agreement, so the details were not part of the record before the court. The defendant's claim of res judicata and untimeliness stemmed from a previous eviction action that was stayed pending litigation of defendant's action against plaintiff and later closed. The court rejected the res judicata claim where the issue of possession was never actually litigated, and concluded that the summary judgment motion was timely e-filed though defendant didn't receive her copy until one business day before the hearing.

2. Effect of preceding actions on the eviction action

In *Wells Fargo, N.A. v. Schulz*, No. A13-0157, 2013 WL 5777915 (Minn. Ct. App. Oct. 28, 2013) (unpublished), after the plaintiff-bank foreclosed on the defendants' mortgage and filed an eviction action, the defendants filed a separate action in state court challenging the foreclosure that the bank removed to federal court. The state court stayed the eviction action pending a decision in the federal court action. After the federal court dismissed the second action, the mortgagors appealed and the state court granted summary judgment to the bank. On appeal of the eviction action, the Court of Appeals held that (1) the bank's motion for summary judgment was timely, as procedural rules in conflict with the summary eviction statutes do not apply to evictions; (2) the district court did not err in not allowing oral argument on the summary judgment issues following dismissal of the second federal court action where the mortgagor's counsel was heard on the issue before the stay, and was not harmed; (3) the district court did not err in refusing to continue the stay pending the federal court appeal; and (4) the district did not err in refusing to consider claims challenging the foreclosure, since such counterclaims generally are considered in a separate civil action rather than the summary eviction action, and these claims were heard in the federal court action.

In *Sumpter v. _____,* No. HC-1011108523 (Minn. Dist. Ct. 4th Dist. Dec. 5, 2001) (Appendix 683), in an eviction action, the court held that litigation of rent abatement from previous rent escrow action was barred by res judicata. The court continued rent abatement for landlord's failure to make all repairs and scheduled a compliance hearing.

O. REMOVAL OF ACTION TO FEDERAL COURT

When the claims of the plaintiff or defendant involve federal law, the defendant may be able to remove the case to federal court. For example, the Civil Rights Removal Statute, 28 U.S.C. § 1443(1) allows removal of the action to federal court where the defendant asserts that the action was motivated by a discriminatory purpose or in retaliation for the exercise of the defendant's rights to challenge discrimination. *See* Defendant's Memorandum In Opposition to Plaintiff's Motion to Remand, *Bossen Terrace v. Ewing*, No. 4-91-Civ. 824 (D. Minn. Nov. 6, 1991) (discussion of cases; action settled in federal court) (Appendix 28).

P. RELEASE FROM PRISON FOR HEARING

The court may order the release of an institutionalized person to appear at an eviction (unlawful detainer) action, under Minn. Stat. § 589.35. *Minneapolis Public Housing Authority v. Harding*, No. UD-1941011532 (Minn. Dist. Ct. 4th Dist. Oct. 26, 1994) (Appendix 29).

Q. EXPEDITED CASES

In 1994, the Legislature created a priority in scheduling for cases including claims of illegal drugs under Section 504.181 (now § 504B.171), or on the basis that the tenant is causing a nuisance or seriously endangering the safety of other residents, their property, or their landlord's property. The priority includes scheduling appearances at the arraignment, scheduling trials, and issuing and executing Writs of Restitution. The court also may not stay issuance of the Writ of Restitution in such cases. Minn. Stat. § 504B.321 (formerly § 566.05), 504B.335 (formerly § 566.07), 504B.345 (formerly § 566.09), 504B.361 (formerly § 566.16), 504B.365 (formerly § 566.17), *amended by* 1994 Minn. Laws. Ch. 502, §§ 4-9.

In 1997 the Legislature replaced the priority for scheduling cases involving claims of illegal drugs with a process for bringing expedited actions involving illegal drugs, prostitution related activities, certain firearm possession offenses, or nuisance or other illegal behavior that seriously endangers the safety of other residents, their property, or the landlord's property. Minn. Stat. § 504B.321 (formerly § 566.05), *amended by* 1997 Minn. Laws Ch. 239, Art. 12, section 5 (Appendix 242). The person filing the complaint must file an affidavit stating specific facts and instances to support it, and explain why an expedited hearing is required. A referee or judge must review the complaint and affidavit to determine whether an expedited hearing is justified. The court must schedule a hearing in not less than five days or more than seven days from the date the summons is issued. A summons must be served within 24 hours of issuance unless the court orders otherwise for good cause. If the court determines that the person seeking an expedited hearing did so without sufficient basis, the court must impose a civil penalty of up to $500 for abuse of the process.

It is unclear what the court will do if at the expedited hearing the landlord cannot prove the basis for the expedited hearing, but can prove a lease violation. The tenant should argue for assessment of the $500 penalty, but also ask that the case be dismissed for not meeting the jurisdictional requirement for an expedited hearing. Without such relief, there would be little disincentive for landlords to characterize breach of lease cases as expedited hearing cases.

R. SETTLEMENT

Most unlawful detainer actions which are contested initially later result in settlement. Settlements can include many issues, including those which could not be resolved if the case were contested. Counsel should include deadlines for action to be taken by the landlord. For instance, if there is agreement on a reference letter, counsel should accept a deadline for drafting the letter, and include a deadline for the landlord to sign and return it. *Shatek v. Kneeland*, No. UD-1970306507 (Minn. Dist. Ct. 4th Dist. Mar. 26, 1997) (Appendix 292) (Settlement for payment of rent, security deposit refund without deductions, reference, schedule for completing the reference letter, writ of restitution if tenant violates agreement, trial if landlord violates agreement). *See Grimmer v. Svoboda*, No. UD-1960923520 (Minn. Dist. Ct. 4th Dist. Jan. 6, Jan. 15, and Mar. 14, 1997) (Appendix 257) (Writ stayed where landlord failed to execute stipulated reference, told tenants they could stay longer, and accepted rent beyond the move out date; landlord ordered to execute reference letter and tenant given extra month to move; damages and move out date settled).

Statements made in settlement negotiations may be actionable for damages in a separate action. In *Hoyt Properties, Inc. v. Production Resource Group, L.L.C.*, 736 N.W.2d 313 (Minn. 2007), a commercial landlord sued the tenant and tenant's parent corporation, alleging that during settlement negotiations in a separate eviction action, the parent corporation through its attorney misrepresented itself as completely separate from tenant. *Id.* at 316-17. The landlord sought to rescind settlement agreement and to pierce the corporate veil so as to hold parent corporation liable for landlord's breach of lease. *Id.* at 317. The district court granted summary judgment dismissing landlord's rescission, veil-piercing, breach-of-contract, and fraudulent-transfer claims but denied parent corporation's motion to dismiss for failure to join necessary party. *Id.* at 317. The landlord appealed and the Court of Appeals affirmed in part, reversed in part, and remanded, concluding that the alleged representations were actionable because they both implied facts and directly asserted facts, and that whether the landlord reasonably relied on the representations was a genuine issue of material fact for trial, precluding summary judgment. *Hoyt Props. Inc., v. Prod. Res. Group*, 716 N.W.2d 366, 373-75 (Minn. Ct. App. 2006). The Minnesota Supreme Court held that the alleged statements were actionable as fraudulent misrepresentations, 736 N.W.2d at 319, and that there were fact issue precluding summary judgment regarding whether alleged representations were knowingly false when made or were made without knowledge whether they were true or false precluded summary judgment, as to actual reliance precluded summary judgment, and as to whether falsity of the representation was known or obvious to the listener precluded summary judgment. *Id.* at 319-21. Justice Anderson, joined by Justice Hanson, dissented, concluding that the landlord failed to establish the element of the claims. *Id.* at 321-26.

Landlords occasionally include in settlement agreements provisions on future payments of rent. While the landlord may obtain a writ and evict the tenant for failing to make installment payments on back rent, the landlord must file a new action if future rents are not paid. *See* discussion, *infra*, at VIII.B.2.

The court retains the right to approve or not approve a settlement, and in some cases may not approve provisions unfavorable to a tenant that the tenant had agreed to follow. *Minneapolis Public Housing Authority v. Taylor*, No. UD-1961211526 (Minn. Dist. Ct. 4th Dist. Mar. 20, 1997) (Appendix 281) (Settlement for two and one half months to move, 10-day notice of exact date to move, neutral reference, dismissal, and cancellation of agreement; court struck provision requiring tenant to exclude her minor daughter from the property).

Minnesota law encourages a settlement of disputes and generally presumes the validity of releases of claims. Since a release is a contract, interpretation of the release is a question of law, governed by principles of contract construction. *The Regents of the University of Minnesota v. Scheurer*, No. C2-99-1065 (Minn. Ct. App. Dec. 28, 1999) (unpublished) (The general release in the parties' unlawful detainer settlement agreement discharged all claims and liabilities, not just housing related claims).

The court maintains jurisdiction over the case to enforce the settlement. In *Huffman v. Ellis*, No. UD-1991119518 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2000) (Appendix 397), the parties settled an unlawful detainer action for nonpayment of rent with habitability defenses for rent abatement and a deadline to complete repairs. When the landlord did not complete repairs by the deadline, the tenant moved for relief based on breach of the settlement agreement. The court found the breach of the agreement, diminished use of enjoyment of the premises, and awarded rent abatement. After taking testimony on damage to the tenant's car allegedly caused by repair problems not contemplated in the settlement agreement, the court concluded that the damages were excluded from rent abatement and would not be considered *res judicata* as to future claims. *Patterson v. Heinecke*, No. C3-00-600301 (Minn. Dist. Ct. 6th Dist. Mar.

24, 2000) (Judge Oswald) (Appendix 412) (Writ vacated where the parties settled for payment of back rent but plaintiff refused to cooperate; plaintiff ordered to immediately cooperate with defendant to provide forms necessary to obtain rental assistance from the Salvation Army. "This Court is not going to act as Plaintiff's rent collection agency nor is it going to allow Plaintiff's own refusal to cooperate to frustrate the prior settlement of the parties).

Counsel should consider contempt as a method for enforcing settlement agreements. *See* discussion, *infra,* at VII.C.

Occasionally court personnel may be reluctant to expunge a court file where there is a settlement agreement setting out actions or events that will occur in the future. The tenant should ask the court to order that expungement occur immediately. This is especially important during a period in which the tenant is seeking new housing. *Viking Properties of MN LLC v. Wesley*, Nos. UD-1990714563 and UD-1990709901 (Minn. Dist. Ct. 4th Dist. Aug. 11, 1999) (Judge Rosenbaum) (Appendix 421) (Action to be expunged immediately upon filing of order where unlawful detainer action was erroneously filed due to mistake or confusion; settlement providing that tenant would move in one and one-half months, tenant would not pay rent for two months and landlord would retain deposit plus interest, landlord would provide neutral reference, landlord would make repairs as ordered by the housing inspector, landlord would give 24 hours written notice of intention to make repairs, tenant would accommodate repair persons, landlord could contact tenant's community liaison except all repair notices would be between the parties, the agreement did not waive other rights related to nuisance, illegal or criminal conduct, privacy, or discrimination, tenant would not pursue claims for rent abatement, landlord would not pursue claims for past rent, deposit, late fees, court costs, or court fees, the parties did not admit liability).

Counsel should consider the following issues for settlement:

1. Rent and fees: rent abatement for disrepair; scheduling rent abatement in installments to conform to government benefit program income or asset requirements; landlord rent abatement payment by lump sum or installment payments with interest; waiver or limitation of back or future rent or utility charges; waiver of late, service and filing fees; extension and/or payment plan to pay rent or other fees; rent abatement to enforce a lockout penalty; suspension of government subsidy to landlord pending repairs; recalculation of subsidized housing income, rent and government subsidy; waiver of side payments (charges or fees not authorized by subsidized housing programs); assessment of $250 in costs for failing to register trade name with Secretary of State; damages; tenant retains potential tort claim;

2. Repairs: schedule for repairs; landlord will comply with inspection orders; apartment reinspection; landlord enjoined from filing any unlawful detainer actions for nonpayment of rent until after repairs have been made;

3. Housing: relocation and relocation benefits during apartment remodeling; landlord will put tenant in suitable replacement housing and provide money for food until hearing; landlord will provide habitable replacement housing with kitchen facilities; landlord's relocation of tenant to another property which would pass Section 8 inspection, and landlord and tenant will sign Section 8 lease at new apartment;

4. Tenant and landlord conduct: reasonable accommodation of the tenant's disability; mediation between the landlord, landlord staff, tenant and/or neighbors; changes in how a

landlord, landlord staff, tenant and/or neighbors deal with each other; probation period for the tenant; extended period for tenant to comply with the lease or government codes; exclusion of certain guests; mutual non-harassment order; notice of landlord visits; pets; tenant will not be noisy and landlord will take action against other noisy tenants; tenant agrees not to damage property; limitation on residents but not guests;

5. Future agreements: executing a contract for deed or other contract; executing a lease; executing subsidized housing contracts;

6. Moving: lease termination notice; landlords allows tenant to terminate lease; tenant can move out with one month's notice; extended period to move and/or extended stay of issuance of the Writ of Restitution; scripted favorable or non-negative reference to prospective landlords and to tenant screening agencies and process for preparing and circulating reference; tenant will clean old apartment; disposition of security deposit and interest; landlord will return security deposit or provide itemized list of damages in ten days with an evidentiary hearing if tenant disputes landlord's determination;

7. Other: explanation of the dispute between the parties; apologies by the parties; extension of the period in which a notice quit by the landlord would be presumed to be retaliatory; retraction of eviction notices;

8. Enforcement: notice to the tenant and tenant's advocate of landlord's allegation that tenant has violated the settlement agreement and landlord's seeks the writ of restitution, with opportunity for the tenant to request a hearing to challenge the allegation; agreement admissibility in other actions; agreement enforcement; confession of judgment; waiver of other claims if parties comply with agreement, and re-opening of action if parties violate agreement; continuing jurisdiction;

9. Case disposition: dismissal of the unlawful detainer action; judgment; sealing or expunging court records.

The following settlement agreements address many of these issues:

1. Amended Settlement & Release, *Smith v. Meyer*, No. UD-1940804538 (Minn. Dist. Ct. 4th Dist. Oct. 3, 1994) (rent escrow action settlement; rent abatement in installments to conform to government benefits program, favorable reference, rent-free occupancy, extended vacate date, liability releases, and continuing jurisdiction) (Appendix 30).

2. *Clark v. Johnson*, No. UD-1940720506 (Minn. Dist. Ct. 4th Dist. Aug. 5, 1994) (rent paid into court released to plaintiff, extended vacate date, waiver of additional rent, limitation of utility bill liability, and favorable reference) (Appendix 31).

3. Settlement & Agreement *Lisk v. McGee*, No. 1940811500 (Minn. Dist. Ct. 4th Dist. Aug. 18, 1994) (rent payment, waiver of filing fee, vacate date, *pro rata* rent for last month, return of security deposit, favorable reference, and dismissal) (Appendix 32).

4. *Bratton v. Dockery*, No. UD-1940912513 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1994) (payment plan for rent and filing fee) (Appendix 33).

5. Settlement Agreement between Bethune Associates, Parkview Apartments, and Derrell Woodard (Oct. 20, 1994) (schedule for rent payment, parties' cooperation in excluding a non-resident, retraction of eviction notices, admissibility of settlement agreement, and enforcement) (Appendix 34).

6. Settlement Agreement, *Minneapolis Public Housing Authority v. Patterson*, No. UD-1940511538 (Minn. Dist. Ct. 4th Dist. May 31, 1994) (probation) (Appendix 35).

7. *Ehlart v. Billat*, No. 24-C794-956 (Minn. Dist. Ct. 3rd Dist. Sep. 30, 1994) (extension to pay rent, taxes and insurance, entry into contract for deed, and dismissal) (Appendix 36).

8. *Public Housing Authority v. Vang*, UD-1951003612 (Minn. Dist. Ct. 4th Dist. Oct. 17, 1995) (Appendix 94) (tenant already paid all of the rent, landlord's records were inaccurate, and landlord apologizes to tenant).

9. _____ *v.* _____, C3-94-211 (Minn. Dist. Ct. 5th Dist. Dec. 21, 1994) (Appendix 95) ($500 in lockout damages prospectively applied to rent, schedule for repairs, and confession of judgment, tenant cooperation with landlord for completing repairs, extension of 90 day retaliatory eviction presumption under Minn. Stat. § 566.28 (now § 504B.441)).

10. *Wynmore Apartments v. Stellick*, No. UD-1920513525 (Minn. Dist. Ct. 4th Dist. June 23, 1992) (Appendix 182) (housing authority shall pay increased subsidy after miscalculating tenant's income and rent; $250 penalty for failing to register trade name; waiver of late fees; waiver of side payments or fee charged in excess of amounts stated in lease; waiver of ½ of the filing fee; payment plan for back rent).

11. *Grimmer v. Svoboda*, No. UD-1960923520 (Minn. Dist. Ct. 4th Dist. Oct. 29, 1996) (Appendix 188) (extended time to move; $250 penalty for failing to register trade name of the plaintiff's management company to be paid from rent paid into court; mutual non-harassment order; 48 hours written notice for landlord visits, containing date, time and duration for visit; non-interference with tenant's access to garage; neutral reference letter with specific statements and limitations; process for resolution of disputed claims to personal property in garage); *Grimmer v. Svoboda*, No. UD-1960923520 (Minn. Dist. Ct. 4th Dist. Jan. 6, Jan. 15, and Mar. 14, 1997) (Appendix 257) (Writ stayed where landlord failed to execute stipulated reference, told tenants they could stay longer, and accepted rent beyond the move out date; landlord ordered to execute reference letter and tenant given extra month to move; damages and move out date settled).

12. *Kedrowski v. Doe*, No.-UD 1950801514 (Minn. Dist. Ct. 4th Dist. Nov. 17, 1995) (Appendix 189) (non-negative reference, lease termination, and rent abatement).

13. *Chromy v. Wastweet*, No. CX-96-1328 (Minn. Dist. Ct. 7th Dist. Aug. 12, 1996) (Appendix 190) (Tenant’s remedies action settlement: $4,800 rent abatement, collected by prospective rent credit, lump sum or installment payments with interest; relocation of tenant during apartment remodeling and rehabilitation; relocation and moving benefits, suspension of rent subsidy to landlord until tenant returns to the remodeled; execution of lease and reinstatement of rent subsidy following remodeling; lease termination notice

security deposit; any attempt to evict tenant during duration of agreement presumed retaliatory; court jurisdiction retained).

14. *Pirkola v. Bastie,* No. C1-95-602242 (Minn. Dist. Ct. 6th Dist. Feb. 20, 1996) (Appendix 196) (settlement for one month period for tenant to comply with local fire code).

15. Jenkins, Harvey, and Van Patten Settlement Agreement (Jan. 20, 1995) (Appendix 190(A)) (Section 8 voucher: schedule for landlord repairs, execution of new Section 8 lease, landlord participation in Section 8 program, rent abatement, lease termination with sixty days notice upon agreement to sell the house, favorable reference).

16. *Guevara v. Catchings*, No. UD-01970117520 (Minn. Dist. Ct. 4th Dist. Jan. 30, 1997) (Appendix TR 147b) (Settlement for dismissal of unlawful detainer action with prejudice, landlord enjoined from filing any unlawful detainer actions for nonpayment of rent until after repairs have been made, retaliation protection period of 90 days will not begin until all repairs have been made and rent abatement collected, unlawful detainer files will be expunged).

17. *LaSalle Group, Ltd. v.* _____, No. UD-1970326507 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1997) (Appendix 267) (Joint request for expungement).

18. *Heintzman v. Steinman*, No. C7-99-1772 (Minn. Dist. Ct. 10th Dist. Dec. 29, 1999) (Appendix 394) (Based upon stipulation for dismissal, dismissal of action with prejudice and expungement).

19. *2407 Partners v. Kirk*, No. HC-1990409512 (Minn. Dist. Ct. 4th Dist. Sep. 30, Dec. 8, 1999) (Appendix 402) (Settlement for rent abatement, landlord payment of $500 in costs for failure to register two business names with the Secretary of State, favorable reference, dismissal, and expungement; file expunged).

20. *Bratton v. Cobb*, No. 8C-000222514 (Minn. Dist. Ct. 4th Dist. Apr. 12, 2000) (Appendix 380) (parties agreed there was short service but executed move out agreement; case expunged due to short service).

21. _____ *v. Tran*, No. AC-03-13965 (Minn. Dist.Ct. 4th Dist. Nov. 19, 2003) (Appendix 456) (repairs litigated in previous emergency relief action cannot be relitigated in subsequent action for property damage; landlord claiming tenant damage must prove the condition of the property when the tenant moved to the property, and a connection between repairs and tenant damage; landlord failed to comply with security deposit statute).

S. CONSOLIDATING THE EVICTION ACTION WITH OTHER ACTIONS

While some courts take an expansive view of the relief that can be afforded the tenant, others view the court's jurisdiction to be very narrow. *See* Breach of Covenants of Habitability Relief, *infra* at VI.E.1.i; Remedies and Requests for Relief, *infra* at VII. Tenants' advocates should considering commencing a separate action and moving for consolidation. In *Ridgemont Apartments v. Englund*, No. C3-96-68 (Minn. Dist. Ct. 10th Dist. Apr. 1, 1996) (Appendix 191), the landlord of a RHCDS Sect. 515 subsidized housing project sought to terminate the tenant's subsidy and increase the tenant's share of the

rent to the market rent for failing to recertify on time. The landlord brought an eviction (unlawful detainer) action, and the tenant defended the action while bringing an affirmative action as well. The court held that while the landlord gave the tenant several notices, the notice which contained the required information that failure to recertify would result in termination of the subsidy was not given thirty days before the due date, as required by the program handbook. Since the two actions were consolidated, in addition to dismissing the unlawful detainer action for non-payment of the market rent, the court granted additional affirmative relief, including ordering the landlord to recalculate the tenant's share of the rent, immediately reinstate the subsidy if a subsidy slot was available, credit defendant's rent for an amount equal to the subsidy even if a subsidy slot is not available, and notify the tenant of the amount of past rent due, and ordered the tenant to pay that amount within 10 days after notice from the landlord.

See generally:

- Action Not Appropriate for Certain Types of Litigation, *supra* at II.B;
- Temporary Restraining Orders, *supra* at V.D.;
- Companion Actions, *infra* at VI.E.1.j;
- Housing Court Consolidation of Claims, *supra* at V.G.4;
- Attorney's fees in consolidated actions at VIII.E.4.(a)(2)(d).
- Statutory privacy claims in consolidated eviction and tenant actions at XII.B.2.c.
- Rent escrow actions:
  - Consolidated with eviction actions at XII.B.3.a.(2)(i).
  - Appeals: Consolidation with eviction action at XII.B.3.a.(2)(w).
- Emergency tenant remedies actions: Consolidation with eviction action at XII.B.3.b.(3)(d).

T. SEALING OR EXPUNGING COURT RECORDS

In some circumstances, the court may considering sealing or expunging the eviction (unlawful detainer) court records. *See* discussion, *infra*, VIII.E.5.

U. DISBURSEMENT OF FUNDS PAID INTO COURT

A party's payment of the funds into court does not operate as a relinquishment of the party's interest in the money. The parties are entitled to notice and an opportunity for hearing before the disposition of funds on deposit. *Knutson v. Seeba*, No. C7-98-1665 (Minn. Ct. App. Mar. 30, 1999) (Appendix 341) (Unpublished).

V. WITNESS FEES

Subpoenaed witnesses who do not receive a witness fee along with the subpoena are not obligated to attend the trial. Parties are not entitled to county payment of witness fees. *Bossen Terrace v. Price*, No. C5-98-434 and C1-98-480 (Minn. Ct. App. Oct. 6, 1998) (Appendix 312) (Unpublished: Trial court did not err in quashing subpoenas where the witness fee was not paid, or requiring a preliminary showing of merit before providing witness fees).

W. ATTORNEY TESTIMONY

Where the tenant's attorney takes action on behalf of the tenant, such as calling or sending a letter to the landlord, there is a question as to whether the attorney can provide testimony on the subject.

See Gale v. Winge, No. C7-98-2279 (Minn. Ct. App. July 6, 1999) (unpublished) (affirmed determination as not clearly erroneous that husband continued to use property as his place of abode and substitute service on wife was proper; minor inaccuracies in contract-for-deed legal description do not render the cancellation notice ineffective; trial court did not abuse its discretion in denying motion to vacate default judgment where tenant did not present a defense on the merits nor a reasonable excuse for failure to act; attorney's testimony at trial regarding payment of money was not on a contested issue, and did not require disqualification; equitable rights were not at issue, but equities were not in the defendants' favor).

X. TREATMENT OF *PRO SE* PARTIES

In *Follis v. State Armory Building Commission*, No. A14-2198, 2015 WL 7940309 (Minn. Ct. App. December 7, 2015) (unpublished), following cancellation of a contract for deed and the ensuing eviction, the vendor allowed the vendees access to the premises to remove belongings for 60 days, after which the vendor denied access. The vendor never completed a written inventory of the property. The vendees sued for $3,000,000 in damages and $250,000 in punitive damages. The district court granted partial summary judgment to the vendor, concluding that the vendees presented no evidence of the value of the personal property, and awarded $500 to the vendees under Minn. Stat. § 504B.231 as an unlawful ouster for failing to prepare the inventory.

The Court of Appeals affirmed the partial summary judgment and award. In response to the claim that the district court did not treat them appropriately as *pro se* litigants, the court stated:

> Without citing any legal authority, the Follises contend that the district court should have "assisted" them with their case. The Follises' contention is wrong. District courts have "a duty to ensure fairness to a pro se litigant by allowing reasonable accommodation so long as there is no prejudice to the adverse party." *Kasson State Bank v. Haugen,* 410 N.W.2d 392, 395 (Minn. App.1987). Although courts may make some accommodation to ensure fairness to a pro se party, "this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fizgerald v. Fitzgerald,* 629 N.W.2d 115, 119 (Minn. App.2001).
>
> The record here demonstrates that the district court properly accommodated the Follises. The Follises appeared at the summary-judgment hearing without filing any response to the summary-judgment motion. They asked the district court for time to respond in writing to the motion, and the district court gave them two weeks. Transcripts of the hearings demonstrate that the district court was extremely patient with the Follises and gave them ample opportunity to be heard. This claim is without merit.

Id. At *4-5.

In *Stuart Co. v. Ramsey,* No. A14–0639, 2014 WL 5800462 (Minn. Ct. App. Nov. 10, 2014) (unpublished), the Court of Appeals affirmed eviction of the public housing tenant for nonpayment of rent, holding that (1) lack of the federally required eviction notice did not deprive the district court of jurisdiction, (2) the *pro se* tenant before the district court waived the notice defense by not raising it below, and (3) the tenant similarly waived the requirement of material noncompliance by not raising it. The court noted

> We note that appellant appeared pro se in district court, and the record reflects that the district

> court failed assist appellant in advancing her legal theories. And, in fact, the record shows that the district court was quite abrupt with appellant. We urge district courts to be cognizant of a party's pro se status and to be as helpful as possible under the circumstances.

Id. at *2.

In *Stone v. Clow*, A13-0984, 2014 WL 902724 (Minn. Ct. App. March 10, 2014) (unpublished), the property owner Clow a document entitled "Extended Stay-Residential Lease" to rent to the resident Stone. After a dispute, the owner locked out the resident. The district court concluded that Clow unlawfully excluded Stone from the apartment by locking Stone out. The district court required Clow to pay certain monetary damages and awarded Stone attorney's fees.

The Minnesota Court of Appeals affirmed. The Court allowed the owner to raise application of Minn. Stat. Ch. 327 on appeal even though he did not before the district court when he appeared pro se.

> "Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald,* 629 N.W.2d 115, 119 (Minn.App.2001). Typically we consider only those issues and theories "presented and considered" by the district court. *Thiele v. Stich,* 425 N.W.2d 580, 582 (Minn.1988) (quotation omitted). But because Clow was pro se at the district court hearing and because he did claim that Stone was a hotel guest, we will consider his arguments on appeal in the interests of justice. See Minn. R. Civ.App. P. 103.04. Even so, for the reasons set forth below, we find Clow's arguments unpersuasive.

Id. at *3.

CHAPTER VI: DEFENSES

A. FORM ANSWERS AND MOTIONS

A written answer to eviction action complaints is not required by statute or rules. *See* discussion at V.B.

Forms drafted by the author are available at http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html.

A1. FILING FEE WAIVERS: *IN FORMA PAUPERIS*

See discussion, *supra*, at V.B1.

A2. VERIFICATION SIGNED BY NOTARY NO LONGER REQUIRED

See discussion at V.B2.

B. LIMITATIONS ON PLAINTIFF REMEDIES, QUESTIONS OF TITLE, AND EQUITABLE DEFENSES

1. In Municipal or County Court

The court did not have jurisdiction to hear questions of title or equitable defenses. *Dahlberg v. Young*, 231 Minn. 60, 67-68, 42 N.W.2d 570, 576 (1950). However, the defendant could commence a separate action in district court and seek to enjoin prosecution of the eviction (unlawful detainer) action, *William Weisman Holding Co. v. Miller*, 152 Minn. 330, 332, 188 N.W. 732, 733 (1922), or remove the action to District Court. *Albright v. Henry*, 285 Minn. 452, 460, 174 N.W. 2d 106, 110 (1970); *Sternaman v. Hall*, 411 N.W.2d 18, 19 n.1 (Minn. Ct. App. 1987); *Brundidge v. Bleckinger*, No. UD-1850916524 (Henn. Cty. Mun. Ct., Oct. 28, 1985) (Appendix 2).

2. In District Court

Unification of trial courts in the district court altered the above limitation, but it took a while for the appellate courts to understand the change. In *Sternaman v. Hall*, 411 N.W.2d 18, 19 n.1 (Minn. Ct. App. 1987) the Court noted

> We note that unification of the Ramsey County Bench might affect the application of this rule in the future; however, since the trial court was acting in a traditional municipal court capacity during this unlawful detainer action, unification does not affect this decision.

Subsequent decisions affirmed the rule through the 1990s, even though the rule probably was based on the jurisdictional limits of municipal and county courts, rather than an inherent jurisdictional limitation for eviction (unlawful detainer) actions. *Federal Land Bank v. Obermoller* 429 N.W.2d 251, 257 (Minn. Ct. App. 1988), *pet. for rev. denied* (Minn. Oct. 26, 1988); *Park Drive Partnership v. Granse* No. C7-96-401 (Minn. Ct. App. Sep. 24, 1996), FINANCE & COMMERCE at 38 (Sep. 27, 1996) (Appendix 193) (unpublished decision: pending separate quiet title action did not preclude unlawful detainer action, which determines who has the superior right of possession, but does not determine title; the defendant cannot assert title, equitable rights or counterclaims; the defendant did not present any evidence demonstrating a greater right of possession than the plaintiff); *Bjur v. Burgmeier*, No. C2-92-409 (Minn.

Ct. App. Aug. 18, 1992), FINANCE & COMMERCE at B45 (Aug. 21, 1992) (unpublished: because plaintiff as the mortgagees assignee, has presumptively good title and because defendants cannot litigate title in an eviction (unlawful detainer) action, defendants are foreclosed from challenging plaintiffs title by reference to their collateral litigation) (Appendix 0.H); *Stein v. J.D. White, Inc.,* No. C0-91-2164 (Minn. Ct. App. Apr. 21, 1992), FINANCE & COMMERCE at B24 (April 24, 1992) (unpublished: rule that unlawful detainer action merely determines right to present possession of property and does not determine ultimate rights of the parties is based in part on an obsolete division of equity jurisdiction between municipal and district courts, but the rule retains legal force because the unlawful detainer action is a suspension of ordinary procedures in order to achieve a summary disposition of the right to present possession) (Appendix 0.F); *Hargreaves v. FDIC*, No. C9-89-1966) (Minn. Ct. App. June 12, 1990), FINANCE & COMMERCE at B12 (June 15, 1990) (unpublished) (unlawful detainer action does not adjudicate legal or equitable ownership interests).

However, the courts were not unified. In *Lilyerd v. Carlson*, 499 N.W.2d 803, 807, 812 (Minn. Ct. App. 1993), the court noted that while an eviction (unlawful detainer) action is generally summary in nature, determines only present possessory rights, and usually does not bar subsequent actions involving title or equitable rights of the parties, counterclaim for first right of refusal to purchase could have been tried to the unlawful detainer action jury.

In 2006, the issue was resolved in *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352 (Minn. Ct. App. 2006). The Court reviewed the history of litigation of title issues in eviction actions, dating back to the time when evictions were heard in county and municipality courts of limited jurisdiction. The Court concluded that unification of the trial courts removed any limitations based on the nature of the court, leaving only limitations based on the summary nature of the eviction action, which does not preclude litigation of title.

3. Mortgage Foreclosure and Contract for Deed Cancellation

a. *Before 2006*

There was some confusion over whether the defendant can litigate the plaintiff's compliance with procedural requirements of mortgage foreclosure and contract for deed cancellation statutes. The defendant clearly may raise non-compliance with statutory notice and service requirements for contract for deed cancellation. *Enga v. Felland,* 264 Minn. 67, 70-71, 117 N.W.2d 787, 789-90 (1962) (eviction reserved for improper contact for deed cancellation). *See Revels v. O'Neal*, No. UD-1960723503 (Minn. Dist. Ct. 4th Dist. Sep. 11, 1996) (Appendix 194) (contract for deed cancellation notice properly served; vendor's mortgagee is not a party which must be served; defenses of unjust enrichment, void and unenforceable contract for deed and fraudulent inducement could not be raised in the eviction (unlawful detainer) action where vendee brought no action within the statutory sixty day period following notice of cancellation); *Swartwood v. Clark,* No. UD-1920928505 (Minn. Dist. Ct. 4th Dist. Oct. 15, 1992) (Appendix 16.C) (vendor failed to meet burden of proof regarding alleged service of cancellation notice); *Edwards v. Sagataw,* No. 31-C2-92-512 (Minn. Dist. Ct. Itasca Cty. Apr. 30, 1992) (Appendix 16.D) (quit claim deed obtained by vendor from vendee while vendee was not in default lacked consideration; allegations of default in payment of taxes by vendee implied continuing application of contract for deed; vendor, cannot evict vendees without foreclosing the contract). *See also* discussion, *supra* at V.N. (collateral estoppel).

However, raising mortgage foreclosure defects was another story. In *Amresco Residential Mortgage Corp. v. Stange*, 631 N.W.2d 444 (Minn. Ct. App. 2001), the trial court ruled that it could not

consider mortgage defects in the eviction action. On appeal, the court held that rather than order the trial court to hear the issues or convert the action to an ejectment action, the appellants could seek to enjoin prosecution of the eviction action in the separate proceeding in which they sought to set aside respondent's foreclosure which they commenced after dismissal of their counterclaims in the eviction action. While the court affirmed dismissal of the counterclaims, it ordered that the court's stay of the writ of restitution during the appeal be continued for a reasonable period of time in which appellants can assert, and the district court can determine in their pending proceeding, whether their right of possession should be protected by enjoining the writ until the court rules on their title claims. *See AHR Construction, Inc. v. Dixon*, Nos. A06-1554, A06-0248, 2007 WL 2417083 (Minn. Ct. App. Aug. 28, 2007), *review denied* (Minn. Nov. 21, 2007) (unpublished) (challenges to foreclosure cannot be raised in an unlawful detainer action and must be asserted in a separate proceeding, citing *AMERSCO*). *But see Comerica Mortgage Corp. v. Gaddy*, No. UD-1950223514 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1995) (Appendix 195) (Mortgager did not prove that service of the notice of foreclosure sale was insufficient).

In *Fraser v. Fraser*, 642 N.W.2d 34 (Minn. Ct. App., 2002), the husband's father, who sold house to husband and wife under contract for deed, gave notice of cancellation of contract after husband brought dissolution action. The wife sought to enjoin cancellation as part of dissolution proceedings, which was granted and later vacated. The father then brought an eviction action against wife, and the district court ruled in father's favor. The wife appealed in both cases and they were consolidated. The court held that there was no jurisdiction in the dissolution action jurisdiction to enjoin cancellation of contract for deed. In the eviction action, the court held that the trial court was not bound by findings on the contract for deed service from the dissolution action, given the lack of jurisdiction in the latter. As to whether the wife could litigate equitable real estate issues in the eviction case, relying on *Amresco Residential Mortgage Corp. v. Stange*, 631 N.W.2d 444 (Minn. Ct. App. 2001), the court held that if she has the ability to litigate her equitable mortgage and other claims and defenses in alternate civil proceedings where she could enjoin the eviction action, it would be inappropriate for her to seek to do so in the eviction action. However, since the court could not determine whether the eviction action was wife's only opportunity to address her claims and defenses, it remanded the case for the district court to address wife's service claims, address the propriety of entertaining wife's equitable defenses in the eviction action or in an alternate proceeding; and, if appropriate, decide the equitable defenses.

In most eviction (unlawful detainer) actions based on contract for deed cancellation or mortgage foreclosure the plaintiff will assert compliance with statutory procedures in the complaint. The defendant's denial of these claims is not an equitable defense, but rather a denial that plaintiff has satisfied the procedural preconditions for commencing the action.

The defendant was precluded from raising *ultimate legal or equitable defenses* in an eviction (unlawful detainer) action. *See Dahlberg*; *William Weisman Holding Co. But see Lilyerd.* In *Dahlberg*, the court made the distinction between the claim that an instrument is voidable is an equitable issue, while the claim that an instrument is void is not an equitable issue, concluding that the claim of fraud involved whether the instrument was voidable, thus an equitable issue that could not be raised in an unlawful detainer action. The defendant could assert that challenging compliance with procedural requirements is not an equitable issue, since it involves a determination of whether the contract for deed cancellation or mortgage foreclosure was void, rather than voidable.

b. *2006: Real Estate Equity Strategies, LLC v. Jones*

The issue of litigation of mortgage foreclosure issues in eviction cases took another turn in *Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352 (Minn. Ct. App. 2006). When the defendants'

home went into foreclosure, they entered in an agreement with the plaintiff under which the defendants sold their home to one of plaintiff's entities, which leased it back to the defendants with an option for purchase. When the defendants defaulted on the lease, the plaintiff filed an eviction action against them. The defendants filed a separate equity stripping action against the plaintiff and its entities under Minn. Stat. §§ 325N.01-08, and filed an answer in the eviction case asking for dismissal or a stay pending resolution of the equity stripping action. The trial denied the motion and entered judgment for the plaintiff.

The Court of Appeals affirmed the decision, first concluding that a defendant's assertion of claim of title under Minn. Stat. § 504B.121 does not deprive subject matter jurisdiction to the eviction court. *Id.* The court concluded that the trial court has discretion to decide whether to stay the eviction pending resolution of the equity stripping action, and does not abuse its discretion by declining to stay the eviction. *Id.*

The court reviewed the history of litigation of title issues in eviction actions, dating back to the time when evictions were heard in county and municipality courts of limited jurisdiction. The court concluded that unification of the trial courts removed any limitations based on the nature of the court, leaving only limitations based on the summary nature of the eviction action, which does not preclude litigation of title. *Id.*

c. *Since 2006 and Real Estate Equity Strategies, LLC v. Jones*

Since this decision, the Legislature amended Minn. Stat. § 325N.18 to include a new subdivision 6, which requires the court to issue an automatic stay without imposition of a bond if a defendant makes a prima facie showing that the defendant has commenced an illegal foreclosure reconveyance action, raises the defense under Minn. Stat. § 504B.121 of an illegal foreclosure reconveyance, or asserts a claim of fraud, false pretense, false promise, misrepresentation, misleading statement, or deceptive practice in conveyance with a foreclosure reconveyance. The defendant also must show that the defendant owned foreclosed residence, the foreclosure reconveyance, and continued occupancy of the property. The automatic stay expires if the foreclosed homeowner fails to commence a foreclosure reconveyance action within 90 days of issuance of the stay.

Just months before the *Real Estate Equity Strategies* decision and afterwards, the Court of Appeals has following the earlier line of cases, holding that the eviction court could not adjudicate legal and equitable rights of ownership. *RedStar Capital, LLC v. Rex,* No. A07-1873, 2008 WL 5136002 (Minn. Ct. App. Dec. 9, 2008) (unpublished); *Ketterling v. Hamilton*, Nos. A05-1872, A05-2119, 2006 WL 2258053 (Minn. Ct. App. Aug. 8, 2006) (unpublished); *Sundberg v. Sundberg*, No. A05-1845, 2006 WL 1806394 (Minn. Ct. App. July 3, 2006) (unpublished) (eviction defendant could not litigate the legal cancellation of contract for deed).

A number of recent appellate decisions affirming evictions have discussed evictions not be appropriate to litigate issues of title. *Nationstar Mortg., LLC v. Dooling*, No. A15–1509, 2016 WL 2842967 (Minn. Ct. App. May 16, 2016) (unpublished); *Malone v. Bland*, No. A15-0146, 2015 WL 4994637 (Minn. Ct. App. August 24, 2015) (unpublished); *U.S. Bank Nat. Ass'n v. Knoedler*, No. A14-1394, 2015 WL 1514189 (Minn. Ct. App. Apr. 6, 2015), review denied (June 30, 2015) (unpublished); *Bank Of New York Mellon v. Tatro,* No. A14-0142, 2014 WL 4957667 (Minn. App. Oct. 6, 2014) (unpublished); *Bank of America, N.A v. Smith,* No. A13-2299. 2014 WL 3801306 (Minn. App. Aug. 4, 2014) (unpublished); *Federal National Mortgage Association ("Fannie Mae") v. Robinson,* No.

A14-0023, 2014 WL 3802216 (Minn. App. Aug. 4, 2014) (unpublished); *Federal Home Loan Mortgage Corporation v. Briggs,* No. A13-2089, 2014 WL 3397124 (Minn. App. July 14, 2014) (unpublished).

For more information on mortgage foreclosure defense, *see* discussion at VI.F.1.d. (notice to tenants following mortgage foreclosure or contract for deed cancellation); VI.F.12. (homeowner and tenant defenses).

4. Counterclaims

Counterclaims or set offs are not allowed if the basis of the counterclaim or setoff is *independent* of the tenant's obligation to pay rent. *Keller v. Henvit*, 219 Minn. 580, 585, 18 N.W.2d 544, 547 (1945), citing *William Weisman Holding Co. v. Miller*, 152 Minn. 330, 332, 188 N.W. 732, 733 (1922). *See Warren v. Hodges*, 137 Minn. 389, 390, 163 N.W. 739, __ (1917) (in nonpayment of rent case, no defense for landlord's violation of repair covenant); *Peterson v. Kreuger*, 67 Minn. 449, 450, 70 N.W. 567, (1897).

Warren was reversed in *Fritz v. Warthen*, 298 Minn. 48, 54, 213 N.W.2d 339, 341-42 (1973), where the court held that § 504.18 (now § 504B.161) created an exception to the rule, holding that the covenants of habitability and the covenant to pay rent are mutual and dependant, and all or part of the rent is not due when the landlord has breached the covenants.

5. Eviction Action Remedy for Plaintiff Is Possession and Not a Judgment for Rent

"The judgment in an unlawful detainer action determines only the right to the present possession .... Nor can such action be for the recovery of rent." *Keller v. Henvit*, 219 Minn. 580, 585, 18 N.W.2d 544, 547 (1945), citing *William Weisman Holding Co. v. Miller*, 152 Minn. 330, 332, 188 N.W. 732, 733 (1922). Subsequent decisions are *Park Drive Partnership v. Granse*, No. No. C7–96–401, 1996 WL 537498 at *1 (Minn. Ct. App. Sep. 24, 1996) (unpublished); *Bjur v. Burgmeier*, No. No. C2-92-409, 1992 WL 196336 at *1 (Minn. Ct. App. Aug. 18, 1992) (unpublished); *Brinkman v. Bank of America*, N.A., 914 F.Supp.2d 984, 1004 (D. Minn. 2012).

C. IMPROPER SERVICE (LACK OF PERSONAL JURISDICTION)

1. Requirements for personal jurisdiction, VI.C.1
2. Specific defenses, VI.C.2

a0. *Challenges to affidavits of service*, VI.C.2.a0
a. *No service,* VI.C.2.a
b. *Service less than seven (7) days before the initial hearing,* VI.C.2.b
c. *Service on legal holidays,* VI.C.2.c
d. *Service by a named plaintiff or agents,* VI.C.2.d
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h. *Improper affidavit of service,* VI.C.2.h
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i. *Waiver of defense,* VI.C.2.i

j. *Service before filing action,* VI.C.2.j
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3. It is unclear whether defendants can be designated as "John" or "Jane Doe", VI.C.3
4. Subtenants, VI.C.4

1. Requirements for personal jurisdiction

"The summons shall be served . . . in the manner provided for service of a summons in a civil action in the district court." Minn. Stat. § 504B.331 (formerly § 566.06). *See* Minn. R. Civ. P. 4. The summons and complaint shall be served not less than seven (7) nor more than fourteen (14) days before the initial court appearance. Minn. Stat. §§ 504B.321 (formerly § 566.05), 504B.331 (formerly § 566.06). The time period excludes the date of service but includes the date of the initial hearing. Minn. Stat. § 645.15. *See Township Bd. v. Lewis*, 305 Minn. 488, 490-92, 234 N.W.2d 815, 817-18 (1975).

Minn. Stat. § 504B.331 (formerly § 566.06) provides for the methods of service:

504B.331 Summons; How Served.

(a) The summons must be served at least seven days before the date of the court appearance specified in section 504B.321, in the manner provided for service of a summons in a civil action in district court. It may be served by any person not named a party to the action.

(b) If the defendant cannot be found in the county, the summons may be served at least seven days before the date of the court appearance by:

(1) leaving a copy at the defendant's last usual place of abode with a person of suitable age and discretion residing there; or

(2) if the defendant had no place of abode, by leaving a copy at the property described in the complaint with a person of suitable age and discretion occupying the premises.

(c) Failure of the sheriff to serve the defendant is prima facie proof that the defendant cannot be found in the county.

(d) Where the defendant cannot be found in the county, service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week if:

(1) the property described in the complaint is:

(i) nonresidential and no person actually occupies the property; or

(ii) residential and service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; and

(2) the plaintiff or the plaintiff's attorney has signed and filed with the court an affidavit stating that:

(i) the defendant cannot be found, or that the plaintiff or the plaintiff's attorney believes that the defendant is not in the state; and

(ii) a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff.

(e) If the defendant or the defendant's attorney does not appear in court on the date of the appearance, the trial shall proceed.

The statute can be broken down into three types of service:

1. By delivery to the defendants.

2. If the defendants cannot be found in the county, substituted service by delivery at the defendant's residence, to a family member or other person of suitable age and discretion residing at the defendant's residence,

3. If the defendants cannot be found in the county, substituted service by mail and posting, if:

   (a) for the two types of tenants:

      (1) for residential, service has been attempted at least twice on different days, with at least one of the attempts between 6:00 p.m. and 10:00 p.m., or

      (2) for non-residential, no person actually occupies the property, and

   (b) the plaintiff or counsel files an affidavit (1) stating that the defendant cannot be found, or the affiant believes that the defendant is not in the state, and (2) that a copy of the summons has been mailed to the defendant at the defendant's last address known to the plaintiff.

The summons may be served by any person not named a party to the action. See also Minn. R. Civ. P. 4.02. If the defendant is confined to a state institution, by serving also the chief executive officer at the institution. Minn. R. Civ. P. 4.03(a).

1a. Strict compliance required

Strict compliance with service requirements, rather than mere substantial compliance, is a precondition to personal jurisdiction,. *Color-Ad Packaging, Inc. v. Kapak Industries, Inc.*, 285 Minn. 525, 526 n.1, 172 N.W.2d 568, 569 n.1 (1969), overruled on other grounds by *In re Lake Valley Twp. Bd., Traverse Cnty. v. Lewis*, 305 Minn. 488, 234 N.W.2d 815 (1975); *Bloom v. American Express Co.*, 222 Minn. 249, 253, 23 N.W.2d 570 (1946); *Koski v. Johnson*, 837 N.W.2d 739 (Minn. Ct. App. 2013); *Nieszner v. St. Paul Sch. Dist. No. 625*, 643 N.W.2d 645, 649–50 (Minn. Ct. App. 2002); *B&J Property Management v. Gates*, No. UD-01970602519 (Minn. Dist. Ct. 4th Dist. June 12, 1997) (Appendix 247)

(Dismissal for improper service, failure to register trade name, and failure to attach notice to quit and lease to complaint).

2. Specific defenses

a0. *Challenges to affidavits of service*

A party challenging an affidavit of service must overcome the presumption of service by clear and convincing evidence. *Drews v. Fannie Mae,* 850 N.W.2d 738 (Minn. Ct. App. 2014); *Imperial Premium Finance, Inc. v. GK Cab Co., Inc.,* 603 N.W.2d 853 (Minn. Ct. App. 2000).

a. *No service*

Minn. Stat. § 504B.331 (formerly § 566.06); *Karnis v. Rayford*, No. UD-1940714513 (Minn. Dist. Ct. 4th Dist. Aug. 15, 1994) (personal service proven by a preponderance of the evidence) (Appendix 37); *Koop v. _____*, No. 27-CV-HC-09-1163 (Minn. Dist. Ct. 4th Dist. Feb. 17, 2009) (Appendix 606) (eviction dismissed for improper service, where action listed four named defendants and affidavit of service claimed service on "John Doe"). If the process server and the defendant are within speaking distance of each other and the process server takes such action as to convince a reasonable person that personal service is being attempted, the defendant cannot avoid service simply by refusing to accept the summons. *Nielsen v. Braland*, 264 Minn. 481,484, 119 N.W.2d 737, 739 (1963).

b. *Service less than seven (7) days before the initial hearing*

The summons must be served seven days before the hearing, but not to the exact hour. *Central Internal Medicine Assoc. P.A. v. Chilgren*, No. C2-00-36, 2000 WL 987858 (Minn. Ct. App. July 18, 2000) (unpublished). Minn. Stat. § 504B.331 (formerly § 566.06).

In *Bray v. _____,* No. 27-CV-HC-16-27 (Minn. Dist. Ct. 4th Dist. Jan. 22, 2016) (Appendix 766), the court granted dismissal where the summons and complaint were posted less than 7 days and tenant and son testified credibly and server did not testify in support of affidavit of service. *See Homlquist v. _____,* No. HC 050927536 (Minn. Dist. Ct. 4th Dist. Oct. 6, 2005) (Appendix 651) (eviction dismissed for improper service time, improper notice, and waiver of notice by acceptance of rent); *Bratton v. Cobb*, No. 8C-000222514 (Minn. Dist. Ct. 4th Dist. Apr. 12, 2000) (Appendix 380) (parties agreed there was short service but executed move out agreement; case expunged due to short service); *Judge v. Rio Hot Properties, Inc.,* No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (unlawful detainer action dismissed for service less than seven days before the hearing); *Peart v. Peloquin,* No. C3-90-430 (Minn. Dist. Ct. 8th Dist. May 25, 1990) (court dismissed action when the tenant received the summons and complaint only five days before the hearing. (Appendix 2.A).

c. *Service on legal holidays*.

Minn. Stat. §645.44, subd. 5 prohibits services on legal holidays. Service on Sunday had been prohibited by § 624.04, but it was repealed in 2005.

d. *Service by a named plaintiff or agents*

Service by the plaintiff is improper. Minn. R. Civ. P. 4.02. *Williams v. McCrimmon*, No. UD-1991207535 (Minn. Dist. Ct. 4th Dist. Dec. 17, 1999) (Appendix 428) (Improper service by delivery to a

person of suitable age and discretion, who lives in Iowa and was only a temporary guest of the tenant; service on the tenant was made by the plaintiff; action dismissed). *See Landgren v. Pipestone County Board of Commissioners*, 633 N.W.2d 875 (Minn. Ct. App. 2001) (sheriff may not serve his own action).

In *Lewis v. Contracting Northwest, Inc.*, 413 N.W.2d 154 (Minn. Ct. App. 1987), the court explained the reason for precluding parties from serving process:

> The law has wisely entrusted the decision of disputes between citizens *to persons wholly disinterested and free from bias and the acrimony of feeling so frequently, if not uniformly, engendered by litigation*; and the same is equally true of *the persons selected to execute the process necessary to the adjustment of such disputes.*

Id. at 155 (emphasis added). A court should carefully scrutinize service by persons related to or employed by the plaintiff who are not "wholly disinterested and free from bias" related to the action.

A number of courts have held that partners, managers, caretakers, and other employees of the plaintiff are not authorized to serve defendants because they are not wholly disinterested in the case. In *Hedlund v. Potter*, No. C3-91-1542 (Minn. Dist. Ct. 10th Dist. Dec. 31, 1991), the caretaker for the landlord served the tenant with the summons and complaint. The caretaker had signed the lease, and was authorized to sign leases, collect rent, maintain the premises, and receive service of process on behalf of the landlord under Minn. R. Civ. P. 4.03. *Id.* at 2. The court held that service was improper under Minn. Stat. § 566.06 (now § 504B.331) and Minn. R. Civ. P. 4.02, which states that the summons must be served by any person not named a party in the action. *Id.* at 4. (Appendix 4.C.2). *See DuFour v. _____*, No. 27-CV-HC-13-78 (Minn. Dist. Ct. 4th Dist. Jan. 16, 2013) (Appendix 771) (dismissal for service by employee); *Meldahl and SJM Prop. v. _____*, No. 1050923509, Order on Referee Review at 12-14 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered dismissal for improper service by maintenance person who was agent for landlord); *MJD Enterprises, Inc. v. _____*, No. HC-1040406523 (Minn. Dist. Ct. 4th Dist. May 18, 2004) (Appendix 612) (eviction dismissed and expunged and costs awarded where property manager served defendant and filed false affidavit stating that another person served defendant; it was irrelevant that manager called herself an "independent contractor" when she handled all matters related to rental); *Alex Properties v. _____*, No. HC 031105500 (Minn. Dist.Ct. 4th Dist. Nov. 13, 2003) (Appendix 462) (dismissal for service by plaintiff's managing partner); *Sidal Realty Company, LLP v. _____*, No. HC 030114401 (Minn. Dist.Ct. 4th Dist. Jan. 28, 2003) (Appendix 569) (dismissal for service by employee of plaintiff); *Riebe v. Graves*, No. UD-1940321515 (Minn. Dist. Ct. 4th Dist. Apr. 11, 1994) (improper service by person whose duties, responsibilities, rights and powers were identical to named plaintiff) (Appendix 38).

e. *Substituted service on non-defendant defenses*

(1) Defendant could be found in the county

Berryhill v. Healey, 89 Minn. 444, 446, 95 N.W. 314, (1903) ("It is provided by G.S. 1894, § 6113, that, if it appears at the time of the making of the complaint that the person against whom it is made is absent from the county, substituted service of the summons may be made by leaving a certified copy at his usual place of residence. Jurisdiction does not depend upon its being so made to appear at the time of filing the complaint, but *depends upon the fact of such absence*") (emphasis added). *See Durigan v. Smith*, No. UD-80515 (Henn. Cty. Mun. Ct., July 25, 1977) (Appendix 3) (substitute service on a

person of suitable age and discretion was improper where there was no evidence that defendant could not be found in the county).

(2) Service on a person who does not reside with the defendant

In *Jaeger v. Palladium Holdings, LLC,* 884 N.W.2d 601 (Minn. Aug. 31, 2016), foreclosure by advertisement was attempted on a townhome owned by Jaeger. However, Jaeger's adult son, who was only visiting the townhome to take care of it while Jaeger was away, was served with the Notice, instead of Jaeger himself. The District court held that the substitute service was deficient because the adult son was not "residing" in the townhome when service was attempted, and therefore, the foreclosure sale was void. The Court of Appeals affirmed, but reasoned that if Jaeger had actual notice of the action (which he did not), then substantial compliance with the substitute service requirements would have been sufficient.

The Minnesota Supreme Court affirmed, but held that strict compliance with the substitute service requirements is always required, even if the party has actual notice of the action. The Supreme Court also determined that the adult son was not "then residing therein" at the townhouse because he had his own home established elsewhere and was not living in the townhome permanently or for an extended period. In doing so, the Supreme Court expressly rejected the functional definition of "residing", which would have been satisfied by the presence of a nexus between the individual and the defendant, such that there was some reasonable assurance that the notice would reach the intended person. *See Murray v. Murray*, 159 Minn. 111, 113-14, 198 N.W. 307, 308 (1924); 1 D. MCFARLAND & W. KEPPEL, MINNESOTA CIVIL PRACTICE, § 935 at 464 (1979) (hereinafter "D. MCFARLAND & W. KEPPEL").

When the issue of nonresidence has been raised but not proven by the defendant, the courts have considered when the defendant actually received the summons. *See Murray*, 159 Minn. at 114, 198 N.W. at 308; *Juhl v. Rose*, 366 N.W. 2d 706, 707 (Minn. Ct. App. 1985); *Metropolitan Bank v. Panis*, No. CX-89-681 (Minn. Ct. App. Aug. 22, 1989) (unpublished). The defendant should present convincing evidence of nonresidence, such as testimony or an affidavit of the person's landlord and proof of rent payment. *See Twin City Development Co. v. _____,* No. 27-CV-HC-14-4804 (Minn. Dist. Ct. 4th Dist. Sep. 23, 2014) (Appendix 773) (dismissal for substitute service on a neighbor, complaint misstated the premises, plaintiff's agent did not have a power of authority, plaintiff incorrectly identified itself in the complaint); *Norby v. _____,* No. _____ (Minn. Dist.Ct. 4th Dist. May 24, 2001) (Appendix 549) (improper substitute service on non-resident house guest); *Stevens Avenue Limited Partnership v. Hayes*, No. UD-1930203533 (Minn. Dist. Ct. 4th Dist. Feb. 11, 1993) (Appendix 3.A) (dismissal where service was on nonresident); *Sloneker v. Taylor*, No. UD-1940810530 (Minn. Dist. Ct. 4th Dist. Sep. 16, 1994) (dismissal where service was a non-resident) (Appendix 39); *Minneapolis Public Housing Authority v. Kline*, No. UD-1930712506 (Minn. Dist. Ct. 4th Dist. Aug. 5, 1993) (Appendix 3.B) (motion to quash writ granted where service was on child who did not reside on the premises).

In *Capper v. Kragt*, No. C6-98-698 (Minn. Ct. App. Aug. 25, 1998) (Appendix 317) (The court reversed a trial court denial of the defendant's motion to dismiss for insufficient service, where the summons and complaint were served on a neighbor and relative of the defendant, who agreed to give the papers to the defendant. The court noted that because the process server failed to substantially comply with the requirements of Minn. R. Civ. P., the fact that the defendant later received the summons and complaint did not render service proper.

The status of a person being a resident is somewhere between something more permanent as in domicile, and something less permanent as in a visitor. *O'Sell v. Peterson*, 595 N.W.2d 870 (Minn. Ct.

App. 1999) (service on defendant's 14-year-old stepson who stayed with defendant during regular and planned noncustodial visitation was a resident; discussion of cases in Minnesota and other states). *But see Williams v. McCrimmon*, No. UD-1991207535 (Minn. Dist. Ct. 4th Dist. Dec. 17, 1999) (Appendix 428) (Improper service by delivery to a person of suitable age and discretion, who lives in Iowa and was only a temporary guest of the tenant; service on the tenant was made by the plaintiff; action dismissed).

In *Anderson v. _____,* No. 1060308540 (Minn. Dist. Ct. 4th Dist. May 8, 2006) (Appendix 657) (Judge Karasov), the court concluded that service was proper where tenant did not prove that recipient of substitute service was not residing on the property. The court held that the housing court did not have eviction subject matter jurisdiction where defendant home-owner asserted foreclosure reconveyance defense under Minn. Stat. Ch. 325N, and dismissed and expunged the action.

(3) Service on a person who is not of suitable age and discretion

There is no minimum age for a person receiving service. The person need not understand the legal importance of the papers. *Holmen v. Miller*, 296 Minn. 99, __, 206 N.W.2d 916, 919 (1973). While there are no reported cases interpreting this part of Minn. Stat. § 504B.331 (formerly § 566.06), courts have upheld service on children in two cases involving a rule and statute with the same language. In *Holmen v. Miller*, 296 Minn. 99, 103-05, 206 N.W.2d 916. 919-20 (1973), the court held that the sheriff's certificate, which stated that the 13 year old who received service of a civil summons was of suitable age and discretion, was *prima facie* evidence of proper service, and defendant did not rebut the presumption where defendant cited no evidence other than the child's age. In *Temple v. Norris*, 53 Minn. 286, 289, 55 N.W. 133, 134 (1893), the court presumed that a 14-year old was of suitable age and discretion to be served with a civil complaint by the sheriff, where it was not shown that she was not ordinarily intelligent nor in full possession of her facilities. *See* D. MCFARLAND & W. KEPPEL, *supra*, § 935.

Both cases involve service by the sheriff, whose certificate is *prima facie* evidence. However, an affidavit of service from someone other than the sheriff is not *prima facie* evidence, and is entitled to no greater weight that the defendant's affidavit. *See Seivert v. O'Brien*, 202 Minn. 314, 316, 278 N.W. 162, __ (1938).

The defendant should present convincing evidence of the child's age and discretion, such as the child's general behavior, educational level and performance, ability to follow instruction and to deliver letters and notices (i.e., notes from teachers), and when defendant actually received the papers, if at all. *See Kahn v. _____,* No. 27-CV-HC- 14-6322 (Minn. Dist. Ct. 4th Dist. Dec. 15, 2014) (Appendix 772) (dismissal for service on 11-year old child); *Minneapolis Public Housing Authority v. Kline*, No. UD-1930712506 (Minn. Dist. Ct. 4th Dist. Aug. 5, 1993) (Appendix 3.B) (motion to quash writ granted where service was on child who did not reside on the premises); *Joiner v. Harris*, No. UD-1930712506 (Minn. Dist. Ct. 4th Dist. July 23, 1993) (Appendix 3.C) (dismissal for service on 13 year old child who suffered from attention deficit disorder; affidavit of service did not identify the person receiving service).

(4) Service not at the defendant's residence

See Holtberg v. Bommersbach, 236 Minn. 335, 337-38, 52 N.W.2d 766, 768-69 (1952); *Crofton v. _____*, No. HC 030702519 (Minn. Dist.Ct. 4th Dist. July 10, 2003) (Appendix 489) (improper service by leaving summons and complaint at tenant's workplace).

f. *Improper substitute service by mail and posting*

As noted above, service by mail and posting is regulated by Minn. Stat. § 504B.331 (d) (formerly § 566.06):

> (d) Where the defendant cannot be found in the county, service of the summons may be made upon the defendant by posting the summons in a conspicuous place on the property for not less than one week if:
>
> (1) the property described in the complaint is:
>
> (i) nonresidential and no person actually occupies the property; or
>
> (ii) residential and service has been attempted at least twice on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.; and
>
> (2) the plaintiff or the plaintiff's attorney has signed and filed with the court an affidavit stating that:
>
> (i) the defendant cannot be found, or that the plaintiff or the plaintiff's attorney believes that the defendant is not in the state; and
>
> (ii) a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff.
>
> (e) If the defendant or the defendant's attorney does not appear in court on the date of the appearance, the trial shall proceed.

The statute can be broken down into the following sequence:

1. Defendants cannot be found in the county

2. For residential property, service has been attempted at least twice on different days, with at least one of the attempts between 6:00 p.m. and 10:00 p.m.

3. For nonresidential property, no person actually occupies the property.

4. A copy of the summons has been mailed to the defendant at the defendant's last address known to the plaintiff.

5. The plaintiff or counsel files an affidavit (1) stating that the defendant cannot be found, or the affiant believes that the defendant is not in the state, and (2) that a copy of the summons has been mailed to the defendant at the defendant's last address known to the plaintiff.

6. Posting the summons in a conspicuous place on the property for not less than one week.

A number of defenses are available for violations of the statute and the sequence required by it.

(1) <u>The defendant could be found in the county.</u>

Berryhill v. Healey, 89 Minn. 444, 446, 95 N.W. 314, (1903) ("It is provided by G.S. 1894, § 6113, that, if it appears at the time of the making of the complaint that the person against whom it is made is absent from the county, substituted service of the summons may be made by leaving a certified copy at his usual place of residence. Jurisdiction does not depend upon its being so made to appear at the time of filing the complaint, but *depends upon the fact of such absence*") (emphasis added). *See Durigan v. Smith*, No. UD-80515 (Henn. Cty. Mun. Ct., July 25, 1977) (Appendix 3) (substitute service on a person of suitable age and discretion was improper where there was no evidence that defendant could not be found in the county).

(2) Personal service was not attempted twice on different days, with at least one attempt between 6:00 p.m. and 10:00 p.m.

See Project for Pride in Living, Inc. v. _____, No. HC 010815515 (Minn. Dist.Ct. 4th Dist. Aug. 29, 2001) (Appendix 563) (mailing and posting service improper where there was no attempt at personal service between 6:00 and 10:00 p.m.).

(3) The summons was mailed but not posted, or posted but not mailed.

See Harris v. _____, No. HC 031006514 (Minn. Dist.Ct. 4th Dist. Oct. 14, 2003) (Appendix 512) (dismissal for failure to mail summons); *Hartog v. Ketchum*, No. C4-94-796 (Minn. Dist. Ct. 3rd Dist. July 25, 1994) (dismissal where summons was posted but not mailed) (Appendix 40).

(4) Failure to file all of the affidavit files.

In *Koski v. Johnson*, 837 N.W.2d 739 (Minn. Ct. App. 2013), the Court of Appeals held that strict compliance is required by the service statute, reversing the trial court and concluding that the landlord did not strictly comply where the landlord affidavits stating that the defendant cannot be found, or that the plaintiff or the plaintiff's attorney believes that the defendant is not in the state, and that a copy of the summons had been mailed to the defendant at the defendant's last known address if any is known to the plaintiff. *Id.* at 743-44. *See Glenwood Financial LLC v. _____,* No. 27-CV-HC-14-5721 (Minn. Dist. Ct. 4th Dist. Nov. 25, 2014) (Appendix 768) (dismissal where summons and complaint were posted without filing affidavits of mailing and plaintiff); *Igherighe v. _____*, No. HC 020208501 (Minn. Dist.Ct. 4th Dist. Feb. 20, 2002) (Appendix 521) (improper mailing and posting service where plaintiff filed no affidavit of posting, and affidavit of not finding defendant was ambiguous of whether service was attempted in the evening; dismissed and expunged).

(5) The plaintiff did not follow the statutory sequence.

As noted above, the plaintiff must strictly follow the statutory sequence of step to have the right to serve by mailing and posting. *See* discussion at VI.C.2.

In *The Freund Haus, LLC v. _____,* No. 27-CV-HC-1-6609 (Minn. Dist. Ct. 4th Dist. July 22, 2014) (Judge Chou) (Appendix 733), the tenant defendant requested expungement from eviction on her record. The referee denied her motion for expungement with prejudice. The defendant sought reversal of the referee's order. The court found that the eviction was moot at the time of its filing and the court lacked jurisdiction over the case because the plaintiff had actual and constructive notice that the defendant had moved out of the apartment since the defendant (1) knew the defendant was physically assaulted by another tenant of the property; (2) heard from the defendant's father that his daughter could no longer live at the premise; (3) refused to accept the return of the keys by the defendant's father; and

(4) was notified via e-mail, his preferred method of communication, that defendant had moved. The court also held that even if the case was not moot, jurisdiction was never properly conferred to the court to hear the case due to defective service because service by mail and by posting is appropriate only if the defendant cannot be found in the country. In this case, not only plaintiff could have found defendant very easily in the country but plaintiff also made the mistake to mail the summons prior to his second attempt at personal service. As a result, the court ordered the expungement stating that it was clearly in the interests of justice which were not outweighed by the public's interest in knowing about the record.

See Renne v. _____, No. 27-CV-HC-14-5385 (Minn. Dist. Ct. 4th Dist. Oct. 17, 2014) (Appendix 767) (dismissal where summons and complaint were posted before mailing); *TCF National Bank v. Meldahl,* No. 27-CV-HC-14-2308 (Minn. Dist. Ct. 4th Dist. May 21, 2014) (Appendix 769) (dismissal where all affidavits were filed at the same time, rather than following the statutory sequence of filing affidavits before posting); *Howard v._____,* No. 62-HG-CV-13-469 (Minn. Dist. Ct. 2nd Dist. June 21, 2013) (Judge Van de North) (Appendix 765) (dismissal where summons and complaint were posted before filing affidavits of not found and mailing); *Sumpter v. _____,* No. 27-CV-HC-12-6974 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2012) (Appendix 690) (court dismissed the eviction without prejudice, holding that (1) the individual landlord could be represented by another person with a power of authority, (2) the landlord failed to disclose his name an address in the oral lease or otherwise 30 days prior to bringing the eviction action as required by Minn. Stat. § 504B.181; (3) the landlord's 12 day written notice did not terminate the tenancy at will, (4) the landlord did not filed an affidavit of service, (5) the landlord cannot state the tenants were not in the state when she admitted she viewed them at home when she attempted service, (5) names of defendants who did not live on the property would be removed from the caption); *Ali v. _____*, No. HC 040213545 (Minn. Dist.Ct. 4th Dist. Feb. 27, 2004) (Appendix 463) (dismissal for posting before filing affidavits); *Plymouth Avenue Townhomes and Apartments v. Hollie*, No. UD-1950912555 (Minn. Dist. Ct. 4th Dist. Sept. 26, 1995) (Appendix 96); *Blackmon v. Johnson*, No. UD-1950516515 (Minn. Dist. Ct. 4th Dist. June 2, 1995) (Appendix 97); *Gasparre v. Acres*, No. UD-2940715809 (Minn. Dist. Ct. 4th Dist. July 28, 1994) (dismissal) (Appendix 41); *Minneapolis Public Housing Authority v. McKinley*, No. UD-98-0305507 (Minn. Dist. Ct. 4th Dist. Mar. 27, 1998) (Appendix 348A) (Posting of summons before mailing of summons did not comply with statute and rule, requiring dismissal).

(6) Time for posting

The summons must be posted for seven days, but not to the exact hour. *Central Internal Medicine Assoc. P.A. v. Chilgren*, No. C2-00-36, 2000 WL 987858 (Minn. Ct. App. July 18, 2000) (unpublished). *See Bray v. _____,* No. 27-CV-HC-16-27 (Minn. Dist. Ct. 4th Dist. Jan. 22, 2016) (Appendix 766) (dismissal where summons and complaint were posted less than 7 days and tenant and son testified credibly and server did not testify in support of affidavit of service).

f1. *Improper mail and post service on commercial nonresidential tenant*

In *Sabra Health Care Holdings III, LLC v. Trinity Health Systems-Camden, LLC, et. al.,* No. 27-CV-HC-14-1155 (Minn. Dist. Ct. 4th Dist. Mar. 31, 2014) (Appendix 770), the defendant commercial tenant was a nursing home occupied by subtenant residents. The plaintiff landlord had attempted service on the defendant once, mailed to the property and the defendant's corporate address outside the state, and posted on the property.

The court granted dismissal, concluding that in a commercial eviction, the landlord could not post the summons and complaint without first attempting substitute service on a person of suitable age and discretion occupying the premises.

The court could have dismissed the action for two other reasons. The court did not but could have decided that the property was residential due to the occupancy of subtenant residents even though the commercial defendant did not reside there, requiring two attempts at service "on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m." under Minn. Stat. § 504B.331(d)(1)(ii) (formerly § 566.06). The landlord had attempted personal service only once.

The court also could have determined that while the subtenants used the property as residential, the lease between the plaintiff and defendant was commercial and not residential but still occupied. Mail and post service for nonresidential properties is not available if the property is occupied. It is available only if "no person actually occupies the property." Minn. Stat. § 504B.331(d)(1)(i) (formerly § 566.06).

Even where mail and post service is not available for occupied nonresidential property, the plaintiff still may serve (1) personally under Minn. Stat. § 504B.331(a) (formerly § 566.06), or (2) by substitute service on a "a person of suitable age and discretion occupying the premises" under Minn. Stat. § 504B.331(b)(2) (formerly § 566.06). The statute does not require that the person be an agent authorized by the defendant.

It is common for landlords of occupied nonresidential properties to use mail and post service when the landlord cannot serve an authorized agent of the defendant. As noted above, the statute does not authorize it. Any landlord who does not also use substitute service on a person of suitable age and discretion occupying the premises, regardless of whether the person is an authorized agent of the defendant, risks dismissal.

For occupied nonresidential property, the proper sequence of events would be:

1. Attempt personal service on the defendant or an authorized agent.
2. If unsuccessful, the defendant cannot be found in the county,
3. Since the defendant does not have a place of abode, leave a copy at the property described in the complaint with a person of suitable age and discretion occupying the premises.
4. If desiring mail and post service as well, continue as follows.
5. Mail a copy of the summons to the defendant at the defendant's last address known to the plaintiff.
6. The plaintiff or counsel files an affidavit (1) stating that the defendant cannot be found, or the affiant believes that the defendant is not in the state, and (2) that a copy of the summons has been mailed to the defendant at the defendant's last address known to the plaintiff.
7. Post the summons in a conspicuous place on the property for not less than one week.

For unoccupied nonresidential property where mail and post service is available, the proper sequence of events would be:

1. Attempt personal service
2. If unsuccessful, the defendant cannot be found in the county

3. Mail copy of the summons to the defendant at the defendant's last address known to the plaintiff.
4. The plaintiff or counsel files an affidavit (1) stating that the defendant cannot be found, or the affiant believes that the defendant is not in the state, and (2) that a copy of the summons has been mailed to the defendant at the defendant's last address known to the plaintiff.
5. Post the summons in a conspicuous place on the property for not less than one week.

g. *If the defendant is confined to a state institution, failure to serve the institution's chief executive officer.*

See Minn. R. Civ. P. 4.03(a). The county jail may be such an institution. *See Monno v. Rachuy,* 2006 WL 330043 (Minn. Ct. App. Feb. 14, 2006) (unpublished).

h. *Improper affidavit of service*

In *Glenwood Financial LLC v. _____,* No. 27-CV-HC-14-5721 Minn. Dist. Ct. 4th Dist. Nov. 25, 2014) (Appendix 704), the tenants failed to appear at an eviction hearing and a default judgment was entered. The tenants moved to vacate the judgment, reopen the case, and then dismiss the action for service defects. The court found that the tenants met all four Finden factors: (1) the tenants had a reasonable case on the merits, since the plaintiff's affidavit and the affidavits of mailing were missing from the record, and complaint treated a duplex as a single property; (2) the tenants had a reasonable excuse for the default since they had no actual notice of the eviction hearing and there was no basis to establish they should have known of the hearing; (3) the tenants acted with reasonable diligence to reopen the case; and (4) there is no substantial prejudice to the landlord since the landlord has the ability to refile the action and have it adjudicated promptly. Accordingly, the court granted the motion to reopen, and then dismissed the case without prejudice due to the service defects. *See Joiner v. Harris*, No. UD-1930712506 (Minn. Dist. Ct. 4th Dist. July 23, 1993) (Appendix 3.C) (dismissal for service on 13 year old child who suffered from attention deficit disorder; affidavit of service did not identify the person receiving service).

h1. *Untimely or no affidavit of service*

Minn. R. Gen. P. 605 requires a plaintiff in the Fourth and Second Districts for Hennepin and Ramsey Counties to file the affidavit of service by 3:00 p.m. three business days before the hearing, and gives the court the discretion to strike the action. In *Sumpter v. _____,* No. 27-CV-HC-12-6974 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2012) (Appendix 690), the court dismissed the eviction without prejudice, holding that (1) the individual landlord could be represented by another person with a power of authority, (2) the landlord failed to disclose his name an address in the oral lease or otherwise 30 days prior to bringing the eviction action as required by Minn. Stat. § 504B.181; (3) the landlord's 12 day written notice did not terminate the tenancy at will, (4) the landlord did not file an affidavit of service, (5) the landlord cannot state the tenants were not in the state when she admitted she viewed them at home when she attempted service, (5) names of defendants who did not live on the property would be removed from the caption. *See Okoiye v. Washington*, No. UD-1990708534 (Minn. Ct. Dist. July 22, 1999) (Appendix 425) (dismissal for failure to file affidavit of service; expungement motion granted; tenant awarded costs); *Pillsbury Partnership v. Loomer*, No. UD-1941121505 (Minn. Dist. Ct. 4th Dist. Dec. 2, 1994) (Appendix 105) (dismissal for failure to file affidavit of service).

i. *Waiver of defense*

Often tenants have other defenses in addition to the defense of improper service. If a defendant does not move the District Court for dismissal based on lack of personal jurisdiction before or contemporaneously with a motion for dismissal on other grounds or partial summary judgment, the defendant invokes the jurisdiction of the District Court and waives by implication, the defense of lack of personal jurisdiction. *Patterson v. Wu Family Corporation*, 608 N.W.2d 863 (Minn. 2000).

j. *Service before filing action*

Service may not occur before filing the action. *Stevens Community Assoc. v. _____,* No. HC 010003507 (Minn. Dist. Ct.Ct. 4th Dist. Oct. 12, and Dec. 13, 2000) (Appendix 579) (dismissal where affidavit of service claimed service before action was filed; expungement granted later).

k. *Service on business*

Service on a business must be on a person authorized to accept service. *Tri Star Developers, LLC v. _____*, No. HC 010109514 (Minn. Dist. Ct. 4th Dist. Oct. 17, 2001) (Appendix 584) (improper service on employee of business who was not an officer and not authorized to accept service; defendant business was incorrectly named; default judgment vacated and action dismissed and expunged).

l. *Incomplete service*

In *Luciow v. _____,* No. 27-CV-HC-14-5999 (Minn. Dist. Ct. 4th Dist. Dec. 4, 2014) (Appendix 764), the court granted dismissal for service of the summons without the complaint.

3. It is unclear whether defendants can be designated as John Doe or Jane Doe

The summons must be directed to "stating the full name and date of birth of the person against whom the complaint is made, unless it is not known . . ." Minn. Stat. § 504B.321 (formerly § 566.05). The eviction (unlawful detainer) statutes do not contain authority for commencement of an action against an unknown defendant by use of a fictitious name. *Compare with* Minn. Stat. §§ 558.02 (partition of real estate), 559.02 (adverse claims to real estate).

While Minn. R. Civ. P. 9.08 provides for designating the unknown name of an opposing party with any name, it also contemplates amendment of the pleadings with the true name of the party. *See Peterson v. Sorlien*, 299 N.W.2d 123, 132 (Minn. 1980); *Leaon v. Washington County*, 397 N.W.2d 867, 871-72 (Minn. Ct. App. 1986). Since the eviction (unlawful detainer) action is a summary proceeding, some of the Minnesota Rules of Civil Procedure may not apply. It appears that Rule 9.08 contemplates an action of longer duration, which would allow for identification of the true names of the defendants.

The writ of restitution should not be enforced against unnamed occupants. The writ of restitution is to be executed against the defendant if he or she can be found in the county, or any adult member of the defendant's family, or other person in charge of the premises. The writ directs the defendant to remove himself or herself, the defendant's family, and all of their personal property from the premises. Minn. Stat. § 504B.365 (formerly § 566.17).

The writ cannot be enforced against a person who was not a party to the eviction (unlawful detainer) action nor named in the writ of restitution. *See Kowalenko v. Haines*, No. C6-85-1365 (Minn. Ct. App., July 24, 1985) (attached as Appendix 4). In *Kowalenko*, the petitioner had subleased the apartment from the former tenants. The writ was enforced against the petitioner, pursuant to an unlawful

detainer action against former tenants, but not the petitioner. The petitioner was not named in the writ. The court ordered the landlord to return possession of the apartment and petitioners personal property to her, pursuant to Minn. Stat. § 504B.375 (formerly § 566.175).

If the sheriff cannot determine whether the designation of "John" or "Jane Doe" includes the person in the premises, the sheriff should not enforce the writ. *See Casper v. Klippen*, 61 Minn. 353, 356, 63 N.W. 737, 739 (1895). Given the uncertainty of application of Rule 9.08 and the problems in enforcing a "John" or "Jane Doe" writ, the prudent landlord should avoid such designation and discover the names of tenants prior to commencing an eviction (unlawful detainer) action.

The tenant who has not been specifically named in an eviction (unlawful detainer) action faces a dilemma about challenging how the case has been pled. While the tenant may have grounds for re-opening the action and vacating the judgment based on a lack of personal jurisdiction, the landlord may simply refile another action pleading the name of the tenant. If a tenant does not have any other defenses to the action, the tenant simply will have bought more time to move by forcing the landlord to file an eviction (unlawful detainer) action which will become part of the tenant's record with the tenant screening company, making it more difficult to move. In addition, if the case name remains John or Jane Doe, then tenant screening agencies may not be able to connect the case to the tenant. Depending on other defenses available to the tenant, the tenant may be better served by raising the issue with the landlord and negotiating for more time to move and a positive or neutral tenant reference, thus avoiding a court file which creates an unfavorable tenant screening report.

In *Koop v.* _____, No. 27-CV-HC-09-1163 (Minn. Dist. Ct. 4th Dist. Feb. 17, 2009) (Appendix 606), the eviction was dismissed for improper service, where action listed four named defendants and affidavit of service claimed service on “John Doe.”

4. Subtenants

The landlord may bring the action against the tenant and subtenant, jointly. *Judd v. Arnold*, 31 Minn. 430, 433, 18 N.W. 151, 152 (1884). However, if the subtenant is not named as a party in an action against the tenant, the writ cannot be enforced against the subtenant. *Bagley v. Steinberg*, 34 Minn. 470, 471, 26 N.W. 602, __ (1886); *Kowalenko v. Haines*, No. C6-85-1365 (Minn. Ct. App. July 24, 1985) (Appendix 4).

D. FAILURE TO SATISFY PRECONDITIONS TO RECOVERY OF THE PREMISES

1. The plaintiff is not entitled to possession, VI.D.1
1a. Plaintiff's agent is not authorized with a proper power of authority, VI.D.1a
2. Landlord address disclosure, VI.D.2
2a. Disclosure of the identity of the principal of the property, VI.D.2a
3. Trade name registration, VI.D.3
4. Foreign corporation, VI.D.4
5. Tenant in possession for at least three years, VI.D.5
6. Failure to state the facts that authorize recovery of the premises, VI.D.6
7. Unauthorized practice of law, VI.D.7
8. Failure to attach to the complaint or provide at the initial hearing a copy of the termination notice or lease (Hennepin and Ramsey County Housing Court), VI.D.8
9. Failure to provide defendant with a copy of the lease before commencement of the action, VI.D.9
10. Failure to timely file the affidavit of service (Fourth District; Hennepin and Ramsey County Housing Courts), VI.D.10
11. Section 8 Existing Housing Certificate and Voucher Programs: Failure to give notice to the public housing authority, VI.D.11
12. Bankruptcy, VI.D.12
13. Stay of eviction action pending parallel litigation, VI.D.13
14. Failure to join an indispensable party, VI.D.14
15. Lack of jurisdiction over Indian trust property, VI.D.15
16. Action is inappropriate method to resolve complex claims, VI.D.16
17. Failure to sign complaint, VI.D.17
18. Landlord's preparation of summons, VI.D.18
19. Premature action or claim that had not accrued, VI.D.19
20. Plaintiff's voluntary dismissal, VI.D.20
21. Lease Signed under Duress, VI.D.21
22. Filing case in violation of consumer fraud order, VI.D.22
23. Domestic abuse, VI.D.23
24. Summons content, VI.D.24
25. Failure to use written lease, VI.D.25
26. Mootness, VI.D.26
27. Plaintiff's default, VI.D.27
28. Statute of frauds, VI.D.28
29. Tenant waiver of claims, VI.D.29
30. Statute of limitations, VI.D.30
31. Servicemembers Civil Relief Act, VI.D.31
32. Accord and satisfaction, VI.D.32

0. Lack of subject matter jurisdiction

Subject matter jurisdiction for eviction actions is limited by statute. *See* discussion, *supra*, at II.

In the Second District Court (Ramsey County) and Fourth District Court (Hennepin County), Housing Courts have limited subject matter jurisdiction. *See* discussion, *supra*, at V.G.0.

1. The plaintiff is not entitled to possession

The action may be commenced only by the person entitled to the premises, Minn. Stat. § 504B.285 (formerly § 566.03), subd. 1, or the authorized management company or agent for the owner of the premises. Minn. Stat. § 481.02, subd. 3(13) (emphasis added). *See GISP, Inc. v. _____,* No. 27-CV-HC-12-4522 (Minn. Dist. Ct. 4th Dist. Aug. 14, 2012) (Appendix 803) (dismissal granted where plaintiff did not own the property and failed to submit documentation that it owned the property or was otherwise entitled to possession); *Devonshire v. _____,* No. HC 051220530 (Minn. Dist. Ct. 4th Dist. Jan. 13, 2006) (Appendix 642) (eviction dismissed and expunged for improper plaintiff and default by plaintiff); *Johnson v. Robertson*, No. UD-193072254 (Minn. Dist. Ct. 4th Dist. Aug. 4, 1993) (Appendix 4.B.1) (dismissal where plaintiff's agent appeared without written authorization); *Remas Properties, LLC v. Student*, No. UD-1940705517 (Minn. Dist. Ct. 4th Dist. July 19, 1994) (Appendix 27); *Lewis Properties v. Pruitt*, No. UD-1950315516, Decision Order at 2 (Minn. Dist. Ct. 4th Dist. Sept. 22, 1995) (Appendix 92).

An agent must file the action in the name of the principal. *See Zelevarov v. _____,* No. 27-CV-HC 14-5892 (Minn. Dist. Ct. 4th Dist. Nov. 14, 2014) (Appendix 756) (dismissal for (1) failure to register trade name with Secretary of State, as staying action would frustrate summary nature, and (2) failure to comply with Minn. R. Gen. P. 603 where agent sued in agent's name rather than principal's name); *Kavati v. _____,* Court File No. 27-CV-HC-14-4945 (Minn. Dist. Ct. 4th Dist. Sep. 23, 2014) (Appendix 787) (dismissal where agent sued in own name and LLC owned building, citing Minn. R. Gen. P. 603).

The plaintiff must properly identify itself. *See Twin City Development Co. v. _____,* No. 27-CV-HC-14-4804 (Minn. Dist. Ct. 4th Dist. Sep. 23, 2014) (Appendix 773) (dismissal for substitute service on a neighbor, complaint misstated the premises, plaintiff's agent did not have a power of authority, plaintiff incorrectly identified itself in the complaint)

One joint tenant can evict a lessee from co-owned property without the other joint tenant's consent. *Abraham V. Bellefy*, No. A03-585, 2004 WL 193127 (Minn. Ct. App. Feb. 3, 2004) (unpublished).

In *Hedlund v. Potter*, No. C3-91-1542 (Minn. Dist. Ct. 10th Dist.), the action was commenced by an individual. The court found that the individual plaintiff was not a proper party, since he simply was a trustee for an entity that he had formed, and that he provided no evidence stating his relationship to the entity. Order (Nov. 26, 1991) (Appendix 4.C.1). *See Marguerite R. Hermann Trust v. _____,* Court File No. 27-CV-HC-14-1036 (Minn. Dist. Ct. 4th Dist. Mar. 6, 2014) (Appendix 788) (dismissal of action by trust where trustee personally leased property in his own name and also used a building name in its termination notice); *FTK Properties, Inc. v. US Benefit Association, LLC*, No. HC 010518508 (Minn. Dist. Ct. 4th Dist. June 1, 2001) (Appendix 503) (action dismissed without prejudice where three shareholder corporation landlord of commercial property was represented by a person who was not an attorney and did not have a power of attorney.

A landlord who files bankruptcy listing the premises as part of the bankruptcy estate relinquishes control of the premises to the bankruptcy court, and does not have the right to file an eviction (unlawful detainer) action until the bankruptcy court abandons the property. *See Grandco Management v. Wielding*, No. UD-1921202525 (Minn. Dist. Ct. 4th Dist. Dec. 16, 1993) (Appendix 4.B.3). If the

plaintiff is a corporation, the attorney or advocate for the tenant should determine whether the corporation is in good standing by contacting the Secretary of State at 296-2803. If the corporation is not in good standing, the court should dismiss the action because a corporation not in good standing would not be entitled to possession as a proper party.

Similarly, the owner may not be a proper plaintiff when the property is under the control of a court appointed administrator in a tenant remedies action. *See Sun Trust Mortgage Inc. v. _____*, No. 27-CV-HC-08-5044, Order (Minn. Dist. Ct. 4th Dist. June 25, 2008) (Appendix 622) (eviction filed by owner dismissed and expunged where property was under control of administrator in another action); Minn. Stat. §§ 504B.385, 504B.425, 504B.435, 504B.445, 504B.451, 504B.455, 504B.461.

It seems increasingly common for landlords to defend a retaliation claim by asserting that they have sold or are going to sell the property. In *Mattice v. Judge*, No. UD-1990504519 (Minn. Dist. Ct. 4th Dist. May 19, 1999) (Appendix 399), the plaintiff was a purchaser on a purchase agreement for the property, but there had been no closing on the purchase agreement, the seller had not yet conveyed a deed to the plaintiff, and the purchase agreement did not otherwise entitle the plaintiff to possession of the property prior to closing on the purchase agreement. The court concluded that the plaintiff was not entitled to current possession of the property. *See Filas v. _____*, No. HC 040115532 (Minn. Dist. Ct. 4th Dist. Feb. 18, and Mar. 10, 2004) (Appendix 497) (motion to quash writ granted and eviction dismissed where "Plaintiffs were not the real parties in interest when the complaint was filed because they had executed a contract for deed, now cancelled, with another vendee", later expunged).

1a. Plaintiff's agent is not authorized with a proper power of authority

When a person appears on behalf of the plaintiff, two issues much be analyzed: (1) is the person engaging in the unauthorized practice of law, *see* discussion, *supra*, at V.J, and *infra*, at VI.D.7; and (2) is the person properly authorized.

The action may be commenced only by the person entitled to the premises, Minn. Stat. § 504B.285 (formerly § 566.03), subd. 1, or the authorized management company or agent for the owner of the premises. Minn. Stat. § 481.02, subd. 3(13) (emphasis added).

Minn. Gen. R. Prac. 603 provides:

> An unlawful detainer action shall be brought in the name of the owner of the property or other person entitled to possession of the premises. No agent shall sue in the agent's own name. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing. No person other than a principal or a duly licensed lawyer shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at the time of filing, and no person other than a duly licensed lawyer shall be allowed to appear unless the Power of Authority is so attached to the complaint. An agent or lay advocate may appear without a written Power of Authority if the party being so represented is an individual and is also present at the hearing.

Lack of the power of authority for the appearing agent requires dismissal. *See Twin City Development Co. v. _____,* No. 27-CV-HC-14-4804 (Minn. Dist. Ct. 4th Dist. Sep. 23, 2014) (Appendix 773) (dismissal for substitute service on a neighbor, complaint misstated the premises, plaintiff's agent did not have a power of authority, plaintiff incorrectly identified itself in the complaint); *Strohmeirer v. Akinsipe,* No. 27-CV-HC- 13-5163 (Minn. Dist. Ct. 4th Dist. Sep. 18, 2013) (Appendix 800) (rent

escrow action; rent abatement of $2,650 over 7 months for flooding and complete abatement for most recent month; if violation not remedies, plaintiff may move for additional remedies; defendant-landlord was in default where agent appeared without power of authority; tenant's lay testimony on medical causation excluded but expert testimony could have been offered); *HNA Properties v. _____,* No. 27-CV-HC-13-757 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2013) (Appendix 801) (dismissal for failure to comply with Minn. R. Gen. P. 603; the subsequent denial of costs was reversed in *HNA Properties v. Moore,* 848 N.W.2d 238, 241 (Minn. Ct. App. 2014); *DeCourey v. Peterson*, No. UD-1940614513 (Minn. Dist. Ct. 4th Dist. July 1, 1994) (Appendix 42).

A power of authority signed by a person other than the principle must be notarized. *Minneapolis Public Housing Authority v. Redding*, No. UD-1930222507 (Minn. Dist. Ct. 4th Dist. Mar. 5, 1993) (Appendix 4.B.2); Minn. Stat. § 523.01; *Remas Properties, LLC v. Student*, No. UD-1940705517 (Minn. Dist. Ct. 4th Dist. July 19, 1994) (Appendix 27).

In *Nguyen v. _____,* No. 27-CV-HC-12-6065 (Minn. Dist. Ct. 4th Dist. Oct. 15, 2012) (Appendix 802), the court dismissed the action where a purported agent appear for the plaintiff but no power of authority was attached to the complaint at the time of filing. The court concluded that the plaintiff could not cure the failure after filing the complaint.

In *Sumpter v. _____,* No. 27-CV-HC-12-6974 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2012) (Appendix 690), the court dismissed the eviction without prejudice, holding that (1) the individual landlord could be represented by another person with a power of authority, (2) the landlord failed to disclose his name an address in the oral lease or otherwise 30 days prior to bringing the eviction action as required by Minn. Stat. § 504B.181; (3) the landlord's 12 day written notice did not terminate the tenancy at will, (4) the landlord did not filed an affidavit of service, (5) the landlord cannot state the tenants were not in the state when she admitted she viewed them at home when she attempted service, (5) names of defendants who did not live on the property would be removed from the caption.

The power of authority must be properly executed. It is common for alleged agents to appear with a power of authority or attorney that does not refer to the action and is not contemporaneous with the action. Rule 603 governs "parties" in Housing Court. The rule plainly and unambiguously prohibits an agent from suing in the agent's own name and outlines the only circumstances under which an agent may appear on behalf of a principal. Rule 603 does not authorize appearances with a power of attorney. In *Rogers v. _____,* No. 27-CV-HC-14-3567 (Minn. Dist. Ct. 4th Dist. Dist. July 18, 2014) (Appendix 693), the court dismissed the case without prejudice because (1) plaintiff failed to adequately plead disclosure under Minn. Stat. § 504B.181 as required by Minn. R. Gen. P. 604(a)(3); and (2) a defect in the power of authority.

The primary circumstance discussed is under authority granted by "the Power of Authority" for an eviction action. The rule uses singular, case-specific language throughout its text, starting with its reference to "[a]n unlawful detainer action." Critically, Rule 603 refers to each "the Power of Authority" and "the complaint" on three separate occasions. The rule refers to "the time of filing" of the complaint on two occasions in requiring attachment of "the Power of Authority."

The rule does not refer to attachment of "a Power of Authority" to the Complaint, language open to a more general interpretation. Similarly, the rule does not refer in any way to a Power of Attorney or any other type of authority-conferring instrument. Rather, the rule requires "the Power of Authority" to be attached as a prerequisite to an agent suing on a principal's behalf.

Consistent with the language of Rule 603, the Statewide Judicial Branch and the Fourth Judicial District have approved "Power of Authority in Eviction Action" forms. The court-approved forms require the grantor to specify the particular eviction action and court file number in which the authority is granted contemporaneously with the filing of the Complaint. *See* Power of Authority in Eviction Action Forms, http://www.mncourts.gov/default.aspx?page=513&item=293&itemType=formDetails.

The approved forms require additional assurances of reliability of the granted authority, including that the grantor has authority as principal or by her/his relationship to the principal. The forms require verification of the component facts by the grantor-affiant at the time of the filing of the Complaint in an eviction action, consistent with the language and intent of Rule 603.

Use of a power of attorney not only is not authorized under Rule 603, but also does not authorize to the holder to represent the party. In *In re the Conservatorship of Riebel*, 625 N.W.2d 480, 483 (Minn. 2001), the Supreme Court of Minnesota held that a power of attorney does not authorize an attorney-in-fact to engage in the practice of law. The *Riebel* court relied on its "inherent power to regulate the practice of law for the protection of the public." *Id.* The court focused on the danger of construing powers of attorney to authorize non-attorneys to prosecute claims in court as "providing a very easy means of circumventing the prohibition against the unauthorized practice of law." *Id.*, at 482.

The *Riebel* court's analysis strongly weighs against a judicial endorsement of a blanket authority purportedly granted in a general power of attorney. Moreover, the *Riebel* court's analysis supports an interpretation of Rule 603 that is narrow and case-specific, so as not to allow the "parties" that are subject to the rule to usurp the judiciary's role in regulating the practice of law. Of course, this narrow interpretation is also consistent with the language and purpose of the rule, including the Task Force's concern with the issue of the unauthorized practice of law at the time Rule 603 was adopted. *See* Minn. Gen. R. 603, Task Force Comment.

1b. Power of attorney

Use of a power of attorney not only is not authorized under Rule 603, but also does not authorize to the holder to represent the party. In *In re the Conservatorship of Riebel*, 625 N.W.2d 480, 483 (Minn. 2001), the Supreme Court of Minnesota held that a power of attorney does not authorize an attorney-in-fact to engage in the practice of law. The *Riebel* court relied on its "inherent power to regulate the practice of law for the protection of the public." *Id.* The court focused on the danger of construing powers of attorney to authorize non-attorneys to prosecute claims in court as "providing a very easy means of circumventing the prohibition against the unauthorized practice of law." *Id.*, at 482.
See discussion, *supra*, at VI.D.1a.

2. Landlord address disclosure

a. Failure to disclose

The landlord cannot maintain an eviction (unlawful detainer) action if the names and addresses of the authorized manager of the premises and the owner or agent authorized to accept service, are not disclosed as required by the statute, and such information is not known by the tenant at least 30 days before the issuance of the summons. Minn. Stat. § 504B.181 (formerly § 504.22).

504B.181 LANDLORD OR AGENT DISCLOSURE.

Subdivision 1. Disclosure to tenant.

There shall be disclosed to the residential tenant either in the rental agreement or otherwise in writing prior to commencement of the tenancy the name and address of:

(1) the person authorized to manage the premises; and

(2) the landlord of the premises or an agent authorized by the landlord to accept service of process and receive and give receipt for notices and demands.

Subd. 2. Posting of notice.

(a) A printed or typewritten notice containing the information which must be disclosed under subdivision 1 shall be placed in a conspicuous place on the premises. This subdivision is complied with if notices posted in compliance with other statutes or ordinances contain the information required by this section.

(b) Unless the landlord is required to post a notice by section 471.9995, the landlord shall also place a notice in a conspicuous place on the property that states that a copy of the statement required by section 504B.275 is available from the attorney general to any residential tenant upon request.

Subd. 3. Service of process.

If subdivisions 1 and 2 have not been complied with and a person desiring to make service of process upon or give a notice or demand to the landlord does not know the name and address of the landlord or the landlord's agent, as that term is used in subdivision 1, then a caretaker or manager of the premises or an individual to whom rental payments for the premises are made shall be deemed to be an agent authorized to accept service of process and receive and give receipt for notices and demands on behalf of the landlord. In case of service of process upon or receipt of notice or demand by a person who is deemed to be an agent pursuant to this subdivision, this person shall give the process, notice, or demand, or a copy thereof, to the landlord personally or shall send it by certified mail, return receipt requested, to the landlord at the landlord's last known address.

Subd. 4. Information required for maintenance of action.

Except as otherwise provided in this subdivision, no action to recover rent or possession of the premises shall be maintained unless the information required by this section has been disclosed to the tenant in the manner provided in this section, or unless the information required by this section is known by or has been disclosed to the tenant at least 30 days prior to the initiation of such action. Failure by the landlord to post a notice required by subdivision 2, paragraph (b), or section 471.9995 shall not prevent any action to recover rent or possession of the premises.

Subd. 5. Notice to landlord.

Any residential tenant who moves from or subleases the premises without giving the landlord at least 30 days written notice shall void any provision of this section as to that tenant.

Subd. 6. Successors.

This section extends to and is enforceable against any successor landlord or individual to whom rental payments for the premises are made.

In *SN2 LLC v. _____,* No. 27CVHC 15-2234 (Minn. Dist. Ct. 4th Dist. June 4, 2015) (Appendix 688), the plaintiff-landlord brought an eviction action against defendant-tenants. The housing court found that the plaintiff-landlord/owner had not disclosed its address more than 30 days prior to commencing the eviction action as required by Minn. Stat. § 504B.181. The fact that the prior landlord/owner had complied with the disclosure requirements was irrelevant. In light of these findings, the housing court granted the defendants' motion for summary judgment and dismissed the action without prejudice. *See Champlin Leased Housing II LP dba Elm Creek Apartments v. _____,* No. 27-CV-HC-3327 (Minn. Dist. Ct. 4th Dist. July 1, 2014) (Appendix 691) (court dismissed the case without prejudice because the plaintiff failed to satisfy the disclosure requirements of Minn. Stat. § 504B.181); *Arreguin v. _____,* No. 27-CV-HC-13-207 (Minn. Dist. Ct. 4th Dist. Jan. 22, 2013) (Appendix 694) (court dismissed the case without prejudice because the plaintiff failed to satisfy the disclosure requirements of Minn. Stat. § 504B.181); *Sumpter v. _____,* No. 27-CV-HC-12-6974 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2012) (Appendix 690) (court dismissed the eviction without prejudice, holding that (1) the individual landlord could be represented by another person with a power of authority, (2) the landlord failed to disclose his name an address in the oral lease or otherwise 30 days prior to bringing the eviction action as required by Minn. Stat. § 504B.181; (3) the landlord's 12 day written notice did not terminate the tenancy at will, (4) the landlord did not filed an affidavit of service, (5) the landlord cannot state the tenants were not in the state when she admitted she viewed them at home when she attempted service, (5) names of defendants who did not live on the property would be removed from the caption); *Smith v. _____,* No. 27-CV-HC-06-4423 (Minn. Dist. Ct. 4th Dist. Sep. 27, 2006) (Appendix 664) (dismissal for violation of Minn. Stat. § 504B.181; costs awarded); *Sakala v. _____*, No. 27-CV-HC-08-6156 (Minn. Dist. Ct. 4th Dist. Sep. 9, 2008) (Appendix 619) (order reversing referee order for eviction, and dismissing eviction action for landlord's failure to post address until two weeks after filing eviction action); *Haage v. Strong*, No. UD-1911206527 (Minn. Dist. Ct. 4th Dist. Dec. 20, 1991) (Appendix 4.A) (dismissal for landlord's failure to give oral or written notice of his address); *Dube v. Dahill*, Partial Transcript, No. 2941107802 at 6 (Minn. Dist. Ct. 4th Dist. Nov. 17, 1994) (Appendix 137); *Edwards v. Bledsoe*, No. UD-1940712561 (Minn. Dist. Ct. 4th Dist. Aug. 16, 1994) (Appendix 43) (plaintiff failed to prove compliance by preponderance of evidence).

In *Hoskins v. _____,* No. HC 051116548 (Minn. Dist. Ct. 4th Dist. Dec. 5, 2005) (Appendix 654), the court dismissed the eviction action where landlord did not reside at address that he disclosed to tenant in the lease, in violation of Minn. Stat. § 504B.181. The court ordered the landlord to wait 30 days before filing another action, with rent paid into court by tenant returned to tenant.

b. Post office boxes and commercial mailbox services

A post office box or commercial mailbox service should not comply with the statute, since neither is an address where the plaintiff can be personally served. However, an unpublished Court of Appeals decision incorrectly reached the other conclusion.

In *ARU Props., LLC v. Clark,* No. A16-1126, 2017 Minn. App. Unpub. LEXIS 288 (Minn. Ct. App. April 3, 2017) (unpublished), the owner filed an eviction action alleging breach and rent. The referee denied the tenant's motion for dismissal for disclosing only a commercial mailbox service. The Court of Appeals affirmed the district court in an unpublished decision. The court concluded that

disclosure of a commercial mailbox service complied with Minn. Stat. § 504B.285, subd. 5, noting the referee's conclusion that the rent escrow action statute, Minn. Stat. § 504B.385 allows for service on post office box.

This statutory construction analysis in this unpublished decision is weak. Minn. Stat. § 504B.181 (formerly Minn. Stat. § 504.22) dates back to 1974 and predates Minn. Stat. § 504B.385 (formerly Minn. Stat. § 566.34), which was enacted in 1989. The 1974 Legislature certainly did not anticipate that it would created the rent escrow action in 1989 and provide for alternative service. The tenant remedies action statute in 1974 did not allow a tenant to serve a pleading on a post office box. Minn. Stat. § 504B.385 (formerly Minn. Stat. § 566.34). This author was a lobbyist who drafted part of the rent escrow action statute, and he advocated for post office box service because so many landlord violated the disclosure statute. As *ARU Props., LLC* is unpublished, it is not precedential. *See* discussion at I.A.3.

Many district courts have confronted the issue and have held that post office boxes do not comply with the statute. In *Brown v. Austin*, No. UD-1000203527 (Minn. Dist. Ct. 4th Dist. Feb. 16, 2000) (App. 382), the court first ruled that a post office box number is not a sufficient disclosure under § 504B.181. Since there was a dispute in fact over whether an actual street address had been provided, the case was scheduled for trial with disclosure being the first issue to be raised. Tr. at 3. The court then ruled that since the tenant's habitability defense was based on a notice of intent to condemn the property, the court would not require the tenant's to deposit any rent into court. *Id.* 5-8. *See Ali v. _____,* No. 600223537 (Minn. Dist. Ct. 4th Dist. May 16, 2006) (Appendix 667) (referee dismissed eviction where landlord disclosed to tenant only a post office box and not a street address; judge reversed referee denial of statutory costs, holding award of costs in mandatory; tenant may credit award of costs against rent with notice to landlord); *Igherighe v. _____,* No. HC-1011001519 (Minn. Dist. Ct. 4th Dist. Oct. 10, 2001 and Feb. 19, 2002) (Appendix 519) (costs awarded and file expunged where action was dismissed where plaintiff landlord of Section 8 Voucher tenant failed to served Section 8 office, plaintiff disclosed only a post office box and not a street address to tenant, plaintiff pled rent due from Section 8 and not the tenant, and plaintiff named a non-tenant as a defendant); *Franklin v. Bryd*, No. HC-000103511 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 390) (Dismissal where lease provided only a post office box address for the landlord, in violation of § 504B.181); *Swartwood v. Dampier*, No. UD-1950803520 (Minn. Dist. Ct. 4th Dist. Aug. 23, 1995) (Appendix 172); *Pocklington v. Brown*, No. UD-1950113512 (Minn. Dist. Ct. 4th Dist. Jan. 26, 1995) (Appendix 98); *Mathers v. Davis*, No. UD-1911002512 (Minn. Dist. Ct. 4th Dist. Oct. 11, 1991) (Appendix 4.B); *Anderson v. Whitney*, No. 510527, Transcript at 5-8 (Minn. Dist. Ct. 4th Dist. May 23, 1989) (Appendix 5).

Other courts have found the landlord's use of a commercial mailbox service, while appearing to be a street address, is not a proper address under Minn. Stat. § 504B.181 (formerly § 504.22) because the landlord could not be personally served there. *Towns v. Dailey*, No. UD-01970912521 (Minn. Dist. Ct. 4th Dist. Oct. 13, 1997) (Appendix 300); *Smith v. Reese*, No. UD-1961203542 (Minn. Dist. Ct. 4th Dist. Jan. 3, 1997) (Appendix 293) (Box at private commercial mail collection/distribution center is not an address where plaintiffs could be personally served, in violation of § 504.22 (now § 504B.181)).

c. Changes in ownership or name

The statute extends to and is enforceable against any successor, owner, caretaker, manager, or individual to whom rental payments for the premises are made. § 504B.181 (formerly § 504.22). *But see O'Connor v. Miller*, UD-194-0211505 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1994) (Appendix 178) (new landlord complied with disclosure statute, even though he filed case 10 days after receiving title through tax forfeiture).

Changes in the landlord's name less than 30 days before filing might violate the statute. *Compare Sterling Properties, L.L.C. v. _____*, No. UD-1961113528 (Minn. Dist. Ct. 4th Dist. Nov. 22, 1996) (Appendix 295a) (Dismissal for failure to disclose name 30 days before filing action, where Sterling Properties, Inc. conveyed property to Sterling Properties, L.L.C., and the latter filed the action that same day), *with Carriagehouse Apartments v. Stewart*, No. UD-1970107501 (May 13, 1997) (Appendix 249) (Landlord complied with § 504.22 (now § 504B.181) where rental documents referred to "Gene Glick Management Corp." and a local address, signs at the address contained variations on that name, and the tenant knew the location of the building).

d. Failure to plead disclosure

The landlord also must plead compliance with the statute. In *Rogers v. _____,* No. 27-CV-HC-14-3567 (Minn. Dist. Ct. 4th Dist. Dist. July 18, 2014) (Appendix 693), the court dismissed the case without prejudice because (1) plaintiff failed to adequately plead disclosure under Minn. Stat. § 504B.181 as required by Minn. R. Gen. P. 604(a)(3); and (2) a defect in the power of authority. *See Stein v. _____,* No. HC 000804513 (Minn. Dist. Ct. 4th Dist. Aug. 18, 2000) (Appendix 577) (dismissal where landlord failed to plead compliance with address disclosure statute, Minn. Stat. § 504B.181 (formerly § 504.22)); *Henz v. Bronzin*, No._____ (Minn. Dist. Ct. 6th Dist. June 4, 1991) (Appendix 4.C) (dismissal for plaintiff's failure to plead compliance with Minn. Stat. § 504.22 (now § 504B.181)). The landlord's failure to post a rental license under local ordinance may be additional proof that the landlord has not complied with the disclosure statute as well.

e. Disclosure ordinances

Some local ordinances require a landlord who does not live in the local area to maintain a contact person who resides in the area. Minneapolis Code of Ord. § 244.1840 (within 16-county metropolitan area); (Appendix 11.A); Brooklyn Center Ordinance § 12-904 (within metropolitan counties). (Appendix 244a) Failure to comply with such ordinances may be a violation of § 504B.181 (formerly § 504.22). *Anda Construction v. Peoples*, No. UD-01970321516 (Minn. Dist. Ct. 4th Dist. Apr. 2, 1997) (Appendix 244) (Violation of local contact ordinance violates § 504.22 (now § 504B.181)). *See City of Minneapolis v. Swanson*, No. C5-97-312, 1997 WL 471182 (Minn. Ct. App. Aug. 19, 1997) (Appendix 251) (Unpublished: Ordinance requiring landlord to list residential address rather than post office box on rental license is constitutional).

2a. Disclosure of the identity of the principal of the property

Consistent with the Minn. Stat. § 504B.181 (formerly 504.22) requirement that the landlord disclose its address to the tenant, landlords have been held to disclose the identity of the principal of the property. In order for the tenant to bring actions concerning the property, the tenant not only needs an address, but also the identity of the principal of the property.

In *Trilogy Properties of MN LLC v. _____*, No. 27-CV-HC-11-7635 (Minn. Dist. Ct. 4th Dist. Dec. 16, 2011) (Appendix 689) (also posted at http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html), the court held noted:

> 2. Mr. Benson, owner of Trilogy Properties, testified in relevant part that the owner of the property is Mr. Brad Cartier; that Mr. Cartier has a rental license which is posted "in the kitchen cabinet." The court received in evidence without objection Plaintiff's Exhibit #3, which verifies that the City of Minneapolis has issued a rental license for the property; the license is in the name

of "Bradley A. Cartier" at an address in Forest Lake, Minnesota. The lease does not contain the name Bradley Cartier; the lease does not contain a street address for either the owner, Bradley Cartier, or the Plaintiff, Trilogy Properties of MN LLG.

3. The Defendant made a motion for dismissal after the Plaintiff's case, based on failure of the Plaintiff to demonstrate compliance with the jurisdictional requirements of the statute, MSA 5048.181.

4. This Court has long interpreted the statute as requiring that a landlord must provide to a tenant, prior to initiating an eviction, a street address for either the owner or for a person authorized to accept service on behalf of the owner. A post office box is not sufficient. A purpose of the statute is to put the parties to a residential tenancy on equal footing as to each party's ability to sue, and serve, the other party. The tenant can not serve the landlord at a post office box. In this case, even were the court to infer that the license posted in the kitchen cabinet has the name and address of Mr. Cartier, there is nothing from which the court can infer that the Defendant either knew of the posted notice in the kitchen or, more critically, knew anything about the identity of Mr. Cartier. The lease does not refer to Mr. Cartier; the notices to the Defendant were from Trilogy Properties; the Lease refers to Trilogy Properties as "Landlord." The lease states that "[t]he owner of this property is: Trilogy Properties PO Box 701 St Francis MN 55070." #26, p.4, Ex. 1. There is no reason for the Defendant to have known that Mr. Cartier is, in fact, the owner. There is no evidence that the Defendant was advised of a street address for Trilogy.

5. The Plaintiff has not demonstrated compliance with MSA 5048.181 and the case must be dismissed.

3. Trade name registration

Persons conducting a business under an assumed trade name must register the name with and disclose the name of the principles to the Secretary of State. An assumed name is a name which does not set forth the true name of every person interested in the business. Minn. Stat. § 333.01. The terms "person" and "true name" are defined broadly. § 333.001, subds. 2, 3.

The required certificate to be filed must state the name of the business, the business address, and the true name of each person conducting or transacting the business, and the addresses of such persons. § 333.01. If any event occurs which makes any statement in the certificate incorrect, the business must file an amended certificate within sixty (60) days. § 333.035.

A person conducting a business violation of §§ 333.001 to 333.06 may not commence or defend against a civil action based upon contracts or transactions of the business before a certificate has been filed. § 333.06. If such an action is filed before the certificate has been filed with the Secretary of State, the opposing party may raise the failure to file the certificate as a defense. All proceedings must be stayed until the certificate is filed. If the opposing party prevails in the action, the opposing party also shall be entitled to tax $250.00 in costs, in addition to other statutory costs. If the opposing party does not prevail in the action, the opposing party shall be entitled to deduct $250.00 from the judgment otherwise recoverable. *Id.*

Tenants' advocates should not ignore the issue just because the name of the plaintiff is a personal name rather than a trade name, since the statute focuses on whether the person acts through an

unregistered entity. In *Timberland Partners III. LLP the Henning,* No. UD-2960711201 (Minn. Dist. Ct. 4th. Dist. July 22, 1996) (Appendix 197), the court correctly focused on the entity doing business as opposed to the entity listed in the case caption. The court found that the plaintiff's use of a business name not listed on the complaint and not registered with the Secretary of State violated the statute. The court ordered the case to go ahead only after plaintiff demonstrated compliance with the statute by properly registering the trade name. *See 40th Street Commons v. _____,* No. HC-060215520 (Minn. Dist. Ct. 4th Dist. Mar. 20, 2006) (Appendix 629) (costs awarded where plaintiff's registration lapsed for failing to file annual registration before commencing the action, and reinstated registration after commencement); *Grimmer v. Svoboda*, No. UD-1960923520 (Minn. Dist. Ct. 4th Dist. Oct. 29, 1996) (Appendix 188) (settlement: $250 penalty for failing to register trade name of the plaintiff's management company to be paid from rent paid into court).

In *Hedlund v. Potter*, No. C3-91-1542 (Minn. Dist. Ct. 10th Dist.), the action was commenced by an individual. The court initially found that the individual plaintiff was not a proper party, since he simply was a trustee for an entity that he had formed, and that he provided no evidence stating his relationship to the entity. The court then found that the entity was doing business under a third name, that of a mobile home park, but had failed to register this name with the Secretary of State. The court ordered the action stayed until plaintiff complied with the statute, and ordered that defendants were entitled to a setoff in the amount of $250.00 under Minn. Stat. § 333.06. Order (Nov. 26, 1991) (Appendix 4.C.1). After plaintiff registered with the Secretary of State, the court dismissed the action for improper service of the summons and complaint by the landlord's caretaker. Order (Dec. 31, 1991) (Appendix 4.C.2). Defendants then moved for taxation of $250.00 in costs for each Defendant under Minn. Stat. § 333.06. Plaintiff argued that the court could not award costs since § 333.06 requires commencement of a civil action, and since the action really had not been commenced because it was dismissed for improper service. The court rejected plaintiff's argument, finding that the action was not void at its commencement but merely was voidable upon proper motion. The court ordered taxation of costs of $250.00, but treated the Defendants as one party and did not order multiple awards of costs. Order for Judgment (Feb. 8, 1992) and Judgment (Mar. 3, 1992) (Appendix 4.C.3).[2]

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[2]*See 2407 Partners v. Kirk*, No. HC-1990409512 (Minn. Dist. Ct. 4th Dist. Sep. 30, Dec. 8, 1999) (Appendix 402) (Settlement for rent abatement, landlord payment of $500 in costs for failure to register two business names with the Secretary of State, favorable reference, dismissal, and expungement; file expunged); *Barnes Properties v. Sims*, No. 8C-01991105512 (Minn. Dist. Ct. 4th Dist. Nov. 16, 1999) (Appendix 377). Plaintiff moved for dismissal; defendant credited $250 off rent); *Solar IV Partnership v. Sederstrom*, No. UD-1980812534 (Minn. Dist. Ct. 4th Dist. Sep. 3, 1998) (Appendix 364) ($250.00 in costs awarded where plaintiff registered its trade name, but operated under another trade name which was not registered); *Central Manor Apartments v. Beckman*, Nos. UD-1980609509, UD-1980513525 (Minn. Dist. Ct. 4th Dist. Aug. 6, 1998) (Appendix 319C) (Tenant awarded a setoff of $500 where landlord commenced two successive unlawful detainer actions without registering its trade name); *Central Manor Apartments v. Beckman*, Nos. UD-1980609509, UD-1980513525 (Minn. Dist. Ct. 4th Dist. July 29, 1998) (Appendix 319B); *Sterling Properties v. _____*, No. UD-2961015201 (Minn. Dist. Ct. 4th Dist. Oct. 28, 1996) (Appendix 295) (Landlord failed to register trade names: hearing stayed until landlord registers assumed names, $250 in costs taxed against plaintiff); *Timberland Partners III, L.L.P. v. Henning*, No. UD-2960711201 (Minn. Dist. Ct. 4th Dist. July 22, 1996) (Appendix 197) (Landlord failed to register trade names: hearing stayed until landlord registers assumed names, $250 in costs taxed against plaintiff); *B&J Property Management v. Gates*, No. UD-01970602519 (Minn. Dist. Ct. 4th Dist. June 12, 1997) (Appendix 247) (Dismissal for improper service, failure to register trade name, and failure to attach notice to quit and lease to complaint).

In *ARU Props., LLC v. Clark,* No. A16-1126, 2017 Minn. App. Unpub. LEXIS 288 (Minn. Ct. App. April 3, 2017) (unpublished), the owner filed an eviction action alleging breach and rent. The tenant asserted at trial that the owner had not registered its trade name but the referee ruled that the tenant could not raise the issue at trial. The Court of Appeals affirmed the referee's ruling to not consider the trade name claim as she did not assert it in her answer but raised it for the first time at trial. The court held the issue was not properly before it, citing *Antonson v. Ekvall,* 289 Minn. 536, 539, 186 N.W.2d 187, 189 (1971). However, in *Antonson,* the claim was not raised until *after* trial in a motion for new trial. The court then noted in *dicta* that a trade name violation does not bar an eviction action. The court did not discuss stay of an eviction action, the more common remedy for trade name violations. As *ARU Props., LLC* is unpublished, it is not precedential. *See* discussion at I.A.3.

Some courts have dismissed eviction actions for failure to register. *See Zelevarov v. _____,* No. 27-CV-HC 14-5892 (Minn. Dist. Ct. 4th Dist. Nov. 14, 2014) (Appendix 756) (dismissal for (1) failure to register trade name with Secretary of State, as staying action would frustrate summary nature, and (2) failure to comply with Minn. R. Gen. P. 603 where agent sued in agent's name rather than principal's name); *H&K Equities LLC v. _____,* No. 27-CV-HC-13569 (Minn. Dist. Ct. 4th Dist. Mar. 12, 2013) (Appendix 758) (tenant awarded $250 in costs and action dismissed where landlord where landlord did not register trade name).

Relief is available even where the plaintiff ultimately prevails. *Rush Riverview Apartments v. _____,* No. C3-01-0996 (Minn. Dist. Ct. 10th Dist. Aug. 7, 2001) (Appendix 567) (Judge Clifford) (violent conduct and noise constituted material non-compliance in HUD subsidized project; writ stayed for 7 days and until plaintiff complies with the trade name registration statute and pays defendant $250 in costs).

4. Foreign corporation

A foreign corporation which transacts business in Minnesota must hold a certificate of authority from the Secretary of State. Minn. Stat. § 303.03. A foreign corporation may not sue in Minnesota courts without obtaining the certificate. Minn. Stat. § 303.20. *See Uptown Classic Properties JV1, LLC v. _____*, No. HC 1030123529 (Minn. Dist. Ct. 4th Dist. Apr. 9, 2003) (Appendix 588) (dismissal and expungement where foreign limited liability company had no state certificate of authority under Minn. Stat. § 322B.94); *Uptown Classic Properties JV1, LLC v. _____*, No. HC 1030123527 (Minn. Dist. Ct. 4th Dist. Apr. 9, 2003) (Appendix 587); *Cohn-Hall-Marx Co. v. Feinberg*, 214 Minn. 584, 588, 8

Earlier decisions include *Lewis Properties v. Pruitt,* No. UD-1950315516 (Minn. Dist. Ct. 4th Dist. Sept. 22, 1995) (Appendix 92); *Lewis Properties v. Pruitt*, No. UD-1950315516 (Minn. Dist. Ct. 4th Dist. May 11, 1995) (Appendix 99); *Gramith V. Thibodeau*, No. UD-1941223506 (Minn. Dist. Ct. 4th Dist. Jan. 13, 1995). *See Elliot Court v. Robinson*, No. UD-1930514543 (Minn. Dist. Ct. 4th Dist. June 18, 1993) (Appendix 4.C.5); *DVN Properties v. Gammage*, No. UD-1930525546 (Minn. Dist. Ct. 4th Dist. June 23, 1993) (Appendix 4.C.6); *Nouvelle Apartments v. Moore*, No. UD-1930302522 (Minn. Dist. Ct. 4th Dist. Mar. 26, 1993) (Appendix 4.C.7) (writ granted where notice signed by both parties was valid notice to quit on which plaintiff relied and refused to rescind; plaintiff ordered to pay defendant $250.00 for failing to register trade name with Secretary of State). *See also Northbrook Terrace v. Timmons*, No. UD-920917517 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1992) (hearing continued for plaintiff to file trade name registration with the Secretary of State) (Appendix 4.C.4). *But see BRI Associates v. Gangle,* No. C4-95-845 (Minn. Dist. Ct. 10th Dist. Apr. 24, 1995) (Appendix 88) (plaintiff allowed to amend case caption to defeat trade name registration claim).

N.W.2d 825, 826-27 (1943); *E.C. Bogt, Inc. v. Ganley Bros. Co.*, 185 Minn. 442, 443-44, 242 N.W. 338, 338-39, (1932).

5. Tenant in possession for at least three years

An eviction (unlawful detainer) action is unavailable where the tenant has "been in quiet possession [of the premises] for three years next before the filing of the complaint, after determination of the leasehold estate . . ." Minn. Stat. § 504B.311 (formerly § 566.04).

The meaning of the statute is unclear. In *Berg v. Wiley*, the Minnesota Supreme Court noted in *dictum* that the statute reflects the policy choice of the legislature that tenants in possession for at least three years can be evicted only in an ejectment action. 264 N.W.2d 145, 151 n.8 (Minn. 1978) (*Berg II*). In *Priordale Mall Investors v. Farrington*, 390 N.W.2d 412 (Minn. Ct. App. 1986) (*Priordale Mall*), the Court of Appeals held that the *Berg II* Court did not intend to change its earlier holding that the statute only prohibited eviction (unlawful detainer) actions commenced more than three years after expiration of the lease. *Id.* at 414, citing *Alworth v. Gordon*, 81 Minn. 445, 453, 84 N.W. 454, 457 (1900), *Suchaneck v. Smith*, 45 Minn. 26, 27, 47 N.W. 397, 397 (1890). Chief Judge Popovich dissented in *Priordale Mall I*, arguing that *Berg II*, as the latest pronouncement of the Supreme Court on the issue, must be followed. 390 N.W.2d at 415.

In *ARU Props., LLC v. Clark,* No. A16-1126, 2017 Minn. App. Unpub. LEXIS 288 (Minn. Ct. App. April 3, 2017) (unpublished), the owner filed an eviction action alleging breach and rent. The tenant argued that the tenancy terminated three years before the landlord filed the eviction action, precluding the action, but the referee did not rule on the claim. The Court of Appeals rejected the tenant's argument that Minn. Stat. § 504B.311 precluded the eviction action. The court oddly noted that the issue was raised in tenant's answer but the district court did not rule on it, so the court need not address it. The court then noted in *dicta* that the statute did not apply because the property was licensed during the rental. As *ARU Props., LLC* is unpublished, it is not precedential. *See* discussion at I.A.3.

6. Failure to state the facts that authorize recovery of the premises

In an eviction (unlawful detainer) action, the plaintiff must plead in the complaint "the facts which authorize the recovery of possession." Minn. Stat. § 504B.321 (formerly § 566.05) (emphasis added). *See Mac-Du Properties v. LaBresh*, 392 N.W.2d 315, 317, 318 (Minn. Ct. App. 1986). *See also* Minn. R. Gen. P. 604. The complaint must set forth a legally sufficient claim for relief. *Mankato & Blue Earth County Housing & Redevelopment Authority v. Critzer*, No. C2-92-1712, 1995 WL 130608 (Minn. Ct. App. Mar. 28, 1995), FINANCE AND COMMERCE 48 (Mar. 31, 1995) (Appendix 101).

The statute appears to require more than mere notice pleading used in other civil actions. *See* Minn. R. Civ. P. 8.01. This is consistent with the summary nature of eviction (unlawful detainer) actions, where the defendant has little time to prepare a defense and possibly no opportunity for discovery. Pleading "the facts which authorize recovery" of the premises should require more than mere conclusory statements. For example, rather than state that the tenant breached the lease, the complaint should specifically allege the facts which lead to the conclusion of breach of the lease. *Mollins v. Persaud*, No. UD-1940712552 (Minn. Dist. Ct. 4th Dist. July 22, 1994) (Appendix 73) (complaint must include lease and be more specific as to grounds for eviction, where defendant claimed the complaint failed to state dates and times of alleged violations, specific lease provisions violated, names of persons allegedly living on the property, names of neighbors stating complaints, and the precise nature of those complaints).

The court may strike or dismiss the inadequately pled claims, and allow adequately pled claims to proceed. *Mei Jen Chen v.* _____, No. HC 040106505 (Minn. Dist. Ct. 4th Dist. Jan. 13, 2004) (Appendix 538A) (rent claim stricken as vague, notice claim and retaliation defense scheduled for trial).

a. *Pleading compliance with statutory preconditions for the action*

Where a statute or regulation sets out preconditions for commencement of an action, facts establishing compliance must be pleaded. *Biron v. Board of Water Commissioners*, 41 Minn. 319, 320 43 N.W. 482, 482 (1889). Such statutes include the following subjects:

(1) Who may commence the action.

See Minn. Stat. §§ 481.02, subd. 3(13), 504B.285 (formerly § 566.03); Minn. R. Gen. P. 604. *See* discussion, *supra*, at VI.D.1.

(2) Description of the premises.

See Minn. Stat. § 504B.321 (formerly § 566.05); Minn. R. Gen. P. 604. In *Glenwood Financial LLC v.* _____, No. 27-CV-HC-14-5721 Minn. Dist. Ct. 4th Dist. Nov. 25, 2014) (Appendix 704), the tenants failed to appear at an eviction hearing and a default judgment was entered. The tenants moved to vacate the judgment, reopen the case, and then dismiss the action for service defects. The court found that the tenants met all four *Finden* factors: (1) the tenants had a reasonable case on the merits, since the plaintiff's affidavit and the affidavits of mailing were missing from the record, and complaint treated a duplex as a single property; (2) the tenants had a reasonable excuse for the default since they had no actual notice of the eviction hearing and there was no basis to establish they should have known of the hearing; (3) the tenants acted with reasonable diligence to reopen the case; and (4) there is no substantial prejudice to the landlord since the landlord has the ability to refile the action and have it adjudicated promptly. Accordingly, the court granted the motion to reopen, and then dismissed the case without prejudice due to the service defects. *See Twin City Development Co. v.* _____, No. 27-CV-HC-14-4804 (Minn. Dist. Ct. 4th Dist. Sep. 23, 2014) (Appendix 773) (dismissal for substitute service on a neighbor, complaint misstated the premises, plaintiff's agent did not have a power of authority, plaintiff incorrectly identified itself in the complaint).

(3) Compliance with the disclosure statute.

Minn. Stat. § 504.22 (now § 504B.181). *See* discussion, *supra* at VI.D.2. Rule 604 requires that the complaint contain "a statement of how plaintiff has complied with Minnesota Statues 504.22 (now § 504B.181) by written notice to the defendant, by posting or by actual knowledge of the defendant." A simple statement that the landlord complied with § 504B.181 (formerly § 504.22) may not comply with Rule 704, since it requires a statement of *how* the landlord has complied with § 504B.181 (formerly § 504.22). *See Rogers v.* _____, No. 27-CV-HC-14-3567 (Minn. Dist. Ct. 4th Dist. Dist. July 18, 2014) (Appendix 693) (court dismissed the case without prejudice because (1) plaintiff failed to adequately plead disclosure under Minn. Stat. § 504B.181 as required by Minn. R. Gen. P. 604(a)(3); and (2) a defect in the power of authority); *Stein v.* _____, No. HC 000804513 (Minn. Dist. Ct. 4th Dist. Aug. 18, 2000) (Appendix 577) (dismissal where landlord failed to plead compliance with address disclosure statute, Minn. Stat. § 504B.181 (formerly § 504.22)); *Henze v. Bronzin*, No._ (Minn. Dist. Ct. 6th Dist. June 4, 1991) (Appendix 4.C) (dismissal for failure to plead compliance with § 504.22 (now § 504B.181)); *Charboneau v. Johnson,*, No. UD-1950817510 (Minn. Dist. Ct. 4th Dist. Aug. 30, 1995) (Appendix 81).

(4) Compliance with the trade name statute.

See Minn. Stat. §§ 333.01-333.06. *See* discussion, *supra* at VI.D.3.

(5) Compliance with the foreign corporations registration statutes.

See Minn. Stat. §§ 303.03-303.20. *See* discussion, *supra* at VI.D.4.

(6) Compliance with the statutory and regulatory requirements of the public and government subsidized housing programs.

See discussion, *infra* at VI.E.12, VI.F.10., VI.G.10; *Okotete v. Courtney* UD-1931222507 (Minn. Dist. Ct. 4th Dist. Jan. 7, 1994) (Appendix 103) (failure to plead subsidized tenancy, subsidized eviction requirements and whether plaintiff complied with them, and only generic allegations of breach without any details, names or dates); *Parkview Assoc. v. Woodard*, No. UD-1940912558 (Minn. Dist. Ct. 4th Dist. Sep. 23, 1994) (Appendix 44) (dismissal of complaint that failed to state premises were federally subsidized housing, federal eviction requirements, and whether plaintiff complied with requirements); *Reitman v. Smith*, No. UD-1940720534 (Minn. Dist. Ct. 4th Dist. Aug. 2, 1994) (Appendix 45) (dismissal of complaint that failed to state applicability of Section 8 federal laws and rules, and did not include the Section 8 lease); *Fragale v. Sims*, No. UD-1930802515 (Minn. Dist. Ct. 4th Dist. Aug. 11, 1993) (Appendix 4.D.1) (dismissal for failure to give notice and failure to plead §8 tenancy, eviction requirements and whether plaintiff complied with requirements); *Loring Towers Apartments Limited Partnership v. Redcloud*, No. UD-1921210529 (Minn. Dist. Ct. 4th Dist. Jan 20, 1993) (Appendix 11.I.5) (complaint failed to state notice requirement, that notice was given, and that defendant was allowed informal conference); *Krieg v. Clark*, No. UD-4920204900 (Minn. Dist. Ct. 4th Dist. Mar. 4, 1992) (Appendix 4.D); *Riverside Plaza Limited Partnership v. Lee*, No. UD-1901009585 (Minn. Dist. Ct. 4th Dist. Oct. 18, 1990) (Appendix 5.A). *See generally RFT & Assocs. v. Smith*, 419 N.W.2d 109, 111 (Minn. Ct. App. 1988); *Housing and Redev. Auth. of Waconia v. Chandler*, 403 N.W.2d 708, 711 (Minn. Ct. App. 1987); *Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889, 895 (Minn. Ct. App. 1986).

(7) Compliance with the manufactured (mobile) home park lot rental statutes.

MINN. STAT. Ch. 327C. *See* discussion, *infra* at VI.E.11, VI.F.7, VI.G.11.

(8) Compliance with the statutory requirement that a tenant holding over after sale of the property, foreclosure of a mortgage in expiration of the time for redemption, or termination of a contract to convey the property, has received at least one month's written notice of the termination of tenancy as a result of the sale, foreclosure, or termination.

MINN. STAT. § 504B.285 (formerly § 566.03), subd. 1. *See* discussion, *infra* at VI.F.11-12.

b. *Rent claims*

In *Barzallo v.* _____, No. 27-CV-HC-08-4535 (Minn. Dist. Ct. 4th Dist. June 23, 2008) (Appendix 598), the eviction action was dismissed where landlord pled nonpayment of rent without stating an amount due, and the tenant bringing people to the property). *See Ali v.* _____, No. 060310538 (Minn. Dist. Ct. 4th Dist. Mar. 24, 2006) (Appendix 666) (eviction dismissed for improper pleading and partial payment of rent; costs awarded); *Mei Jen Chen v.* _____, No. HC 040106505 (Minn. Dist. Ct. 4th

Dist. Jan. 13, 2004) (Appendix 538A) (rent claim stricken as vague, notice claim and retaliation defense scheduled for trial); *Igherighe v. _____,* No. HC-1011001519 (Minn. Dist. Ct. 4th Dist. Oct. 10, 2001 and Feb. 19, 2002) (Appendix 519) (plaintiff pled rent due from Section 8 and not the tenant, and plaintiff named a non-tenant as a defendant).

c. *Breach claims*

In *Berg v. _____*, No. 27-CV-HC-08-3505 (Minn. Dist. Ct. 4th Dist. May 19, 2008) (Appendix 599), the eviction action was dismissed where landlord failed to comply with order to provide tenant with detailed factual basis for eviction action). *See Brooklyn Park Housing Assoc. LLP. v. _____*, No. HC001114522, (Minn. Dist. Ct. 4th Dist. Nov. 28, 2000) (Appendix 632) (eviction dismissed where landlord alleged breach of lease but did not attach or provide lease, and complaint allegation of breach by "police activity" was vague); *Hurt v. Johnston*, No. HC-000103513 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 398) (Landlord's motion to amend complaint denied and action dismissed where landlord failed to attach the lease to the complaint to support a claim of breach of lease, and the landlord's claims of breach by unsanitary conditions in that tenant knew information about the landlord required by statute to be disclosed to the tenant were not pled with sufficient specificity); *Walters v. _____*, No. HC 010706519 (Minn. Dist. Ct. 4th Dist. July 25, 2001) (Appendix 592) (dismissal of breach claim for lack of specificity); *Westfalls Housing Ltd. Partnership v. Scheer*, No. C8-93-227 (Minn. Dist. Ct. 5th Dist. Nov. 30, 1993) (Appendix 26) (dismissal for alleging only that defendant had broken terms of lease, and termination of lease due to infraction notices).[3]

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[3]Other decisions include *Jafer Enterprises, Inc. v. Peters*, No. UD-1920701512 (Minn. Dist. Ct. 4th Dist. July 2, 1992) (where complaint alleged written lease but did not have right of reentry clause and plaintiff later alleged an oral lease which reserved a right of reentry, the complaint fails to state the facts authorizing recovery of the premises) (Appendix 4.F); *Krieg v. Clark*, No. UD-4920204900 (Minn. Dist. Ct. 4th Dist. Mar. 4, 1992) (Appendix 4.D) (dismissal for alleging only disturbances and participation in use of illegal drugs in subsidized housing, noting that "the pleading requirement is particular important in public housing, subsidized housing, and other cases based on breach of lease,) citing RESIDENTIAL UNLAWFUL DETAINER SEMINAR FOR JUDGES OF THE FOURTH JUDICIAL DISTRICT at 12 (Jan. 1988); *Henze v. Bronzin*, No._____ (Minn. Dist. Ct. 6th Dist. June 4, 1991) (Appendix 4.C) (dismissal for failure to plead compliance with Minn. Stat. § 504.22 (now § 504B.181)); *VIP Properties v. Turner*, No. UD-1910318501 (Minn. Dist. Ct. 4th Dist. Mar. 28, 1991) (Appendix 4.E) (dismissal for alleging only disturbances and violations of rules); *Nationwide Mgmt. Whispering Pines Apartments v. Vittorio*, No. C3-95-832 (Minn. Dist. Ct. 6th Dist. Oct. 30, 1995) (Appendix 102) (complaint alleged only violation of the lease); *Okotete v. Courtney*, No. UD-1931224507 (Minn. Dist. Ct. 4th Dist. Jan. 7, 1994) (Appendix 103) (failure to plead subsidized tenancy, subsidized eviction requirements and whether plaintiff complied with requirements, and pled only generic allegations of breach without details, names or dates); *Dubina v. Olson*, No. C5-95-600980 (Minn. Dist. Ct. 6th Dist. June 20, 1995) (Appendix 104) (defective complaint).

In *Riverside Plaza Limited Partnership v. Lee*, No. UD-1901009585 (Minn. Dist. Ct. 4th Dist. Oct. 18, 1990) (Appendix 5.A), the landlord and tenant participated in the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects. The federal regulations, program handbook, and the lease all provided that the tenancy continued indefinitely until the landlord properly terminated the lease for material noncompliance with the lease, material failure to carry out obligations under any state landlord and tenant law, or other good cause. The complaint only alleged that the tenant had failed to move after notice, and that the tenant had broken the terms of the rental agreement with the landlord by "material noncompliance." The landlord did not attach the notice to the complaint, incorporate the notice in the complaint by reference, state in the complaint the allegations stated in the notice, or allege in the complaint what conduct by the tenant constituted material noncompliance. *Id*. at 1-2. The

d. *Allegations of unlawful activity*

See Minn. Stat. § 504B.171 (formerly § 504.181). In *Minneapolis Public Housing Authority v. _____,* No. 050920503 (Minn. Dist. Ct. 4th Dist. Oct. 4, 2005) (Appendix 670), the eviction action was dismissed where landlord's complaint alleged criminal activity without a specific factual basis. *See Brogdon Properies, LLC v. _____,* No. 1030826501 (Minn. Dist. Ct. 4th Dist. Sep. 4, 2003) (Appendix 479) (dismissed for lack of specific allegations of illegal activity); *Ford v. _____,* No. HC-1020325505 (Minn. Dist. Ct. 4th Dist. Apr. 26, 2002) (Appendix 500) (Section 8 voucher, plaintiff failed to allege drug use with any particularity; action dismissed and defendant awarded costs and disbursements); *Johnson v. _____*, No. HC 1001005514 (Minn. Dist. Ct. 4th Dist. Oct. 18, 2000) (Appendix 526) (directed verdict entered on drug claim where witness testified no drugs were found in raid, and testimony on earlier controlled purchase of drugs was not pled; nonpayment of rent was by Section 8 and not tenant, so tenant not required to pay filing fee to redeem); *MPHA v. _____*, No. UD-1970123530 (Minn. Dist. Ct. 4th Dist. Feb. 19, 1997) (Appendix 273) (Dismissal where complaint failed to state with sufficient specificity facts supporting drug paraphernalia claim).

e. *Litigating claims not raised in the complaint*

The plaintiff may not litigate claims and facts not raised in the complaint. *Mac-Du Properties v. LaBresh*, 392 N.W.2d 315, 318 (Minn. Ct. App. 1986) (plaintiff only could be entitled to restitution of the property based on claims in the complaint, and not other grounds: the trial court "lacked jurisdiction to order restitution for reasons which had nothing to do with respondents' unlawful detainer complaint"). July 23, 2019

7. Unauthorized practice of law

See discussion, *supra* at V.J.

a. *Management agents for plaintiff*

In *Hedlund v. Potter*, No. C3-91-1542 (Minn. Dist. Ct. 10th Dist.), the action was commenced by an individual. The court found that the individual plaintiff was not a proper party, since he simply was a trustee for an entity that he had formed, and that he provided no evidence stating his relationship to the entity. Order (Nov. 26, 1991) (Appendix 4.C.1). *See Meldahl and SJM Prop. v. _____*, No. 1050923509, Order on Referee Review at 18-19 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered dismissal where agent was not authorized by principal); *Erickson v. Kane*, C4-92-600535 (Minn. Dist. Ct. 6th Dist. Apr. 7, 1992) (person who appeared with plaintiff who was not an authorized management agent of the owner of rental property was prohibited from commencing, maintaining, conducting or defending on behalf of plaintiffs an unlawful detainer action under Minn. Stat. § 481.02) (Appendix 4.H). *See* Standing Order Regarding Court Appearances by Non-Attorney, Non-Managing Agents (Minn. Dist. Ct. 2nd Dist. June 9, 1995) (Appendix 84).

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court concluded that plaintiff had not plead any facts which authorized discovery, and dismissed the action. *See also Whittier Cooperative Inc. v. Rosewag*, No. UD-1910306501 (Minn. Dist. Ct. 4th Dist. Mar. 19, 1991) (Appendix 5.B); *Franklin v. McDonald*, No. UD-1900312613 (Minn. Dist. Ct. 4th Dist. Mar. 22, 1990) (Appendix 5.C). *Contra Flikeid v. Darrough*, No. UD-1940328501 (Minn. Dist. Ct. 4th Dist. May 3, 1994) (Appendix 59).

For use of power of authority or attorney form, *see* discussion, *supra*, at VI.D.1a.

b. *Corporations*

(1) Outside Hennepin and Ramsey Counties

In *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753 (Minn. 1992), the court held that a corporation must be represented by a licensed attorney when appearing in district court. It is important to closely review this decision, because the court went into great detail discussing the history of the rule, its policy basis, and whether the Legislature had limited the effect of the rule.

This was not a new issue for the court. The court reviewed the history of the principle, both in Minnesota around the country, requiring that a corporation must be represented by a licensed attorney when appearing in court, regardless of whether the person seeking to represent the corporation is a director, officer or shareholder.

> Minnesota follows the common law rule that a corporation may appear only by attorney. We first touched upon this rule in *Banks v. Pennsylvania Ry. Co.*, 111 Minn. 48, 126 N.W. 410 (1910). In finding jurisdiction over a foreign corporation which appeared generally and entered an answer on the merits, we stated:
>
> > It may be conceded, as claimed, that the courts of this state have no jurisdiction over a foreign corporation, except as it is brought within the purview of our statutes; but it is equally true that such a corporation may voluntarily appear *by attorney* and submit its person to the jurisdiction of the courts of the state, precisely as it may *by attorney* come into such courts for the purpose of enforcing its claims.
>
> *Banks,* 111 Minn. at 54, 126 N.W. at 411 (emphasis supplied). Sixteen years later, we directly addressed the common law rule in *Cary & Co. v. F.E. Satterlee & Co.,* 166 Minn. 507, 208 N.W. 408 (1926). We held:
>
> > The ruling refusing to permit Mr. Francis C. Cary to appear as attorney for plaintiff was correct. Mr. Cary is no longer an attorney at law, and the right of a party to a suit in court to appear in person therein does not entitle him to appear for a corporation, even if he owns all its capital stock for the corporation is a distinct legal entity.
>
> *Cary,* 166 Minn. at 509, 208 N.W. at 409.

Nicollet Restoration, Inc., 486 N.W.2d at 754. The court went into detail discussing the policy considerations for the rule.

> In order to understand the importance of this prohibition, it is necessary to examine its underlying rationale. A non-attorney agent of a corporation is not subject to the ethical standards of the bar and is not subject to court supervision or discipline. The agent knows but one master, the corporation, and owes no duty to the courts. In addition, a corporation is an artificial entity which can only act through agents. To permit a lay individual to appear on behalf of a corporation would be to permit that individual to practice law without a license. The purpose behind attorney licensing requirements is the protection of the public and the courts from the consequences of

ignorance or venality. *Strong Delivery Ministry,* 543 F.2d at 33 (citation omitted). The Seventh Circuit Court of Appeals explained:

> The rule in these respects is neither arbitrary nor unreasonable. It arises out of the necessity, in the proper administration of justice, of having legal proceedings carried on according to the rules of law and the practice of courts and by those charged with the responsibility of legal knowledge and professional duty.
>
> ....
>
> Were it possible for corporations to prosecute or defend actions in person, through their own officers, men unfit by character and training, men, whose credo is that the end justifies the means, disbarred lawyers or lawyers of other jurisdictions would soon create opportunities for themselves as officers of certain classes of corporations and then freely appear in our courts as a matter of pure business not subject to the ethics of our profession or the supervision of our bar associations and the discipline of our courts.

Id. at 33-34 (citations omitted). Thus, there are strong public policy considerations on which the prohibition is based. [Any] departure [from the general policy that corporate representation must be by lawyers] should always be cautiously controlled to avoid the dangers inherent in representation by those without legal training or professional discipline and standards. *Employers Control Serv. Corp. v. Workers Compensation Bd.,* 35 N.Y.2d 492, 364 N.Y.S.2d 149, 323 N.E.2d 689, 692 (1974).

Nicollet Restoration, Inc., 486 N.W.2d at 754-75.

The court then addressed the argument that Minn. Stat. § 481.02, subd. 2 (1990) authorizes a corporation to appear by or through a non-attorney agent.

> Minn. Stat. § 481.02, subd. 2 provides, in pertinent part, that: "No corporation, organized for pecuniary profit, except an attorney's professional corporation ... by or through its officers or employees or any one else, shall maintain, conduct, or defend, except in its own behalf when a party litigant, any action or proceeding in any court in this state ...."
>
> We reject this argument for two reasons. First, a careful reading of Minn. Stat. § 481.02, subd. 2, indicates that the legislature intended to grant the power to corporations to appear in court by or through its officers, employees or other agents when they are a party litigant to an action. Contrary to petitioner's interpretation, this does not mean that the officer, employee or agent appearing on behalf of a corporation may be a non-attorney. Under the common law, a corporation still must be represented by a licensed attorney when appearing in district court whether or not the attorney is an officer, employee or other agent. If district courts are to handle their increasingly crowded and complex dockets efficiently and justly, it is important that clients' causes be presented by persons trained and licensed to do so.
>
> Even assuming that Minn. Stat. § 481.02, subd. 2, could be construed to permit a corporation to appear by or through a non-attorney agent, such a construction would raise serious constitutional problems. Since corporations are distinct legal entities, any individual attempting to appear on behalf of the corporation would, in effect, be practicing law. Based on the legislature's power to

enact criminal statutes, it is clear that the legislature has the authority to determine who may or may not be prosecuted for the unauthorized practice of law. This, however, does not mean that the legislature may decide who may properly practice law before the courts of this state. Under Article 3, Section 1 of the Minnesota Constitution, this power is vested solely in the judiciary. *Minneapolis Star & Tribune Co. v. Housing & Redevelopment Auth.,* 310 Minn. 313, 318, 251 N.W.2d 620, 623 (1976). Art. 3, § 1 provides:

> Division of Powers. The powers of government shall be divided into three distinct departments: legislative, executive and judicial. No person or persons belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.

In *Sharood v. Hatfield,* 296 Minn. 416, 425, 210 N.W.2d 275, 280 (1973), we held that, [T]he power to make the necessary rules and regulations governing the bar was intended to be vested exclusively in the supreme court, free from the dangers of encroachment either by the legislative or executive branches. *Id.* at 425, 210 N.W.2d at 280 (citation omitted). We explained:

> Under our form of government, where the judicial constitutes an independent branch, the character of those who stand in this relation to the court should be of the court's choosing and under the supervision of the court, and other branches of the government should not be permitted to embarrass or frustrate judicial functions by the intrusion of incompetent or improper officers upon the courts. *Courts will defer to reasonable legislative regulation, but this deference is one of comity or courtesy rather than an acknowledgement of power.* This view is without doubt supported by the great weight of authority.

Sharood, 296 Minn. at 426, 210 N.W.2d at 281 (citation omitted) (emphasis supplied). Therefore, legislative enactments which purport to authorize certain classes to practice law in the courts of this state are not controlling upon the judiciary. As such, we reaffirm our conviction that a corporation must be represented by a licensed attorney when appearing in district court.

Nicollet Restoration, Inc., 486 N.W.2d at 755-76.

The only issue that was new to the court in *Nicollet Restoration, Inc.* was that the action as issue first originated in conciliation court. The court held that where the action originated was irrelevant. *Id.* In doing so, the court affirmed both the decision of the trial court judge and the Court of Appeals. 486 N.W.2d at 753, *affirming* 475 N.W.2d 508 (Minn. Ct. App. 1991).

In *World Championship Fighting v. Janos*, 609 N.W.2d. 263 (Minn. Ct. App. 2000), the Court of Appeals affirmed a district court dismissal of removal to district court from conciliation court by a corporation not represented by counsel. Citing *Nicollet Restoration Inc.*, the court stated that "we perceive no reason why a corporation unrepresented by counsel should be able to commence a district court action by removing a case from conciliation court when it is not allowed to do so by filing a complaint." 609 N.W.2d. at 265. In response to the claim that state statute provided otherwise, the court quoted *Nicollet*: "[L]egislative enactments which purport to authorize certain classes to practice law in the courts of this state are not controlling upon the judiciary. As such, we reaffirm our conviction that a corporation must be represented by a licensed attorney when appearing in district court." *Id.*, citing 486 N.W.2d at 756. The court concluded that the filing of the notice of removal was an appearance under Minn. R. Civ. P. 5.01, and could not be done without counsel. *Id.* at 265.

In *Save Our Creeks v. City of Brooklyn Park,* 699 N.W.2d 307, 309 (Minn.2005), the court followed and cited *Nicollet*, noting:

> A non-attorney agent of a corporation is not subject to the ethical standards of the bar and is not subject to court supervision or discipline. The agent knows but one master, the corporation, and owes no duty to the courts. In addition, a corporation is an artificial entity which can only act through agents. To permit a lay individual to appear on behalf of a corporation would be to permit that individual to practice law without a license.

Several districts have applied *Nicollet Restoration* to evictions. *See* Memorandum of Chief Judge Lawrence Cohen (Minn. Dist. Ct. 2nd Dist. Mar. 30, 2001) (Appendix 538) (citing *Nicollet Restoration, Inc.,* "a licenced attorney must represent any corporation appearing in the Housing Court of the Second Judicial District"); *Hedlund v. Otten*, No. CX-93-08 (Minn. Dist. Ct. 10th Dist. Mar. 2, 1993) (Appendix 4.F.1) (dismissed where trust was similar to corporation).

Corporations which are not in good standing may be susceptible to challenge as a proper party. *See* discussion, *supra* at VI.D.3.

(2) Hennepin and Ramsey Counties

(a) Before *The Community Cares v. Faulkner*

(i) Minn. Gen. R. Prac. 603

Minn. Gen. R. Prac. 603 provides for the Hennepin and Ramsey County Housing Courts for the Fourth and Second Judicial Districts:

> Rule 603.Parties
>
> An unlawful detainer action shall be brought in the name of the owner of the property or other person entitled to possession of the premises. No agent shall sue in the agent's own name. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing.
>
> No person other than a principal or a duly licensed lawyer shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at the time of filing, and no person other than a duly licensed lawyer shall be allowed to appear unless the Power of Authority is so attached to the complaint. An agent or lay advocate may appear without a written Power of Authority if the party being so represented is an individual and is also present at the hearing.

(ii) Predecessors of Minn. Gen. R. Prac. 603

Minn. Gen. R. Prac. 603 was promulgated in 1992, modeled after the then-existing Special Rules of Practice for the Fourth District Court and the earlier Hennepin County Municipal Court Rules. Before 1992, eviction actions, then called unlawful detainer actions, were heard in county courts around the state, and municipal courts in Ramsey and Hennepin Counties. Minn. Stat. §§ 487.17, 488A.11, 488A.28 (1978). County and municipal courts were courts of limited jurisdiction, higher than conciliation courts and lower than district courts. See Minn. Stat. Chs. 487, 488A (1978). Conciliation court jurisdiction was limited to claims up to $1,000. Minn. Stat. §§ 488A.12, 488A.29, 491.04 (1978).

The earliest version of what morphed into Minn. Gen. R. Prac. 603 first appeared in the Rule 10 of the Hennepin County Municipal Court Special Rules of Procedure in 1979. Here is the text of this early rule:

> Rule 10.02. Parties
>
> The action shall be brought in the name of the owner of the property, or such other person or legal entity having the right of possession of the property. No agent shall sue in his present own name, except where authorized by law, and any agent suing for a principal shall attach a copy of the power of authority to the complaint.
>
> A person who holds a majority of the outstanding shares of stock in a corporation and who is an officer thereof and appears and files with the court an affidavit setting forth such fact, may appear for the entity. A full time employee of the corporation may appear for the entity upon being duly authorized to do so either by a resolution of the Board of Directors or by a written notice from an officer of the corporation that a designated person or a current incumbent in a designated position with the corporation has authority to bind the corporation.

Henn. Cty. Mun. Ct. Spec. R. Proc. 10.02, Minnesota Rules of Court at 525 (1980).

The rule was revised in 1981 to delete all references to corporations in the second paragraph, replacing it with the requirement than an agent appearing for a party attach a power of authority to the complaint. Here is the text of the second version of the rule:

> Rule 10.02. Parties
>
> The action shall be brought in the name of the owner of the property, or such other person or legal entity having the present right of possession of the property. No agent shall sue in his own name, and any agent suing for a principal shall allege such authority in the complaint.
>
> Any person, other than a duly licensed attorney, appearing on behalf of a party to the action shall attach a copy of the power of authority to the complaint.

Henn. Cty. Mun. Ct. Spec. R. Proc. 10.02, Minnesota Rules of Court at 647 (1982).

Another revision in 1982 combined the paragraphs and added a clause to the power of authority sentence.

> Rule 10.02. Parties
>
> The action shall be brought in the name of the owner of the property or such other person or legal entity having the present right of possession. No agent shall sue in his own name. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing, and no person other than a duly licensed attorney shall be allowed to appear unless the Power of Authority is so attached to the complaint.

Henn. Cty. Mun. Ct. Spec. R. Proc. 10.02, Minnesota Rules of Court at 738 (1988).

With the merger of municipal and county courts into the district courts in 1987, the rule moved to the Special Rules of Practice for the Fourth Judicial District in 1989.

RULE 13.02 PARTIES

> The action shall be brought in the name of the owner of the property or such other person or legal entity having the present right of possession. No agent shall sue in his or her own name. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing, and no person other than a duly licensed attorney shall be allowed to appear unless the Power of Authority is so attached to the complaint.

Spec. R. Prac. 4th Jud. Dist. 13.02, Minnesota Rules of Court at 509 (1989).

(iii) Creation of Housing Courts and Minn. Gen. R. Prac. 603

In 1988, Governor Rudy Perpich created the Governor's Commission on Affordable Housing for the 1990's. The author was a member of the Legal Services Task Force of the Commission and drafter of a number of proposals, including one to create housing courts with referees to support consistent decision-making in eviction cases. There were no conversations about special treatment of corporations in housing courts.

The Commission included the author's proposal in its report. Recommendations of the Governor's Commission on Affordable Housing for the 1990's at 27 (available at https://www.leg.state.mn.us/docs/pre2003/other/890122.pdf).

In 1989, the author worked on the bill that the Minnesota Legislature passed, providing for creation of housing courts in the Second and Fourth Judicial Districts. Minn. Stat. § 484.013. There were no conversations about special treatment of corporations in housing courts.

The Second and Fourth Districts created housing courts in 1990. The housing courts are divisions of the District Court, rather than separate courts like the Conciliation Courts. District Court referees preside over litigation in these courts. They are courts of record. The decisions of the referees become final District Court judgments, appealable to the Court of Appeals of Minnesota. The Housing Court rules are in Title VII of the Minnesota General Rules of Practice for the District Courts. The Minnesota Rules of Civil Procedure and the Minnesota Rules of Evidence apply, as do general sections of the Minnesota General Rules of Practice for the District Courts. The litigation is fast-paced but complex in many cases, often implicating the common law of contracts and property, the common law of eviction litigation and landlord-tenant law, federal statutes and regulations, and various Minnesota statutes.

As a regular practitioner in unlawful detainer actions, the author was asked to become a member of the Fourth District Housing Court Bench and Bar Committee. I still am a member and the longest serving member of the Committee. One of the tasks for the Bench and Bar Committee was to draft rules for the new Housing Courts for both the Second and Fourth Districts. The Committee used the Special Rules of Practice for the Fourth Judicial District as a starting point. It revised Spec. R. Prac. 4th Jud. Dist. 13.02 to become Rule 603 of the new General Rules of Practice for the District Courts. It generally followed the old rule and added a sentence on when agents could appear without a Power of Authority.

RULE 603. PARTIES

> An unlawful detainer action shall be brought in the name of the owner of the property or other person entitled to possession of the premises. No agent shall sue in the agent's own name. Any agent suing for a principal shall attach a copy of the Power of Authority to the complaint at the time of filing. No person other than a principal or a duly licensed lawyer shall be allowed to appear in Housing Court unless the Power of Authority is attached to the complaint at the time of filing, and no person other than a duly licensed lawyer shall be allowed to appear unless the Power of Authority is so attached to the complaint. An agent or lay advocate may appear without a written Power of Authority if the party being so represented is an individual and is also present at the hearing.

Again, there were no conversations about special treatment of corporations in housing courts. The members did discuss allowing agents and advocates to assist individual landlords and tenants.

(iv) *Walnut Towers v. Schwan* and an attempt to revise Minn. Gen. R. Prac. 603

In *Walnut Towers v. Schwan*, No. A07-1311, 2008 WL 4224462 (Minn. Ct. App. Sept. 16, 2008) (unpublished), the Court of Appeals held that the district court erred in allowing a corporation to proceed in an eviction action without the representation of legal counsel, quoting extensively from both *Nicollet Restoration, Inc.* and *World Championship Fighting. Id.* at *2. The court noted that while the litigants did not brief the impact of Minn. Stat. § 481.02, subd. 3(12) (2006), which provides that any authorized management agent of an owner of rental property used for residential purposes, whether the management agent is a natural person, corporation, partnership, limited partnership, or any other business entity, is not authorized to appear before a district court or the Court of Appeals or supreme court pursuant to an appeal if the agent it not a licensed attorney. Still, the court stated that "the language of this statute comports with *Nicollet Restoration,* but we recognize that there could be alternative readings of this statute." *Id.* The court also noted that it expressed "no opinion at this time as to whether Minn. R. Gen. Pract. 603 is inconsistent with Minn. Stat. § 481.02, subd. 3. *See* Minn. R. Gen. Prac. 601 (stating that the rules pertaining to housing court 'shall apply to housing court practice except where they are in conflict with applicable statutes')." *Id.*

The *Walnut Towers* decision appears to have been the impetus for the request of the Minnesota Multi-Housing Association that the Supreme Court Advisory Committee on the Rules of General Practice adopt a rule allowing corporations to appear in district court eviction actions without representation by a licensed attorney. On April 23, 2009, the Committee considered a proposal and decided to take no action on the proposal. Several members commented that it was not the role of the Committee to propose a rule different than the rulings of the appellate courts. The Committee concluded

> It was noted that the committee has taken up the issue of corporate representation in district court before, and it keeps popping up, but the Minnesota Supreme Court has decided it as a matter of law as discussed in *Nicollet Restoration, Inc. v. Turnham*, 475 N.W.2d 508 (Minn. Ct. App. 1991), *aff'd* 486 N.W.2d 753 (Minn. 1992). The proposal in essence asks the committee to overrule caselaw, and it is generally not the role of the committee to attempt to overrule caselaw. An appeal would be an appropriate means to raise this issue, *e.g.*, as an amicus.

Supreme Court Advisory Committee on the Rules of General Practice, Meeting Summary, at 9-10 (Apr. 23, 2009). In its Final Report, the Committee stated:

> Recommendations Not Requiring Rule Amendments

> In addition to the recommendations for rule amendments, which are discussed in detail later in this report, the committee addressed one other subject where it concluded that no rule amendment is warranted at this time.
>
> Gen. R. Prac. 603. The committee considered a suggestion that the housing court rules be amended to permit corporations to appear in district court eviction action without representation by a licensed attorney. The suggestion was made to the committee by the Minnesota Multi-Housing Association (MMHA), and was made in response to *Walnut Towers v. Schwan,* A07-1311 (Minn. Ct. App. Sept. 16, 2008) (unpublished)(no PFR filed), which held that the district court erred in allowing corporation to appear without counsel. Because of the decision of this issue in *Nicollet Restoration, Inc. v. Turnham,* 475 N.W.2d 508 (Minn. Ct. App. 1991), aff'd 486 N.W.2d 753 (Minn. 1992), the advisory committee does not arrogate to make any recommendation on this issue.

Recommendations of Minnesota Supreme Court Advisory Committee on General Rules of Practice, Final Report, at 5 (Aug. 31, 2009).

(iv) Another attempt to revise Minn. Gen. R. Prac. 603

In 2018, landlords again attempted to revise Minn. Gen. R. Prac. 603 to allow corporations to appear pro se. In *Order Promulgating Amendments to the Gen. Rules of Practice for the Dist. Courts,* No. ADM 09-8009 (Minn. May 13, 2019), the Court ruled:

> ... in the absence of strong support for the proposed amendment to Rule 603 and, in light of our existing precedent, we decline to amend Rule 603. *See, e.g., Save Our Creeks v. City of Brooklyn Park*, 699 N.W.2d 307, 309 (Minn. 2005) ("It is well settled under Minnesota common law that a corporation must be represented by an attorney in legal proceedings.").

Id. at 2. In its memorandum, the Court added:

> The Advisory Committee for the General Rules of Practice for the District Courts recommends several amendments to Rules 601-612 of the General Rules of Practice, which apply to housing court proceedings in Hennepin and Ramsey Counties. See Minn. Gen. R. Prac. 601. Included among these recommendations is a proposed amendment to Rule 603 to clarify the scope of non-attorney agent participation in proceedings in Housing Court. The committee points out that the two judicial districts governed by this rule, Hennepin and Ramsey Counties, have conflicting approaches to the rule, and materials submitted during the public comment period indicate that Housing Court in Hennepin County allows non-attorney agents to appear on behalf of landlords, and housing Court in Ramsey County requires an attorney to appear on a landlord's behalf.
>
> The committee's recommended amendment to Rule 603 was supported by 10 members and opposed by 5 members. The Minnesota Multi-Housing Association and the Minneapolis Public Housing Authority support the committee's recommended amendment HOME Line (including a former attorney for this tenant advocacy organization) and Mid-Minnesota Legal Aid oppose the committee's recommended amendment. On two occasions, the Second and Fourth Judicial Districts solicited input on the use of non-attorney agents from Housing Court stakeholders and reported that the majority of responding stakeholders, 58 percent, supported allowing non-attorney agents to appear in Housing Court. But the districts also acknowledged "that there is not agreement from stakeholders" on this issue.

> We have the inherent authority to regulate the bar and determine who is authorized to practice law in Minnesota. *See, e.g., In re Conservatorship of Riebel*, 625 N.W.2d 480, 481 n.3 (Minn. 2001) (stating that "legislative enactments concerning the practice of law" are recognized "as a matter of comity as long as they are reasonable and in harmony with [the] court's exercise of its authority to regulate the bar"). The record before us on the use of non-attorney agents appearing in Housing Court on behalf of landlords lacks strong support for the proposed amendment to Rule 603 of the General Rules of Practice for the District Courts. We therefore decline to adopt the recommended amendment to that rule.

Id. at 1-2.

(v) Cases

Some courts have issued standing orders on corporations acting without attorneys. Memorandum of Chief Judge Lawrence Cohen (Minn. Dist. Ct. 2nd Dist. Mar. 30, 2001) (Appendix 538) (citing *Nicollet Restoration, Inc.,* "a licenced attorney must represent any corporation appearing in the Housing Court of the Second Judicial District"); *In re Morning Sun Investments, Inc.*, Standing Order (Minn. Dist. Ct. 4th Dist. Mar. 21, 2001) (Appendix 523) (corporation "must be represented by a licensed attorney when appearing in District Court," citing *Nicollet Restoration, Inc.*).

The referees of Fourth District Housing Court for Hennepin County have allowed corporations and limited liability companies to appear without representation by a licensed attorney, relying on Minn. Gen. R. Prac. 603 and *Hinckley Square Associates v. Cervene*, 871 N.W.2d 426 (Minn. Ct. App. 2015) (noted that corporations must be represented by a licensed attorney in the Minnesota district courts unless otherwise authorized to proceed without an attorney by Minn. R. Gen. Prac. 512(c) in conciliation court and Minn. R. Gen. Prac. 603 in housing courts in Hennepin and Ramsey Counties).

The *Hinkley* Court and the Fourth District Housing Court misread Rule 603, which establishes who is a proper party in an eviction action and prohibits an agent from suing in her, his, or its own name. Rule 603 discusses principals and agents and the limitations on when an agent may appear for a principal in an eviction action. Rule 603 does not mention the subsets of corporations or limited liability companies or discuss representation of either business entity in its text, so *Nicollet Restoration, Inc.* should apply in housing courts in Hennepin and Ramsey Counties. *See* Memorandum of Chief Judge Lawrence Cohen (Minn. Dist. Ct. 2nd Dist. Mar. 30, 2001) (Appendix 538) (citing *Nicollet Restoration, Inc.,* "a licenced attorney must represent any corporation appearing in the Housing Court of the Second Judicial District").

Even before *Hinckley*, a referee did not apply the decision in *Nicollet Restoration, Inc.* to landlord corporations in *Rio Hot Properties, Inc. v. Judge*, No. UD-1981005518 (Minn. Dist. Ct. 4th Dist. Oct. 19, 1998) (Appendix 362A) (Denial of tenant's motion to dismiss, on the grounds that plaintiff was a sole shareholder corporation, *Nicollet* did not deal with residential property, *Nicollet* involved an appeal from conciliation court and was not an unlawful detainer action, and Minn. Stat. §481.02 allows non-attorneys to maintain unlawful detainer actions). Counsel should argue that none of these factors counteract the strong language in *Nicollet* which prohibit non-attorney representation of corporations.

Judges and some referees of Fourth District Court for Hennepin County have applied *Nicollet Restoration* to evictions. In *Meldahl and SJM Prop. v.* _____, No. 1050923509, Order on Referee Review at 15-18 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov), the judge

reversed referee and ordered dismissal where corporation represented by president. In *FTK Properties, Inc. v. US Benefit Association, LLC*, No. HC 010518508 (Minn. Dist. Ct. 4th Dist. June 1, 2001) (Appendix 503), the court dismissed the eviction without prejudice where three shareholder corporation landlord of commercial property was represented by a person who was not an attorney and did not have a power of attorney). *See Welsh v. Clark*, No. UD-1921120502 (Minn. Dist. Ct. 4th Dist. Dec. 3, 1993) (Appendix 4.F.2) (dismissed); *Jafer Enterprises, Inc. v. Peters*, No. UD-1920701512 (Minn. Dist. Ct. 4th Dist. July 21, 1992) (action continued) (Appendix 4.F); *Cities Management, Inc. v. Thompson*, No. UD-1920720517 (Minn. Dist. Ct. 4th Dist. Aug. 4, 1992) (action continued) (Appendix 4.G).

(b) *The Community Cares v. Faulkner*

In *The Community Cares v. Faulkner*, 949 N.W.2d 296 (Minn. Ct. App. 2020), the court held that Minn. Gen. R. Prac. 603 allows a person not an attorney agent to appear in Hennepin and Ramsey Housing Count on behalf of a business-entity landlord. Unfortunately the court misread the rule and ignored the history of it as discussed above and for now it is the law for Hennepin and Ramsey Counties.

c. *Limited Partnerships and Limited Liability Companies*

Citing *Nicollet Restoration*, courts have held that limited partnerships and limited liability companies must be represented by an attorney. In *Hinckley Square Associates v. Cervene*, 871 N.W.2d 426 (Minn. Ct. App. 2015), the landlord was a limited partnership that filed an eviction action and appeared at the bench trial in district court without representation by a licensed attorney. The tenant filed a motion to dismiss arguing that artificial entities must appear with an attorney. The district court denied the motion, finding that only corporations (and not limited partnerships) must be represented by counsel when appearing in district court, and entered judgment ordering the tenant's eviction. The tenant appealed from the final judgment and argued, among other things, that the district court erred in denying the motion to dismiss (and because the Court of Appeals found error on the first issue, it did not reach the other issues raised by the tenant). The Court of Appeals was unable to find any reason to treat limited partnerships differently from corporations or other limited liability companies, which must appear via a licensed attorney in district court. Accordingly, as a matter of first impression, the Court of Appeals held that limited partnerships must be represented by a licensed attorney in the Minnesota district courts unless otherwise authorized to proceed without an attorney by Minn. R. Gen. Prac. 512(c) in conciliation court and Minn. R. Gen. Prac. 603 in housing courts in Hennepin and Ramsey Counties. The court also held that the actions by the non-attorney agents in this case were not curable defects because they went beyond signing and filing the complaint, and therefore the judgment against the tenant was reversed.

While the *Hinkley* Court reached the correct conclusion, it misread Rule 603, which establishes who is a proper party in an eviction action and prohibits an agent from suing in her, his, or its own name. Rule 603 discusses principals and agents and the limitations on when an agent may appear for a principal in an eviction action. Rule 603 does not mention the subsets of corporations or limited liability companies or discuss representation of either business entity in its text, so *Nicollet Restoration, Inc.* should apply in housing courts in Hennepin and Ramsey Counties. *See* Memorandum of Chief Judge Lawrence Cohen (Minn. Dist. Ct. 2nd Dist. Mar. 30, 2001) (Appendix 538) (citing *Nicollet Restoration, Inc.,* "a licenced attorney must represent any corporation appearing in the Housing Court of the Second Judicial District").

See Westfalls Housing Ltd. Partnership v. Scheer, No. C8-93-227 (Minn. Dist. Ct. 5th Dist. Nov. 30, 1993) (Appendix 26) (Judge Peterson) (summary judgment granted to defendant against plaintiff

limited partnership); *Remas Properties, LLC v. Student*, No. UD-1940705517 (Minn. Dist. Ct. 4th Dist. July 19, 1994) (Appendix 27) (dismissal granted to defendant against limited liability company).

In *The Community Cares v. Faulkner*, 949 N.W.2d 296 (Minn. Ct. App. 2020), the court held that Minn. Gen. R. Prac. 603 allows a person not an attorney agent to appear in Hennepin and Ramsey Housing Count on behalf of a business-entity landlord. Unfortunately the court misread the rule and ignored the history of it as discussed above and for now it is the law for Hennepin and Ramsey Counties.

8. Failure to attach to the complaint or provide at the initial hearing a copy of the termination notice or lease (Hennepin and Ramsey County Housing Court)

Minn. R. Gen. Prac. Rule 604 provides that in an action for holding over after termination of the lease, plaintiff must attach a copy of the termination notice, if any, to the complaint or provide it to defendant or defendant's counsel at the initial appearance, unless the plaintiff does not possess a copy of the notice, or if the defendant acknowledges receipt of the notice at the hearing. Similarly, if the action is for breach of the lease, plaintiff must attach a copy of the lease, if any, to the complaint or provide it to defendant or defendant's counsel at the initial appearance unless the plaintiff does not possess a copy of it.

Since plaintiff has the option of either attaching the termination notice or lease to the complaint or providing it at the initial appearance, the defendant should not move to dismiss the action before the first hearing if these documents are not attached to the complaint. However, if plaintiff does not provide these documents at the initial appearance, defendant should immediately move to dismiss the action for failing to comply with Rule 704. Even if plaintiff supplies these documents at the initial hearing, counsel should consider moving for a continuance if counsel has not seen these documents before.

a. Breach claims

See Tambornino v. _____, No. 27-CV-HC- 12-5520 (Minn. Dist. Ct. 4th Dist. May 14, 2013) (Judge Kaman) (Appendix 799) (expungement granted and referee decision reversed where plaintiff failed to attach lease to complaint or provide it to defendant at first hearing; tenant was not required to request lease at first hearing); *Brooklyn Park Housing Assoc. LLP. v. _____,* No. HC001114522, (Minn. Dist. Ct. 4th Dist. Nov. 28, 2000) (Appendix 632) (eviction dismissed where landlord alleged breach of lease but did not attach or provide lease, and complaint allegation of breach by "police activity" was vague); *Meldahl and SJM Prop. v. _____*, No. 1050923509, Order on Referee Review at 19-20 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered dismissal of breach of lease claim in eviction case claiming breach of lease and nonpayment of rent for failing to give tenant copy of lease); *Pham v. _____*, No. HC 030131517 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2003) (Appendix 560) (dismissal for failure to present lease for breach claim and notice for holdover claim, and for waiver of notice by acceptance of rent); *Hurt v. Johnston*, No. HC-000103513 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 398) (Landlord's motion to amend complaint denied and action dismissed where landlord failed to attach the lease to the complaint to support a claim of breach of lease, and the landlord's claims of breach by unsanitary conditions in that tenant knew information about the landlord required by statute to be disclosed to the tenant were not pled with sufficient specificity.; *Reitman v. Smith*, No. UD-1940720534 (Minn. Dist. Ct. 4th Dist. Aug. 3, 1994) (Appendix 45) (subsidized housing lease not attached to complaint); *Mollins v. Persaud*, No. UD-1940712552 (Minn. Dist. Ct. 4th Dist. July 22, 1994) (Appendix 73).

b. Notice claims

See Floy v. _____, No. HC-010821507 (Minn. Dist. Ct. 4th Dist. Sep. 13, 2001) (Appendix 499) (combined eviction and emergency relief action: dismissal of eviction breach claim since tenant actions did not violate the lease; dismissal of notice claim since notice was not attached to complaint and there was no evidence of when notice was given; tenant raising condemnation as a habitability defense did have to pay rent into court; landlord who rented out condemned property was liable for $1900 in rent and deposit paid plus $5700 additional treble damages, plus $500 in moving expenses, for $8100; deadlines for payment; expungement of eviction case); *O'Brian v. _____,* No. HC 1010402506 (Minn. Dist. Ct. 4th Dist. Apr. 18, 2001) (Appendix 552) (breach claims dismissed where oral lease contained no right of re-entry clause; notice claim dismissed where landlord failed to attached notice to complaint, and failed to prove notice was given; expungement granted); *B&J Property Management v. Gates*, No. UD-01970602519 (Minn. Dist. Ct. 4th Dist. June 12, 1997) (Appendix 247) (Dismissal for improper service, failure to register trade name, and failure to attach notice to quit and lease to complaint).

9. Failure to provide defendant with a copy of the lease before commencement of the action

Minn. Stat. § 504B.115 (formerly § 504.015) requires the landlord to provide a copy of the lease to the tenant. In actions to enforce a written lease, except for nonpayment of rent, disturbing the peace, malicious destruction of property, or violation of the drug covenant in § 504B.171 (formerly § 504.181), failure to provide a copy of the lease is a defense. A signed acknowledgment by the tenant of receipt is *prima facie* evidence of receipt. The landlord may overcome the defense by establishing that the tenant had actual knowledge of the provision. In *Meldahl and SJM Prop. v. _____*, No. 1050923509, Order on Referee Review at 19-20 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov), the judge reversed the referee and ordered dismissal of breach of lease claim in eviction case claiming breach of lease and nonpayment of rent for failing to give tenant copy of lease.

Some local ordinances require the landlord to give the tenant a copy of the lease. Mpls. Code of Ord. § 244.280 (Appendix 138) requires the landlord to give the tenant a copy of the lease within five days after it is signed by both parties. The tenant also may be entitled to rent abatement for the landlord's violation of this section. *See* discussion, *infra*, at VI.E.1.d.(3) (Violation of covenants of habitability).

10. Failure to timely file the affidavit of service (Fourth District; Hennepin and Ramsey County Housing Courts)

See discussion at VI.C.2.h1.

11. Section 8 Existing Housing Certificate and Voucher Programs: Failure to give notice to the public housing authority

Requirements for eviction and defenses to evictions in public and government subsidized housing are discussed under the headings of nonpayment of rent, holding over and breach of lease cases.

The Section 8 Existing Housing Certificate and Voucher Programs provide the tenant with a housing certificate or voucher, which allows the tenant to find a landlord willing to participate in the program. The housing authority sends a monthly rent subsidy, called a Housing Assistance Payment (HAP), to the landlord and the tenant pays the remaining share of the rent. The landlord may terminate the tenancy only for serious or repeated violations of the lease, violation of federal, state, or local law which imposes an obligation on the tenant in connection with occupancy of the unit, or other good cause, except at the end of the term. The provisions of the HAP contract between the landlord and the housing authority, and the lease between the landlord and the tenant mirror the requirements of the regulations.

a. Under old regulations

Under the old regulations, the landlord had to notify the housing authority when it commenced an eviction (unlawful detainer) action. 24 C.F.R. §§ 882.215(c)(1) and 887.213(c) provided that the owner must notify the housing authority in writing of the commencement of procedures for termination of the tenancy, at the same time that the owner gives notice to the tenant under state or local law. The notice to the housing authority could be given by furnishing to the housing authority a copy of the notice to the tenant. If the owner failed to give such notice to the housing authority, the action had to be dismissed. *Carlson v. Lavine*, No. UD-1930104506 (Minn. Dist. Ct. 4th Dist. Jan. 22, 1993) (Appendix 5.J.3) (dismissed where service of HRA occurred 7 days after service on defendant and only three days before hearing; service was not "at same time" as service on defendant); *Shun v. Jasper*, No. UD-1920605513 (Minn. Dist. Ct. 4th Dist. July 7, 1992) (dismissal where Plaintiff failed to serve public housing authority with copy of lease termination letter and summons and complaint until after Defendant raised the issue in court as a violation of 24 C.F.R. § 882.215(c)(4) (1992)) (Appendix 5.J.1).[4]

b. New regulation

The United States Department of Housing and Urban Development (HUD) published an extensive revision of the Section 8 Certificate and Voucher regulation. 60 Fed. Reg. 34,660 (July 3, 1995). The regulations became effective October 2, 1995. The regulations retain the requirement that the landlord notify the housing authority, but the regulations changed the language to state: "The owner must give the HA [housing authority] a copy of any owner eviction notice to the tenant." 24 C.F.R. § 982.310(e)(2)(ii), 60 Fed. Reg. at 34,705. "Owner eviction notice means notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action." § 982.310(e)(2)(ii), 60 Fed. Reg. at 34,705 (Appendix 109). Cases decided under the old regulations remain good law under the new regulations, except that the new regulations do not state when the landlord must notify the public housing authority.

Recent decisions include *Bushido Management, Inc. v. _____,* No. 27-CV-HC-06-2489 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 634) (referee decision reversed and eviction dismissed and expunged where Section 8 voucher landlord failed to notify housing authority of eviction, tenant awarded costs); *Peters v. _____,* No. No. 27-CV-HC-060306506 (Minn. Dist. Ct. 4th Dist. Apr. 10, 2006) (Appendix 680) (Judge Wernick) (reversal of referee decision denying motion to dismiss eviction; failure of Section 8 Voucher landlord to serve housing authority with complaint is a jurisdiction defect

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[4] *See Pearson v. Cook*, No. UD-1950825523 (Minn. Dist. Ct. 4th Dist. Sept. 13, 1995) (Appendix 106); *Semple Enterprises v. Smith,* No. UD-1944104509 (Minn. Dist. Ct. 4th Dist. Nov. 23, 1994) (Appendix 107); *Kedrowski v. Marbury*, No. UD-194110547 (Minn. Dist. Ct. 4th Dist., Nov. 22, 1994) (Appendix 108); *Bedeau v. Bryant*, No. UD-1930401504 (Minn. Dist. Ct. 4th Dist. April 13, 1993) (Appendix 5.J.4); *McMullen v. Cole*, No. UD-2921105800 (Minn. Dist. Ct. 4th Dist. Nov. 16, 1992) (Appendix 5.J.5); *Golf View Properties v. Brown*, No. UD-4921005900 (Minn. Dist. Ct. 4th Dist. Oct. 19, 1992) (Appendix 5.J.2) (voucher); *Z & S Management Company v. Jankowicz*, No. UD-1920131503 (Minn. Dist. Ct. 4th Dist. Feb. 14, 1992) (Appendix 5.H); *Maciej v. Christian*, No. UD-1910905516 (Minn. Dist. Ct. 4th Dist. Sept. 17, 1991) (Appendix 5.I); *Hechter v. Wilson*, No. UD-4910802900 (Minn. Dist. Ct. 4th Dist. Aug. 12, 1991) (Appendix 5.J); *Wayzata Woods Apartments v. Gager*, No. UD-1900917544 (Minn. Dist. Ct. 4th Dist. Sept. 27, 1990) (Appendix 5.D); *Filister v. Nord*, No. C9-87-8066 (Minn. Dist. Ct. 10th Dist. Aug. 25, 1987) (Appendix 5.E); *Lamlon Development Corp. v. Owens*, __ Misc.2d ___, 533 N.Y.S.2d 186 (Dist. Ct. 1988) (Appendix 5.F); *Defloria v. Crooks*, No. SPN 088-03-07038 (Conn. Super. Ct. May 20, 1988) (Appendix 5.G).

requiring dismissal; Minn. R. Gen. Prac. 608 only requires tenant to deposit withheld rent if habitability is raised although enjoining eviction under Minn. R. Civ. P. 65.03(a) authorizes court to order deposit of rent); *Caberallo LLC v. ____,* No. HC 030324503 (Minn. Dist. Ct. 4th Dist. Apr. 14, 2003) (Appendix 635) (eviction dismissed and expunged where Section 8 voucher landlord failed to notify housing authority of eviction, tenant awarded costs); *Wright v. _____*, No. 27-CV-HC-08-4603 (Minn. Dist. Ct. 4th Dist. Sep. 24, 2008) (Appendix 626) (expungement granted where landlord did not notify Section 8 Office was eviction action); *Meldahl and SJM Prop. v. _____*, No. 1050923509, Order on Referee Review at 14-15 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered dismissal of eviction in part for plaintiff's failure to give notice to public housing authority); *Nelson v. _____*, No. HC 031007508 (Minn. Dist. Ct. 4th Dist. Oct. 16, 2003) (Appendix 548) (dismissal where Section 8 landlord did not notify housing authority); *Rio Hot Properties, Inc. v. ____*, No. HC 021024517 (Minn. Dist. Ct. 4th Dist. Nov. 7, 2002) (Appendix 566) (dismissal where Section 8 landlord did not notify housing authority of eviction action at the same time it notified tenant, although landlord notified housing authority afterwards); *Igherighe v. _____,* No. HC-1011001519 (Minn. Dist. Ct. 4th Dist. Oct. 10, 2001 and Feb. 19, 2002) (Appendix 519) (costs awarded and file expunged where action was dismissed where plaintiff landlord of Section 8 Voucher tenant failed to served Section 8 office, plaintiff disclosed only a post office box and not a street address to tenant, plaintiff pled rent due from Section 8 and not the tenant, and plaintiff named a non-tenant as a defendant); *SJM Properties, Inc. v. _____,* No. HC 020402501 (Minn. Dist. Ct. 4th Dist. Apr. 11, 2002, Feb. 12, 2003) (Appendix 570) (dismissal where Rental Assistance for Family Stabilization (RAFS) Program landlord failed to serve the Section 8 office; different notice periods for landlord and tenant might be proper; costs and disbursements awarded, which may be credited against rent; expungement granted later).[5]

12. Bankruptcy

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[5]In *Stillday v. Kittleson*, No. UD-01980421523 and 1980430900 (Minn. Dist. Ct. 4th Dist. Jul. 21, 1998) (Appendix 368), the court consolidated unlawful detainer and rent escrow actions, dismissed the unlawful detainer action for failing to serve a copy of the summons and complaint on the Minneapolis Public Housing Authority, and concluded that the landlord violated the tenant's privacy, and awarded $100 to the tenant. *See Williams v. McCrimon*, No. HC-1991117529 (Minn. Dist. Ct. 4th Dist. Dec. 7, 1999) (Appendix 428) (Dismissal for failure to give notice to public housing authority under 24 C.F.R. § 982.310 (e)(2)(ii); defendants' names expunged); *Nelson v. Kragness*, No. HC-1991103507 (Minn. Dist. Ct. 4th Dist. Nov. 17, 1999) (Appendix 409) (Action dismissed where plaintiff failed to give housing authority copies of eviction notices as required by the lease addendum.; *Morris v. Jordan*, No. UD-1980406518 (Minn. Dist. Ct. 4th Dist. Jun. 18, 1998) (Appendix 352B) (dismissed Section 8 certificate unlawful detainer action for failing to serve a copy of the summons and complaint on the public housing authority, expunged name of minor as there was no reason to name him as a defendant); *Morris v. Jordan*, No. UD-1980504511 (Minn. Dist. Ct. 4th Dist. May 13, 1998) (Appendix 352A) (dismissed Section 8 certificate unlawful detainer action for failing to serve a copy of the summons and complaint on the public housing authority); *Anderson v. Burton*, No. UD-2971024200 (Minn. Dist. Ct. 4th Dist. Nov. 6, 1997) (Appendix 246) (Lease followed old regulations and required service on housing authority at the same time as on the tenant; service on housing authority eight days after service on tenant was improper); *Papenheim v. Smith*, UD-1960415534 (Minn. Dist. Ct. 4th Dist. Apr. 26, 1996) (Appendix 198) (§8 certificate unlawful detainer dismissal for failure to notify §8 office under new regulations). *See also Santouse v. Scott*, 2006 WL 1600385 (Conn. Super. Ct. 2006) (eviction dismissed where landlord failed to prove compliance); *Homestead Equities, Inc. v. Washington*, 176 Misc.2d 459, 672 N.Y.S.2d 980 (N.Y. City Civ. Ct. 1998) (eviction dismissed for failure to plead §8 status or tenancy and failure to comply with regulation).

A landlord may not use an eviction (unlawful detainer) action to terminate the interest in lease to property of a tenant who has filed a bankruptcy action, without first obtaining relief from the automatic stay. *Otten v. Washington*, No. UD-1910617506 (Minn. Dist. Ct. 4th Dist. July 3, 1991) (Appendix 5.K) (dismissal of complaint alleging nonpayment of rent for period following bankruptcy filing); 11 U.S.C. §§ 362, 541. *See Minneapolis Public Housing Authority v. Sterling*, No. UD-1980604506 (Minn. Dist. Ct. 4th Dist. Jul. 6, 1998) (Appendix 350) (writ quashed by stipulation where writ issued after filing of bankruptcy); *In re Sudler*, 71 B.R. 780 (Bankr. E.D.Pa. 1987) (tenancy rights not terminated prior to bankruptcy filing where tenant had not been put out of property as of time of filing).

The landlord also may not proceed against a co-tenant of the bankruptcy debtor where such a proceeding would affect the property of the bankruptcy estate and adversely affect the interest of the bankruptcy debtor. *Otten*, citing *In re Otero Mills, Inc.*, 25 B.R. 1018, 1021 (Bankr. D.N.M. 1982). A landlord who files bankruptcy listing the premises as part of the bankruptcy estate relinquishes control of the premises to the bankruptcy court, and does not have the right to file an unlawful detainer action until the bankruptcy court abandons the property. *See Grandco Management v. Wielding*, No. UD-1921202525 (Minn. Dist. Ct. 4th Dist. Dec. 16, 1993) (Appendix 4.B.3).

13. Stay of eviction action pending parallel litigation

In some cases a landlord may file an eviction (unlawful detainer) action as a way to get around defending an action already brought by the tenant. The court may dismiss or stay the action as being incorrectly commenced when the pending parallel action would properly resolve the dispute. *Rice Park Properties v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556 (Minn. 1995) (Minnesota Supreme Court decision reversing the Court of Appeals and affirming the district court decision to stay an unlawful detainer action pending final disposition of a related and earlier filed declaratory judgment action commenced by the tenant); *Stein v. J.D. White, Inc.*, No. CO-91-2164 (Minn. Ct. App. Apr. 21, 1992), FINANCE & COMMERCE B24 (April 24, 1992) (Appendix 0.F) (affirmed dismissal). *But see Park Drive Partnership v. Granse* No. C7-96-401 (Minn. Ct. App. Sep. 24, 1996), FINANCE & COMMERCE at 38 (Sep. 27, 1996) (Appendix 193) (unpublished decision: pending separate quiet title action did not preclude unlawful detainer action, which determines who has the superior right of possession, but does not determine title; the defendant cannot assert title, equitable rights or counterclaims; the defendant did not present any evidence demonstrating a greater right of possession than the plaintiff).

In *Nuvola, LLC v. Wright,* No. A15-1778, 2016 WL 3223231 (Minn. Ct. App. June 13, 2016) (unpublished), a condominium purchase agreement provided that, inter alia, if Wright could not complete the purchase by a date certain, then the agreement was deemed cancelled. A disagreement arose between the parties regarding the purchase agreement, resulting in a civil action filed by Wright. Nuvola also filed an eviction action to remove Wright, who remained in possession of the unit after the date certain in the agreement. At the end of the eviction trial, Wright asked the housing court for a stay of the proceedings pending resolution of the parallel civil suit because it involved the same property and agreement. The housing court denied the stay because it was untimely, and alternatively, because Wright had failed to provide a case-specific reason why a stay was necessary to protect her interests in the property. The housing court recommended that an order to vacate be issued, and the district court agreed. The Court of Appeals affirmed the decisions below, stating that a motion to stay may be made at any time leading up to and including the day of trial, but not after completion of the trial, because a late request could deny the other party time to respond and it could result in the district court considering materials that were not in the record before the housing court. The Court of Appeals also noted that Wright did not request a stay in the parallel civil action and that none of the claims or defenses in that action were necessary to a fair determination of the eviction action; the eviction proceeding only decided

issues that were determinative of the present possessory rights to the property and other issues regarding the purchase agreement could be resolved in the parallel civil action.

Tenants' advocates also should consider a motion in the pending action to restrain the landlord from filing the eviction (unlawful detainer) action. *See* Temporary Retraining Orders, *supra* at V.D.

For more information on stays in mortgage foreclosure evictions, *see* discussion at VI.F.12.a2.

14. Failure to join an indispensable party

In some cases, the alleged breach of the lease on the part of the tenant may have been caused by a third party. For instance, if a public housing authority providing a rent subsidy for the tenant to the landlord withholds the subsidy or incorrectly calculates the subsidy, the landlord might file an eviction (unlawful detainer) action for nonpayment of rent against the tenant. The tenant may argue that the action should be dismissed for failure to join an indispensable party, or that the party should be joined under Minn. R. Civ. P. 19. *See Lang v. Terpstra*, No. UD-1940207512 (Minn. Dist. Ct. 4th Dist. June 12, 1994) (Appendix 70) (storage company added as necessary party on defendant's motion regarding property disposition). The landlord might respond that the action is a summary proceeding in which parties who do not have a possessory interest in the premises could not be joined. The tenant could respond by asserting that the plaintiff would have an adequate remedy in an ejectment action.

In *Hanson v. Trom*, No. UD-1950926503 (Minn. Dist. Ct. 4th Dist. Nov. 3, 1995) (Appendix 82), the landlord alleged non-payment of rent against one co-tenant, without naming the other co-tenant. The court held that the landlord failed to name an indispensable party, since the court could not enter final judgment without affecting the interests of the co-tenant. *See Tri Star Developers, LLC v.* _____, No. HC 010109514 (Minn. Dist. Ct. 4th Dist. Oct. 17, 2001) (Appendix 584) (improper service on employee of business who was not an officer and not authorized to accept service; defendant business was incorrectly named; default judgment vacated and action dismissed and expunged).

The writ cannot be enforced against a subtenant who was not a party to the eviction (unlawful detainer) action nor named in the writ of restitution. *See Kowalenko v. Haines*, No. C6-85-1365 (Minn. Ct. App., July 24, 1985) (attached as Appendix 4). In *Kowalenko*, the petitioner had subleased the apartment from the former tenants. The writ was enforced against the petitioner, pursuant to an unlawful detainer action against former tenants, but not the petitioner. The petitioner was not named in the writ. The court ordered the landlord to return possession of the apartment and petitioners personal property to her, pursuant to Minn. Stat. § 504B.375 (formerly § 566.175).

If the tenant commences an action including all of the parties before the landlord commences the eviction (unlawful detainer) action, the tenant could argue for dismissal based on the existence of the pending parallel action. *See Stein v. J.D. White, Inc.*, No. C0-91-2164 (Minn. Ct. App. Apr. 21, 1992), FINANCE & COMMERCE B24 (April 24, 1992) (Appendix O.F).

The tenant also could request that the court continue the action to allow the tenant to serve a third party complaint on the indispensable party, and order an expedited period such as seven days for the third party Defendant to appear and respond.

15. Lack of jurisdiction over Native American and Indian tribal trust property

The state courts do not have jurisdiction over claims involving the right of an enrolled member of an Indian tribe to possession of property held in trust for Indians by the United States. *White Earth Housing & Redevelopment Authority v. J.F.*, No. C8-91-224 (Minn. Dist. Ct. 9th Dist. Feb. 5, 1992) (Appendix 24); *State of Alaska, Dept. of Public Works v. Agli*, 472 F.Supp. 70 (D.C. Alaska 1979) (state courts do not have jurisdiction to adjudicate rights to possession or ownership of interest in property held in trust for Alaska natives); 28 U.S.C. § 1360(b).

In *All Mission Indian Housing Authority v. Silvas*, 680 F. Supp. 330 (C.D. Cal. 1987), in an unlawful detainer action in Federal Court, the court held:

> 28 U.S.C. § 1360(a) provides, inter alia, that in all Indian country in California, the state has "jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in ... Indian country ... and those civil laws of such state that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State." However, § 1360(b) provides that nothing in § 1360 "shall confer jurisdiction upon the State to adjudicate ... the ownership or right to possession of such property [i.e., property of any Indian tribe held in trust by the United States] or any interest therein." This statute is consistent with the Supreme Court's recognition that an action asserting a right to possession of Indian lands arises under federal law. *Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 675, 682, 94 S.Ct. 772, 781, 784–85, 39 L.Ed.2d 73 (1974). Conversely, this Circuit has held: "Where a dispute involves [Indian] trust or restricted property, the state may not adjudicate the dispute nor may its law apply." *In re Humboldt Fir, Inc.*, 426 F.Supp. 292, 296 (N.D.Cal.1977) (emphasis added; citations omitted), aff'd, 625 F.2d 330 (9th Cir.1980). *See also Segundo v. City of Rancho Mirage*, 813 F.2d 1387 (9th Cir.1987) (rent control ordinance inapplicable to allotted Indian land); *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir.1975), cert. denied, 429 U.S. 1038, 97 S.Ct. 731, 50 L.Ed.2d 748 (1977) (zoning ordinance inapplicable to Indian reservation).
>
> Conclusion
> Because the substantive state law cannot apply (and state courts cannot adjudicate this dispute) and because no federal statute or treaty governs this dispute, the Court concludes that the dispute is one arising under the federal common law, which may, if necessary, look to state law for its ascertainment. *See, e.g., Smith v. CMTA–IAM Pension Trust*, 654 F.2d 650, 663 (9th Cir.1981) (Tashima, J., concurring and dissenting). Therefore, this Court has subject matter jurisdiction of this action under 28 U.S.C. § 1331.

Id. at 332.

Also, under 28 U.S.C. § 1360(b), Minnesota courts do not have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the Red Lake Reservation.

16. Action is inappropriate method to resolve complex claims

a. Manufactured (mobile) home park lot home repossession

In *Nygren v. Nix*, No. C1-96-42 (Minn. Dist. Ct. 9th Dist. Jan. 25, 1996) (Appeal 199), the defendant agreed to purchase a manufactured (mobile) home park lot home from the plaintiff by a promissory note which stated monthly payments, and rented the land below it by a lease which did not state rent payments. The plaintiff brought an action for non-payment of rent and late fees, and the

defendant answered that the action should be dismissed because the action was not an appropriate forum since the dispute was more properly governed by the Manufactured Home Repossession Security Act (MHRSA), Minn. Stat. § 327.62 *et seq.* The court dismissed the action for preparing and issuing a summons which should have been prepared and issued by the court, and for not signing the complaint.

b. Domestic partners.

Domestic partners may or may not be in a landlord-tenant relationship, and if not, an eviction (unlawful detainer) action not be an appropriate forum to determine their possessory interests in the property. In *Shustarich v. Fowler*, UD 1960604520 (Minn. Dist. Ct. 4th Dist. July 5, 1996) (Appendix 176), Plaintiff and defendant first lived in defendant's home. Then plaintiff and defendant moved from her home to a second property, and the parties then living at the second property moved to defendant's old home. Plaintiff took title to the new property, and defendant contributed several thousand dollars from the sale of her home to a new roof and appliances. The parties kept separate expenses. After defendant obtained an order for protection, plaintiff gave notice and filed an unlawful detainer action. The court concluded that plaintiff failed to establish a landlord-tenant relationship, defendant was entitled to assert an interest in the premises, and an unlawful detainer action was a summary remedy inappropriate to try issues of title or to substitute for an action in ejectment, and denied restitution of the premises. *See In re Estate of Ericksen,* 337 N.W.2d 671 (Minn. 1983). *But see Stock v. Beaulieu* (Minn. Dist. Ct. 9th Dist. Mar. 9, 1995) (Appendix 140) (domestic partners were in landlord-tenant relationship; plaintiff retaliated against defendant for reporting a crime of domestic abuse committed by the plaintiff in which the defendant was the victim).

17. Failure to sign complaint

In *Nygren v. Nix*, No. C1-96-42 (Minn. Dist. Ct. 9th Dist. Jan. 25, 1996) (Appendix 199), the court dismissed the action for preparing and issuing a summons which should have been prepared and issued by the court, and for not signing the complaint.

18. Landlord's preparation of summons

In *Nygren v. Nix*, No. C1-96-42 (Minn. Dist. Ct. 9th Dist. Jan. 25, 1996) (Appendix 199), the court dismissed the action for preparing and issuing a summons which should have been prepared and issued by the court, and for not signing the complaint.

19. Premature action or claim that had not accrued

When the complaint alleges an act that has not yet occurred, such as nonpayment of future rent or fees or failing to move at expiration of a notice period that has not yet expired, the action or claim should be dismissed as being premature or not ripe. The court should consider only *present* possessory interests of the parties.

In *Eagan East Ltd. Partnership v. Powers Investigations, Inc.*, 554 N.W. 2d 621 (Minn. Ct. App. 1996), the commercial landlord demanded from the commercial tenant a prospective and retroactive rent increase after the square footage used by the tenant was remeasured. When the tenant failed to pay the additional rent, the landlord filed an eviction (unlawful detainer) action. The trial court held that the rent increase clauses in the lease were ambiguous and could not be applied retroactively from the new square footage measurement, but could be applied prospectively. The landlord then announced a new prospective rent increase, and in a subsequent order of the trial court, the court ruled that the landlord

was entitled to the rent increase and the tenant was not entitled to attorney's fees under the lease. On appeal, the Court of Appeals held that the trial court's jurisdiction was limited to determining present possessory rights of the parties, and that the trial court exceeded its jurisdiction by ruling on the prospective rent increase and attorney's fee issues.

The most common premature cases are notice cases filed before the effective date of the notice. In *Duke v. _____,* No. 27CVHC 12-6851 (Minn. Dist. Ct. 4th Dist. Nov. 27, 2012) (Appendix 692), the tenant had a month-to-month lease. On September 28, 2012, the landlord delivered a notice to vacate to the tenant effective October 31, 2012. Also on September 28, 2012, the landlord and the tenant signed a settlement agreement for rent and utilities to date. Section 22 of the lease allowed the landlord to terminate the lease for breach of lease with five days' notice to the tenant. On October 31, 2012, at 12:52 pm the landlord brought an eviction action for failure to vacate and for failure to pay utility bills. The court dismissed the case without prejudice because the landlord brought the eviction action for failure vacate because the action was brought before the expiration of the tenant's time to move and because the landlord had presented no evidence to establish that the 5 day notice of termination had been satisfied. *See Walters v. Demmings*, No. UD-1990916517 (Minn. Dist. Ct. 4th Dist. Nov. 15, 1999) (Appendix 422) (court dismissed the landlord's notice to quit claim as premature, as the action was filed before the effective date of the notice); *Clobes v. _____,* No. HC 010301510 (Minn. Dist. Ct. 4th Dist. Mar. 15, 2001) (Appendix 487) (action dismissed as premature where notice set vacate date as March 3 and landlord filed action March 1; costs and disbursements awarded); *Ewing Square Associates v. Koerner*, No. UD-2910104802 at 2-6 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1991) (Appendix 15.B) (unlawful detainer action dismissed where it was commenced contemporaneously with issuance of the ten day notice of termination); *Loring Towers Apartments Limited Partnership v. Redcloud*, No. UD-1921210529 (Minn. Dist. Ct. 4th Dist. Jan 20, 1993) (Appendix 11.I.5). *See also Northgate Housing Limited v. Kirkland*, No. 2002-152, 2002 WL 34422174 (Vt. Nov. Term 2002) (unpublished) (claims for possession based on termination notices had not properly accrued, as the lawsuit was filed prior to the stated termination dates; trial court did not err in finding that $6.00 in unpaid rent was *de minimus* and failed to provide a basis for possession).

Rent claims also can be premature. *See Busse v. _____,* No. 27-CV-HC-14-5955 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2014) (Appendix 784) (judgment for tenant where lease stated rent was due 28th of month but did not state amount and landlord filed action on the 6th; expungement granted; costs awarded); *Uptown Classic Properties v. _____,* No. 1021119509 (Minn. Dist. Ct. 4th Dist. Dec. 12, 2002) (Appendix 684) (eviction action plaintiff must provide sworn testimony to prove allegations of complaint; landlord who obtained rental license on November 18 and filed eviction action on November 19 could not seek rent for July through November; claim for December rent is not ripe for eviction action filed in November; eviction action dismissed and tenant is a prevailing party; expungement granted under statute); *BIRDMA, LLC v. _____*, No. HC 1011102511 (Minn. Dist. Ct. 4th Dist. Dec. 7, 2001) (Appendix 476) (action filed on the 2nd was premature to claim service fee due on the 5th; tenant tendered but landlord refused rent; landlord failed to prove amount of utility bills; lease did not comply with shared meter statute conditions). *See* discussion, *infra*, at VI.E.15.2.

20. Plaintiff's voluntary dismissal

Plaintiff may dismiss the action without order of the court *only* before the tenant serves the answer. Minn. R. Civ. P. 41.01(a). If the answer contains a counterclaim, the court cannot dismiss the action unless the court retains jurisdiction to hear the counterclaim. Rule 41.01(b). While counterclaims generally are not available in eviction (unlawful detainer) actions. If a rent abatement claim is viewed as

a counterclaim as opposed to a set off, the court would have to adjudicate the claim even if the eviction claim were dismissed. *See* Breach of Covenants of Habitability, *infra* at VI.E.1.a.

If the plaintiff dismisses an action and then refiles, the court may assess costs against the plaintiff from the first action and stay the second action until the plaintiff has complied with the order. Rule 41.04. If the plaintiff dismisses the second action, the dismissal is an adjudication on the merits. Rule 41.01(a).

21. Lease Signed under Duress

The landlord should not be able to enforce provisions of a written lease signed under duress. Duress is a defense to a contract "when there is coercion by means of physical force or unlawful threat, which destroys one's free will and compels compliance with the demands of the party exerting the coercion." Minnesota courts have not recognized the defense of economic duress. *St. Louis Park Investment Co. v. R.L. Johnson Investment Co.*, 411 N.W.2d 288, 291 (Minn. Dist. Ct. at 1987) (No duress where contract for deed vendee willingly executed deed after consulting with attorney and was not subjected to physical force or unlawful threats, even though forced to move from a previous location by time constraints); *Cedar Associates LLP v. Curtis*, No. UD-1970108508 (Minn. Dist. Ct. 4th Dist. May 20, 1997) (Appendix 250) (Tenant did not prove duress where tenant alleged landlord required her to sign lease under threat of immediate eviction).

22. Filing case in violation of consumer fraud order

On occasion courts have found landlords fraudulently filing and prosecuting unlawful detainer and other actions in violation of state consumer protection laws, and have ordered the landlords to obtain judge approval before filing new actions. In *In re Application of Okoiye* (Jan. 7, 1998) (Appendix 354E), the landlord sought *in forma pauperis* status to file another unlawful detainer action. The court reminded the landlord of the requirement for court approval for filing, and concluded that the landlord had given improper notice and had not submitted substantive proof supporting claims which he had litigated before. *See Le v.* _____, No. HC 02-7952 (Minn. Dist. Ct. 4th Dist. May 14, 2002) (Appendix 530) (ordered landlord who filed several actions again defendant and other tenants in violation of federal subsidized housing termination regulations to secure approval of Chief Judge prior to filing any eviction actions); *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 29, 1999) (Appendix 424) (landlord not allowed to file unlawful detainer action where claims were controlled by previous court orders). Landlords may try to avoid the effect of such orders by having cases brought in the name of a spouse or other person. *Amsler v. Touliot*, No. UD-1970908519 (Minn. Dist. Ct. 4th Dist. Sep. 24, 1997) (Appendix 245) (landlord ordered to obtain judge approval when his wife files cases on properties in which he maintains an interest).

23. Domestic abuse

a. *Eviction Defense*

Issues of domestic abuse can come up in a number of ways in unlawful detainer actions. There a number of common law and statutory defenses that may be available.

i. Nonpayment of rent

The landlord might file an unlawful detainer action for nonpayment of rent after the victim excludes the abuser from the household and the abuser no longer contributes toward rent. The victim could argue that eviction is not appropriate where the victim is not responsible for the nonpayment of rent, and only needs additional time to obtain assistance with the rent. *Maxtin Housing Authority v. McLean*, 328 S.E.2d 290 (N.C. 1985) (Public housing: default on payment of rent rested with abuser and not the remaining victim); *614 CO. v. D. H. Overmayer*, 297 Minn. 395, 396, 211 N.W.2d 891, 893 (1973), *affirming* First and Second Interlocutory orders, No. 204678 (Minn. Dist. Ct. 2nd Dist. Apr. 22 and July 9, 1972) (Appendix 54) (Affirmed trial court orders allowing commercial tenant one month to pay amount in default).

Another rent scenario is where the victim has left the property with proper notice but the landlord includes the tenant in eviction or rent claims anyway. Minn. Stat. §§ 504B.285, Subd. 1 (b); 504B.206, Subd. 1 (a), provide the defense that the defendant or another tenant or authorized occupant in the household has been a victim of domestic abuse, criminal sexual conduct, or stalking, and that the tenant ended the lease as required by Minn. Stat. § 504B.206 (2014) and does not have any rent obligation to the landlord following termination of the tenancy. *See* discussion, *infra*, at VI.E.38.

ii. Holding over after notice

Some cases involve the abuser trying to evict the cohabiting victim after the victim obtains a restraining order. The victim may be able to get the case dismissed on the grounds of no landlord-tenant relationship, or retaliation. *Shustarich v. Fowler*, No. UD-1960604520 (Minn. Dist. Ct. 4th Dist. July 5, 1996) (Appendix 176) (No landlord-tenant relationship); *Stock v. Beaulieu*, Minn. Dist. Ct. 9th Dist. Mar. 9, 1995) (Appendix 140) (Retaliation). *See* discussion, *supra*, at II.B.2.

The landlord might give a victim a notice to quit in a month-to-month tenancy after the victim defends against the abuser, or excludes the abuser from the property. The victim could raise a retaliation defense against the landlord, since tenants are protected against retaliation for actions they take to enforce their rights under any laws, not just housing law. Minn. Stat. § 504B.285 (formerly § 566.03). *See* discussion, *infra*, VI.F.3.

iii. Breach of lease

The landlord might file an action for breach of lease where the conduct of the abuser offends other tenants, neighbors or the landlord's staff. In 2014, the Minnesota Legislature enacted new rights for tenant who are victims of domestic violence, including an eviction defense where basis of the eviction is that the tenant or authorized occupant in the household has been a victim of domestic abuse, criminal sexual conduct, or stalking, Minn. Stat. §§ 504B.285, Subd. 1 (b); 504B.206, Subd. 1 (a). *See* discussion, *infra*, at VI.G. 38.

b. *Tenant Remedies*

Tenants facing domestic abuse have remedies other than eviction defense. Tenants have used rent escrow and tenant remedies actions, claiming that the landlord was obligated under the lease, a covenant of quiet enjoyment, or the covenant of habitability to maintain the property fit for the use intended by the parties to take action against an abuser, or that the circumstances amounted to constructive eviction.

In _____ *v. Country Village Apartments*, C8-02-14178 (Minn. Dist. Ct. 1st Dist. July 8, 2002) (Appendix 436), the tenant obtained a restraining order against the father of her child. She called the police for subsequent incidents of threats and property damage, but did not feel safe. She gave notice to the landlord that she would vacate, claiming that the property was not fit for her use under Minn. Stat. § 504B.161 (formerly § 504.18). When the landlord did not agree to end the tenancy, she filed an rent escrow action under Minn. Stat. § 504B.385 (formerly § 566.34). The court found that she had been constructively evicted, and ordered her released from the lease, ending her rent liability, and that the landlord return her deposit minus the cost of damage beyond ordinary wear and tear. *See Person v. Torchwood Management*, No. UD-1920604543 (Minn. Dist. Ct. 4th Dist. July 6, 1992) (Appendix 205) (rent escrow action: landlord's failure to effectively abate loud and abusive language by neighboring tenants, noisy parties, and unjustified harassment by other tenants violated § 504.18 (now § 504B.161)); *Colonial Court Apartments, Inc. v. Kern*, 292 Minn. 533, 163 N.W.2d. 770 (1968) (damages action: affirmed trial court finding of constructive eviction for landlord's failure to respond to tenant's complaints about neighboring tenants).

See discussion, *infra*, at XII.B.2a (quiet enjoyment), XII.B.3 (habitability actions).

24. Summons content

In *Times Square Shopping Center, L.L.P., v. The Tobacco City, Inc.*, 585 N.W. 2d 791 (1998), the tenant challenged the summons as not stating that an original complaint had been filed with the district court, as required by Minn. Stat. § 504B.321 (formerly § 566.05). The court concluded that the function of the eviction summons was not negated by the minor technical error in the standard form.

25. Failure to use written lease

Minn. Stat. § 504B.111 (formerly § 504.012) provides that a "landlord of a residential building with 12 or more residential units must have a written lease for each unit rented to a residential tenant.... A landlord who fails to provide a lease, as required under this section, is guilty of a petty misdemeanor." Generally a contract entered into in violation of a statute or ordinance which imposes a prohibition and a penalty for an action is void and unenforceable. However, the court first must consider the nature and circumstances of the contract in light of the statute or ordinance. The court will not infer that the legislative body intended the contract to be void unless such is necessary to accomplish its purpose. The courts have voided contracts where the violations offended important public policies with respect to health and safety of the public, and have upheld contracts where the legislative intent did not indicate that its sanction should apply where the violation is slight, not seriously injurious to the public order, and where no wrong has resulted from want of compliance. *New Bonn Company v. Herman*, 271 Minn. 105, 135 N.W.2d 222 (1965).

26. Mootness

Since the eviction action is for allegedly unlawful detention or possession of the property, the case is moot if the tenant has vacated the property prior to the court hearing. Mootness is the doctrine of standing set in a time frame: "the personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Nathan v. Town Centre Self Storage, LLC*, No. A06-461, 2007 WL 446831 (Minn. Ct. App. Feb. 13, 2007) (unpublished) (quoting *Kahn v. Griffin,* 701 N.W.2d 815, 821 (Minn. 2005). Mootness occurs "if an event occurs that resolves the issue or renders it impossible to grant effective relief." *Id.* (quoting *Isaacs v. Am. Iron and Steel Co.*, 690 N.W.2d 373, 376 (Minn. Ct. App. 2004), *review denied* (Minn. Apr. 4, 2005).

In *Sandy Pine Apartments v. _____,* No. 58-CV-14-309 (Minn. Dist. Ct. 10th Dist., Pine County, Aug. 6, 2014) (Appendix 750) (Judge Martin), the co-defendant who no longer lived on the premises dismissed from action. In *The Freund Haus, LLC v. _____,* No. 27-CV-HC-1-6609 (Minn. Dist. Ct. 4th Dist. July 22, 2014) (Judge Chou) (Appendix 733), the tenant defendant requested expungement from eviction on her record. The referee denied her motion for expungement with prejudice. The defendant sought reversal of the referee's order. The court found that the eviction was moot at the time of its filing and the court lacked jurisdiction over the case because the plaintiff had actual and constructive notice that the defendant had moved out of the apartment since the defendant (1) knew the defendant was physically assaulted by another tenant of the property; (2) heard from the defendant's father that his daughter could no longer live at the premise; (3) refused to accept the return of the keys by the defendant's father; and (4) was notified via e-mail, his preferred method of communication, that defendant had moved. The court also held that even if the case was not moot, jurisdiction was never properly conferred to the court to hear the case due to defective service because service by mail and by posting is appropriate only if the defendant cannot be found in the country. In this case, not only plaintiff could have found defendant very easily in the country but plaintiff also made the mistake to mail the summons prior to his second attempt at personal service. As a result, the court ordered the expungement stating that it was clearly in the interests of justice which were not outweighed by the public's interest in knowing about the record. *See Olson v. _____*, No. HC 031008504 (Minn. Dist. Ct. 4th Dist. Oct. 21, 2003) (Appendix 556) (dismissed where tenant vacated before hearing but after action commenced); *Ukatu v. _____*, No. HC 0307614501 (Minn. Dist. Ct. 4th Dist. July 30, 2003) (Appendix 586) (dismissal for no license at time of filing, even though landlord later obtained license; eviction case is moot when tenants have vacated; expungement granted).

27. Plaintiff's default

It is common for the court to strike a case when the plaintiff does not appear to proceed with it. Tenants still should appear and ask that the case be dismissed. *See Devonshire v. _____,* No. HC 051220530 (Minn. Dist. Ct. 4th Dist. Jan. 13, 2006) (Appendix 642) (eviction dismissed and expunged for improper plaintiff and default by plaintiff); *Filas v. _____*, No. HC 040218516 (Minn. Dist. Ct. 4th Dist. Mar. 2, 2004) (Appendix 498) (dismissal with prejudice where tenant appeared but plaintiff did not).

28. Statute of frauds

Minn. Stat. § 513.04 provides:

> Conveyance of Interest in Land Except up to One-year Lease.
> No estate or interest in lands, other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered, or declared, unless by act or operation of law, or by deed or conveyance in writing, subscribed by the parties creating, granting, assigning, surrendering, or declaring the same, or by their lawful agent thereunto authorized by writing. This section shall not affect in any manner the power of a testator in the disposition of real estate by will; nor prevent any trust from arising or being extinguished by implication or operation of law.

In *Shoppes At Prairie Run Property Group v. Draeger,* No. A13-1911, 2014 WL 2921919 (Minn. App. June 30, 2014) (unpublished), D's Family Pizza, LLC leased a mall site for a restaurant. Prior to execution of the written lease, the manager of the LLC allegedly orally agreed to reimburse the landlord for improvements to and equipment for the leased space. However, none of the members of the

LLC actually signed the personal guaranty that was attached to the written lease. The LLC made all of the lease payments, but failed to repay the amounts advanced for equipment and improvements. The landlord obtained a default judgment against the LLC, but the District court granted summary judgment in favor of the individual members. The Court of Appeals affirmed, stating: 1) a member is not personally liable for the obligations of a limited liability company merely because he or she is a member; 2) even if the oral promise to repay was independent of the lease, it would be a promise to answer for the debts of another, and would still be subject to the statute of frauds and require a signed writing to be enforced; 3) it was not reasonable for a commercial landlord to spend considerable sums before it had a signed guaranty; 4) any detrimental reliance was not so great as to rise to the level of injustice or to avoid the statute of frauds; and 5) there was no unjust enrichment because the landlord already had a judgment against the LLC for the full amount and because the improvements and equipment remain the property of the landlord.

In *5th Street Ventures, LLC v. Frattallone's Hardware Stores, Inc.,* No. A03-2036, 2004 WL 1878822 (Minn. App. Aug. 24, 2004) (unpublished), the original landlord and tenant entered into a ten-year lease to operate a hardware store, and the tenant wanted to install, among other things, a fence in the front of the store. The landlord sent a letter to the tenant objecting to the chain-link style of the fence, allowing it to be completed, but reserving the right to contribute to improving the aesthetics, if needed. The tenant continuously occupied the fenced-in outdoor space until the new landlord objected to the use of the common areas in violation of the lease and filed the unlawful detainer suit. The tenant argued that the original landlord's letter constituted a written modification to the lease. The District Court granted summary judgment in favor of the tenant, and 5th Street Ventures appealed. The Court of Appeals reversed and remanded, holding that questions of fact existed regarding the intent of the alleged lease modification and the new landlord's actual knowledge of the modification, which precluded summary judgment. The Court of Appeals further stated that the letter may satisfy the statute of frauds and that specific performance may be compelled when there has been part performance. Finally, the Court of Appeals cautioned that if the new landlord had actual knowledge of the unrecorded lease, it cannot later seek protection of the Torrens statute as a good-faith purchaser.

In *Jacobson v. Meinen Holdings, LLC,* No. 28-CV-16-645 (Minn. Dist. Ct. 3rd Dist., Houston County, Feb. 15, 2017) (Appendix 807) (Judge Sturino), the landlord in an email offered a tenancy for life, but the proposed lease which was not signed proposed a termination provision. The subsequent email and mail correspondence confirmed the former and that the landlord would continue to participate in the Section 8 program. After the tenant complained about conditions, the landlord attempted to terminate the tenancy. The tenant filed a rent escrow action, with the court ordering that (1) landlord is required to make repairs, (2) tenant has the right to lease the property for life, through the part performance exception to the statute of frauds, (3) landlord is required to participate in section 8 program for remainder of lease, (4) the landlord shall reimburse the tenant for expenses incurred in connection with repair issues, (5) the corporate veil was pierced to make the entity and the shareholder liable, and (6) $500 statutory attorneys' fees for tenant.

See contra MM Home Builders, Inc. v. Williams, No. C3-02-521, 2002 WL 31247999 (Minn. Ct. App. Oct. 8, 2002) (unpublished) (tenant cannot use statute of frauds to avoid a contract that she approved and signed).

29. Tenant waiver of claims

The tenant may waive claims related to financial obligations to the landlord by paying amounts later to be challenged. *White v. Ford*, No. C2-02-2048, 2003 WL 21694419 (Minn. Ct. App. July 22,

2003) (unpublished) (tenant waived claim that landlord improperly modified lease to require tenant payment of utilities by paying for utilities for 9 months after notice).

Many statutory protections cannot be waived. *See* discussion, *infra*, at VI.G.12.

30. Statute of limitations

Some claims may be barred by a statute of limitations. *Boston Housing Authority v. Tyler*, N0. 00-01016 (Mass. Dist. Ct., Boston Housing Ct. Jan. 21, 2004) (Appendix 478) (dismissal of eviction action not brought within two year statute of limitations for forfeiture; 6 year statute of limitations for contract actions did not apply to evictions).

The Minnesota statute of limitations period is six years for claims under a contract or statute, or concerning personal property, fraud, and other listed claims, Minn. Stat. § 541.05, and two years for penalties created by statute. Minn. Stat. § 541.07. *See* discussion, *infra*, at XII.B.0B.

31. Servicemembers Civil Relief Act

On December 19, 2003, the new Servicemembers Civil Relief Act replaced the Soldiers' and Sailors' Civil Relief Act. 50 U.S.C. §§ 3951-3959, Pub. L. No. 108-189 (2003), 117 Stat 2835. It extended coverage to members of the National Guard serving "more than 30 consecutive days of active duty. The court may grant a stay of proceedings in a number of circumstances, should grant a stay in some, and must grant a stay in others.

Absent a court order, a landlord may not evict a servicemember or the dependents of a servicemember from a residential lease when the monthly rent is at or below $2400 per month for the year of 2003, and $2465 in 2004, with a formula to calculate the rent ceiling for subsequent years. 50 U.S.C. § 3951.

In any eviction case, if a servicemember whose ability to pay the rent is materially affected by military service, the court shall grant a request for (1) a stay of the action for 90 days, unless equity requires a shorter or longer stay, or (2) adust the obligation under the lease to preserve the interests of all parties. The court also may grant the relief on its own motion, and may grant landlord as equity may require. It is a misdemeanor for a person to knowingly take part or attempt to take part in an eviction.

32. Accord and satisfaction

In *Rosetree Properties LLP v. _____,* No. 62-HG-CV-16-1712 (Minn. Dist. Ct. 2nd Dist. Sept. 21, 2016) (Appendix 728), the district court issued an order expunging the landlord's eviction action after finding that the allegations in the complaint were untrue. The court found that the accord and satisfaction doctrine barred the eviction action because the landlord previously had settled the matter and was paid in full.

D1. CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY (CARES) ACT § 4024

The Coronavirus Aid, Relief, and. Economic Security (CARES) Act § 4024, codified at 15 U.S.C. § 9058, created an eviction moratorium operated by restricting lessors of covered properties. The federal eviction moratorium took effect on March 27, 2020 and continued for 120 days until July 25, 2020.

The federal moratorium also provided that a lessor (of a covered property) may not evict a tenant after the moratorium expires except on 30 days' notice that may not be given until after the moratorium period. This provision is not limited to nonpayment of rent and has no expiration date.

The Act defines a "covered property" as a property that: (1) participates in a "covered housing program" as defined by the Violence Against Women Act (VAWA) (as amended through the 2013 reauthorization); (2) participates in the "rural housing voucher program under section 542 of the Housing Act of 1949"; (3) has a federally backed mortgage loan; or (4) has a federally backed multifamily mortgage loan.

For more information on the Act and covered properties, *see* Pandemic Eviction Defense and Tenant Claims in Minnesota at I.B.

For cases, *see* Pandemic Eviction Defense and Tenant Claims in Minnesota at III.B.1.b.

E. NONPAYMENT OF RENT DEFENSES.

1. Breach of the covenants of habitability, VI.E.1
2. Rent licenses and other housing condition defenses, VI.E.2
3. Breach of an express covenant which creates a condition precedent to payment of rent, VI.E.3
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1. Breach of the covenants of habitability

For more information on habitability claims in tenant-filed actions including application of the covenants of habitability, *see* discussion at XII.B.3.

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b. *The plaintiff must prove that rent was not paid,* VI.E.1.b
c. *The defendant must tender the rent to be withheld or provide adequate security,* VI.E.1.c

d. *Evidence of violations,* VI.E.1.d

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(3) Housing code violations not concerning housing condition, VI.E.1.d(3)
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(5) Court inspection of the property, VI.E.1.d(5)
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a0. *Before the covenants*

Prior to 1971, the landlord only had an obligation to maintain the property if the landlord agreed to take the obligation, or if the lease was silent. *Delamater v. Foreman*, 184 Minn. 428, 239 N.W. 148 (1931).

a. *The covenants*

For more information on habitability claims in tenant-filed actions including application of the covenants of habitability, *see* discussion at XII.B.3.

In 1971 the Minnesota Legislature enacted Minn. Stat. § 504.18. Subdivision 1 provided that implied in every oral and written residential lease are three covenants or obligations of the landlord:

1. That the premises and all common areas are fit for the use intended by the parties.

2. To keep the premises in reasonable repair, except where the disrepair was caused by the willful, malicious or irresponsible conduct of the tenant or tenant's agent.

3. Maintain the premises in compliance with applicable state and local housing maintenance, health, and safety laws, except where the violation was caused by the willful, malicious, or irresponsible conduct of the tenant or tenant's agent. Included in "health and safety laws" are: (a) The weatherstripping, caulking, storm window, and storm door energy efficiency standards for rental property contained in Minn. Stat. § 216C.27, subd. 1, 3. *See* Minn. Stat. § 216C.30, subd. 5, Minn. R. § 7655.0400; and (b) Fire extinguisher and smoke detector installation requirements. Minn. Stat. §§ 299F.361, 299F.362.

The successor statute Minn. Stat. § 504B.161 now reads:

504B.161 COVENANTS OF LANDLORD OR LICENSOR.

Subdivision 1. Requirements.

(a) In every lease or license of residential premises, the landlord or licensor covenants:

(1) that the premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee;

(3) to make the premises reasonably energy efficient by installing weatherstripping, caulking, storm windows, and storm doors when any such measure will result in energy procurement cost savings, based on current and projected average residential energy costs in Minnesota, that will exceed the cost of implementing that measure, including interest, amortized over the ten-year period following the incurring of the cost; and

(4) to maintain the premises in compliance with the applicable health and safety laws of the state, and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

(b) The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

Subd. 2. Tenant maintenance.

The landlord or licensor may agree with the tenant or licensee that the tenant or licensee is to perform specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in a conspicuous writing. No such agreement, however, may waive the provisions of subdivision 1 or relieve the landlord or licensor of the duty to maintain common areas of the premises.

Subd. 3. Liberal construction.

This section shall be liberally construed, and the opportunity to inspect the premises before concluding a lease or license shall not defeat the covenants established in this section.

Subd. 4. Covenants are in addition.

The covenants contained in this section are in addition to any covenants or conditions imposed by law or ordinance or by the terms of the lease or license.

Subd. 5. Injury to third parties.

Nothing in this section shall be construed to alter the liability of the landlord or licensor of residential premises for injury to third parties.

Subd. 6. Application.

The provisions of this section apply only to leases or licenses of residential premises concluded or renewed on or after June 15, 1971. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

The "fit for intended use covenant" includes the landlord's statutory obligations to be the bill payer and customer of record for utility services supplied to a building through one meter where the service covers more than one unit or the common areas. Minn. Stat. § 504B.215 (formerly § 504.185). *See* Utilities, *infra*, at VI.E.4.

The statute is to be liberally construed. Minn. Stat. § 504B.161, Subd. 3. The covenants of habitability and the covenant to pay rent are mutual and dependent, and all or part of the rent is not due when the landlord has breached the covenants. *Fritz v. Warthen*, 298 Minn. 48, 55-59, 213 N.W.2d 339, 340-42 (1973). The defendant may raise breach of the covenants as a defense to an action for nonpayment of rent. *Id.* at 59, 213 N.W.2d at 342.

The fact that a residential tenant operates a business out of the home does not negate operation of the statutory covenants. *Swartwood v. Gardner*, No. UD-1950929506 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1995) (Appendix 113) (tenants operation of a family day care center at residential rental premises does not relieve landlord of obligations under covenants of habitability).

a1. *Waiver or modification of the covenants*

The parties may not waive or modify the covenants. Minn. Stat. § 504B.161 (formerly § 504.18), subd. 1. In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix

708), the landlord Meldahl claimed that the tenants breached the lease by allowing housing inspectors into the house without providing him prior notice. The court denied this claim and found the clause in the lease requiring such notice unconscionable and thus unenforceable. In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. The court affirmed the referee's findings in their entirety. *See Greevers v. Greevers*, No. UD-1950628506 (Minn. Dist. Ct. 4th Dist. July 24, 1995) (Appendix 110) (no existence of agreement by tenant reside in condemnable or uninhabitable premises, and such an agreement would be contrary to public policy and in violation of State law).

The tenant's pre-rental inspection of the premises does not defeat the covenants. § 504B.161 (formerly § 504.18) , subd. 3. A lease term stating that the tenant accepts the premises as being in excellent condition is void and contrary to public policy, where the condition of the premises violates the covenants.

a2. *Leases requiring tenant maintenance and repairs*

While the tenant may agree in writing to perform special repairs or maintenance if the agreement is supported by adequate consideration, the agreement does not waive the covenants. Minn. Stat. § 504B.161 (formerly § 504.18), subd. 2. In *Wardin v. Maski*, No. C4-97-2245, 1998 Minn. App. LEXIS 941 at *7, 1998 WL 481917 at *3 (Minn. Ct. App. Aug. 18, 1998) (unpublished), the court affirmed the trial court's application of the statute to a lease requiring the tenant to make repairs.

> The lease provided that the respondents would maintain mechanical systems, but the district court found that the lease did not contain a "conspicuous indication * * * to support [Wardin's] contention that [respondents] were obligated to perform specific repairs or maintenance." We agree that the maintenance provision was not specific and was not set forth in a conspicuous writing. The maintenance provision appears on page three of a six-page form lease and is written in the same typeface as the rest of the lease. Also, the maintenance agreement was not supported by any consideration. The district court properly found that respondents were not responsible for maintaining the heating system and water pipes and did not abuse its discretion in abating rent for insufficient utilities.

Id. See State v. Ellis, 441 N.W.2d 134, 137-38 (Minn. App. Ct. 1989) (ultimate responsibility for compliance with the covenants remains with the landlord; landlord's attempt to transfer responsibility to tenant is prohibited).

In *Hermel v. _____,* No. 27-CV-HC-17-493 (Minn. Dist. Ct. 4th Dist. Feb. 17, 2017) (Appendix 734), the Section 8 Voucher landlord filed an eviction action for tenant's failure to pay rent in January and February. The landlord argued that aside from the amount owed by the tenant under the subsidized lease, the tenant also owed him a separate amount under a separate lease agreement for tenant to rent out the garage. The court stated that the landlord and tenant were not allowed to make their own "side deal" without the agreement of the housing authority and therefore landlord could not charge tenant for any rent other than that specified on the Housing Assistance Payment (HAP) contract. In addition, the court held that costs to repair the refrigerator, furnace and air conditioner paid for by tenant were the responsibility of landlord and therefore such amounts needed to be reimbursed. Lastly, the court denied the tenant's request to be reimbursed by landlord for buying a lawnmower at the landlord's request stating that the lawnmower belongs to tenant who is able to sell it. The court also ordered the tenant to receive a credit of such overpaid amounts towards future rent owed by the tenant (but at the termination

of the tenancy, any remaining amounts should be paid to tenant in cash 30 days prior to the end of the tenancy). The tenant was allowed to remain in possession of the premises and awarded allowable costs and disbursements.

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix 708), the landlord Meldahl brought this eviction action to remove the tenants from his property for non-payment of rent and breach of the lease. Meldahl claimed that the tenants breached the lease by owing an outstanding water bill, late rent fees, and lawn mowing fees. The district court held that none of Meldahl's asserted breach claims constituted a material breach. In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. The court affirmed the referee's findings in their entirety.

See Robinson v. Etukakpan, No. 27-CV-HC- 06-4817 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2006) (Appendix 676) (Judge Reding) (rent escrow action; no evidence oral lease provided for late fees; landlord failed to prove rent increase was not retaliatory; landlord failed to prove tenant impaired landlord's attempts at repairs; tenant failed to prove landlord promised to supply working washer and dryer; landlord was not entitled to collect rent without a Brooklyn Park rental license; landlord did not prove a conspicuous writing with adequate consideration to require tenant to make repairs; tenant awarded rent abatement for habitability violations and lack of rental license, $100 per privacy violation, and $500 in attorney's fees; landlord ordered to comply with privacy statute with 24 hours notice); *Dydell v. Sumpter,* No. HC 010918901 (Minn. Dist. Ct. 4th Dist. Nov. 5, 2001) (Appendix 644) (rent escrow action: RAFS subsidized housing tenant awarded rent abatement for disrepair; tenant not responsible for RAFS subsidy; lease provision requiring tenant to maintain property cannot waive Minn. Stat. § 504B.161; landlord ordered to complete repairs); *S&R Management v. _____, _____ v. Wones,* Nos. HC-#1000621500 and HC #1000627901 (Minn. Dist. Ct. 4th Dist. July 25, 2000) (Appendix 677) (consolidated eviction and rent escrow actions; property co-owner, management company, and property manager all were landlords as defined by Minn. Stat. § 504B.001, Subd. 7; lease contained no conspicuous writing supporting landlord's claim that tenant was required to paint and clean property; failure of tenant to give written notice of repairs does not waive landlord's covenant of habitability but court may consider it in determining rent abatement; eviction dismissed, rent abatement of $125 per month out of $525 rent for numerous violations; landlord ordered to make repairs; while court made no findings on privacy violations, tenant ordered to not unreasonably deny access, landlord may give 24 hour notice; jurisdiction retained and compliance hearing scheduled).

In *Jafer Enterprises, Inc. v. Peters,* No. UD-1920701512 (Minn. Dist. Ct. 4th Dist. Aug. 10, 1992) (Appendix 5.P), the landlord and tenant agreed that the rent would be reduced by $50.00 because the tenant agreed to paint the house, install carpet, and do other needed repairs at her cost. The court found that given the condition of the premises and the rent reduction already negotiated between the parties, the tenant still was entitled to a $300.00 per month rent abatement for three months. *Id.* at 3. *See Coleman v. Kopet*, No. UD-1000211534 (Minn. Dist. Ct. 4th Dist. Mar. 8, 2000) (Appendix 385) (Adequate consideration to shift the obligation for repairs from the landlord to the tenant must be fair and reasonable under the circumstances; the landlord failed to prove adequate consideration, so the landlord was responsible for making all repairs; rent abatement of $2,925 over ten months (32%) covered by rent paid into court and credits against future rent); *Larson v. Cooper*, No. UD-1880209557, Order at 6 (Minn. Dist. Ct. 4th Dist. Mar. 21, 1988) (Appendix 6); *Greevers v. Greevers*, No. UD-1950628506 (Minn. Dist. Ct. 4th Dist. July 24, 1995) (Appendix 110) (no existence of agreement by tenant reside in condemnable or uninhabitable premises, and such an agreement would be contrary to public policy and in violation of State law); *U and W, Inc. v. Grove*, No. UD-1950403505 (Minn. Dist.

Ct. 4th Dist. Apr. 25, 1995) (Appendix 111) (provision stating tenant would provide all maintenance not enforced); *Phoenix Group, Inc. v. Phonseya*, No. UD-1951004508 (Minn. Dist. Ct. 4th Dist. Nov. 1, 1995) (Appendix 87) (illiterate and vulnerable adult who began paying full rent after stipulated rent abatement did not prove that repairs were completed); *Olson v. Brooks*, No. UD-1950209512 (Minn. Dist. Ct. 4th Dist. Mar. 7, 1995) (Appendix 112) (landlord failed to prove oral agreement for tenants to make repairs related to items listed by the housing inspector).

a3. *Leases charging tenants for repairs*

The landlord may not charge the tenant for service calls to maintain the property. In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix 708), the landlord Meldahl brought this eviction action to remove the tenants from his property for non-payment of rent and breach of the lease. Meldahl claimed that the tenants breached the lease by owing an outstanding water bill, late rent fees, and lawn mowing fees. The district court held that none of Meldahl's asserted breach claims constituted a material breach. In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. The court affirmed the referee's findings in their entirety. *See Meldahl and SJM Prop. v. _____*, No. 1050923509, Order on Referee Review at 21-22 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered lease term requiring payment of $50 service call fee was illegal and unenforceable).

b. *The plaintiff must prove that rent was not paid*

Often the amount of rent withheld is not in dispute. If it is in dispute, the court should allow litigation of that issue before it determines whether withheld rent should be paid into court. However, as noted below, the court should only consider whether rent should be paid into court as it accrues, rather than back rent withheld. *See Kahn v. Greene*, No. UD-1940330506 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46) (plaintiff alleged but did not prove part of plaintiff's nonpayment of rent claim); *See Z & S Management Company v. Jankowicz*, No. UD-1920219515 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1992) (9.B) (plaintiff's alleged but did not prove nonpayment of January and February rent where plaintiff's complex manager had been warned about not promptly submitting rent payments to plaintiff after receiving them from tenants, and plaintiff later fired the manager).

c. *Tendering rent into court or providing adequate security*

(1) *Fritz* factors

In *Fritz*, 298 Minn. at 61-62, 213 N.W.2d at 343, the court stated that the trial court shall order the defendant to provide security in one of three ways:

1. Pay into court "rent to be withheld" and "any future rent withheld,"

2. Deposit such rents in escrow subject to appropriate terms and conditions, or

3. Provide adequate security if such is more suitable under the circumstances.

The *Fritz* Court based the need for payment of rent or security on its concern that the plaintiff may need the rent to pay for expenses of the premises during the unlawful detainer action, and if the plaintiff

prevails, the plaintiff would be harmed if the rent could not be collected and the action delayed eviction of the defendant. *Id.*

Many courts regularly require the defendants to pay into court back and future withheld rent, without consideration of the factors discussed in *Fritz* and the other methods of providing security outlined in Fritz. The court should not require prepayment of back rent where the defendant withheld the rent but no longer has all of the money, the defendant has a claim that the covenants have been breached, and there will be little or no delay in proceeding to trial. In such cases, prepayment of back rent should not be required for five reasons. *See* James Poradek and Luke Grundman, *Fixing a Hole: The Fritz Defense Revisited*, Bench and Bar (Sep. 1, 2021).

(2) The court should not require full payment of back rent into court

Many courts regularly require the defendants to pay into court back and future withheld rent, without consideration of the factors discussed in *Fritz* and the other methods of providing security outlined in *Fritz*.

On the other hand, some courts have not required defendants to pay back or future rent into court, without explanation. *See Kahn v. Foote*, No. UD-194041455503 (Minn. Dist. Ct. 4th Dist. May 6, 1994) (Appendix 47); *Erickson v. Foster*, No. UD-1871007506 (Minn. Dist. Ct. 4th Dist. Oct. 28, 1987) (Appendix 5.N).

The court should not require prepayment of back rent where the defendant withheld the rent but no longer has all of the money, the defendant has a claim that the covenants have been breached, and there will be little or no delay in proceeding to trial. In such cases, prepayment of back rent should not be required for five reasons. *See* James Poradek and Luke Grundman, *Fixing a Hole: The Fritz Defense Revisited*, Bench and Bar (Sep. 1, 2021).

(a) Fritz does not require posting of alleged back rent

The court's discussion of the need to protect the plaintiff while the action is pending, and the use of the terms "rent to be withheld" and "any future rent" suggest that the court did not envision the posting of back rent. 298 Minn. at 61-62, 213 N.W.2d at 343. *See* James Poradek and Luke Grundman, *Fixing a Hole: The Fritz Defense Revisited*, Bench and Bar (Sep. 1, 2021).

Courts in other jurisdictions have concluded that requiring posting of back rent is inappropriate, since payment of future rent as it becomes due adequately protects the plaintiff while the action is pending. *Bell v. Tsintolas Realty Co.,* 430 F.2d 474, 483 (D.C. Cir. 1970). *See Cooks v. Fowler*, 459 F.2d 1269, 1274 (D.C. Cir. 1974); *Teller v. McCoy*, 162 W. Va. 367, __, 253 S.E.2d 114, 129-30 (1978) (citing *Fritz* and other cases); *Medford v. Superior Court*, 140 Cal. Ct. App. 3d 236, 239-42, 189 Cal. Rptr. 227, 229-30 (1983). *See also Carlson v. Mixwell*, 412 N.W.2d 771, 772-73 (Minn. Ct. App. 1987) (contract for deed cancellation injunction bond).

In *Kohner Props. v. Johnson,* 2016 Mo. App. LEXIS 896 (Mo. Ct. App. Sept. 13, 2016), the tenant appellant withheld her rent after her bathroom ceiling, which was leaking and had mold, collapsed and was covered by plastic. The tenant also had issues with cracked, unstable bathroom floor and made several complaints but management repairs did not fix the issues and she had to stay at hotels three or four nights a week at her own expense because her younger daughter with cerebral palsy was unable to use the bathtub for bathing and the mold in the bathroom aggravated her allergies. The tenant tried to

secure other housing but was repeatedly rejected for not meeting the minimum income requirements. The landlord filed a nonpayment of rent eviction lawsuit seeking unpaid rent and possession of the premises. The tenant filed an answer, affirmative defenses and a counterclaim alleging violation of the implied warranty of habitability. The court found that tenant was barred from asserting the affirmative defense or counterclaim of implied warranty of habitability because she failed to either vacate the premise or tender her rent in court in *custodia legis.* The court also found that landlord breached the maintenance clause of the lease agreement and awarded tenant an amount to set-off hotel costs. The tenant appealed arguing that she had not vacated the premises or tendered her rent to the court because doing so is not a legal prerequisite to asserting the affirmative defense of breach of implied warranty of habitability or a breach of warranty of habitability counterclaim. The Missouri Court of Appeals stated that the majority of courts which permit rent withholding as a remedy under the warranty allow the tenant to retain his rent, subject to the court's discretionary power to order the tenant to deposit his rent with the court and held that (i) a tenant's submission of the entire contracted-for rent to the court in custodia legis is not an automatic prerequisite to a tenant raising the landlord's breach of the warranty as a defense or counterclaim in a rent and possession suit against her; (ii) the trial court may order a tenant in possession to submit all, part, or none of her withheld rent to the court in custodia legis pending litigation; and (iii) due to the general interest and importance of the issue, the case was to be transferred to the Missouri Supreme Court.

(a1) The Fritz requirement is for security during the litigation

Again, the court's discussion of the need to protect the plaintiff while the action is pending, and the use of the terms "rent to be withheld" and "any future rent" suggest that the court did not envision the posting of back rent. 298 Minn. at 61-62, 213 N.W.2d at 343. *See* James Poradek and Luke Grundman, *Fixing a Hole: The Fritz Defense Revisited*, Bench and Bar (Sep. 1, 2021).

What *Fritz* requires is akin to a supersedeas bond in appellate litigation. Minn. R. Civ. App. P. 108.02, subd. 4 (c) provides that:

> (c) When the judgment or order determines the possession, ownership, or use of real or personal property (such as in actions for replevin, foreclosure, or conveyance of real property), the amount of the security normally must be fixed at such sum as will compensate the respondent for the loss of use of the property during the pendency of the appeal, costs on appeal (to the extent security for costs has not already been given under Rule 107), interest during the pendency of the appeal, and any other damages (including waste) that may be caused by depriving the respondent of the right to enforcement of the judgment or order during the pendency of the appeal.

Minn. Stat. § 504B.371, Subd. 3 (formerly § 566.12) states that the appealing defendant may remain in possession of the premises, and execution of the writ shall be stayed, if "all rent and other damages due to the party excluded from possession during the pendency of the appeal will be paid." *See* discussion, *infra*, at X.E.3.b.

(b) Local rules do not require posting of alleged back rent

Minn. Gen. R. Prac. 608 governing housing courts in the Fourth and Second Districts (Hennepin and Ramsey Counties) provides that when a tenant withholds rent and relies on a defense, the defendant shall pay into court an amount "equal the rent due as the same *accrues* or such *other amount* as determined by the court to be *appropriate* as security for the plaintiff, given the circumstances of the case." (emphasis added). Again, the rule does not require payment of the back rent withheld. Indeed,

Rule 608 is more flexible than in FOURTH JUD. DIST. SPEC. R. PRAC. 13.09, since it recognizes the court's discretion in determining what would be appropriate security for the plaintiff.

Rule 608 only applies "where a tenant withholds rent in reliance on a defense." If the tenant was not able to pay rent, or disputes the landlord's claim for rent, Rule 608 does not apply and does not support requiring the tenant to paying accruing rent into court. *See* James Poradek and Luke Grundman, *Fixing a Hole: The Fritz Defense Revisited*, Bench and Bar (Sep. 1, 2021).

(c) Requiring the posting of back rent may violate due process

See Hovey v. Elliott, 167 U.S. 409, 415-17 (1897). *See Boddie v. Connecticut,* 401 U.S. 371, 377-83 (1971); *Griffin v. Illinois*, 351 U.S. 12, 17-18 (1956). Such a requirement also may violate equal protection. *Lindsey v. Normet,* 405 U.S. 56, 74-79 (1972). *See* James Poradek and Luke Grundman, *Fixing a Hole: The Fritz Defense Revisited*, Bench and Bar (Sep. 1, 2021).

(d) Fritz allows for payment of adequate security

Such security could include where there is no delay, no payment, since there is no harm to the plaintiff, or where there may be some delay, partial payment (where the defendant has a strong claim of breach of the covenants) or documented eligibility for Emergency Assistance from the county or a private social service agency to pay any arrearage remaining after trial on breach of the covenants. Additionally, Rule 608 gives the court the discretion to consider these factors. *See* James Poradek and Luke Grundman, *Fixing a Hole: The Fritz Defense Revisited*, Bench and Bar (Sep. 1, 2021).

In *Granco Management v. Moore,* No. UD-1920727536 (Minn. Dist. Ct. 4th Dist. Aug. 15, 1992) (Appendix 5.Q), the referee ordered the tenant to deposit withheld rent into court, and allowing a writ of restitution to issue by default if she did not. The tenant requested judge review of the order. The court concluded that the tenant's affidavit and exhibits demonstrated the substantial likelihood of success on the merits of her defense under the covenants of habitability, the tenant was without funds and unable to make the payment ordered by the referee, and the tenant's lack of funds was in part a direct result of the floor of other circumstances which gave rise to her defense. The court concluded that no deposit was appropriate as security for the landlord, and ordered that the referee's order be vacated regarding the deposit with the court.

(e) Requiring posting back rent inhibits covenants enforcement

The *Fritz* Court recognized the importance of facilitating enforcement of the covenants. *Id.* at 59-60, 213 N.W.2d at 342. The statute is to be liberally construed. Minn. Stat. § 504B.161 (formerly § 504.18), subd. 3. *See Bell*, 430 F.2d at 483. *See* James Poradek and Luke Grundman, *Fixing a Hole: The Fritz Defense Revisited*, Bench and Bar (Sep. 1, 2021).

(f) Defending other causes of action does not require defendants to place into court the subject of the controversy

The practice of requiring tenants to pay into court that the tenant disputes owing based on the facts or defenses is unique when compared to litigation outside the housing context. Defendants in other actions are not requires to place into court the subject of the controversy in order to put on a defenses that the defendants are not liable on the plaintiff's claims. *See* James Poradek and Luke Grundman, *Fixing a Hole: The Fritz Defense Revisited*, Bench and Bar (Sep. 1, 2021).

(3) Decisions requiring less than full payment into court of back rent

There have been many cases in which the courts have ordered a tenant to pay into court less than all of the rent withheld, and in some cases, no rent at all. In *Larson v. Cooper*, No. UD-1880209557 (Minn. Dist. Ct. Mar. 21, 1988) (Appendix 6), the plaintiff claimed $1,805.16 due, and the court allowed the defendant to assert the defense after depositing $1,405.16. Order at 6. In *Schwanke v. Magnuson*, No. CO-90-0640 (Minn. Dist. Ct. 8th Dist. Jan. 9, 1991) (Appendix 5.L), plaintiff alleged nonpayment of rent of $250.00 in monthly rent for December and January for a total of $500.00. The court allowed defendant to assert the habitability defense after paying $250.00 into court. After trial, the court concluded that plaintiff was entitled to $300.00 in rent, released the $250.00 to the plaintiff and ordered to pay the remaining $50.00.

Recent decisions include *Hanson v. Widmark,* No. UD-1960625508 (Minn. Dist. Ct. 4th Dist. Aug. 2, 1996) (Appendix 200) (complaint alleged May and June rent of $837.00; court allowed landlord to include claim from July rent, but ordered tenant to pay into court only $1000.00 of $1,570.00 due based upon tenant's showing that condition of the premises was more than likely a basis for rent abatement); *Donovic v. Dodson*, No. C2-96-600607 (Minn. Dist. Ct. 6th Dist. Apr. 29, 1996) (Appendix 201) (no rent paid into court); *Judnick v. Boje*, No. C7-96-600537 (Minn. Dist. Ct. 6th Dist. Apr. 19, 1996) (Appendix 202) (no rent paid into court); *Ellis v. McDaniel*, No. UD-1960318520 (Minn. Dist. Ct. 4th Dist. Apr. 4, 1996) (Appendix 203) (landlord alleged $735.00 rent due through March; tenants paid into court $840.00 for March and April rent, leaving $315.00 not paid into court).

Earlier decisions include *Jensen v. Scott*, No. UD-1950203531 (Minn. Dist. Ct. 4th Dist. Feb. 28, 1995) (Appendix 114) (50% of withheld rent paid in to court); *Schaapveld v. Crump*, No. UD-1951011528 (Minn. Dist. Ct. 4th Dist. Nov. __, 1995) (Appendix 115) (no rent paid into court, based on guarantees from agencies to pay into court $1,100.00 against $1,650.00 allegedly due); *Phoenix Group, Inc. v. Phonseya*, No. UD-1951004508 (Minn. Dist. Ct. 4th Dist. Nov. 1, 1995) (Appendix 87) ($162.50 (50%) of $325.00 withheld paid into court); *Klyberg v. Elkboy*, No. UD-1910617511 (Minn. Dist. Ct. 4th Dist. July 3, 1991) (Appendix 5.M) (defendant ordered to pay into court $300.00 of $350.00 withheld in June, and $450.00 for July).

(4) Condemned or condemnable housing

Where the premises have been condemned or are in condemnable condition, the defendant should be allowed to move for summary judgment without prepayment of back rent, since the value of the premises is $0.00. In *Brown v. Austin*, No. UD-1000203527 (Minn. Dist. Ct. 4th Dist. Feb. 16, 2000) (App. 382), the court first ruled that a post office box number is not a sufficient disclosure under § 504B.181. Since there was a dispute in fact over whether an actual street address had been provided, the case was scheduled for trial with disclosure being the first issue to be raised. Tr. at 3. The court then ruled that since the tenant's habitability defense was based on a notice of intent to condemn the property, the court would not require the tenant's to deposit any rent into court. *Id.* 5-8. In *Erickson v. Foster*, No. UD-1871007506 (Minn. Dist. Ct. 4th Dist. Oct. 28, 1987) (Appendix 5.N), the court did not require the defendant to pay withheld rent into court. The court found the apartment to be extensively dilapidated, noting that the housing inspector testified that he posted a notice on the premises that the apartment was subject to condemnation if it was not repaired immediately. The court ordered an entire abatement of past rent due, and ordered future abatement until plaintiff complied with the housing code and Minn. Stat. § 504.18 (now § 504B.161). *See Floy v. _____,* No. HC-010821507 (Minn. Dist. Ct. 4th Dist. Sep. 13, 2001) (Appendix 499) (combined eviction and emergency relief action: dismissal of eviction breach

claim since tenant actions did not violate the lease; dismissal of notice claim since notice was not attached to complaint and there was no evidence of when notice was given; tenant raising condemnation as a habitability defense did have to pay rent into court; landlord who rented out condemned property was liable for $1900 in rent and deposit paid plus $5700 additional treble damages, plus $500 in moving expenses, for $8100; deadlines for payment; expungement of eviction case); *Walters v. Demmings*, No. UD-1990916517 (Minn. Dist. Ct. 4th Dist. Oct. 21, 1999) (Appendix 422) (tenant in consolidated unlawful detainer and emergency relief actions not required to pay withheld rent into court where tenant alleged payment on utility bills for an illegal shared meter); *Swanson v. Ivie*, No. UD-1950411541 (Minn. Dist. Ct. 4th Dist. May 8, 1995) (Appendix 116) ($250.00 (25%) of $1,000.00 withheld paid into court where notice of condemnation issued).

(5) Disputed rent

Where the plaintiff and defendant disagree on how much rent was withheld, the court should not order the defendant to pay into court more than the tenant claims has been withheld. In *Z & S Management Company v. Jankowicz*, No. UD-1920219515 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1992) (Appendix 9.B), plaintiff alleged nonpayment of $402.00 for December through February rent. Defendant argued that she owed only $137.00 through March. The court ordered defendant to pay into court $137.00. *See Kahn v. Greene*, No. UD-1940330506 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46) (defendant not required to pay into court disputed rent claim from before March).

(6) Law firm and agency checks

The Fourth District (Hennepin County) Housing Court issued a May 15, 1996, Order approving acceptance of uncertified checks from Legal Aid and other law firms. The Housing Court retains discretion to decide whether to accept uncertified checks from social service agencies. It takes quite a bit longer for the court to process and disperse uncertified funds, so if quick dispersal of funds is important to the tenant, the tenant or tenant's attorney should submit funds by certified check. (Appendix 174(A).

(7) Tenant's failure to comply with court's order to pay rent into court

Generally, if the court orders the tenant to pay rent into court and the tenant does not, the court will allow the landlord to order a writ of restitution. *Swartwood v. Rouleau*, No. C8-98-1691, 1999 WL 293898 (Minn. Ct. App. May 11, 1998) (unpublished) (affirmed order for eviction for nonpayment of rent where tenants claimed habitability violations but did not pay rent into court).

However, in *Hanson v. Widmark,* No. UD-1960625508 (Minn. Dist. Ct. 4th Dist. Aug. 2, 1996) (Appendix 200), the complaint alleged May and June rent of $837.00. The court allowed landlord to include claim from July rent, but ordered tenant to pay into court only $1000.00 of $1,570.00 due based upon tenant's showing that condition of the premises was more than likely a basis for rent abatement. While the tenant did not deposit the money in the court authorized eviction, the court decided to determine rent abatement to avoid unnecessary duplication of litigation. In *Amsler v. Wright*, No. UD-1960502510 (Minn. Dist. Ct. 4th Dist. May 30, 1996) (Appendix 186), the court denied the landlord's objection to court receipt of tenant's rent three minutes late, and objection to the source of funds paid into court. *See Amsler v.* _____, No. 27-CV-HC-09-37 (Minn. Dist. Ct. 4th Dist. Jan 16, 2009) (Appendix 597) (reversing referee order for eviction) (tenant showed good cause for paying rent into court late, where tenant was unable to convert money orders into cash before the court's deadline).

(8) Appeal of decision ordering tenant to pay rent into court

If the tenant believes that the amount ordered is too high, the tenant could consider appealing to the Court of Appeals for a writ of prohibition, or if the decision was made by a housing court referee, requesting judge review of the decision. *See Peters v. _____,* No. No. 27-CV-HC-060306506 (Minn. Dist. Ct. 4th Dist. Apr. 10, 2006) (Appendix 680) (Judge Wernick) (reversal of referee decision denying motion to dismiss eviction; failure of Section 8 Voucher landlord to serve housing authority with complaint is a jurisdiction defect requiring dismissal; Minn. R. Gen. Prac. 608 only requires tenant to deposit withheld rent if habitability is raised although enjoining eviction under Minn. R. Civ. P. 65.03(a) authorizes court to order deposit of rent)*; Granco Management v. Moore,* No. UD-1920727536 (Minn. Dist. Ct. 4th Dist. Aug. 15, 1992) (Appendix 5.Q) (judge review: court concluded that no deposit was appropriate as security for the landlord, and ordered that the referee's order be vacated regarding the deposit with the court). For more information on writs of prohibition, *see* discussion at XI.

(9) Guarantee of Payment

In some cases the court will accept a guarantee of payment of rent by an agency in lieu of payment of rent into court. *Larson v. Bonacci*, No. UD-970506542 (Minn. Dist. Ct. 4th Dist. Jun. 18, 1997) (Appendix 265) (Guarantee of payment from Economic Assistance Department); *Hemraj v. Hicks*, No. UD-1970306508 (Minn. Dist. Ct. 4th Dist. Apr. 8, 1997) (Appendix 259) (Trial scheduled for March 28, tenant paid half of rent into court and court accepted agency guarantee of payment of the remainder by April 10).

(10) Not applicable where tenant did not withhold rent

In *Peters v. _____,* No. No. 27-CV-HC-060306506 (Minn. Dist. Ct. 4th Dist. Apr. 10, 2006) (Appendix 680) (Judge Wernick), the court reversed the referee decision denying motion to dismiss eviction, concluding that failure of Section 8 Voucher landlord to serve the housing authority with the complaint was a jurisdiction defect requiring dismissal. The court noted that Minn. R. Gen. Prac. 608 only requires tenant to deposit withheld rent if habitability is raised although enjoining eviction under Minn. R. Civ. P. 65.03(a) authorizes court to order deposit of rent.

(11) McKnight Habitability Litigation Revolving Fund

New in 2017 was the McKnight Foundation Habitability Litigation Revolving Fund. The McKnight Foundation provided $25,000 for paying withheld rent into court in evictions and tenant-filed actions in Minneapolis for tenant who do not have the rent to pay into court. As noted above, tenants who are ordered to pay withheld rent into court but cannot comply are subject to an immediate eviction order. *See* discussion at VI.E.1.c.7.

Volunteer Lawyers Network administers the fund. Since the fund is a revolving fund, disbursed funds can be returned from court ordered rent abatements. For more information, contact VLN at 612-752-6647 https://www.vlnmn.org/

d. *Evidence of violations*

(1) Reasonable repair and code compliance covenants

Most large cities have housing maintenance and health codes. In such cities, tenants often will assert the covenants of habitability defense based on a breach of the codes. In *City of Morris v. Sax Investments, Inc.*, 730 N.W.2d 531 (Minn. Ct. App. 2007), the Court of Appeals considered a challenge

to a local habitability ordinance on the grounds that it was preempted by the state building code. The court concluded that the state building code did not preempt local regulation of habitability. On appeal, the Minnesota Supreme Court held that the authority of municipalities to enact and enforce habitability standards for rental housing is constrained by the prohibition on municipal regulation of building code provisions in Minn. Stat. § 16B.62, subd. 1. *City of Morris v. Sax Investments, Inc.*, 749 N.W.2d 1, 3 (Minn. 2008).

Useful evidence includes reports and/or testimony of housing, health, fire, and energy inspectors, pictures, items from the premises, utilities and other bills, and lay witnesses. It is equally important to present evidence of the violations of the codes *and* the affect of those violations on the tenant. For instance, in two separate cases involving the same landlord and building but different tenants and apartments, the inspections reports listed the same violations of the code. However, apparently due to differences in the extent of the code violations and the affect of the violations on the tenants use and enjoyment of the property, the rent abatements were different. *See Zeman v. Arnold*, No. UD-1900911501 (Minn. Dist. Ct. 4th Dist. Oct. 11, 1990) (Appendix 6.A); *Currington v. Zeman*, Nos. UD-1900910517 and UD-1900911502 (Minn. Dist. Ct. 4th Dist. Oct. 11, 1990) (Appendix 6.B).

(a) Appellate decisions

In *Ghebrehiwet v. Ghneim,* No. A15-0397 (Minn. Ct. App. January 11, 2016) (unpublished), landlord claimed in district court on removal from conciliation court that tenant failed to pay rent when due, held over after the lease expired, and damaged the rental unit. The tenant counterclaimed that the landlord breached the covenants of habitability due to a pervasive smell of sewage, flooding from a leaking roof, and no heat in the rental unit. The tenant also alleged privacy violations because landlord entered the rental unit without a reasonable purpose and without making a good faith effort to provide reasonable notice on several occasions, including an incident when the tenant woke up in her master bedroom to find the landlord and another male standing within feet of her, both of whom refused to leave even after several requests. The district court held that tenant owed $1,952 in unpaid rent, but that landlord was liable for damages in the amount of $3,300 (3 months' rent) for his breach the covenant of habitability and for penalties in the amount of $3,300 for numerous privacy violations.

The Court of Appeals affirmed the penalties, but reversed the damage award. For a substantial violation of the tenant's right to privacy, the statute allows for penalties that may include rent reduction up to full rescission of the lease, recovery of any damage deposit, and a maximum $100 civil penalty for each violation. The district court found that more than 10 substantial violations had occurred and awarded $1,000. The district court also awarded an additional $2,300 for the egregious master bedroom incident in the form of full rent reduction for that month ($1,100), recovery of the $1,100 damage deposit, and a $100 penalty. The Court of Appeals held that the penalties awarded to the tenant were not an abuse of discretion.

However, the Court of Appeals found that the tenant did not provide photographs or a contemporaneous record of the habitability problems, such as when they began, when complaints were made, and when each problem was fixed. Since the tenant failed to present specific proof of those damages, the district court simply abated the entire rent for the three months when the most egregious violations occurred. This was an abuse of discretion because the statute requires a proportionate approach (the extent the violations impaired the use and enjoyment of the unit) if rent is to be retroactively abated as a remedy for the breach of habitability. The Court of Appeals found there is no precedential authority for complete abatement of rent for any month when a violation has occurred. Accordingly, the award of damages was reversed.

In *Richter v. Czock*, No. C7-01-1340, 2002 WL 338181 (Minn. Ct. App. 2002) (unpublished), the court consolidated an eviction action based on holding over after notice with a rent escrow action. The court affirmed trial court rulings that the lease required a 45 day notice, that $100 per month rent abatement would cover only the period in which the landlord knew of the habitability issues, and that the landlord did not violate the privacy statute where the tenants were present when the landlord came, and the landlord claimed an emergency. The court also held that the trial court did not err in not admitted evidence when the *pro se* tenants did request admission. The court noted that since the tenant appealed from the rent escrow action judgment but not the separate eviction action judgment, it would not consider whether the notice was retaliatory.

(a) District court decisions

(i) Fourth District

In *Penrod Lane LLC v. Doe,* No. 27-CV-HC-16-6268 (Minn. Dist. Ct. 4th Dist. Mar. 1, 2017) (Appendix 742), the landlord filed eviction action against tenants alleging nonpayment of rent. The tenant filed an answer denying the rent allegations and raising an affirmative defense of breach of statutory covenants of habitability because of multiple windows missing windowpanes, the second floor entrance being unusable due to repair issues, leaks and plumbing issues (such that tenants had to use a plastic tub to wash dishes) and lead hazards at the premises in need of abatement. The tenant presented evidence that her one-year-old child was diagnosed with an elevated blood lead level. The court noted that the landlord's CEO enrolled in a lead safe work course but stated that no work had been done to correct the issues and that merely signing up to participate is not the same as actually abating a significant lead hazard. The court noted that the landlord was placed on notice and held that it failed to maintain the premises in compliance with the applicable health and safety laws of the state. For those reasons, the court concluded that the condition of the premises violated the statutory covenants of habitability. The court awarded full retroactive rent abatement from December 2016 through February 2017 given the completely impaired use and enjoyment of the premises and awarded prospective rent abatement (until landlord completes all outstanding repairs and completes lead abatement as directed by the city). But the court denied rent abatement for the period of July 2015-November 2016 noting that tenants could seek such further relief through a separate action. The court ordered tenants to remain in possession of the premises and found that tenants were the prevailing party and were, as such, entitled to statutory costs but no attorney’s fees were awarded because the lease did not provide for attorney's fees. As for the tenants' expungement request, the court reserved tenants' motion stating the court will need to monitor this case regarding the reinstatement of rent but the court decided to amend the title of the case to remove tenants' names.

In *McPipe v. _____,* No. 27-CV-HC-14-4302 (Minn. Dist. Ct. 4th Dist. Feb. 3, 2015) (Appendix 740) (Judge Bratvold), the eviction defendant tenant filled a notice of request and request for judge review alleging that the referee erred in (1) finding that the defendant did not pay rent for two months when defendant deposited rents into court pending determination of defendant's defense; (2) determining that the plaintiff landlord prevailed on proving non-payment of a month's rent; (3) entering judgment for possession in favor of the plaintiff; (4) awarding the plaintiff taxation of costs; (5) requiring the defendant to pay costs of filing and statutory attorney fee; and (6) failing to make any determination with respect to rent abatement for one of the months. The court found that the plaintiff's companion challenge to the referee's decision was untimely. On the tenant's claim, the court stated that the referee erred because "[a] tenant who deposits rent into court pending a determination of a habitability defense has fulfilled her ongoing rent obligations" and found that (1) plaintiff failed to prove his nonpayment of rent

claim; (2) defendant prevailed on her habitability defense; (3) defendant was entitled to rent abatement of 50% ($229 out of $458 rent) for two months due to plaintiff's violation of the statutory covenants of habitability; (4) judgment was to be entered in favor of defendant; (5) defendant was to be awarded taxation of costs; (6) defendant was entitled to costs and statutory $5 attorneys' fee; (7) plaintiff was entitled to receive part of the amount of rent deposited with the court for three months (minus the rent abatement, which was to be paid to defendant); and (8) defendant was to remain in possession of the premises.

In _____ *v. Meldahl,* 27-CV-HC-14-3813 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2014) (Appendix 710), the tenant filed a petition for emergency relief under the Tenant Remedies Act, codified as Minn. Stat. § 504B.381. The tenant claimed Meldahl unlawfully interrupted the utility service to her refrigerator and freezer, which lacked electricity and thus caused food spoilage. She stated that she called Mehldahl weeks prior to bringing this action, requesting he fix these problems, in addition to plumbing problems in the bathroom, but was promptly ignored. Prior to this trial, the referee had granted the petition for emergency relief and ordered Meldahl to remedy the situation immediately. However, as of trial, the problems had yet to be remedied. At trial, Mehldahl incorrectly claimed that notice to a landlord regarding problems in the property must be made in writing. Minn. Stat. § 504B.381(4) forecloses this argument, as it does not require notice to be written, and the tenant's notice by telephone was sufficient. The court found she failed to adequately prove Meldahl intentionally and unlawfully tampered with her electricity. However, in light of Meldahl's failure to remedy the problems, the court found the tenant was entitled to rent abatement for the months she paid rent while the premise was in disrepair, along with costs, totaling $4,197, and statutory attorney's fees of $500.

In _____ *v. Meldahl,* 27-CV-HC-14-3813 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 711) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's findings in the previous action. Meldahl claimed the referee (1) erred in finding the tenant had diminished use and enjoyment of the property, which entitled her to rent abatement and costs; (2) erred in finding the tenant had properly notified Meldahl of the repairs needed; (3) erred in finding the tenant's testimony was credible, while Meldahl's was not; (4) showed bias in favor of the tenant; and (5) improperly allowed the tenant to represent her co-tenant. The court disagreed with each of Meldahls claims. First, the court held that it would not overturn the referee's credibility determinations and that the referee did not erroneously find that Tenant's use and enjoyment of the property was diminished. Further, the referee's award of attorney’s fees was supported by the record and well within its authority to do so. The referee showed no bias as his evidentiary findings were an appropriate exercise of his discretion. And finally, the tenant was allowed to represent her co-tenant in this action because Minn. Gen. R. Prac. 603 only requires a power of authority for eviction actions, and this was a petition for emergency relief.

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix 708), a companion to _____ *v. Meldahl,* 27-CV-HC-14-3813 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2014) (Appendix 710), the landlord Meldahl brought this eviction action to remove the tenants from his property for non-payment of rent and breach of the lease. Meldahl claimed that the tenants breached the lease by owing an outstanding water bill, late rent fees, and moving fees. On his nonpayment of rent charge, Meldahl claimed the tenants failed to pay rent for two months. The district court held that none of Meldahl's asserted breach claims constituted a material breach. Further, Meldahl claimed that the tenants breached the lease by allowing housing inspectors into the house without providing him prior notice. The court denied this claim and found the clause in the lease requiring such notice unconscionable and thus unenforceable.

In regards to the non-payment of rent, simply filing an eviction notice is not enough to warrant actual eviction. Instead, Meldahl was required to show by a preponderance of the evidence that (1) there is a lease agreement with a rental amount due; and (2) that the rental amount was not paid pursuant to the agreement. Meldahl failed to meet this burden, as the tenants were able to provide credible evidence that they had, in fact, paid rent. Under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption. The tenants sought the abatement of rent because, they claim, Meldahl breached his covenants of habitability, due to numerous and unresolved problems with the house (e.g., holes in the floor, a malfunctioning toilet, flooding in the basement, etc.). The court entered judgment for the tenants and referenced rent abatement ordered in a companion emergency tenant remedies action. The court granted the right to remain in possession of the premises, allowable costs, rent abatement, and expungement.

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. Meldahl argued that the referee erred by (1) finding the tenants had not materially breached the lease; (2) finding the tenants' testimony was credible, while Meldahl's was not; and (3) failing to address the tenants' allegations of improper service. The court affirmed the referee's findings in their entirety. First, the tenants did not materially breach the lease by failing to mow the lawn, failing to pay the water bill, allowing housing inspectors into the house without Meldahl's prior notice, or failing to pay rent. The referee's findings were not clearly erroneous and the court upheld his conclusions. Furthermore, under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption, and thus the court determined Meldahl cannot base an eviction action on mere allegations. Next, in addressing Meldahl's credibility argument, the court stated that it defers to the referee's credibility determinations and would not reconsider those. And finally, the court addressed the tenants' allegations of improper service, but found that service was proper because tenants failed to prove otherwise by clear and convincing evidence.

In *Stewart v. _____,* No. 27-CV-HC-06-1916 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 662) (Judge Crump), the landlord filed a combination eviction action and conciliation court action in housing court, and the tenant answered alleging habitability. At trial, the tenant attempted to testify about her observations about how her dryer worked, and rodent infestation. The housing court referee did not accept her testimony, since she was not an expert in dryer repair or pest control. After the referee ruled for the landlord, the tenant sought review by a district court judge. The court reversed the referee's grant of eviction writ where referee did not equally allow late exhibits from parties and disallowed tenant to testify about her habitability observations because she was not an expert. The court dismissed the action with prejudice and expunged; awarded the tenant awarded all rents of $1618 paid into court and a credit of $525 against future rent where tenant testified about rodent infestation and a clothes dryer damaging clothes; awarded costs and credited against future rent; ordered the landlord to complete repairs; and not future rent abatement was available if repairs not completed. On appeal, the Court of Appeals held that the district court correctly found that the referee had erred. *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007) (unpublished).

In *Himraj v. _____,* No. HC-1060117546 (Minn. Dist. Ct. 4th Dist. April 25, 2006) (Appendix 682) (Judge McGunnigle), the landlord filed an eviction action alleging partial nonpayment of rent and late fees. The tenant argued that the landlord violated the covenant of habitability by not making repairs, including but not limited to, severe heating inadequacies, as she had no heat in her home for many winter months and many security issues with her back door. The court referee determined that the landlord

proved the nonpayment of rent, the defendant successfully defended by proving a violation of the statutory covenants of habitability, but awarded landlord costs and rent deposited to the court to the landlord, and gave landlord 14 days to comply with corrections required by the city because plaintiff's habitability violation warranted a court order of immediate repair due to the emergency nature of the violation. The tenant filed a notice of request for judge review. The landlord did not respond. The court stated that "[w]here the court finds for the defendant, [it] shall enter judgment for the defendant and tax the costs to the plaintiff" and ordered that (1) judgment be entered for tenant, (2) the costs be awarded to tenant (allowing tenant to withhold equivalent amount in future rent if costs were not paid), (3) tenant may deposit future rent with the court pending landlord's compliance with any outstanding repair orders, (4) defendant may petition the court for rent abatement, and (5) part of the order requiring her to refrain from legal action for 14 days be stayed.

Earlier decisions include *Jafer Enterprises, Inc. v. Peters,* No. UD-1920701512 (Minn. Dist. Ct. 4th Dist. Aug. 10, 1992) (Appendix 5.P) (a defective stove for one month, roach and mice infestation, broken porch door lock, missing porch door screen, broken cold water faucet, trash in the basement, and missing storms and screens); *Z & S Management Company v. Jankowicz*, No. UD-1920219515 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1992) (Appendix 9.B) (peeling lead paint); *Klyberg v. Elkboy*, No. UD-1910617511 (Minn. Dist. Ct. 4th Dist. July 3, 1991) (Appendix 5.M) (debris and junk, decayed cellar hatch, buckled floor, inoperable smoke detector, defective light switch, leaking faucets, inadequate toilet installation, roach infestation, water damage, unsecured counter top, floor holes, defective plaster, and lack of storms); *Erickson v. Foster*, No. UD-1871007506 (Minn. Dist. Ct. 4th Dist. Oct. 28, 1987) (Appendix 5.N) (extensive dilapidation, holes and cracks in walls and ceilings, exposed pluming, defective light fixture, and cracked toilet seat).

In *Bebault v. Danko*, No. 742053 (Minn. Dist. Ct. 4th Dist. 1978) (Appendix 7) the court found that the tenant did not have an adequate supply of water in her apartment at any time during her tenancy. The court concluded that the landlord had violated the covenant to keep the premises in reasonable repair, in addition to violating the housing code. *Id.* at 6-8. In contrast, the court found that a deadbolt lock is an amenity rather than a factor affecting habitability, and that the lack of the deadbolt lock did not cause inconvenience or harm to the tenant. *Id*. at 7. However, deadbolt locks are required by codes in Minneapolis and other municipalities.

In *Gramith v. Thibodeau*, No. UD-1941223506 (Minn. Dist. Ct. 4th Dist. Jan. 13, 1995) (Appendix 100), the tenants failed to prove violation of the covenants of habitability and diminished use and enjoyment of the premises, where the items of disrepair were allegedly minor and the landlord corrected the problems. *See Wheeler v.* _____, No. HC 030905517 (Minn. Dist. Ct. 4th Dist. Oct. 3, 2003) (Appendix 594) ($1005 in late fees were excessive, tenant did not prove habitability violations, tenant may redeem).

(ii) Second District

In *Dellmore v. IPM Realty,* No. CX-06-2688 (Minn. Dist. Ct. 2nd June 29, 2006) (Appendix 641), in a tenant remedies action, the court made extensive findings on habitability and use and enjoyment of the property and concluded that the subsidized housing tenant's habitability damages were not limited to tenant's share of rent especially where housing authority did not seek repayment of subsidy from landlord, and collection of rent after condemnation entitled tenant to treble damages. The court awarded the tenant rent abatement trebled and reimbursement of expenses resulting from habitability violations and condemnation for total of $28,000, and order the landlord ordered to prepay hotel expenses for displaced tenants.

(iii) Third District

In *Krong v. Armogost*, No. 80-C-3958 (Minn. Dist. Ct. 3rd Dist. Aug. 14, 1986) (Appendix 7.A), tenants commenced a Tenants' Remedies Action claiming violations of the covenants. The court found that numerous violations of the housing code also constituted violations of the covenants to maintain the premises in reasonable repair and fit for the use intended by the parties. The violations included, among other violations, disrepair of ceilings, walls, windows, faucets, and appliances, and mildew on the walls. *Id*. at 2-3. In another Tenants' Remedies Action, the Dodge County Court found in *Hawkins v. McNeillus* numerous violations of the covenants to maintain the premises in reasonable repair and fit for the use intended by the parties, including water damage on ceiling, walls, and outlets; mold and mildew in sleeping areas; the lack of operable fire extinguishers and vent fans; and storage of flammable liquids. Nos. 2063, 2131 at 3-7 (May 3, 1984) (Appendix 7.B).

(iv) Sixth District

See Donovic v. Dodson, No. C2-96-600607 (Minn. Dist. Ct. 6th Dist. Apr. 29, 1996) (Appendix 201) (landlord breached covenants of habitability by failing to ensure the unit had hot and cold water at all times, failing to install a deadbolt lock, failing to have an adequate heating system for all rooms of the house, and other code violations); *Judnick v. Boje*, No. C7-96-600537 (Minn. Dist. Ct. 6th Dist. Apr. 19, 1996) (Appendix 202) (two months where housing conditions were poor, the tenants replaced the stove, furnace (with a grant) and planned to replace the hot water heater).

(v) Eighth District

See Schwanke v. Magnuson, No. C0-90-0640 (Minn. Dist. Ct. 8th Dist. Jan. 9, 1991) (Appendix 5.L) (heater improperly vented, electrified refrigerator, unsafe electrical outlets, and unsafe bathroom floor).

(2) Fit for use intended covenant: other conditions and conduct problems

While most cases involve violations of the reasonable repair and code compliance covenants, it is possible to have a violation of only the "fit for intended use" covenant. For instance, if the parties agreed that the landlord would supply a room air conditioner for the apartment but then did not supply it, the lack of the air conditioner may violate the "fit for intended use" covenant without constituting disrepair or a code violation. In *Swartwood v. Gardner*, No. UD-1950929506 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1995) (Appendix 113), the tenant did not prove that the landlord promised to provide her a stove and refrigerator.

In *Rush v. Westwood Vill. P'ship,* 887 N.W.2d 701 (Minn. Ct. App. 2016), rev. denied Mar. 14, 2017, residential tenants filed two rent escrow actions which became consolidated appeals. In the first action, tenants requested heat treatment as opposed to chemical treatment (a cheaper method) for bed bug infestation or, alternatively, monetary compensation for their discarded personal property (done in connection with the chemical treatment option) and consequential damages. In the second action, the other set of tenants requested landlord to repair the bed bug infestation and reimburse them for any property damage and any other expenses. The Minnesota Court of Appeals affirmed the district court, holding that (1) Minn. Stat. § 504B.161, subd. 1(a)(2) covenant of reasonable repair does not protect the tenants' personalty nor protect the tenant from having to move and clean personalty as part of the landlord's extermination work, and (2) Minn. Stat. § 504B.161, subd. 1(a)(1) allows the landlord to keep the place fit for the use intended by using a method of his choosing so long as it is an effective method.

The first holding is especially troubling, since the common law of consequential damages for contract breaches should have included the tenants' claims. *See* discussion at VI.E.1.*l.* Since the court held that the landlord did not violate Minn. Stat. § 504B.161, it did not reach the issues of rent abatement or consequential damages. 887 N.W.2d at 709. Tenants should assert consequential damages claims for expenses and damages that flow from landlord violations of the lease covenants created by Minn. Stat. § 504B.161.

Other violations of the fitness covenant could include conduct issues, such as harassment or unannounced visits by the landlord, or failure of the landlord to control the conduct of other tenants. In *Liedtke vs Timberland Partners,* 19AV-CV-14-468 (Minn. Dist. Ct. 1st Dist. June 20, 2014) (Judge Carter) (Appendix 780), in a rent escrow action, the tenant was awarded rent abatement for noise from business operating in neighboring apartment. The court concluded that the notice to terminate lease was retaliatory, the landlord failed to rebut retaliation presumption with evidence of breach, the property manager's testimony of complaints from other tenant inadmissible hearsay. The court ordered the landlord ordered to renew the lease.

In *Hutton v. _____,* No. HC 1000606517 (Minn. Dist. Ct. 4th Dist. Jul. 7, 2000 (Appendix 656), the court found that the landlord violated implied and express covenants of quiet enjoyment and lease provision on use of the property by residing and allowing others to reside in property rented to tenant, leading to remedy of rent abatement. The court concluded that the parol evidence rule prohibited introduction of evidence of oral agreements made prior to execution of the written lease; the lease did not allow the landlord to restrict use of laundry facilities; and the landlord breached the habitability covenant by not building the promised deck and not correcting water condition in timely manner. The court awarded monthly rent abatement of $100 for habitability and $697.50 retroactively and prospectively for quiet enjoyment out of $1395 rent, along with costs and disbursements. The court order the landlord to observe quiet enjoyment.

See Person v. Torchwood Management, No. UD-1920604543 (Minn. Dist. Ct. 4th Dist. July 6, 1992) (Appendix 205) (rent escrow action: landlord's failure to effectively abate loud and abusive language by neighboring tenants, noisy parties, and unjustified harassment by other tenants violated § 504.18 (now § 504B.161)); *Colonial Court Apartments, Inc. v. Kern*, 292 Minn. 533, 163 N.W.2d. 770 (1968) (damages action: affirmed trial court finding of constructive eviction for landlord's failure to respond to tenant's complaints about neighboring tenants); *Gittleman v. Klinkner*, No. UD-1970805900 (Minn. Dist. Ct. 4th Dist. Aug. 29, 1997) (TR Appendix 151) (Rent abatement of $300 (18%) for problems with the size of the air conditioner, plumbing, and other repairs where landlord promptly responded to some repair needs but slowly to others; landlord ordered to provide properly-sized air conditioner).

Other courts have concluded that conduct problems did not rise to violations of the covenants. *Sandy Hill Apartments v. Kudawoo*, No. 05-2327 (PAM/JSM), 2006 WL 2974305 at *4 (D.Minn. Oct. 16, 2006) (unpublished) (manager's failure to prevent disturbances and disruptive activity did not violate covenants of habitability where record revealed no more than commonplace squabbling between neighbors); *O'Connor v. Miller*, UD-194-0211505 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1994) (Appendix 178) (improper citizen arrest did not support rent abatement).

See discussion, *infra*, at XII.B.2a (quiet enjoyment).

(3) Housing code violations not concerning housing condition

While most housing code cases deal with the physical condition of housing, the housing code covenant is not limited to repair cases. Issues of the landlord-tenant relationship governed by local housing maintenance, health, and safety laws also should be open for litigation, if the landlord does not maintain the premises in compliance with them. For instance, the Minneapolis Code of Ordinances Housing Maintenance Code (Appendix 138):

(a) requires the landlord to give the tenant a copy of the lease within five days after it is signed by both parties, Mpls. Code of Ord. § 244.280,

(b) requires the landlord to make good faith and reasonable effort to notify the tenant before entering the unit, Mpls. Code of Ord. § 244.285,

(c) prohibits termination of the tenancy because of housing repair litigation by the tenant or City or tenant complaint about housing conditions, Mpls. Code of Ord. § 244.80, and

(d) requires the landlord to take appropriate action to deal with disorderly activity by tenants and/or guests on the premises. § Mpls. Code of Ord. 244.2020 (Appendix 128).

Counsel should seek rent abatement when the landlord does not maintain the premises in compliance with such code requirements.

(4) Disrepair caused by acts of nature or third parties

Section 504B.131 (formerly § 504.05) provides that where the property is "destroyed or is so injured by the elements or any other cause as to be untenantable or unfit for occupancy, [the tenant] is not liable thereafter to pay rent ...." The statute generally served as the basis for constructive eviction. In *Ellis v. McDaniel*, No. UD-1960318520 (Minn. Dist. Ct. 4th Dist. Apr. 4, 1996) (Appendix 203), the court held that the tenant was not liable for rent where apartment is made uninhabitable due to actions of a third party and through no fault or negligence of the landlord or tenant, under Sections 504.05 (now § 504B.131) and 504.18 (now § 504B.161).

(5) Court inspection of the property

It is not uncommon for courts to take a first hand view of the property. In *Scroggins v. Solchaga,* 552 N.W.2d 248, 252 (Minn. Ct. App. 1996), the court noted that the district court may inspect the property, as long as it does not gather its own evidence.

(6) Trial court discretion

In *Wardin v. Maski*, No. C4-97-2245 (Minn. Ct. App. Aug. 18, 1998) (Appendix 371) (Unpublished), the court noted that on appeal trial court findings on habitability will be upheld unless clearly erroneous. The court affirmed trial court findings of the uninhabitability of a basement bedroom and the number of habitable units as not being clearly erroneous. The trial court also has considerable discretion in evidentiary rulings relating to habitability. In *Wardin*, the court affirmed trial court evidentiary rulings as not constituting an abuse of discretion, where the trial court admitted photographs

of conditions taken by a prior tenant but supported by the current tenant's testimony that the photographs accurately depicted the condition when the tenant moved into the property.

In *McPipe v. _____,* No. 27-CV-HC-14-4302 (Minn. Dist. Ct. 4th Dist. Feb. 3, 2015) (Appendix 740) (Judge Bratvold), the eviction defendant tenant filled a notice of request and request for judge review alleging that the referee erred in (1) finding that the defendant did not pay rent for two months when defendant deposited rents into court pending determination of defendant's defense; (2) determining that the plaintiff landlord prevailed on proving non-payment of a month's rent; (3) entering judgment for possession in favor of the plaintiff; (4) awarding the plaintiff taxation of costs; (5) requiring the defendant to pay costs of filing and statutory attorney fee; and (6) failing to make any determination with respect to rent abatement for one of the months. The court found that the plaintiff's companion challenge to the referee's decision was untimely. On the tenant's claim, the court stated that the referee erred because "[a] tenant who deposits rent into court pending a determination of a habitability defense has fulfilled her ongoing rent obligations" and found that (1) plaintiff failed to prove his nonpayment of rent claim; (2) defendant prevailed on her habitability defense; (3) defendant was entitled to rent abatement of 50% ($229 out of $458 rent) for two months due to plaintiff's violation of the statutory covenants of habitability; (4) judgment was to be entered in favor of defendant; (5) defendant was to be awarded taxation of costs; (6) defendant was entitled to costs and statutory $5 attorneys' fee; (7) plaintiff was entitled to receive part of the amount of rent deposited with the court for three months (minus the rent abatement, which was to be paid to defendant); and (8) defendant was to remain in possession of the premises.

In *Himraj v. _____,* No. HC-1060117546 (Minn. Dist. Ct. 4th Dist. April 25, 2006) (Appendix 682) (Judge McGunnigle), the landlord filed an eviction action alleging partial nonpayment of rent and late fees. The tenant argued that the landlord violated the covenant of habitability by not making repairs, including but not limited to, severe heating inadequacies, as she had no heat in her home for many winter months and many security issues with her back door. The court referee determined that the landlord proved the nonpayment of rent, the defendant successfully defended by proving a violation of the statutory covenants of habitability, but awarded landlord costs and rent deposited to the court to the landlord, and gave landlord 14 days to comply with corrections required by the city because plaintiff's habitability violation warranted a court order of immediate repair due to the emergency nature of the violation. The tenant filed a notice of request for judge review. The landlord did not respond. The court stated that "[w]here the court finds for the defendant, [it] shall enter judgment for the defendant and tax the costs to the plaintiff" and ordered that (1) judgment be entered for tenant, (2) the costs be awarded to tenant (allowing tenant to withhold equivalent amount in future rent if costs were not paid), (3) tenant may deposit future rent with the court pending landlord's compliance with any outstanding repair orders, (4) defendant may petition the court for rent abatement, and (5) part of the order requiring her to refrain from legal action for 14 days be stayed.

(7) Use of inspection reports

Landlords and tenants often submit public documents to support their cases, such as landlords submitting police reports in breach cases, and tenants submitting inspection reports in habitability cases. While both documents probably comply with the public records exception to the hearsay rule in Minn. R. Evid. 803(8), they still must be authenticated or be self-authenticating under Rules 901 and 902. *State v. Northway*, 588 N.W.2d 180 (Minn. Ct. App. 1999) (affirmed trial court exclusion of federal report which was not authenticated).

Hearsay statements within the report should be excluded unless they meet an exception to the hearsay rule. *Countryview Mobile Home Park v. Oliveras*, No. A04-160, 2004 WL 20049986 (Minn. Ct. App. Sept. 14, 2004) (unpublished) (affirmed from district court ruling sustaining objection to police report containing observations of officers who were not present in court); *Minneapolis Public Housing Authority v. _____*, No. HC 10306313566 (Minn. Dist. Ct. 4th Dist. July 31, 2003) (Appendix 539) (Judge Doty) (landlord's knowledge of alleged altercation was from a police report whose authors did not testify, and did not connect tenant to the incident).

A housing inspection under city ordinance without tenant consent conducted pursuant to a valid administrative search warrant was not unconstitutional. *Cardinal Estates, Inc. v. the City of Morris*, No. CX-02-1505, 2003 WL 1875487 (Minn. Ct. App. April 15, 2003) (unpublished).

(7a) Housing inspectors as lay witnesses and not experts

See discussion, *supra*, at V.H.4.

(8) Lead paint

Federal law requires owners of most pre-1978 rental property to disclose known information about lead based paint and hazzards, with penalties of up to $11,000 per violation and treble damages for willful violations. 24 C.F.R. Part 35, § 30.65; 40 C.F.R. Part 745. *See* D. Ryan and R. Scott, *New environmental Sampling and Right-to Know Strategies for Housing and Tenants' Rights Advocates*, CLEARINGHOUSE REVIEW at 447 (Nov.-Dec. 2001).

In *Penrod Lane LLC v. Doe,* No. 27-CV-HC-16-6268 (Minn. Dist. Ct. 4th Dist. Mar. 1, 2017) (Appendix 742), the landlord filed eviction action against tenants alleging nonpayment of rent. The tenant filed an answer denying the rent allegations and raising an affirmative defense of breach of statutory covenants of habitability because of multiple windows missing windowpanes, the second floor entrance being unusable due to repair issues, leaks and plumbing issues (such that tenants had to use a plastic tub to wash dishes) and lead hazards at the premises in need of abatement. The tenant presented evidence that her one-year-old child was diagnosed with an elevated blood lead level. The court noted that the landlord's CEO enrolled in a lead safe work course but stated that no work had been done to correct the issues and that merely signing up to participate is not the same as actually abating a significant lead hazard. The court noted that the landlord was placed on notice and held that it failed to maintain the premises in compliance with the applicable health and safety laws of the state. For those reasons, the court concluded that the condition of the premises violated the statutory covenants of habitability. The court awarded full retroactive rent abatement from December 2016 through February 2017 given the completely impaired use and enjoyment of the premises and awarded prospective rent abatement (until landlord completes all outstanding repairs and completes lead abatement as directed by the city). But the court denied rent abatement for the period of July 2015-November 2016 noting that tenants could seek such further relief through a separate action. The court ordered tenants to remain in possession of the premises and found that tenants were the prevailing party and were, as such, entitled to statutory costs but no attorney's fees were awarded because the lease did not provide for attorney's fees. As for the tenants' expungement request, the court reserved tenants' motion stating the court will need to monitor this case regarding the reinstatement of rent but the court decided to amend the title of the case to remove tenants' names.

(9) Lay testimony

Tenants and other lay witnesses have the right to testify about their observations of habitability problems. In *Stewart v. _____,* No. 27-CV-HC-06-1916 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 662) (Judge Crump), the landlord filed a combination eviction action and conciliation court action in housing court, and the tenant answered alleging habitability. At trial, the tenant attempted to testify about her observations about how her dryer worked, and rodent infestation. The housing court referee did not accept her testimony, since she was not an expert in dryer repair or pest control. After the referee ruled for the landlord, the tenant sought review by a district court judge. The court reversed the referee's grant of eviction writ where referee did not equally allow late exhibits from parties and disallowed tenant to testify about her habitability observations because she was not an expert. The court dismissed the action with prejudice and expunged; awarded the tenant awarded all rents of $1618 paid into court and a credit of $525 against future rent where tenant testified about rodent infestation and a clothes dryer damaging clothes; awarded costs and credited against future rent; ordered the landlord to complete repairs; and not future rent abatement was available if repairs not completed. On appeal, the Court of Appeals held that the district court correctly found that the referee had erred. *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007) (unpublished).

See Strohmeirer v. Akinsipe, No. 27-CV-HC- 13-5163 (Minn. Dist. Ct. 4th Dist. Sep. 18, 2013) (Appendix 800) (rent escrow action; rent abatement of $2,650 over 7 months for flooding and complete abatement for most recent month; if violation not remedies, plaintiff may move for additional remedies; defendant-landlord was in default where agent appeared without power of authority; tenant's lay testimony on medical causation excluded but expert testimony could have been offered).

(10) Bed bug and other pest infestations

Some landlords argue that infestations by bed bugs or other pests should not be covered under the covenants of habitability. Bed bugs are tiny insects that feed on human blood. Bed bugs are a pest in the United States in hotels, movie theaters, houses, and apartment buildings after several decades of absence. Humans have varying levels of reaction to bed bug bites, ranging from no reaction to severe skin irritation.

It is difficult, and often impossible, to trace the onset and source of a bed bug infestation in a multi-unit building. Bed bugs hide in small spaces, cracks, and crevices, and they are not easy to see when they are not hiding. Bed bugs can go many months without feeding. For more information on bed bugs, *see*

> What's Working for Bed Bug Control in Multifamily Housing: Reconciling best practices with research and the realities of implementation (National Center for Health Housing) http://www.nchh.org/Portals/0/Contents/Bed_Bug_Report_2-12-10.pdf; and
>
> Bed Bugs (Mid-Minnesota Legal Aid and Legal Services State Support) http://www.lawhelpmn.org/issues/housing.

An infestation of residential rental housing violates the covenants of Minn. Stat. § 504B.161. It is a landlord's responsibility to exterminate an infestation. Making a tenant responsible for fixing an infestation violates Minn. Stat. § 504B.161, since it waives and modifies the landlord's statutory duty. The only exception under Minn. Stat. § 504B.161 if where the tenant's willful, malicious, or irresponsible conduct caused the infestation.

(a) Appellate court decisions

The issue of bed bug infestation in rental housing is not new. In *Delamater v. Foreman*, 184 Minn. 428, 239 N.W. 148 (1931), the Minnesota Supreme Court held for the tenants on their claims for damages and constructive eviction in a bed bug-infested apartment in a multi-unit apartment building where the lease was silent on habitability.

In *Rush v. Westwood Vill. P'ship,* 887 N.W.2d 701 (Minn. Ct. App. 2016), rev. denied Mar. 14, 2017, residential tenants filed two rent escrow actions which became consolidated appeals. In the first action, tenants requested heat treatment as opposed to chemical treatment (a cheaper method) for bed bug infestation or, alternatively, monetary compensation for their discarded personal property (done in connection with the chemical treatment option) and consequential damages. In the second action, the other set of tenants requested landlord to repair the bed bug infestation and reimburse them for any property damage and any other expenses. The Minnesota Court of Appeals affirmed the district court, holding that (1) Minn. Stat. § 504B.161, subd. 1(a)(2) covenant of reasonable repair does not protect the tenants' personalty nor protect the tenant from having to move and clean personalty as part of the landlord's extermination work, and (2) Minn. Stat. § 504B.161, subd. 1(a)(1) allows the landlord to keep the place fit for the use intended by using a method of his chosing so long as it is an effective method.

The first holding is especially troubling, since the common law of consequential damages for contract breaches should have included the tenants' claims. *See* discussion at VI.E.1.*l.* Since the court held that the landlord did not violate Minn. Stat. § 504B.161, it did not reach the issues of rent abatement or consequential damages. 887 N.W.2d at 709. Tenants should assert consequential damages claims for expenses and damages that flow from landlord violations of the lease covenants created by Minn. Stat. § 504B.161.

(b) District court decisions

In *Bloomington Associates LP v. _____,* No. 27-CV-HC-16-5638 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2017) (Appendix 739), the landlord filed an eviction action against the tenant alleging breach of lease for failure to notify landlord as required in the lease that tenant's unit was infested with bed bugs and failure to pay the cost of the pest control remediation bill. The court found that the tenant's cognitive abilities were limited, that landlord failed to prove that tenants knew of bed bugs in his apartment and that landlord treated the building numerous times for bed bugs without inspecting all of the apartment units every time they treated the building for bed bugs. The court held that because of that, landlord was unable to prove that tenant breached the lease by failing to notify landlord of bed bugs in his leased property and therefore could not argue that the cost of treating the bed bugs was a direct cause of the carelessness, misuse or neglect of the tenant. The court ordered tenant to remain in possession of the premises and granted him costs and disbursements.

In *Equity Residential Holdings LLC v. Doe,* No. 27-CV-HC-15-5665 (Minn. Dist. Ct. 4th Dist. Mar. 4, 2016) (Appendix 737), the landlord plaintiffs filed an eviction action claiming that defendant owed monthly rent and failed to pay some rent two other months. The tenant defendant raised a violation of statutory covenant of habitability as a defense, requested retroactive rent abatement from the moving date, and deposited the amount with the court as security. The court stated that there was no evidence in the record that the defendant brought the bed bugs, roaches and mice into the property but found that the defendant did not initially fully comply with the landlord's demands to assist with the pest control treatments because of a language barrier and because of the practical difficulties in complying with such treatment. The court explained that the defendant's defense was limited to the rent claimed due and owing by the landlord and that to litigate retroactive rent abatement outside of the eviction action the tenant would have to bring a collateral action. The court determined that the landlord's violations of the

statutory covenants of habitability reduced the defendant's use and enjoyment of the property by 50% and awarded rent abatement for those months in which tenant asserted her habitability defense and withheld her rent. The court entered judgment for the defendant to remain in possession of the premises and also ordered future rent abatement per month until further order of the court, stating that the plaintiff was allowed to bring a motion for an evidentiary hearing to have full rent reinstated once the pest issue had been fully controlled. Since the defendant was successful in reducing monthly rent by a significant percentage but still owed some rent, the court did not award statutory costs and fees.

In *Kaufman v. Lang*, No. 27-CVHC-13-1767 (Minn. Dist. Ct. 4th Dist. Apr. 13, 2015) (Appendix 698), after providing numerous oral notices to landlord, as well as at least one written notice, plaintiff tenant filed a rent escrow action against defendant landlord for violations of statutory covenants of habitability related to persistent bed bug infestation and non-working oven. The court held (1) landlord was required to hire professionals, not just "maintenance personnel" to remedy the violations in 15 days; (2) tenant was entitled to rent abatement from diminished use and enjoyment of the premises for the full amount of the monthly rent ($345.00) for approximately four months prior to the lawsuit, abatement of all future rent and termination of the lease in 2 ½ month along with return of the security deposit after vacating the property.

In *25 & 3146 Properties Inc. v._____,* No. 27-CV-HC-12-7759 (Minn. Dist. Ct. 4th Dist. Jan. 25, 2013) (Appendix 735), the tenant withheld one month rent from landlord because of pests (roaches, bed bugs and mice). The landlord filed an eviction action for nonpayment of rent. The tenant raised the defense of habitability and posted the unpaid rent into escrow with the court. The court found that the continued existence of the pests breached state stator covenants. The court ordered tenant to remain in possession of the premises, $300 rent abatement for three months, and prospective rent abatement until the violation of the statutory covenant was cured. Since the rent was significantly abated and neither party fully prevailed, the court did not award late fees or statutory costs.

In *Giardina v. R110, Inc.,* No. 27-CV-HC-09-5956 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2009) (Judge Klein) (Appendix 697), plaintiff tenant filed a rent escrow action against the landlord resulting from landlord's failure to respond to or address infestation of bed bugs after oral and written notice from tenant of the infestation, and despite the fact that Minneapolis Department of Inspections ordered defendant landlord to exterminated bed bugs and mice in tenant's apartment. The court referee found defendant failed to timely address the infestation after notice, plaintiff's personal property was infested and needed to be destroyed, reasonable value of personal property was $2,000, and that plaintiff was entitled to rent abatement from May 2009 through August 2009 and consequential damages for property loss, offset by $400 in late fees owed by defendant. In upholding the referee's decision, the judge concluded that the findings, made after a half-day trial, did not contain clear error, and the damages amounts were properly determined as the finder of fact.

In *Simmons v. Aradu Properties, LLC*, No. 010100190942014 (Md. Dist. Ct. Jan. 30, 2015) (Appendix 699), the court considered whether bed bugs constituted a threat to a tenants, "life, health or safety" as those terms are used on a Baltimore City Public Local law. Citing to persuasive authority from other New York and Missouri, as well as secondary sources, such as a joint statement from the U.S. Centers for Disease Control and the U.S. Environmental Protection Agency and the Michigan Manual for the Prevention and Control of Bed Bugs, the court concluded that bed bugs pose a threat to a tenants life, health and safety as those terms are used under the Baltimore City Public Local law. The court, therefore, awarded tenant total rent abatement, money in an escrow account, and attorney's fees.

(11) Quiet enjoyment

See discussion, *infra*, at XII.B.2a.

e. *No written notice of violations is required*

In *Ellis v. Doe,* 915 N.W.2d 24 (Minn. Ct. App. 2018), the Court of Appeals held that tenants are not required to give written notice of habitability violations to asset a habitability defense to an eviction action for nonpayment. The Court declined to follow the unpublished decision in *Ellis v. Thompson,* No. A14-1991, 2015 Minn. App. Unpub. LEXIS 591, 2015 WL 3823190 (Minn. Ct. App. June 22 2015), which held to the contrary.

> But we are not bound by unpublished opinions because they are not precedential. Minn. Stat. 480A.08, subd. 3 (2016) ("Unpublished opinions of the Court of Appeals are not precedential."); *Skyline Village Park Ass'n v. Skyline Village L.P.,* 786 N.W.2d 304, 309-310 (Minn. [Ct.] App. 2010).
>
> Furthermore, Ellis was limited to the facts of that case. 2015 Minn. App. Unpub. LEXIS 591, 2015 WL 3823190, at *4 ("*Based on this record,* the district court erred by concluding that [tenants] were entitled to rent abatement." (emphasis added)). And *Ellis* is different in several key aspects. In *Ellis,* the tenants failed to prove violations of the statutory covenants of habitability. 2015 Minn. App. Unpub. LEXIS 591, [WL] at *3. The tenants in *Ellis* also failed to deposit rent into the court as required by *Fritz* and Minn. R. Gen. Pract. 608. Landlord's reliance on Ellis is therefore misguided.
>
> 1. We also note that *Ellis's* analysis of the interplay between a *Fritz* defense and a rent-escrow action did not apply to that case's holding, that the landlord did not violate the statutory covenants of habitability, and was therefore dictum. *See State v. Rainer,* 258 Minn. 168, 179, 103 N.W.2d 389, 396 (1960) ("Of course, a ruling not necessary to the decision of a case can be regarded as only dictum.").

_____ N.W.2d at _____, 2018 Minn. App. LEXIS 232 at *7-8.

Earlier district court decisions reach the same conclusion. *Bebault v. Danko*, No. 742053 at 7, 8 (Minn. Dist. Ct. 4th Dist. 1978) (three judge appellate panel) ("[a]rguably, requiring that notice of a breach of warranty be given to the landlord runs contrary to the clearly articulated legislatively purpose to thwart some measure of protection to tenants;" landlord "must be held to know the conditions of the premises [the landlord] offers for rent") (Appendix 7); *Larson v. Bonacci*, No. UD-970506542 (Minn. Dist. Ct. 4th Dist. Jun. 18, 1997) (Appendix 265). *See also* R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT, § 3:24 at 141 n.20 (Bancroft-Whitney 1980 and Supp. 2008); 51C C.J.S., *Landlord and Tenant*, § 371 (1968), cited in *Bebault* at 8.

In *Wong v. _____,* No. 27-CV-HC-09-1714 (Minn. Dist. Ct. 4th Dist. Dec. 21, 2009) (Appendix 743) (Judge Reding), the landlord plaintiff filed an unlawful detainer action seeking eviction of the defendants for non-payment of rent. The referee held that the tenants owed rent for the period from January 2009 until April, 2009 and ordered them to pay into the court the rent for the months of February and March, pending the trial, which they did. The tenants, one of which has physical disabilities, asserted habitability issues with the home. The referee found that the inspector inspected the property and found eight items in need of repair and found that tenants suffered a loss of security due to ability to access the sliding glass door resulting in a sex offender obtaining access to the residence, loose stairway railing, and loose and uneven carpet and awarded tenants some rent abatement. The referee also

found that that since both parties prevailed in part of their claims neither party was awarded costs. The tenants then filed an expungement motion, which was denied. They then filed a judge review request. The court remanded the issue to the referee for specific findings.

The referee then issued an order denying the motion to expunge stating that tenant had failed to deposit into court all rent due and the court had to order tenant to pay landlord and concluded that "this court cannot find under these facts that plaintiff's case was without basis in fact or law. Landlord was owed rent money from [t]enant and needed a court order in order to get paid the rent the court found that [t]enant owed."

The tenant sought judge review again. The court granted the defendant's motion to expunge stating that the referee erred in not considering that the habitability defense does not require advance written notice of complaints and adding that the defendants were not precluded from expungement, since they were successful in asserting their defense. The court also explained that the expungement statute does not require that plaintiff's case be wholly without merit, but that it be sufficiently without merit to justify expungement.

In *S&R Management v. _____, _____ v. Wones,* Nos. HC-#1000621500 and HC #1000627901 (Minn. Dist. Ct. 4th Dist. July 25, 2000) (Appendix 677), in consolidated eviction and rent escrow actions, the court concluded property co-owner, management company, and property manager all were landlords as defined by Minn. Stat. § 504B.001, Subd. 7; the lease contained no conspicuous writing supporting landlord's claim that tenant was required to paint and clean property; failure of the tenant to give written notice of repairs does not waive the landlord's covenant of habitability but court may consider it in determining rent abatement. The court dismissed the eviction action; awarded rent abatement of $125 per month out of $525 rent for numerous violations; ordered the landlord to make repairs; while court made no findings on privacy violations, ordered the tenant to not unreasonably deny access and authorized the landlord the give 24 hour notices for visits; and retained jurisdiction and scheduled a compliance hearing.

See Meldahl and SJM Prop. v. _____, No. 1050923509, Order on Referee Review at 21-22 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered that tenant need not give written notice to the landlord of violations of covenants of habitability, regardless of provisions in the written lease); *Gerald Snyder Rental Associates v. Bello*, No. UD-1950117553 (Minn. Dist. Ct. 4th Dist. Mar. 15, 1995) (Appendix 118) (on Judge review of referee's decision, tenant need not give written notice to the landlord of violations of covenants of habitability, regardless of provisions in the written lease); *McNair v. Doub*, No. UD-1960708524 (Minn. Dist. Ct. 4th Dist. Aug.12, 1996) (Appendix 205) (lease did not require tenant who gave oral notice of disrepair to give written notice).

In *George Washington University v. Weintraub*, the District Columbia Court of Appeals held that actual notice need not be given if the landlord, in exercise of reasonable care, would have become aware of the defective condition. 458 A.2d 43, 48-49 (1983). (Appendix 7.C) Until recently, in tort cases based upon a violation of the covenants of habitability, the courts considered whether the landlord knew or should have known of the danger on the property. A landlord who violated the covenants had a duty to warn the tenant of the defective condition of the property if the landlord knew or should have known of the danger, and if the tenant would not discover it by exercising due care. *See Oakland v. Stunlund*, 420 N.W.2d 248, 252 (Minn. Ct. App. 1988); *Broughton v. Maes*, 378 N.W.2d 134, 135-37 (Minn. Ct. App. 1985); *Hanson v. Rowe*, 373 N.W.2d 366, 370 (Minn. Ct. App. 1985); *Meyer v. Parkin*, 350 N.W.2d 435, 437-39 (Minn. Ct. App. 1984). However, *Bills v. Willow Run I Apartments*, 534 N.W.2d 286

(Minn. Ct. App. 1995), the court held that a violation of the Uniform Building Code in leased premises is negligence *per se* when the violation harms tenants and that harm is the type which the building code was intended to prevent.

f. *Landlord defenses*

The landlord may defend against the alleged violation of the covenants by proving that the housing was fit for the use intended, in reasonable repair, and in compliance with the code, or by showing that any disrepair or code violation was caused by the willful, malicious, or irresponsible conduct of the tenant or tenant's agent. Minn. Stat. § 504B.161 (formerly § 504.18), subd. 1. However, the landlord would be responsible for violations of the covenants that result from acts of nature or third parties who are not guests, agents or family members of the tenant. While a lease provision stating that the landlord is not liable for damage caused to the tenant's property, may be enforceable, such a provision does not limit the landlord's liability under § 504B.161 (formerly § 504.18).

The landlord also may argue that the tenant agreed in writing to perform specified repairs or maintenance, if the agreement is supported by adequate consideration and set forth in a conspicuous writing. However, such an agreement may not waive the covenants or relieve the landlord of the duty to maintain common areas of the premises. § 504B.161 (formerly § 504.18), subdivision 2. *See Jafer Enterprises, Inc. v. Peters,* No. UD-1920701512 (Minn. Dist. Ct. 4th Dist. Aug. 11, 1992) (Appendix 5.P) (rejection of defense that negotiated rent reduction precluded further rent abatement). In *Wardin v. Maski*, No. C4-97-2245 (Minn. Ct. App. Aug. 18, 1998) (Appendix 371) (Unpublished), the court affirmed the trial court's finding that a lease provision requiring the tenants to maintain mechanical systems violated Minn. Stat. § 504.18 (now § 504B.161), where the provision was not specific, was not set forth in a conspicuous writing, and was not supported by consideration. *See* discussion, *supra*, VI.E.1.a.

A landlord may argue that the landlord took reasonable steps to deal with the repair problems. While the landlord's reasonable efforts to deal with repair problems would be commendable, they do not change the fact that the repair problems existed in the first place, and that the tenant had to live with them. The landlord's efforts may somewhat mitigate rent abatement, but should not eliminate it. *See Uni-B-Partnership v. Mahto*, No. UD-1970515516 (Minn. Dist. Ct. 4th Dist. Jul. 1, 1997) (Appendix 301) (Landlord took reasonable steps to eliminate infestation problems: rent abatement of $250 (11%) over three months); *Ramdin v. Ali*, Nos. UD-1981001900 (Minn. Dist. Ct. 4th Dist. Oct. 27, 1998) (Appendix 360).

While landlords often allege that the tenant caused the disrepair, few decisions have found that the disrepair was caused by willful, malicious or irresponsible conduct of the tenant or tenant's agent. *Rogers v. Stewart*, No. UD-1961029511 (Minn. Dist. Ct. 4th Dist. Jan. 6, 1997) (Appendix 290) (Tenant, family and guests intentionally or negligently caused damage beyond normal wear and tear of a large family).

To the contrary, courts often find that the tenant's conduct to fall below this high standard. In *Genie Management Co. v. Wilson*, No. UD-1980707541 (Minn. Dist. Ct. 4th Dist. Jul. 29, 1998) (Appendix 334), the court found that the tenant and her guest inhibited but did not prevent the landlord from making repairs, noting that the tenant requested that the landlord work on the property only when she was present, and that her friend created a hostile environment for the landlord when he made repairs. The court still awarded rent abatement, but ordered that the tenant fully cooperate with the landlord in making repairs, including controlling the behavior of her guest, noting that failure to do so could result

in a reduction of rent abatement in future months.

Recent decisions include *Judge v. Rio Hot Properties, Inc.*, No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (tenants proved landlord breach of covenants of habitability, while landlord failed to prove tenant negligence or commission in damage, or that tenants unreasonably denied access to the landlord); *Lynch v. Hart*, No. UD-1960610529 (Minn. Dist. Ct. 4th Dist. Jun. 27, 1996) (Appendix 185);*Overstreet v. Jackson*, No. UD-1960520509 (Minn. Dist. Ct. 4th Dist. Jun. 17, 1996) (Appendix 206); *Ellis v. McDaniel*, No. UD-1960318520 (Minn. Dist. Ct. 4th Dist. Apr. 4, 1996) (Appendix 203); *Brook v. Boyd*, No. C8-96-47 (Minn. Dist. Ct. 9th Dist. Feb. 13, 1996) (Appendix 207). *See Hirani v. Neu*, No. UD-1960522506 (Minn. Dist. Ct. 4th Dist. Jun. 17, 1996) (Appendix 208) (rent abatement awarded even though tenant contributed to, but did not cause some repair needs). *But see Scroggins v. Solchaga,* 552 N.W.2d 248, 252 (Minn. Ct. App. 1996) (Court of Appeals held that § 566.25 (now § 504B.425) (the tenant remedies relief section) gave the district court discretion to not award rent abatement, noting that the tenant may have caused some of the properties' problems).

Earlier decisions include *Richard v. Mix*, No. UD-1950424510 (Minn. Dist. Ct. 4th Dist. May 3, 1995) (Appendix 118) (landlord failed to prove that hazardous plumbing and lack of maintenance were caused by alleged lack of cooperation or negligent or intentional acts by the tenant); *Kahn v. Greene*, No. UD-1940330506 at 5 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46) (no convincing evidence that violations or damage were result of defendants' conduct or behavior); *Buckeye Realty Co. v. Elias*, No. CX-91-0697 at 4-5, 9 (Minn. Dist. Ct. 10th Dist. Aug. 6, 1991) (Appendix 15.E) (plaintiff made no showing that damage caused by grease fire in defendant's town home was due to willful, malicious, or irresponsible conduct of defendants); *Bebault v. Danko*, No. 742053 at 6-7 (Minn. Dist. Ct. 4th Dist. 1978) (Appendix 7); *Zeman v. Arnold*, No. UD-1900911501 at 2, (Minn. Dist. Ct. 4th Dist. Oct. 11, 1990) (Appendix 6.A); *Tyus v. Minneapolis Public Housing Authority*, No. UD-1900502523 at 4 (Minn. Dist. Ct. 4th Dist. July 11, 1990) (Appendix 9.A). *U and W, Inc. v. Grow*, No. UD-19504103505 (Minn. Dist. Ct. 4th Dist. Apr. 25, 1995) (Appendix 111); *Hendersen v. Schaapveld*, No. UD-1950127501 (Minn. Dist. Ct. 4th Dist. Mar. 10, 1995) (Appendix 119); *Apple Square, Inc. v. Muldrow*, No. UD-1950213547 (Minn. Dist. Ct. 4th Dist. Mar. 2, 1995) (Appendix 120); *Jensen v. Scott*, No. UD-1950203531 (Minn. Dist. Ct. 4th Dist. Feb. 28, 1995) (Appendix 114).

g. *Measure of damages*

(1) Pre-Covenants of Habitability and *Fritz*

Before enactment of the covenants of habitability and the *Fritz* Court's interpretation of the covenants, the courts applied a "rental value" approach to measuring damages resulting from violations of express covenants to repair in leases. The measure of damages was the difference between the rental value of the premises in their present condition and their value in the condition required by the covenants. *See Geo. Benz & Sons v. Massie*, 208 Minn. 118, 126, 293 N.W. 133, 137 (1940); *Theopold v. Curtsinger*, 170 Minn. 105, 109, 212 N.W. 18, 20 (1927); *Warren v. Hodges*, 137 Minn. 389, 390, 163 N.W. 739 (1917). There is disagreement over what constitutes market value. Landlords may argue that market value may be the rent agreed upon by the parties. However, this may not be appropriate in cases where the rent charged is, due to the condition of the building, below the market value of comparably sized units in the same community that are in compliance with the covenants. Tenants should argue that the rent agreed to by the parties was the market value of the premises in compliance with the covenants, under ordinary circumstances. See Theopold, 170 Minn. at 109, 212 N.W. at 20. Tenants also argue that the landlord's argument goes against the prohibition on waiver of the covenants and the provision that the covenants be liberally construed. § 504B.161 (formerly § 504.18), subds. 1, 2, 3.

(2) Post-Covenants of Habitability and *Fritz*

The covenants of habitability and the covenant to pay rent are mutual and dependent, and all or part of the rent is not due when the landlord has breached the covenants. *Fritz v. Warthen*, 298 Minn. 48, 55-59, 213 N.W.2d 339, 340-42 (1973). Neither § 504B.161 (formerly § 504.18) nor the Minnesota Appellate Courts have clearly stated what standard should be used to measure damages for violation of the covenants of habitability.

Tenants should argue that the "percentage reduction in the use and enjoyment" formula is most appropriate. Under this formula, the rent is abated by a percentage amount equal to the percentage reduction in the use and enjoyment which the trier of fact determines to have been caused by the defects. Because of the cost and impracticability of using expert testimony to establish rental value in a habitability case, this measure appears to be the one most commonly adopted in cases which have actually set damages. R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT, § 3:25 at 143 (1980), at 73 (Supp. 1990).

This standard also is consistent with the covenants of habitability. "The parties to a lease or license of residential premises may not waive or modify the covenants. . ." § 504B.161 (formerly § 504.18), subd. 1. In *Fritz*, the Minnesota Supreme Court stated that "the rent or at least part of it, is not due under the terms of the lease when the landlord has breached the statutory covenants." 298 Minn. at_ , 213 N.W.2d at 342. The Tenants' Remedies Act incorporates this standard by authorizing the court to "find the extent to which any uncorrected violations *impair the tenant's use and enjoyment of the premises contracted for* and order the rent abated accordingly." Minn. Stat. § 504B.425 (formerly § 566.25) (emphasis added).

To the contrary, applying the pre-Section 504B.161 (formerly § 504.18) and *Fritz* standard of measuring damages based on the difference between the rental value of the premises in their present condition and the rental value of the premises in the condition required by the covenants, could lead to a minimal rent abatement or no abatement at all in substandard property rented at a low rent. *See* R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT, § 3:25 (Bancroft-Whitney 1980 and Supp. 2008); *Cezares v. Ortiz*, 109 Cal. Appendix 3rd Supp. 23, _168 Cal. Rptr. 108, 110-13 (1980); *McKenna v. Begin*, 362 N.E.2d 548, 552-53 (Mass. Ct. App. 1977).

Minnesota trial courts also have applied the reduced use and enjoyment standard in summary proceedings such as eviction (unlawful detainer) and tenants' remedies actions. In *Zeman v. Arnold*, No. UD-1900911501 (Minn. Dist. Ct. 4th Dist. Oct. 11, 1990) (Appendix 6.A), the court expressly applied the standard, finding that "[t]he condition of the premises has reduced the tenants use and enjoyment of the property." *Id*. at 2. In *Z & S Management Company v. Jankowicz,* No. UD-1920219515 at 9-10 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1992) (Appendix 9.B), the court again expressly applied the "tenants use and enjoyment of the property" standard. *See Kahn v. Greene*, No. UD-1940330506 at 5 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46); *Kahn v. Foote*, No. UD-1940414503 at 4 (Minn. Dist. Ct. 4th Dist. May 6, 1994) (Appendix 47). *See generally* Appendices 110-120.

In *McPipe v. _____,* No. 27-CV-HC-14-4302 (Minn. Dist. Ct. 4th Dist. Feb. 3, 2015) (Appendix 740) (Judge Bratvold), the eviction defendant tenant filled a notice of request and request for judge review alleging that the referee erred in (1) finding that the defendant did not pay rent for two months when defendant deposited rents into court pending determination of defendant's defense; (2) determining that the plaintiff landlord prevailed on proving non-payment of a month's rent; (3) entering judgment for possession in favor of the plaintiff; (4) awarding the plaintiff taxation of costs; (5) requiring the

defendant to pay costs of filing and statutory attorney fee; and (6) failing to make any determination with respect to rent abatement for one of the months. The court found that the plaintiff's companion challenge to the referee's decision was untimely. On the tenant's claim, the court stated that the referee erred because "[a] tenant who deposits rent into court pending a determination of a habitability defense has fulfilled her ongoing rent obligations" and found that (1) plaintiff failed to prove his nonpayment of rent claim; (2) defendant prevailed on her habitability defense; (3) defendant was entitled to rent abatement of 50% ($229 out of $458 rent) for two months due to plaintiff's violation of the statutory covenants of habitability; (4) judgment was to be entered in favor of defendant; (5) defendant was to be awarded taxation of costs; (6) defendant was entitled to costs and statutory $5 attorneys' fee; (7) plaintiff was entitled to receive part of the amount of rent deposited with the court for three months (minus the rent abatement, which was to be paid to defendant); and (8) defendant was to remain in possession of the premises.

In *Stewart v. _____,* No. 27-CV-HC-06-1916 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 662) (Judge Crump), the landlord filed a combination eviction action and conciliation court action in housing court, and the tenant answered alleging habitability. At trial, the tenant attempted to testify about her observations about how her dryer worked, and rodent infestation. The housing court referee did not accept her testimony, since she was not an expert in dryer repair or pest control. After the referee ruled for the landlord, the tenant sought review by a district court judge. The court reversed the referee's grant of eviction writ where referee did not equally allow late exhibits from parties and disallowed tenant to testify about her habitability observations because she was not an expert. The court dismissed the action with prejudice and expunged; awarded the tenant awarded all rents of $1618 paid into court and a credit of $525 against future rent where tenant testified about rodent infestation and a clothes dryer damaging clothes; awarded costs and credited against future rent; ordered the landlord to complete repairs; and not future rent abatement was available if repairs not completed. On appeal, the Court of Appeals held that the district court correctly found that the referee had erred. *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007) (unpublished).

In *Himraj v. _____,* No. HC-1060117546 (Minn. Dist. Ct. 4th Dist. April 25, 2006) (Appendix 682) (Judge McGunnigle), the landlord filed an eviction action alleging partial nonpayment of rent and late fees. The tenant argued that the landlord violated the covenant of habitability by not making repairs, including but not limited to, severe heating inadequacies, as she had no heat in her home for many winter months and many security issues with her back door. The court referee determined that the landlord proved the nonpayment of rent, the defendant successfully defended by proving a violation of the statutory covenants of habitability, but awarded landlord costs and rent deposited to the court to the landlord, and gave landlord 14 days to comply with corrections required by the city because plaintiff's habitability violation warranted a court order of immediate repair due to the emergency nature of the violation. The tenant filed a notice of request for judge review. The landlord did not respond. The court stated that "[w]here the court finds for the defendant, [it] shall enter judgment for the defendant and tax the costs to the plaintiff" and ordered that (1) judgment be entered for tenant, (2) the costs be awarded to tenant (allowing tenant to withhold equivalent amount in future rent if costs were not paid), (3) tenant may deposit future rent with the court pending landlord's compliance with any outstanding repair orders, (4) defendant may petition the court for rent abatement, and (5) part of the order requiring her to refrain from legal action for 14 days be stayed.

In *Larson v. Cooper*, No. UD-1880209557 (March 21, 1988) (Appendix 6), the 4th District Court found that the basement rooms in a house were not habitable. The rooms constituted one-half of the total floor space of the rental unit, and one-fourth of the total rooms. The court ordered an abatement of $175 per month from a total rent of $675 per month, or a 26% abatement. In *Hawkins v. McNeillus*, the Dodge

County Court found violations of the covenants including water damage on ceilings, walls, and outlets; mold and mildew in sleeping areas, lack of operable fire extinguishers and vent fans; and storage of flammable liquids. The court ordered an abatement from 25 to 50% of the net rent received. Nos. 2063 and 2131 at 8-9 (Appendix 7.B).

In _____ *v. Gustafson*, No. 030220564 (Minn. Dist. Ct. 4th Dist. Apr. 14, 2003) (Appendix 440), in a rent escrow action, the court ordered complete rent abatement for numerous housing code violations, partial rent abatement following substantial but not complete compliance by landlord.

It is not uncommon to have rent abatements in the range of 25 to 50 percent. Recent rent abatement decisions, in declining order of percentage rent abatement, include *Zeman v.* _____, No. HC 031002500 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2003) (Appendix 595) (50% rent abatement, retaliation defenses to not apply in nonpayment of rent case); *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (rent abatement increase to $300 from $650 (46 %)); Washington Rent Abatement Table (Appendix 427); *Walters v. Demmings*, No. UD-1990916517 (Minn. Dist. Ct. 4th Dist. Nov. 15, 1999) (Appendix 422) (rent abatement at $200 a month from $480 per month rent (42%)); *Smith v. Brinkman* and *Brinkman v. Smith*, Nos. HC-1000124900 and HC-1000202517 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2000) (Appendix 418) (rent abatement of $800 over four months (38%)); *Wilson v. Lowe*, No. UD-1991123901 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 429) (Rent escrow action: tenant awarded treble what she paid on shared electrical meter covering basement and common areas in addition to her unit, and rent abatement of $2,600 over eight months (37%)); *Leshoure v. O'Brian*, No. UD-01000303900 (Minn. Dist. Ct. 4th Dist. May 17, 2000)(Appendix 403) (rent escrow action: monthly rent abatement of $300 out of $850 (35%) for $3,600 over one year); *Coleman v. Kopet*, No. UD-1000211534 (Minn. Dist. Ct. 4th Dist. Mar. 8, 2000) (Appendix 385) (rent abatement of $2,925 over ten months (32%) covered by rent paid into court and credits against future rent).[6]

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[6]Earlier decisions include *Rio Hot Properties, Inc. v. Judge*, No. UD-1981005518 (Minn. Dist. Ct. 4th Dist. Oct. 29, 1998) (Appendix 362B) (50% rent abatement); *Sternfels & Co., Inc. v. Thomas*, No. C8-97-2376 (Minn. Ct. App. Nov. 10, 1998) (Appendix 366) (Unpublished: the trial awarded rent abatement of $400.00 against three months' rent of $1,050.00 (38%); Court of Appeals concluded that there was sufficient evidence to support the finding of a partial rent abatement, where the tenant was not forced to move, and where the tenant did not cooperate with the landlord in its efforts to address the problems); *Dunger v. Markowitz*, No: UD-1971224504 (Minn. Dist. Ct. 4th Dist. Jan. 23, 1998) (Appendix 326A) (Monthly rent abatement of $60 out of $217, or 28%); *Moore v. Shelly*, No. UD-1980619500 (Minn. Dist. Ct. 4th Dist. Jul. 8, 1998) (Appendix 351) (Monthly rent abatement of $100 out of $550, or 18%); *Okoye v. Washington*, No. UD-1980909564 (Minn. Dist. Ct. 4th Dist. Oct. 2, 1998) (Appendix 354A) (Rent abatement of $100 out of $650 rent, or 15%); *Wardin v. Maski*, No. C4-97-2245, 1998 Minn. App. LEXIS 941 (Minn. Ct. App. Aug. 18, 1998) (Appendix 371) (Unpublished: affirmed the trial court's award of a 1/7 or 14% rent abatement where the property contained six rather than seven habitable bedrooms, noting that courts have broad discretion in fashioning remedies); *Grider v. Hardin*, No. UD-1980501520 (Minn. Dist. Ct. 4th Dist. May 19, 1998) (Appendix 335) (Monthly rent abatement of $50 out of $500, or 10%).

Larson v. Anderson, No. C9-96-416 (Minn. Dist. Ct. 9th Dist. Oct. 11 and Nov. 8, 1996) (Appendix 264) (Rent abatement of $6,910 *(100%)* over five years failing to repair discharge of raw sewage on the premises; landlord's notice to quit was in retaliation for tenant's complaint to health department); *Cedar Associates LLP v. Curtis*, No. UD-1970108508 (Minn. Dist. Ct. 4th Dist. May 20, 1997) (Appendix 250) (Rent abatement of $2,350 *(75%)* over seven months for problems with heat, insulation, plumbing, security, appliances, smoke detector,

infestation, floors, and electrical, where the landlord kept poor records and failed to begin repairs promptly); *Barger v. Behler*, No. UD-1970116527 (Minn. Dist. Ct. 4th Dist. Jan. 30, 1997) (Appendix 248) (Rent abatement of $600 *(50%)* over two months for extensive soot from fireplace malfunction); *Hemraj v. Hicks*, No. UD-1970306508 (Minn. Dist. Ct. 4th Dist. Apr. 8, 1997) (Appendix 259) (No rent abatement for snow shoveling; monthly rent abatement of $133 *(30%)* for lack of a functioning refrigerator and plumbing defects); *Larson v. Bonacci*, No. UD-970506542 (Minn. Dist. Ct. 4th Dist. Jun. 18, 1997) (Appendix 265) (Rent abatement of $600 *(18%)* over six months for weatherization and electrical problems); *Uni-B-Partnership v. Mahto*, No. UD-1970515516 (Minn. Dist. Ct. 4th Dist. Jul. 1, 1997) (Appendix 301) (Landlord took reasonable steps to eliminate infestation problems: rent abatement of $250 *(11%)* over three months); *Rogers v. Stewart*, No. UD-1961029511 (Minn. Dist. Ct. 4th Dist. Jan. 6, 1997) (Appendix 290) (*No* rent abatement where tenant, family or guests intentionally or negligently damaged their apartment); *McNair v. Doub*, No. UD-1960708524 (Minn. Dist. Ct. 4th Dist. Aug.12, 1996) (Appendix 205) (monthly rent abatement of $150.00 out of $900.00 rent; no present rent abatement because repairs completed); *Donovic v. Dodson*, No. C2-96-600607 (Minn. Dist. Ct. 6th Dist. Apr. 29, 1996) (Appendix 201) (landlord breached covenants of habitability by failing to ensure the unit had hot and cold water at all times, failing to install a deadbolt lock, failing to have an adequate heating system for all rooms of the house, and other code violations; rent abatement of $120.00 out of rent of $380.00 per month for four months); *Judnick v. Boje*, No. C7-96-600537 (Minn. Dist. Ct. 6th Dist. Apr. 19, 1996) (Appendix 202) ($560.00 rent abatement over two months where housing conditions were poor, the tenants replaced the stove, furnace (with a grant) and planned to replace the hot water heater); *Brook v. Boyd*, No. C8-96-47 (Minn. Dist. Ct. 9th Dist. Feb. 13, 1996) (Appendix 207) (consolidated unlawful detainer and rent escrow actions; monthly rent abatement of $100.00 out of $320.00 rent).

Kahn v. Greene, No. UD-1940330506 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46) (retroactive monthly rent abatement of $300 (43%) and prospective monthly rent abatement of $150 (21%)); *Kahn v. Foote*, No. UD-1940414503 (Minn. Dist. Ct. 4th Dist. May 6, 1994) (Appendix 47) (monthly rent abatement of $200 (38%)); *Brown v. Owens*, No. UD-1940726506 (Minn. Dist. Ct. 4th Dist. Aug. 18, 1994) (Appendix 48) (monthly rent abatement of $100 (20%)); *Jensen v. Bosto*, No. UD-1931203513 (Minn. Dist. Ct. 4th Dist. Dec. 17, 1993) (Appendix 74) (monthly rent abatement ranging from $200 to $350 (33-58%); *Almen v. Meadors*, No. UD-1921118525 (Minn. Dist. Ct. 4th Dist. Dec._, 1992) (Appendix 75) (monthly rent abatement of $635 (100%); *Jafer Enterprises, Inc. v. Peters,* No. UD-1920701512 (Minn. Dist. Ct. 4th Dist. Aug. 10, 1992) (Appendix 5.P) (after negotiated rent reduction from $450.00 to $400.00 with tenant agreeing to make repairs, further abatement of $100.00 per month); *Klyberg v. Elkboy,* No. UD-1910617511 (Minn. Dist. Ct. 4th Dist. July 3, 1991) (Appendix 5.M) (rent abated 50% per month from $450.00 to $225.00); *Schwanke v. Magnuson*, No. C0-90-0640 (Minn. Dist. Ct. 8th Dist. Jan. 9, 1991) (Appendix 5.L) (Abatement of $100.00 from $250.00 to $150.00); *Century Apartments, Inc. v. Yalkowsky,* 106 Misc.2d 762, _, 435 N.Y.S.2d 627, 629-30 (New York City Civ. Ct. 1980) (Appendix 7.A) (review of numerous percentage rent abatement awards); *Veres v. Warren*, No. UD-81253, (Henn. Cty. Mun. Ct. June 24, 1977) (Appendix 11).

None of these decisions discuss market value. In 1995, there were many decision awarding a wide range of rent abatement. *See generally* Appendices ___. Substantial rent abatements were awarded in *Lewis Properties v. Pruitt*, No. UD-1950315516 (Minn. Dist. Ct. 4th Dist. Sept. 22, 1995) (Appendix 92) (rent abatement of $1,338.00 (49%) of $2,738.00 rent); *Greevers v. Greevers*, No. UD-1950628506 (Minn. Dist. Ct. 4th Dist. July 24, 1995) (Appendix 110) (rent abatement of $1,000.00 (71%) of $1,400.00 rent); *Gerald V. Snyder Rental Associates v. Bello*, No. UD-1950117553 (Minn. Dist. Ct. 4th Dist. Feb. 6, 1995) (Appendix 121), *affirmed on Judge review*. (Mar. 15, 1995) (Appendix 117) (rent abatement of $750.00 (43%) of $1,750.00 rent); *Lehikoinen v. Salinas*, No. C3-95-60158 (Minn. Dist. Ct. 6th Dist. July 11, 1995) (Appendix 122) (itemized rent abatement of $495.00 (58%) of $850.00 rent); *LeDoux v. Zanosko*, No. CX-95-1001 (Minn. Dist. Ct. 9th Dist. Oct. 16, 1995) (Appendix 124)

Even a lower percentage rent abatement can add up over a number of months. _____ *v. Brogdon Properties, Inc.*, No. HC 030904900 (Minn. Dist. Ct. 4th Dist. Sep. 17, 2003) (Appendix 435) (rent escrow action: complete rent abatement for lack of licensing, judgment of $2500); *Walters v.* _____, No. HC 10101004526 (Minn. Dist. Ct. 4th Dist. Oct. 26, 2001) (Appendix 593) (landlord responsible for shared meter bills, and liable for treble damages or $500 to be credited against rent; tenant payment on bill deemed payment of rent; tenant entitled to costs and disbursements from successful Court of Appeal case; habitability rent abatement of $150-175 per month; leave to file motion for attorney's fees; $3818 disbursed from court to tenant); *Wood v. O'Brien*, No. UD-1970203900 (Minn. Dist. Ct. 4th Dist. Apr. 29, 1997) (Appendix TR 165) (Rent escrow action: $1,250 (25%) rent abatement over nine months for foundation, electrical, plumbing, heating, and basement drainage problems).

The only decisions apparently adopting a market value analyses were decisions in which the trial court concluded that condemned properties had no market value and therefore no rent was due. *See Hamre v. Wu*, No. 797483 at 7 (Minn. Dist. Ct. 4th Dist. Jan. 26, 1983) (Appendix 8); *Zeman v. Smith*, Nos. UD-1840605512 and UD-1840605520 at 9 (Henn. Cty. Mun. Ct. July 11, 1984) (Appendix 9). Indeed, in cases where the property has been condemned, the tenant may prefer to assert a market value analysis, since it leads to a result where the property has no market value and therefore no rent is due. An analysis under the percentage reduction in use and enjoyment standard could lead to the result where the condemned property had some use, and therefore some rent was due.

(3) Condemned or condemnable housing

For more information on condemnation claims in tenant-filed actions, *see* discussion at XII.B.3.f.

Where the premises have been condemned as uninhabitable or are condemnable, the present value is $0.00 and no rent is due to the landlord. *See Hamre v. Wu*, No. 797483 at 7 (Minn. Dist. Ct. 4th Dist. Jan. 26, 1983) (three judge appellate panel) (Appendix 8). *See also Zeman v. Smith*, Nos. UD-1840504512, UD-1840605520 at 5-6 (Henn. Cty. Mun. Ct., July 11, 1984) (Appendix 9) (tenant also owes no rent for period prior to condemnation where premises were in condemnable condition; inspection occurred after rent was due, and inspection orders warning of condemnation were placed on the property during the time period and were not obeyed, leading to condemnation).

The tenant is entitled to a 100% abatement of rent paid. *See Love v. Amsler,* No. 87-14719 (Minn. Dist. Ct. 4th Dist. July 14, 1988), *aff'd Love v. Amsler*, 441 N.W.2d 555 (Minn. Ct. App. 1989) (complete rent abatement for unhabitable apartment); _____ *v. Gibson*, and _____ *v. Gibson*, Nos. 1000301900 and 1000301901 (Minn. Dist. Ct. 4th Dist. Mar. 27, June 30, 2000) (Appendix 439) (emergency tenant remedies action, 100% rent abatement for condemnation, and additional treble damages, tenant may repair and deduct costs from rent, replacement housing, fines; subsequent order that new owner bound by predecessor landlord's obligations, $1800 in attorney's fees, injunction against retaliation). *See* Orders (Minn. Dist. Ct. 4th Dist. Mar. 9 and 13, 2000) (Appendix 383); *Cloutier v. Gibson*, and *Jackson v. Gibson*, Nos. 1000301900 and 1000301901 (Minn. Dist. Ct. 4th Dist. Mar. 9 and 13, 2000) (Appendix 383) (Emergency tenant remedies action: tenant's awarded complete rent abatement plus treble the rent abatement and relocation expenses).

See also Ellis v. McDaniel, No. UD-1960318520 (Minn. Dist. Ct. 4th Dist. Apr. 4, 1996)

(monthly rent abatement of $395.00 (100%) where landlord refused to restore tenants propane supply for heat).

(Appendix 203) (tenant is not liable for rent where apartment is made uninhabitable due to actions of a third party and through no fault or negligence of the landlord or tenant, under Sections 504.05 (now § 504B.131) and 504.18 (now § 504B.161); complete rent abatement prorated for a period in which tenants could not inhabit the apartment); *Erickson v. Foster,* No. UD-1871007506 (Minn. Dist. Ct. 4th Dist. Oct. 28, 1987) (Appendix 5.N) (complete rent abatement for dwelling inappropriate for human occupancy); *Henderson v. Schaapveld*, No. UD-1950127501 (Minn. Dist. Ct. Apr. 10, 1995) (Appendix 119); *Richard v. Mix*, No. UD-1950424510 (Minn. Dist. Ct. 4th Dist. May 3, 1995) (Appendix 118) (condemned or condemnable); *Lewis Properties v. Pruitt,* No. UD-1950315516 (Minn. Dist. Ct. 4th Dist. Sept. 22, 1995) (Appendix 92); *Swanson v. Ivie*, No. UD-1950411541 (Minn. Dist. Ct. 4th Dist. May 8, 1995) (Appendix 116). *But see Kahn v. Morrow*, No. UD-1940504534 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 123) (notice of intent to condemn; monthly rent abatement of $400.00 (76%) of $525.00 rent).

If a landlord, agent, or person acting under the landlord's direction or control rents out residential housing after the premises were condemned or declared unfit for human habitation, the landlord is liable to the tenant for actual damages and an amount equal to three times the amount of all money collected from the tenant, including rent and security deposits, after the date of condemnation or declaration, plus costs and attorney's fees. Minn. Stat. § 504B.204 (formerly § 504.245). The provisions of § 504B.204 (formerly § 504.245) may not be waived.

The prospect of condemnation presents a double-edged sword to the tenant. On one hand, condemnation presents the tenant with evidence that no rent should be due. On the other hand, condemnation also sets a date on which the tenant should vacate the property. If the housing inspector has issued a notice of intent to condemn, the tenant may be able to convince the inspector to not go ahead with actual condemnation until the eviction (unlawful detainer) or rent escrow action is heard, to give the court an opportunity to deal with the situation. If the housing inspector already has condemned the property, the inspector may not have the authority to extend the vacate date. The tenant has two options to seek an extension in this case. First, the tenant could try to go up the chain of command within the inspections department, beginning with the inspector's supervisor and going to the head of the department, or a city council member or the mayor. Second, in some cities, the tenant, like the landlord, may appeal the decision of the inspection's department to a board of appeal. *See* Mpls. Code of Ord. Ch. 242 (Appendix 76).

(4) Trial court discretion to determine rent abatement

The trial court appears to have a great deal of discretion in determining what rent abatement is appropriate under the circumstances. In *Scroggins v. Solchaga,* 552 N.W.2d 248 (Minn. Ct. App. 1996), the tenant won a jury verdict in an unlawful detainer action finding violation of the covenants of habitability and retaliation. After the landlord gave another notice to quit several months later, the tenant filed a tenants remedies action, in which the court found habitability violations based on the jury verdicts, but denied claims for rent abatement and attorneys fees and released rent paid into court to the landlord. The landlord then filed another unlawful detainer action, in which the tenant defaulted. The Court of Appeals held that § 566.25 (now § 504B.425) (the tenant remedies relief section) gave the district court discretion to not award rent abatement, noting that the tenant may have caused some of the properties' problems. *See Love v. Amsler,* No. 87-14719 (Minn. Dist. Ct. 4th Dist. July 14, 1988), *aff'd Love v. Amsler*, 441 N.W.2d 555 (Minn. Ct. App. 1989) (damages action: affirmed complete rent abatement for unhabitable apartment).

In *Richter v. Czock*, No. C7-01-1340, 2002 WL 338181 (Minn. Ct. App. 2002) (unpublished), the

court consolidated an eviction action based on holding over after notice with a rent escrow action. The court affirmed trial court rulings that the lease required a 45 day notice, that $100 per month rent abatement would cover only the period in which the landlord knew of the habitability issues, and that the landlord did not violate the privacy statute where the tenants were present when the landlord came, and the landlord claimed an emergency. The court also held that the trial court did not err in not admitted evidence when the *pro se* tenants did request admission. The court noted that since the tenant appealed from the rent escrow action judgment but not the separate eviction action judgment, it would not consider whether the notice was retaliatory.

In *McPipe v. _____,* No. 27-CV-HC-14-4302 (Minn. Dist. Ct. 4th Dist. Feb. 3, 2015) (Appendix 740) (Judge Bratvold), the eviction defendant tenant filled a notice of request and request for judge review alleging that the referee erred in (1) finding that the defendant did not pay rent for two months when defendant deposited rents into court pending determination of defendant's defense; (2) determining that the plaintiff landlord prevailed on proving non-payment of a month's rent; (3) entering judgment for possession in favor of the plaintiff; (4) awarding the plaintiff taxation of costs; (5) requiring the defendant to pay costs of filing and statutory attorney fee; and (6) failing to make any determination with respect to rent abatement for one of the months. The court found that the plaintiff's companion challenge to the referee's decision was untimely. On the tenant's claim, the court stated that the referee erred because "[a] tenant who deposits rent into court pending a determination of a habitability defense has fulfilled her ongoing rent obligations" and found that (1) plaintiff failed to prove his nonpayment of rent claim; (2) defendant prevailed on her habitability defense; (3) defendant was entitled to rent abatement of 50% ($229 out of $458 rent) for two months due to plaintiff's violation of the statutory covenants of habitability; (4) judgment was to be entered in favor of defendant; (5) defendant was to be awarded taxation of costs; (6) defendant was entitled to costs and statutory $5 attorneys' fee; (7) plaintiff was entitled to receive part of the amount of rent deposited with the court for three months (minus the rent abatement, which was to be paid to defendant); and (8) defendant was to remain in possession of the premises.

In *Himraj v. _____,* No. HC-1060117546 (Minn. Dist. Ct. 4th Dist. April 25, 2006) (Appendix 682) (Judge McGunnigle), the landlord filed an eviction action alleging partial nonpayment of rent and late fees. The tenant argued that the landlord violated the covenant of habitability by not making repairs, including but not limited to, severe heating inadequacies, as she had no heat in her home for many winter months and many security issues with her back door. The court referee determined that the landlord proved the nonpayment of rent, the defendant successfully defended by proving a violation of the statutory covenants of habitability, but awarded landlord costs and rent deposited to the court to the landlord, and gave landlord 14 days to comply with corrections required by the city because plaintiff's habitability violation warranted a court order of immediate repair due to the emergency nature of the violation. The tenant filed a notice of request for judge review. The landlord did not respond. The court stated that "[w]here the court finds for the defendant, [it] shall enter judgment for the defendant and tax the costs to the plaintiff" and ordered that (1) judgment be entered for tenant, (2) the costs be awarded to tenant (allowing tenant to withhold equivalent amount in future rent if costs were not paid), (3) tenant may deposit future rent with the court pending landlord's compliance with any outstanding repair orders, (4) defendant may petition the court for rent abatement, and (5) part of the order requiring her to refrain from legal action for 14 days be stayed.

(5) Limitation on retroactivity (back) rent abatement

The tenant should argue that the only limitation on the rent abatement claim is the six-year statute of limitations for claims under a contract or statute. Minn. Stat. § 541.05. Any shorter limitation

on the claim requires the tenant to litigate similar issues in two separate cases.

Some courts have chosen not to limit retroactive rent abatement. In *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. Ct. App. Sept. 4, 2007) (unpublished), the Court of Appeals held that failure to pay rent could not be a ground for eviction where the landlord failed to comply with a municipal requirement to license or register the rental unit. The Alexandria City Ordinance made it unlawful to lease any residential property unless it had been registered with the City as a rental unit, and a registration fee had been paid. *Id.,* citing Alexandria Code of Ord, Sect. 5.08, Subds. 3(1)5. A landlord filed an eviction action when the tenants told the landlord they did not have the money to pay rent. The District Court ruled for the landlord, concluding that failure to register the rental unit was irrelevant to whether the landlord had the right to recover possession of the property.

The Court of Appeals reversed, first noting that if a tenant's duty to pay rent is excused, the eviction action must fail. *Id.*, citing *MAC-DUE Properties v. LaBresh*, 392 N.W.2d, 315, 316-17 (Minn. Ct. App. 1986), *review denied* (Minn. Oct. 29, 1986), landlord's failure to acquire city-required certificate of occupancy eliminated tenant's duty to pay rent, rendering eviction improper. The court held that the tenants had no rental obligation during the period in which the property was unregistered, and that the tenants could credit rent paid during this period against rent which was unpaid after the landlord registered the property. The court concluded that because the credit for rent paid but not due was larger than the rent due for the period in which the landlord had registered the property, the District Court erred by evicting the tenants. *Id.*

Other decisions not limiting retroactive rent abatement include _____ *v. Brogdon Properties, Inc.*, No. HC 030904900 (Minn. Dist. Ct. 4th Dist. Sep. 17, 2003) (Appendix 435) (rent escrow action: complete rent abatement for lack of licensing, judgment of $2500); *Walters v.* _____, No. HC 10101004526 (Minn. Dist. Ct. 4th Dist. Oct. 26, 2001) (Appendix 593) (landlord responsible for shared meter bills, and liable for treble damages or $500 to be credited against rent; tenant payment on bill deemed payment of rent; tenant entitled to costs and disbursements from successful Court of Appeal case; habitability rent abatement of $150-175 per month; leave to file motion for attorney's fees; $3818 disbursed from court to tenant); *Wilson v. Lowe*, No. UD-1991123901 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 429) (Rent escrow action: tenant awarded treble what she paid on shared electrical meter covering basement and common areas in addition to her unit, and rent abatement of $2,600 over eight months (37%)); *Leshoure v. O'Brian*, No. UD-01000303900 (Minn. Dist. Ct. 4th Dist. May 17, 2000)(Appendix 403) (rent escrow action: monthly rent abatement of $300 out of $850 (35%) for $3,600 over one year); *Coleman v. Kopet*, No. UD-1000211534 (Minn. Dist. Ct. 4th Dist. Mar. 8, 2000) (Appendix 385) (rent abatement of $2,925 over ten months (32%) covered by rent paid into court and credits against future rent.; *Clark v. Urban Investments*, No. UD-1970821901 (Minn. Dist. Ct. 4th Dist. Sep. 10, 1997) (Appendix 629) (Rent abatement from 1993 through 1997); *Larson v. Anderson*, No. C9-96-416 (Minn. Dist. Ct. 9th Dist. Oct. 11 and Nov. 8, 1996) (Appendix 264) (Rent abatement of $6,910 over five years failing to repair discharge of raw sewage on the premises; landlord's notice to quit was in retaliation for tenant's complaint to health department).

Unfortunately, it is not uncommon for the court to place an arbitrary limit on how far back in time the tenant can seek rent abatement. In *Penrod Lane LLC v. Doe,* No. 27-CV-HC-16-6268 (Minn. Dist. Ct. 4th Dist. Mar. 1, 2017) (Appendix 742), the court awarded full retroactive rent abatement from December 2016 through February 2017 given the completely impaired use and enjoyment of the premises and awarded prospective rent abatement (until landlord completes all outstanding repairs and completes lead abatement as directed by the city). But the court denied rent abatement for the period of July 2015-November 2016 noting that tenants could seek such further relief through a separate action. In

Equity Residential Holdings LLC v. Doe, No. 27-CV-HC-15-5665 (Minn. Dist. Ct. 4th Dist. Mar. 4, 2016) (Appendix 737), the court concluded that the defendant's defense was limited to the rent claimed due and owing by the landlord and that to litigate retroactive rent abatement outside of the eviction action the tenant would have to bring a collateral action. *See Smith v. _____,* No. HC 1010417559 (Minn. Dist. Ct. 4th Dist. May 21, 2001) (Appendix 571) (failure to renew license with accurate address information suspended right to collect rent; tenant could not recoup rent paid during period before the period of the landlord's rent claim in which there was no license; landlord liable for statutory penalties for interrupting water service; habitability rent abatement of $100 per month); *Larson v. Bonacci*, No. UD-970506542 (Minn. Dist. Ct. 4th Dist. Jun. 18, 1997) (Appendix 265) (Rent abatement claim limited to current lease, going back five months); *Beliveau v. Olson,* No. UD-1970403902 (Minn. Dist. Ct. 4th Dist. Jun. 4, 1997) (Appendix TR 144) (Monthly rent abatement of only $60.00 out of $395 rent for four months on claim of problems over two and one half years).

(5a) Tenant awards beyond rent claimed credited against future rent

Several courts have allowed rent abatement awards in excess of rent claimed by the landlord to be credited against future rent. In *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. Ct. App. Sept. 4, 2007) (unpublished), the Court of Appeals held that failure to pay rent could not be a ground for eviction where the landlord failed to comply with a municipal requirement to license or register the rental unit. The court held that the tenants had no rental obligation during the period in which the property was unregistered, and that the tenants could credit rent paid during this period against rent which was unpaid after the landlord registered the property. The court concluded that because the credit for rent paid but not due was larger than the rent due for the period in which the landlord had registered the property, the district court erred by evicting the tenants. *Id. See* discussion, *infra*, at VI.E.2.c.

In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees.

The court later ordered that the tenant could remedy violations and deduct the cost from rent, rent abatement would increase from $100 to $200 out of monthly rent of $650, or from 15% to 31% if the landlord did not complete repairs, the tenant could credit payments on the landlord's water bill against rent, the landlord must obtain a rental license, the landlord's right to collect rent was suspended until he obtained the license, and prior orders relating to court approval of future filings remained in effect. *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1999) (Appendix 354G).

Later in 1999, the court issued more orders. *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: rent abatement increase to $300 from $650 (46%) after 1 ½ years of failure to complete repairs; fine of $750 payable to county; $1000 statutory damages and $200 rent abatement for two interruptions of utilities; $1000 for ten privacy violations; landlord ordered to stop privacy violations). *See* Washington Rent Abatement Table (Appendix 427). *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999) (Appendix 426) (compliance order in the consolidated unlawful detainer and emergency tenant remedies

actions: landlord violated unlawful exclusion statute by excluding tenant from the basement; landlord violated shared meter statute where tenant's meter covered her first floor apartment and the common basement which the landlord used for an office and for personal use; landlord violated tenant privacy for coming on the property to do repairs without notice, and by interrogating guests of the tenant; tenant proved that landlord did not provide a certificate of rent paid; landlord failed to prove that tenant failed to pay rent in a timely manner; tenant awarded monthly rent abatement of $300 from $650 (46%) ongoing, $500 for exclusion from the basement, $500 for privacy violations, $500 for violation of the shared meter statute, all of which could be credited against rent; landlord ordered to cease violations of tenant's privacy, and immediately provide tenant with a certificate of rent paid.

In *Walters v.*_____, No. UD-1990916517 (Minn. Dist. Ct. 4th Dist. Nov. 15, 1999) (Appendix 422), the duplex had separate electrical and gas meters for each unit. The electrical meter for the downstairs tenant also covered the basement and hallways, with the court concluding that it was a shared meter. After the furnace became inoperable and the landlord failed to supply adequate temporary heat and the tenant withheld rent, the landlord and tenant filed unlawful detainer and emergency tenant remedies actions, which the court consolidated. The court dismissed the landlord's notice to quit claim as premature, as the action was filed before the effective date of the notice. The court awarded rent abatement at $200 a month from $480 per month rent (42%), $500 in shared meter statutory damages, $500 for utility service interruption damages, all of which could be credited against future rent.

Later in *Walters v.* _____, No. HC 10101004526 (Minn. Dist. Ct. 4th Dist. Oct. 26, 2001) (Appendix 593), the court held the landlord responsible for shared meter bills, and liable for treble damages or $500 to be credited against rent; the tenant payment on the bill was deemed payment of rent; the tenant entitled to costs and disbursements from successful Court of Appeal case; the habitability rent abatement was $150-175 per month; leave was granted to file a motion for attorney's fees; and $3818 was disbursed from court to the tenant.

In *Stewart v.* _____*,* No. 27-CV-HC-06-1916 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 662) (Judge Crump), the landlord filed a combination eviction action and conciliation court action in housing court, and the tenant answered alleging habitability. At trial, the tenant attempted to testify about her observations about how her dryer worked, and rodent infestation. The housing court referee did not accept her testimony, since she was not an expert in dryer repair or pest control. After the referee ruled for the landlord, the tenant sought review by a district court judge. The court reversed the referee's grant of eviction writ where referee did not equally allow late exhibits from parties and disallowed tenant to testify about her habitability observations because she was not an expert. The court dismissed the action with prejudice and expunged; awarded the tenant awarded all rents of $1618 paid into court and a credit of $525 against future rent where tenant testified about rodent infestation and a clothes dryer damaging clothes; awarded costs and credited against future rent; ordered the landlord to complete repairs; and not future rent abatement was available if repairs not completed. On appeal, the Court of Appeals held that the district court correctly found that the referee had erred. *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007) (unpublished).

See also SJM Properties, Inc. v. _____*,* No. HC 020402501 (Minn. Dist. Ct. 4th Dist. Apr. 11, 2002, Feb. 12, 2003) (Appendix 570) (dismissal where Rental Assistance for Family Stabilization (RAFS) Program landlord failed to serve the Section 8 office; different notice periods for landlord and tenant might be proper; costs and disbursements awarded, which may be credited against rent; expungement granted later); _____ *v. Siganos*, No. HC 020201900 (Minn. Dist. Ct. 4th Dist. Mar. 5, 2002) (Appendix 451) (rent escrow action; habitability rent abatement of $100 per month for $1700, which can be credit against future rent with notice; tenant's payments for repairs and on shared meter

credited against rent; tenant authorized to repair).

(6) Increase rent abatement for noncompliance

Some court have increased rent abatement over time when the landlord fails to comply with court orders. *Judge v. Rio Hot Properties, Inc.*, No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (rent abatement to increase if repairs are not completed); *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: rent abatement increase to $300 from $650 (46%) after 1 ½ years of failure to complete repairs; fine of $750 payable to county; $1000 statutory damages and $200 rent abatement for two interruptions of utilities; $1000 for ten privacy violations; landlord ordered to stop privacy violations). *See* Washington Rent Abatement Table (Appendix 427).

h. *Public and Government Subsidized Housing*

(1) Federal requirements

In addition to the covenants implied by Minn. Stat. § 504B.161 (formerly § 504.18), public and government subsidized housing programs require landlords to maintain and repair the premises. 24 C.F.R. §§ 966.4 (public housing); 236.1 and 221.530(b) (Section 236 housing); 221.530(b) (Section 221 housing); 880.601(b) (Section 8 new construction); 881.601(b) (Section 8 substantial rehabilitation); 886.119(a)(2) and 866.123 (Section 8 set aside program); 883.702(b) (Section 8 housing through state housing agencies); 886.323 (HUD-owned Section 8 housing); 882.516 (Section 8 moderate rehabilitation program); 882.747 and 882.516(a)-(d) (Section 8 project based certificate program).

Some subsidized housing programs include a federal housing code, called Housing Assistance Standards. A landlord is required to comply with the standards, and the housing authority inspects the housing for compliance with the standards. If the landlord fails to comply with the standards, the housing authority may suspend payment of its subsidy to the landlord. The tenant is not required to reimburse the landlord for the lost subsidy. *See* 24 C.F.R. Part 982 (Section 8 Existing Housing Certificate and Voucher Program); 882.404 and 882.516 (Section 8 Moderate Rehabilitation Program); and Part 983 (Section 8 Project-Based Certificate Program).

(2) Rent abatement

A tenant in public or government subsidized housing may raise a claim for rent abatement based on violation of the program maintenance requirements or the covenants of habitability. *See Meldahl and SJM Prop. v.* _____, No. 1050923509, Order on Referee Review at 28 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered retroactive and prospective rent abatement beyond amounts abated by Section 8 voucher office, to continue until Section 8 voucher office concludes repairs have been completed*); Z & S Management Company v. Jankowicz,* No. UD-1920219515 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1992) (Appendix 9.B) (rent abatement defense in Section 8 Existing Housing Certificate unlawful detainer action); *Tyus v. Minneapolis Public Housing Authority*, No. UD-1900502523 (Minn. Dist. Ct. 4th Dist. July 11, 1990) (rent abatement claim in public housing rent escrow action) (Appendix 9.A). *See also Housing Authority of East St. Louis v. Melvin*, 154 Ill. Appendix 3rd 999, __, 507 N.E.2d 1289, 1290-91, 1293-95 (1987) (public housing rent abatement claim in unlawful detainer action); *Housing Authority of Newark v. Scott*, 137 N.J. Super. 110, _, 348 A.2d 195, 197-99 (1975) (public housing); *Simon v. Solemon*, 385 Mass. 91, __, 431 N.E.2d 556, 561-62,

569 n.13 (1982) (rent abatement claim in subsidized housing eviction proceeding).

(3) Measure of damages

In subsidized housing, tenants should argue that the measure of damages also should be calculated by the percentage reduction in use standard. *See Dunlap v. Steffens,* No. HC07-9619 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2007) (Appendix 643) (rent escrow action: §8 tenant awarded rent abatement for mold and disrepair; landlord ordered to complete repair with compliance hearing scheduled; landlord's claim about tenant's dog outside scope of action); *Dydell v. Sumpter,* No. HC 010918901 (Minn. Dist. Ct. 4th Dist. Nov. 5, 2001) (Appendix 644) (rent escrow action: RAFS tenant awarded rent abatement for disrepair; tenant not responsible for RAFS subsidy; lease provision requiring tenant to maintain property cannot waive Minn. Stat. § 504B.161; landlord ordered to complete repairs); *Curtis v. Surrette*, 726 N.E.2d 967 (Mass. App. Ct. 2000) (Section 8 landlord was not entitled to recover entire contract rent from tenants after housing authority terminated housing subsidy payments, only the tenant's share of the rent; landlord's breach of covenant of quiet enjoyment in connection with its efforts to delead tenants' apartment supported award of three month's rent as damages); *Overstreet v. Jackson*, No. UD-1960520509 (Minn. Dist. Ct. 4th Dist. Jun. 17, 1996) (Appendix 206) (Section 8 certificate; monthly rent abatement of $100.00 out of $150.00 tenant rent); *Robinson v. Schaapveld*, No. UD-1951006523 (Minn. Dist. Ct. 4th Dist. Dec 15, 1995) (Appendix 209) (retroactive rent abatement of $30.00 out of $43.00 rent in Section 8 housing). *Housing Authority of East St. Louis v. Melvin*, 154 Ill. Appendix 3rd at__, 507 N.E.2d at 1293-95; *Housing Authority of Newark v. Scott*, 137 N.J. Super. at__, 348 A.2d at 197-99. *See also* discussion, *supra,* VI.E.1.g.

Tenants should argue that the rent abatement first should go to the tenant, rather than the government, since it is the tenant's use and enjoyment of the premises that has been effected. For instance, if the contract rent was $550.00, with the tenant paying $150.00 and the housing authority paying $400.00, and the court finds that the rent should be reduced by $100.00 for the month of September, the tenant should receive the $100.00 rent abatement, rather than the government.

The tenant may be entitled rent abatement not only for the tenant's share of the rent, but also the subsidy if the housing authority or HUD does not seek it. *See Dellmore v. IPM Realty,* No. CX-06-2688 (Minn. Dist. Ct. 2nd June 29, 2006) (Appendix 641) (tenant remedies action: extensive findings on habitability and use and enjoyment of the property; subsidized housing tenant's habitability damages not limited to tenant's share of rent especially where housing authority did not seek repayment of subsidy from landlord; collection of rent after condemnation entitled tenant to treble damages; three tenant awarded rent abatement trebled and reimbursement of expenses resulting from habitability violations and condemnation for total of $28,000); landlord ordered to prepay hotel expenses for displaced tenants); *Anderson v. Abidoye*, 824 A.2d 42 (D.C. App. 2003) (unpublished) (trial court limited rent abatement to tenant's share of the rent; Court of Appeals reversed, holding tenant entitled for full rent subject to claims of the subsidy provider); *Simon v. Solemon*, 385 Mass. 91, __, 431 N.E.2d 556, 561-62, 569 n.13 (1982).

In *Z & S Management Company v. Jankowicz*, No. UD-1920219515, (Minn. Dist. Ct. 4th Dist. Mar. 24, 1992) (Appendix 9.B), the plaintiff and defendant participated in the Section 8 Existing Housing Certificate Program. The housing inspector found significant peeling of lead paint on all portions of the exterior of the three floor building, in violation of the federal Housing Quality Standards. After several additional inspections and warnings to the plaintiff, the housing authority withheld the government subsidy for December and January, until the plaintiff corrected the problem at the end of January. *Id.* at 5-8. The plaintiff then filed an unlawful detainer action, not for the government subsidy

withheld by the housing authority, but for the rent withheld by the defendant.

The court found that "peeling lead paint is of special concern when children under the age of 7 reside in the building because young children can eat lead paint chips, resulting in serious illness and even in death." *Id.* at 9. Noting that the defendant was six months pregnant and had a four year old child, the court found that because of the existence of lead paint in and on the building for five months and plaintiff's failure to remove it promptly, the defendant had suffered loss of use and enjoyment of the premises. *Id.*

The court awarded a rent abatement of $150.00, but it was not clear if this rent abatement covered the five month period, or a shorter period. *Id.* at 9-10. It is possible that the rent abatement would have been larger had the peeling lead paint been more accessible to the child, either on the interior walls or on the lower exterior walls during the summer months. The rent abatement award was in addition to, and not set off by the withheld government subsidies.

In public housing, some would argue that the rent abatement should be calculated based on the tenant's rent, since there is no "contract rent" or direct subsidy attributable to individual tenants. Tenants should argue that while rent agreed to by the parties reflects the market value of the premises in compliance with the covenants under ordinary circumstances, *see Theopold v. Curtsinger*, 170 Minn. 105, 109, 212 N.W. 18, 20 (1927), the public housing tenant's rent does not reflect market value since it is based on a percentage of the tenant's adjusted income, and rent abatements based upon the tenant's subsidized rent would lead to public housing tenants, with the lowest incomes and the lowest rents, obtaining the smallest abatements for disrepair in public housing. Rent abatement instead should be based upon HUD Fair Market Rent (FMR), which prescribes market rents for apartments rented under the Section 8 government subsidized housing programs. HUD generally issues new FMR's each year at the end of September.

(4) Multiple inspection agencies

Tenants participating in the Section 8 certificate and voucher program often have access to two different inspectors, one through the Section 8 program, and another with the city inspections department. It is not uncommon for one inspector to fail a unit, and another inspector to pass it, since the inspectors from Section 8 and city inspection offices use different criteria. *See Genie Management Co. v. Wilson*, No. UD-1980707541 (Minn. Dist. Ct. 4th Dist. Jul. 29, 1998) (Appendix 334) (Unit failed Section 8 inspection in May, passed Section 8 inspection following repairs, and failed city inspection in June; monthly rent abatement of $200.00, or 26% of the total rent of $775.00 and 51% of the tenant's share of the rent of $391.00).

(5) Public housing authority claims for rent abatement

The tenant may be entitled rent abatement not only for the tenant’s share of the rent, but also the subsidy if the housing authority or HUD does not seek it. *Anderson v. Abidoye*, 824 A.2d 42 (D.C. App. 2003) (unpublished) (trial court limited rent abatement to tenant’s share of the rent; Court of Appeals reversed, holding tenant entitled for full rent subject to claims of the subsidy provider).

In *Barry v. Lane*, Nos. UD-1980629502 and UD-1980603900 (Minn. Dist. Ct. Sep. 15, 1998) (Appendix 310B), the total rent was $760, with the tenant's share of the rent being $257 and the Section 8 housing subsidy being $503. The court previously ordered a rent abatement of $500 per month, or 66% of the total rent and 195% of the tenant's share of the rent. The public housing authority apparently

asserted that it was entitled to rent abatement beyond the tenant's share of the rent, but since it did not move to intervene, the court disbursed funds in escrow to the tenant.

i. *Relief*

If the defendant proves breach of the covenants, the court should reduce the rent owed by the measure of damages. Some courts have allowed the rent reduction to include a measure of damages over a number of months of noncompliance with the covenants, while others have reduced future rent until compliance is achieved.

An appellate decision might at first glance suggest that the courts should not rule on future rent abatement, but it does not discuss rent abatement and is distinguishable on other grounds. In *Eagan East Ltd. Partnership v. Powers Investigations, Inc.*, 554 N.W. 2d 621 (Minn. Ct. App. 1996), the commercial landlord demanded from the commercial tenant a prospective and retroactive rent increase after the square footage used by the tenant was remeasured. When the tenant failed to pay the additional rent, the landlord filed an eviction (unlawful detainer) action. The trial court held that the rent increase clauses in the lease were ambiguous and could not be applied retroactively from the new square footage measurement, but could be applied prospectively. The landlord then announced a new prospective rent increase, and in a subsequent order of the trial court, the court ruled that the landlord was entitled to the rent increase and the tenant was not entitled to attorney's fees under the lease. On appeal, the Court of Appeals held that the trial court's jurisdiction was limited to determining present possessory rights of the parties, and that the trial court exceeded its jurisdiction by ruling on the prospective rent increase and attorney's fee issues.

The decision was appropriate on the issue of the prospective rent increase, because that issue was not ripe when the landlord commenced the action. Tenant advocates should argue that this decision does not affect rent abatement cases because the rent abatement determination determines present possessory rights, and the doctrines of *res judicata* and collateral estoppel prevent the landlord from claiming increased rent until the repairs are completed.

In *Stewart v. _____,* No. 27-CV-HC-06-1916 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 662) (Judge Crump), the landlord filed a combination eviction action and conciliation court action in housing court, and the tenant answered alleging habitability. At trial, the tenant attempted to testify about her observations about how her dryer worked, and rodent infestation. The housing court referee did not accept her testimony, since she was not an expert in dryer repair or pest control. After the referee ruled for the landlord, the tenant sought review by a district court judge. The court reversed the referee's grant of eviction writ where referee did not equally allow late exhibits from parties and disallowed tenant to testify about her habitability observations because she was not an expert. The court dismissed the action with prejudice and expunged; awarded the tenant awarded all rents of $1618 paid into court and a credit of $525 against future rent where tenant testified about rodent infestation and a clothes dryer damaging clothes; awarded costs and credited against future rent; ordered the landlord to complete repairs; and not future rent abatement was available if repairs not completed. On appeal, the Court of Appeals held that the district court correctly found that the referee had erred. *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007) (unpublished).

In *Himraj v. _____,* No. HC-1060117546 (Minn. Dist. Ct. 4th Dist. April 25, 2006) (Appendix 682) (Judge McGunnigle), the landlord filed an eviction action alleging partial nonpayment of rent and late fees. The tenant argued that the landlord violated the covenant of habitability by not making repairs, including but not limited to, severe heating inadequacies, as she had no heat in her home for many winter

months and many security issues with her back door. The court determined that the landlord proved the nonpayment of rent, the defendant successfully defended by proving a violation of the statutory covenants of habitability, but awarded landlord costs and rent deposited to the court to the landlord, and gave landlord 14 days to comply with corrections required by the city because plaintiff's habitability violation warranted a court order of immediate repair due to the emergency nature of the violation. The tenant filed a notice of request for judge review. The landlord did not respond. The court stated that "[w]here the court finds for the defendant, [it] shall enter judgment for the defendant and tax the costs to the plaintiff" and ordered that (1) judgment be entered for tenant, (2) the costs be awarded to tenant (allowing tenant to withhold equivalent amount in future rent if costs were not paid), (3) tenant may deposit future rent with the court pending landlord's compliance with any outstanding repair orders, (4) defendant may petition the court for rent abatement, and (5) part of the order requiring her to refrain from legal action for 14 days be stayed.

In *Hutton v. _____,* No. HC 1000606517 (Minn. Dist. Ct. 4th Dist. Jul. 7, 2000 (Appendix 656), the court found that the landlord violated implied and express covenants of quiet enjoyment and lease provision on use of the property by residing and allowing others to reside in property rented to tenant, leading to remedy of rent abatement. The court concluded that the parol evidence rule prohibited introduction of evidence of oral agreements made prior to execution of the written lease; the lease did not allow the landlord to restrict use of laundry facilities; and the landlord breached the habitability covenant by not building the promised deck and not correcting water condition in timely manner. The court awarded monthly rent abatement of $100 for habitability and $697.50 retroactively and prospectively for quiet enjoyment out of $1395 rent, along with costs and disbursements. The court order the landlord to observe quiet enjoyment.

The courts have long awarded retroactive and prospective rent abatement, sometimes with a compliance hearing scheduled, and with other relief where appropriate. *See Larson v. Anderson*, No. C9-96-416 (Minn. Dist. Ct. 9th Dist. Oct. 11 and Nov. 8, 1996) (Appendix 264) (Rent abatement judgment of $6,910 over five years failing to repair discharge of raw sewage on the premises; landlord's notice to quit was in retaliation for tenant's complaint to health department); *Barger v. Behler*, No. UD-1970116527 (Minn. Dist. Ct. 4th Dist. Jan. 30, 1997) (Appendix 248) (Current and prospective rent abatement; landlord ordered to fully clean tenant's apartment; court to release rent to landlord only after verification of cleaning); *Cedar Associates LLP v. Curtis*, No. UD-1970108508 (Minn. Dist. Ct. 4th Dist. May 20, 1997) (Appendix 250) (Retroactive and prospective rent abatement, tenant to continue paying abated rent into court, court will release money to landlord only after verification of completion of repairs).[7]

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[7]Earlier decisions include *Hanson v. Widmark,* No. UD-1960625508 (Minn. Dist. Ct. 4th Dist. Aug. 2, 1996) (Appendix 200) (since tenant did not deposit the money in the court authorized eviction, court would determine rent abatement to avoid unnecessary duplication of litigation; landlord did not prove tenant's negligence or intentional act's caused repair needs; landlord shall give tenant a rent credit in any claim landlord may make against tenant related to this tenancy to account for court ordered rent abatement; landlord may not seek from tenant costs claimed in this); *Lynch v. Hart*, No. UD-1960610529 (Minn. Dist. Ct. 4th Dist. Jun. 27, 1996) (Appendix 185) (tenants not assessed costs because they proved covenant of habitability violations present and prospective rent abatement with future rent credit to recover present rent abatement); *Lundstrom v. Colglazier*, No. UD-1960524502 (Minn. Dist. Ct. 4th Dist. Jun. 17, 1996) (Appendix 210) (retroactive rent abatement even though repairs had been completed); *Overstreet v. Jackson*, No. UD-1960520509 (Minn. Dist. Ct. 4th Dist. Jun. 17, 1996) (Appendix 206) (Section 8 certificate; retroactive and prospective monthly rent abatement; jurisdiction retained); *Amsler v. Wright*, No. UD-1960502510 (Minn. Dist. Ct. 4th Dist. May 30, 1996) (Appendix 186) (landlord

If the defendant does not prove breach, the defendant still may redeem by paying the rent owed. *See* discussion, *infra* at VI.E.20.

i1. *Rent abatement beyond rent claimed credited against future rent*

Several courts have allowed rent abatement awards in excess of rent claimed by the landlord to be credited against future rent. In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564

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responsible for all utilities services which do not separately and accurately measure the tenant's sole use of utilities; landlord required to pay water bills where specific lease provisions state such, and general lease term permitting landlord to assess water bills from tenants is invalid; landlord ordered not to claim from tenant the costs of this case or rents abated as additional rent or a security deposit deduction; landlord ordered not to require public assistance vendoring; landlord ordered not to collect water bill payments from tenants; prospective and retroactive rent abatement); *Donovic v. Dodson*, No. C2-96-600607 (Minn. Dist. Ct. 6th Dist. Apr. 29, 1996) (Appendix 201) (rent abatement credit against future rent; tenant given thirty days to pay share of unpaid utilities, but not required to pay a share of future utility bills because the agreement was based on temporary increased usage); *Ellis v. McDaniel*, No. UD-1960318520 (Minn. Dist. Ct. 4th Dist. Apr. 4, 1996) (Appendix 203) (complete rent abatement prorated for a period in which tenants could not inhabit the apartment; tenants given ten days to pay rent due; landlord ordered not to claim additional rent or deduction from deposit for costs in this case or rents abated by this order).

See Appendices 110-26. In *Drews v. Ennis*, No. UD-1950512523 (Minn. Dist. Ct. 4th Dist. June 5, 1995) (Appendix 125) (the court ordered the landlord to pay rent abatement in excess of the amount the tenant paid into court within 14 days or a money judgment would be entered for the tenant); *Brown v. Owens,* No. UD-1940726506 (Minn. Dist. Ct. 4th Dist. Aug. 18, 1994) (retroactive and prospective rent abatement); *Kahn v. Greene*, No. UD-1940330506 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46) (retroactive and prospective rent abatement); *Kahn v. Foote*, No. UD-1940414503 (Minn. Dist. Ct. 4th Dist. May 6, 1994) (Appendix 47) (current and prospective rent abatement); *Jensen v. Bosto*, No. UD-1931203515 (Minn. Dist. Ct. 4th Dist. Dec. 17, 1993) (Appendix 74) (retroactive rent abatement going back six months, and prospective rent abatement); *Buckeye Realty Co. v. Elias,* No. CX-91-0697 at 5, 9 (Minn. Dist. Ct. 10th Dist. Aug. 6, 1991) (Appendix 15.E) (plaintiff ordered to make requested repairs, and defendants may continue to deposit the rent increase with the court administrator until repairs are completed or until further order of the court); *Z & S Management Company v. Jankowicz*, No. UD-1920219515 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1992) (Appendix 9.B) (retroactive rent abatement); *Klyberg v. Elkboy*, No. UD-1910617511 (Minn. Dist. Ct. 4th Dist. July 3, 1991) (Appendix 5.M) (retroactive and future rent abatement until compliance with housing code).

See also Schwanke v. Magnuson, No. C0-90-0640 (Minn. Dist. Ct. 8th Dist. Jan. 8, 1991) (Appendix 5.L) (retroactive and future rent abatement until repairs are completed); *Erickson v. Foster*, No. UD-1871007506 (Minn. Dist. Ct. 4th Dist. Oct. 28, 1987) (Appendix 5.N) (complete retroactive and future rent abatement until compliance with housing code and Minn. Stat. § 504.18 (now § 504B.161)); *Zeman v. Arnold*, No. UD-1900911501 at 3 (Minn. Dist. Ct. 4th Dist. Oct. 11, 1990) (Appendix 6.A) (partial rent abatement with remaining rent paid into court held until filing of statement by defendant or city inspector that corrections have been made); *Larson v. Cooper*, No. UD-1880209557 at 5-7 (Minn. Dist. Ct. Mar. 21, 1988) (Appendix 6) (retroactive abatement and future abatement until compliance with housing code; *Willet v. Streit*, No. 238043 (Ram. Cty. Mun. Ct., May 31, 1978) (Appendix 10) (no rent due until compliance with housing code); *Veres v. Warren*, No. UD-81253 (Henn. Cty. Mun. Ct., June 24, 1977) (Appendix 11) (June rent reduced by diminished value in May and June; future rents paid into court and reduced until compliance).

(Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees.

The court later ordered that the tenant could remedy violations and deduct the cost from rent, rent abatement would increase from $100 to $200 out of monthly rent of $650, or from 15% to 31% if the landlord did not complete repairs, the tenant could credit payments on the landlord's water bill against rent, the landlord must obtain a rental license, the landlord's right to collect rent was suspended until he obtained the license, and prior orders relating to court approval of future filings remained in effect. *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1999) (Appendix 354G).

Later in 1999, the court issued more orders. *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: rent abatement increase to $300 from $650 (46%) after 1 ½ years of failure to complete repairs; fine of $750 payable to county; $1000 statutory damages and $200 rent abatement for two interruptions of utilities; $1000 for ten privacy violations; landlord ordered to stop privacy violations). *See* Washington Rent Abatement Table (Appendix 427). *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999) (Appendix 426) (compliance order in the consolidated unlawful detainer and emergency tenant remedies actions: landlord violated unlawful exclusion statute by excluding tenant from the basement; landlord violated shared meter statute where tenant's meter covered her first floor apartment and the common basement which the landlord used for an office and for personal use; landlord violated tenant privacy for coming on the property to do repairs without notice, and by interrogating guests of the tenant; tenant proved that landlord did not provide a certificate of rent paid; landlord failed to prove that tenant failed to pay rent in a timely manner; tenant awarded monthly rent abatement of $300 from $650 (46%) ongoing, $500 for exclusion from the basement, $500 for privacy violations, $500 for violation of the shared meter statute, all of which could be credited against rent; landlord ordered to cease violations of tenant's privacy, and immediately provide tenant with a certificate of rent paid.

In *Walters v.*_____, No. UD-1990916517 (Minn. Dist. Ct. 4th Dist. Nov. 15, 1999) (Appendix 422), the duplex had separate electrical and gas meters for each unit. The electrical meter for the downstairs tenant also covered the basement and hallways, with the court concluding that it was a shared meter. After the furnace became inoperable and the landlord failed to supply adequate temporary heat and the tenant withheld rent, the landlord and tenant filed unlawful detainer and emergency tenant remedies actions, which the court consolidated. The court dismissed the landlord's notice to quit claim as premature, as the action was filed before the effective date of the notice. The court awarded rent abatement at $200 a month from $480 per month rent (42%), $500 in shared meter statutory damages, $500 for utility service interruption damages, all of which could be credited against future rent.

Later in *Walters v.* _____, No. HC 10101004526 (Minn. Dist. Ct. 4th Dist. Oct. 26, 2001) (Appendix 593), the court held the landlord responsible for shared meter bills, and liable for treble damages or $500 to be credited against rent; the tenant payment on the bill was deemed payment of rent; the tenant entitled to costs and disbursements from successful Court of Appeal case; the habitability rent abatement was $150-175 per month; leave was granted to file a motion for attorney's fees; and $3818 was disbursed from court to the tenant.

In *Stewart v. _____,* No. 27-CV-HC-06-1916 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 662) (Judge Crump), the landlord filed a combination eviction action and conciliation court action in housing court, and the tenant answered alleging habitability. At trial, the tenant attempted to testify about her observations about how her dryer worked, and rodent infestation. The housing court referee did not accept her testimony, since she was not an expert in dryer repair or pest control. After the referee ruled for the landlord, the tenant sought review by a district court judge. The court reversed the referee's grant of eviction writ where referee did not equally allow late exhibits from parties and disallowed tenant to testify about her habitability observations because she was not an expert. The court dismissed the action with prejudice and expunged; awarded the tenant awarded all rents of $1618 paid into court and a credit of $525 against future rent where tenant testified about rodent infestation and a clothes dryer damaging clothes; awarded costs and credited against future rent; ordered the landlord to complete repairs; and not future rent abatement was available if repairs not completed. On appeal, the Court of Appeals held that the district court correctly found that the referee had erred. *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007) (unpublished).

See also SJM Properties, Inc. v. _____, No. HC 020402501 (Minn. Dist. Ct. 4th Dist. Apr. 11, 2002, Feb. 12, 2003) (Appendix 570) (dismissal where Rental Assistance for Family Stabilization (RAFS) Program landlord failed to serve the Section 8 office; different notice periods for landlord and tenant might be proper; costs and disbursements awarded, which may be credited against rent; expungement granted later); _____ *v. Siganos*, No. HC 020201900 (Minn. Dist. Ct. 4th Dist. Mar. 5, 2002) (Appendix 451) (rent escrow action; habitability rent abatement of $100 per month for $1700, which can be credit against future rent with notice; tenant's payments for repairs and on shared meter credited against rent; tenant authorized to repair).

j. *Companion tenant's remedies and rent escrow actions*

Rent escrow actions and eviction (unlawful detainer) actions which involve the same parties must be consolidated and heard on the dates scheduled for the eviction (unlawful detainer) action. Minn. Stat. § 504B.385 (formerly § 566.34). *See* discussion, *infra*, at XII.B.3.

However, if the tenant commences a tenants' remedies or rent escrow action and pays the withheld rent into court *before* the landlord *files* an eviction (unlawful detainer) action, the court should dismiss the eviction (unlawful detainer) action because the tenant no longer is withholding the rent. *Zeman v. Currington*, Nos. UD-1900910517 and UD-1900911502 at 3 (Minn. Dist. Ct. 4th Dist. Oct. 11, 1990) (Appendix 6.B); *Gallion v. Brighton II Ltd. Partnership*, No. UD-1931109510 (Minn. Dist. Ct. 4th Dist. Dec. 7, 1993) (Appendix 49). *See Floyd v. Myers*, Nos. UD-1930601511 and UD-1930602512 (Minn. Dist. Ct. 4th Dist. June 28, 1993) (Appendix 6.C) (rent abatement of $285.00 from $425.00; subsequent eviction notice retaliatory and technical lease violation not material). Other options to consider including seeking a temporary restraining order against filing the eviction (unlawful detainer) action, or sealing the eviction (unlawful detainer) records. *See* Action Not Appropriate for Certain Types of Litigation, *supra* at II.B; Temporary Restraining Orders, *supra* at V.D., Consolidating Actions, *supra* at V.S., Sealing Court Records, *supra* at V.T.

In *Richter v. Czock*, No. C7-01-1340, 2002 WL 338181 (Minn. Ct. App. 2002) (unpublished), the court consolidated an eviction action based on holding over after notice with a rent escrow action. The court affirmed trial court rulings that the lease required a 45 day notice, that $100 per month rent abatement would cover only the period in which the landlord knew of the habitability issues, and that the landlord did not violate the privacy statute where the tenants were present when the landlord came, and the landlord claimed an emergency. The court also held that the trial court did not err in not admitted

evidence when the *pro se* tenants did request admission. The court noted that since the tenant appealed from the rent escrow action judgment but not the separate eviction action judgment, it would not consider whether the notice was retaliatory.

Consolidating actions also may allow the court to grant relief beyond what it would do in the eviction action. In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees.

The court later ordered that the tenant could remedy violations and deduct the cost from rent, rent abatement would increase from $100 to $200 out of monthly rent of $650, or from 15% to 31% if the landlord did not complete repairs, the tenant could credit payments on the landlord's water bill against rent, the landlord must obtain a rental license, the landlord's right to collect rent was suspended until he obtained the license, and prior orders relating to court approval of future filings remained in effect. *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1999) (Appendix 354G).

Later in 1999, the court issued more orders. *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: rent abatement increase to $300 from $650 (46%) after 1 ½ years of failure to complete repairs; fine of $750 payable to county; $1000 statutory damages and $200 rent abatement for two interruptions of utilities; $1000 for ten privacy violations; landlord ordered to stop privacy violations). *See* Washington Rent Abatement Table (Appendix 427). *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999) (Appendix 426) (compliance order in the consolidated unlawful detainer and emergency tenant remedies actions: landlord violated unlawful exclusion statute by excluding tenant from the basement; landlord violated shared meter statute where tenant's meter covered her first floor apartment and the common basement which the landlord used for an office and for personal use; landlord violated tenant privacy for coming on the property to do repairs without notice, and by interrogating guests of the tenant; tenant proved that landlord did not provide a certificate of rent paid; landlord failed to prove that tenant failed to pay rent in a timely manner; tenant awarded monthly rent abatement of $300 from $650 (46%) ongoing, $500 for exclusion from the basement, $500 for privacy violations, $500 for violation of the shared meter statute, all of which could be credited against rent; landlord ordered to cease violations of tenant's privacy, and immediately provide tenant with a certificate of rent paid.

In _____ *v. Meldahl,* 27-CV-HC-14-3813 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2014) (Appendix 710), the tenant filed a petition for emergency relief under the Tenant Remedies Act, codified as Minn. Stat. § 504B.381. The tenant claimed Meldahl unlawfully interrupted the utility service to her refrigerator and freezer, which lacked electricity and thus caused food spoilage. She stated that she called Mehldahl weeks prior to bringing this action, requesting he fix these problems, in addition to plumbing problems in the bathroom, but was promptly ignored. Prior to this trial, the referee had granted the petition for emergency relief and ordered Meldahl to remedy the situation immediately. However, as of trial, the problems had yet to be remedied. At trial, Mehldahl incorrectly claimed that notice to a landlord regarding problems in the property must be made in writing. Minn. Stat. § 504B.381(4) forecloses this argument, as it does not require notice to be written, and the tenant's notice by telephone was sufficient.

The court found she failed to adequately prove Meldahl intentionally and unlawfully tampered with her electricity. However, in light of Meldahl's failure to remedy the problems, the court found the tenant was entitled to rent abatement for the months she paid rent while the premise was in disrepair, along with costs, totaling $4,197, and statutory attorney's fees of $500.

In _____ *v. Meldahl,* 27-CV-HC-14-3813 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 711) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's findings in the previous action. Meldahl claimed the referee (1) erred in finding the tenant had diminished use and enjoyment of the property, which entitled her to rent abatement and costs; (2) erred in finding the tenant had properly notified Meldahl of the repairs needed; (3) erred in finding the tenant's testimony was credible, while Meldahl's was not; (4) showed bias in favor of the tenant; and (5) improperly allowed the tenant to represent her co-tenant. The court disagreed with each of Meldahls claims. First, the court held that it would not overturn the referee's credibility determinations and that the referee did not erroneously find that Tenant's use and enjoyment of the property was diminished. Further, the referee's award of attorney's fees was supported by the record and well within its authority to do so. The referee showed no bias as his evidentiary findings were an appropriate exercise of his discretion. And finally, the tenant was allowed to represent her co-tenant in this action because Minn. Gen. R. Prac. 603 only requires a power of authority for eviction actions, and this was a petition for emergency relief.

In *Meldahl v.* _____*,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix 708), a companion to _____ *v. Meldahl,* 27-CV-HC-14-3813 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2014) (Appendix 710), the landlord Meldahl brought this eviction action to remove the tenants from his property for non-payment of rent and breach of the lease. Meldahl claimed that the tenants breached the lease by owing an outstanding water bill, late rent fees, and moving fees. On his nonpayment of rent charge, Meldahl claimed the tenants failed to pay rent for two months. The district court held that none of Meldahl's asserted breach claims constituted a material breach. Further, Meldahl claimed that the tenants breached the lease by allowing housing inspectors into the house without providing him prior notice. The court denied this claim and found the clause in the lease requiring such notice unconscionable and thus unenforceable.

In regards to the non-payment of rent, simply filing an eviction notice is not enough to warrant actual eviction. Instead, Meldahl was required to show by a preponderance of the evidence that (1) there is a lease agreement with a rental amount due; and (2) that the rental amount was not paid pursuant to the agreement. Meldahl failed to meet this burden, as the tenants were able to provide credible evidence that they had, in fact, paid rent. Under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption. The tenants sought the abatement of rent because, they claim, Meldahl breached his covenants of habitability, due to numerous and unresolved problems with the house (e.g., holes in the floor, a malfunctioning toilet, flooding in the basement, etc.). The court entered judgment for the tenants and referenced rent abatement ordered in a companion emergency tenant remedies action. The court granted the right to remain in possession of the premises, allowable costs, rent abatement, and expungement.

In *Meldahl v.* _____*,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. Meldahl argued that the referee erred by (1) finding the tenants had not materially breached the lease; (2) finding the tenants' testimony was credible, while Meldahl's was not; and (3) failing to address the tenants' allegations of improper service. The court affirmed the referee's findings in their entirety. First, the tenants did not materially breach the lease by failing to mow the lawn, failing to

pay the water bill, allowing housing inspectors into the house without Meldahl's prior notice, or failing to pay rent. The referee's findings were not clearly erroneous and the court upheld his conclusions. Furthermore, under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption, and thus the court determined Meldahl cannot base an eviction action on mere allegations. Next, in addressing Meldahl's credibility argument, the court stated that it defers to the referee's credibility determinations and would not reconsider those. And finally, the court addressed the tenants' allegations of improper service, but found that service was proper because tenants failed to prove otherwise by clear and convincing evidence.

In *S&R Management v. _____, _____ v. Wones,* Nos. HC-#1000621500 and HC #1000627901 (Minn. Dist. Ct. 4th Dist. July 25, 2000) (Appendix 677), in consolidated eviction and rent escrow actions, the court concluded property co-owner, management company, and property manager all were landlords as defined by Minn. Stat. § 504B.001, Subd. 7; the lease contained no conspicuous writing supporting landlord's claim that tenant was required to paint and clean property; failure of the tenant to give written notice of repairs does not waive the landlord's covenant of habitability but court may consider it in determining rent abatement. The court dismissed the eviction action; awarded rent abatement of $125 per month out of $525 rent for numerous violations; ordered the landlord to make repairs; while court made no findings on privacy violations, ordered the tenant to not unreasonably deny access and authorized the landlord the give 24 hour notices for visits; and retained jurisdiction and scheduled a compliance hearing.

In *Walters v. Demmings*, No. UD-1990916517 (Minn. Dist. Ct. 4th Dist. Nov. 15, 1999) (Appendix 422), the duplex had separate electrical and gas meters for each unit. The electrical meter for the downstairs tenant also covered the basement and hallways, with the court concluding that it was a shared meter. After the furnace became inoperable and the landlord failed to supply adequate temporary heat and the tenant withheld rent, the landlord and tenant filed unlawful detainer and emergency tenant remedies actions, which the court consolidated. The court dismissed the landlord's notice to quit claim as premature, as the action was filed before the effective date of the notice. The court awarded rent abatement at $200 a month from $480 per month rent (42%), $500 in shared meter statutory damages, $500 for utility service interruption damages, all of which could be credited against future rent. The tenant moved for reconsideration of the shared meter damages, arguing that her damages exceeded the $500 statutory minimum. The court rejected the argument, concluding that the tenant must prove how much usage occurred outside of her unit. *Demmings v. Walters*, No. UD-1991006902 (Minn. Dist. Ct. 4th Dist. Mar. 22, 2000) (Appendix 422).

In *Judge v. Rio Hot Properties, Inc.*, Nos. UD-1981202903, UD-1981005518, and UD-1981104522 (Minn. Dist. Ct. 4th Dist. Dec. 18, 1998) (Appendix 362D), in consolidated unlawful detainer and emergency tenant remedies actions, the court concluded that a notice to quit which was not effective but the parties agreed to litigate was retaliatory where the landlord only wished to rent to other tenants, the landlords waived a no pet provision and could not rely on it to show a non-retaliatory purpose, the tenants were entitled to additional rent abatement beyond an ongoing rent abatement for loss of utilities, and the tenants were entitled to $500 in statutory damages for termination of utility services which they could credit against future rent.

In *Stillday v. Kittleson*, No. UD-01980421523 and 1980430900 (Minn. Dist. Ct. 4th Dist. Jul. 21, 1998) (Appendix 368), the court consolidated unlawful detainer and rent escrow actions, dismissed the unlawful detainer action for failing to serve a copy of the summons and complaint on the Minneapolis Public Housing Authority, and concluded that the landlord violated the tenant's privacy, and awarded

$100 to the tenant. *See Thomas v. Dobyne*, No. U-1980616536 (Minn. Dist. Ct. 4th Dist. Aug. 4, 1998) (Appendix 370C) (Combined unlawful detainer and lock out actions: award of $500 in statutory damages and $3,635 in attorney's fees where landlord changed the locks while tenant was removing her property following service of a writ of restitution); *Guevara v. Catchings*, No. UD-01961210536 (Minn. Dist. Ct. 4th Dist. Dec. 23, 1996) (Appendix TR 147a) (Unlawful detainer action filed after rent escrow action dismissed with prejudice).

See Smith v. Brinkman and *Brinkman v. Smith*, Nos. HC-1000124900 and HC-1000202517 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2000) (Appendix 418) (Consolidated eviction and rent escrow actions: landlord failed to prove statutory notice to quit, notice to increase rent given November 1 was not effective to increase rent December 1, presumption of retaliation applied to a rent increase notice with the landlord failing to prove a non-retaliatory purpose, habitability rent abatement of $800 over four months (38%) tenant awarded $300 in civil penalties for landlord visits without notice in which he was rude toward the tenant and her daughter, landlord ordered to make repairs with tenant's authorized to make repairs and submit bills for court approval, landlord restrained from harassing tenant and household members with landlord allowed to enter only to make repairs with written 24-hours notice, tenants awarded costs, disbursements and attorney's fees); *Green v. Formanek*, and *Formanek v. Green*, No. 1991001905 and 4991004400 (Minn. Dist. Ct. 4th Dist. Oct. 27, Nov. 8, 1999) (Judge Bruce Peterson) (Appendix 393) (Consolidated rent escrow and eviction actions: dismissal of eviction action where landlord's notice was not wholly without retaliatory motive; tenant awarded retroactive and prospective rent abatement, and costs and disbursements upon application and affidavit). [8]

Consolation all expands the time for appeal. *See* discussion, *infra*, X.A.

k. *Landlord tort liability for personal injury*

See discussion at XII.B.3.g.

k1. *Landlord's contact liability for personal injury*

See discussion at XII.B.3.h.

l. *Consequential damages*

Since the covenants of habitability are implied into all oral and written leases under Minn. Stat. § 504B.161, Subd. 1(a), a violation of the covenants of habitability may give rise to consequential damages. The tenant may recover such consequential damages as, at the time of the making of the lease, the parties could reasonably have contemplated would result from a breach. *Poppen v. Wadleigh*, 235

[8]Earlier cases include *Line v. Reynolds*, No. UD-1960612512 (Minn. Dist. Ct. 4th Dist Aug 12, 1996) (App. 175) (consolidated unlawful detainer and rent escrow actions); *Player v. King,* UD-1960306541 (Minn. Dist. Ct. 4th Dist. Apr. 3 & May 2, 1996) (consolidated unlawful detainer and emergency tenant remedies actions); *Brook v. Boyd*, No. C8-96-47 (Minn. Dist. Ct. 9th Dist. Feb. 13, 1996) (Appendix 207) (consolidated unlawful detainer and rent escrow actions); *Ochoa v. Kenneth*, No. UD-1950919505 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1995) (Appendix 79) (unlawful detainer consolidated with rent escrow action); *Henderson v. Schaapveld*, No. UD-1950127501 (Minn. Dist. Ct. 4th Dist. Apr. 10, 1995) (Appendix 119) (unlawful detainer consolidated with emergency tenants remedies action); *Blevins v. Zeman*, No. UD-1950605568 (Minn. Dist. Ct. 4th Dist. Nov. 8, 1995) (Appendix 126) (unlawful detainer consolidated with lockout action and consumer fraud claim).

Minn. 400, 405, 51 N.W.2d 75, 78 (1952) (commercial lease lost profits); *Force v. Gottwald*, 149 Minn. 268, 272-75, 183 N.W. 356 359 (1921) (lost profits); *Romer v. Topel*, 414 N.W.2d 787, 788 (Minn. Ct. App. 1987), *review denied* (transportation and stabling of horses at another location following collapse of a barn). *See generally* 5C DUNNELL MINN. DIGEST 2D *Damages* § 3.00(b).

In *Les Jones Roofing v. City of Minneapolis*, 373 N.W.2d 807 (Minn. Ct. App. 1985), the commercial tenant rented a building and erroneously assumed that the landlord owned adjacent property and that it would be available for him for parking and storage. The tenant later discovered that the city owned the adjacent property. The tenant rented the property from the city for use as a parking lot and for storage of materials. After the tenant had blacktopped the property and constructed a fence around it, the city ordered it to vacate the property. Because of its inability to use the property, the tenant relocated its business. *Id*. at 808-09. The trial court directed an award for the tenant for the cost of blacktop installed, as a reasonably foreseeable expenditure at the time the parties entered into the lease. The jury awarded the tenant damages for construction of the fence and relocation expenses, but the trial court granted judgment not withstanding the verdict and vacated the award of relocation expenses. On appeal, the court held that the trial court did not err in vacating the award of moving expenses. The court noted that the tenant had operated its business for several months before it rented the adjacent property from the city and did not state that it would move its business if it could not rent the adjacent property from the city. The court concluded that the evidence did not establish that a lease with the city included an understanding that a breach of the lease would lead to relocation. *Id*. at 809.

It should be noted that the tenant was seeking relocation expenses for its business, operated on property rented from another landlord rather than the city. Had the business been operated on property rented from the city and rented at the same time, there would have been a clearer case for consequential damages for relocation expenses.

In *Rush v. Westwood Vill. P'ship,* 887 N.W.2d 701 (Minn. Ct. App. 2016), rev. denied Mar. 14, 2017, residential tenants filed two rent escrow actions which became consolidated appeals. In the first action, tenants requested heat treatment as opposed to chemical treatment (a cheaper method) for bed bug infestation or, alternatively, monetary compensation for their discarded personal property (done in connection with the chemical treatment option) and consequential damages. In the second action, the other set of tenants requested landlord to repair the bed bug infestation and reimburse them for any property damage and any other expenses. The Minnesota Court of Appeals affirmed the district court, holding that (1) Minn. Stat. § 504B.161, subd. 1(a)(2) covenant of reasonable repair does not protect the tenants' personalty nor protect the tenant from having to move and clean personalty as part of the landlord's extermination work, and (2) Minn. Stat. § 504B.161, subd. 1(a)(1) allows the landlord to keep the place fit for the use intended by using a method of his chosing so long as it is an effective method.

The first holding is especially troubling, since the common law of consequential damages for contract breaches should have included the tenants' claims. *See* discussion at VI.E.1.*l.* Since the court held that the landlord did not violate Minn. Stat. § 504B.161, it did not reach the issues of rent abatement or consequential damages. 887 N.W.2d at 709. Tenants should assert consequential damages claims for expenses and damages that flow from landlord violations of the lease covenants created by Minn. Stat. § 504B.161.

A determination of whether to award consequential damages must be made on a case-by-case basis. When a landlord's breach of the lease excludes the tenant from the premises or forces the tenant to vacate the premises, consequential damages may include relocation expenses, temporary shelter expenses, and increased transportation expenses.

In *Giardina v. R110, Inc.,* No. 27-CV-HC-09-5956 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2009) (Judge Klein) (Appendix 697), plaintiff tenant filed a rent escrow action against the landlord resulting from landlord's failure to respond to or address infestation of bed bugs after oral and written notice from tenant of the infestation, and despite the fact that Minneapolis Department of Inspections ordered defendant landlord to exterminated bed bugs and mice in tenant's apartment. The court referee found defendant failed to timely address the infestation after notice, plaintiff's personal property was infested and needed to be destroyed, reasonable value of personal property was $2,000, and that plaintiff was entitled to rent abatement from May 2009 through August 2009 and consequential damages for property loss, offset by $400 in late fees owed by defendant. In upholding the referee's decision, the judge concluded that the findings, made after a half-day trial, did not contain clear error, and the damages amounts were properly determined as the finder of fact.

In *Dellmore v. IPM Realty,* No. CX-06-2688 (Minn. Dist. Ct. 2nd June 29, 2006) (Appendix 641), in a tenant remedies action, the court made extensive findings on habitability and use and enjoyment of the property and concluded that the subsidized housing tenant's habitability damages were not limited to tenant's share of rent especially where housing authority did not seek repayment of subsidy from landlord, and collection of rent after condemnation entitled tenant to treble damages. The court awarded the tenant rent abatement trebled and reimbursement of expenses resulting from habitability violations and condemnation for total of $28,000, and order the landlord ordered to prepay hotel expenses for displaced tenants.

See O'Leary v. _____, No. 2990913207 (Minn. Dist. Ct. 4th Dist. Sep. 27, 1999) (Appendix 553) (offset of tenant payment for improper towing); *Leshoure v. O'Brian*, No. UD-01000303900 (Minn. Dist. Ct. 4th Dist. May 17, 2000) (Appendix 403) (rent escrow action: monthly rent abatement of $300 out of $850 (35%) for $3,600 over one year; $250 in consequential damages for supplies and labor in making repairs; landlord failed to overcome presumption of retaliatory notice with claims that the rent was late, since landlord accepted late rent in the past, or that Section 8 repair requirements were too expensive, since tenant had continuously asked for repairs); *Bordeaux v. Mathers*, UD-1950922925 (Minn. Dist. Ct. 4th Dist. Jan. 29, 1996) (TR Appendix 66) (emergency tenants' remedies and consumer fraud decision finding consequential damages for increased gas bill at old apartment, higher rent at new apartment, and wages for tenant's work removing sewage from basement); *Henderson v. Schaapveld*, Nos. UD-1950127501, UD-1950127502 at 10-15 (Minn. Dist. Ct. 4th Dist. Apr. 10, 1995) (TR Appendix 49); *Overstreet v. Jackson*, No. UD-1960520509 (Minn. Dist. Ct. 4th Dist. Jun. 17, 1996) (Appendix 206) (Section 8 certificate; tenant did not prove entitlement to compensation for loss of food due to refrigerator disrepair where tenant refused entry by the landlord to repair the refrigerator for lack of 24 hours notice).

m. *No assessment of costs against tenant*

Where the tenant litigates and prevails on the issue of habitability violations, the landlord should not be awarded costs. In *McPipe v. _____,* No. 27-CV-HC-14-4302 (Minn. Dist. Ct. 4th Dist. Feb. 3, 2015) (Appendix 740) (Judge Bratvold), the eviction defendant tenant filled a notice of request and request for judge review alleging that the referee erred in (1) finding that the defendant did not pay rent for two months when defendant deposited rents into court pending determination of defendant's defense; (2) determining that the plaintiff landlord prevailed on proving non-payment of a month's rent; (3) entering judgment for possession in favor of the plaintiff; (4) awarding the plaintiff taxation of costs; (5) requiring the defendant to pay costs of filing and statutory attorney fee; and (6) failing to make any determination with respect to rent abatement for one of the months. The court found that the plaintiff's

companion challenge to the referee's decision was untimely. On the tenant's claim, the court stated that the referee erred because "[a] tenant who deposits rent into court pending a determination of a habitability defense has fulfilled her ongoing rent obligations" and found that (1) plaintiff failed to prove his nonpayment of rent claim; (2) defendant prevailed on her habitability defense; (3) defendant was entitled to rent abatement for two months due to plaintiff's violation of the statutory covenants of habitability; (4) judgment was to be entered in favor of defendant; (5) defendant was to be awarded taxation of costs; (6) defendant was entitled to costs and statutory $5 attorneys' fee; (7) plaintiff was entitled to receive part of the amount of rent deposited with the court for three months (minus the rent abatement, which was to be paid to defendant); and (8) defendant was to remain in possession of the premises.

In *Himraj v. _____,* No. HC-1060117546 (Minn. Dist. Ct. 4th Dist. April 25, 2006) (Appendix 682) (Judge McGunnigle), the landlord filed an eviction action alleging partial nonpayment of rent and late fees. The tenant argued that the landlord violated the covenant of habitability by not making repairs, including but not limited to, severe heating inadequacies, as she had no heat in her home for many winter months and many security issues with her back door. The court determined that the landlord proved the nonpayment of rent, the defendant successfully defended by proving a violation of the statutory covenants of habitability, but awarded landlord costs and rent deposited to the court to the landlord, and gave landlord 14 days to comply with corrections required by the city because plaintiff's habitability violation warranted a court order of immediate repair due to the emergency nature of the violation. The tenant filed a notice of request for judge review. The landlord did not respond. The court stated that "[w]here the court finds for the defendant, [it] shall enter judgment for the defendant and tax the costs to the plaintiff" and ordered that (1) judgment be entered for tenant, (2) the costs be awarded to tenant (allowing tenant to withhold equivalent amount in future rent if costs were not paid), (3) tenant may deposit future rent with the court pending landlord's compliance with any outstanding repair orders, (4) defendant may petition the court for rent abatement, and (5) part of the order requiring her to refrain from legal action for 14 days be stayed. *See Lynch v. Hart*, No. UD-1960610529 (Minn. Dist. Ct. 4th Dist. Jun. 27, 1996) (Appendix 185) (tenants not assessed costs because they proved covenant of habitability violations).

n. *Fines*

In *Rio Hot Properties, Inc. v. Judge*, No. UD-1981102522 (Minn. Ct. Dist. 4th Dist. Nov. 19, 1998) (Appendix 362C), the landlord was fined $250 to be credited against rent, with the court ordering second fine of $500 but stayed to allow landlord time to complete repairs. However, the referee later concluded that the fines must be paid to the county, and may not be awarded to the tenant as a credit against rent. *Rio Hot Properties, Inc. v. Judge*, No. UD-1981102522 (Minn. Ct. Dist. 4th Dist. Mar. 29, 1999) (Appendix 362E) (citing Minn. Stat. §574.34). In *Rio Hot Properties, Inc. v. Judge*, No. UD-01981005518 (Minn. Dist. Ct. 4th Dist. May 21, 1999) (Judge L. Arthur) (Appendix 400), the judge affirmed the referee's conclusion, concluding that the fine statute did not create an exception to the general rule under Minn. Stat. § 574.34 that fines are punitive and payable to the state.[9]

[9]Earlier decisions had ordered that fines under Minn. Stat. § 504B.391 (formerly § 566.35) may be awarded to the tenant as a credit against rent. In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in

Even if fines are not awarded to the tenant, they may have some deterrent effect, as they can escalate in $250 increments. *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: rent abatement increase to $300 from $650 (46%) after 1 ½ years of failure to complete repairs; fine of $750 payable to county; $1000 statutory damages and $200 rent abatement for two interruptions of utilities; $1000 for ten privacy violations; landlord ordered to stop privacy violations). *See* Washington Rent Abatement Table (Appendix 427). *See also Chmielewski v. _____*, No. UD 1990324502 (Minn. Dist. Ct. 4th Dist. Apr. 14, 1999) (Appendix 484) ($200 per month rent abatement; landlord order to complete repairs; fines if landlord fails to comply).

o. *Contempt of court*

As an alternative to fines under § 504B.391 (formerly § 566.35), the court the power to award the amounts as damages to tenant as credits against rent under its contempt power. The court may order a party guilty of contempt to pay damages, costs, expenses, and attorney's fees to the other party. Minn. Stat. §588.11. Constructive contempt includes disobedience of any lawful judgment, order, or process of court. §588.01, Subd. 3(3). *Judge v. Rio Hot Properties, Inc.*, No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (tenants' motion in consolidated cases to add punitive damages denied where court found no independent tort, but tenant granted leave to proceed with claims for contempt where the landlord had failed to complete repairs for almost one year.) *See* discussion, *infra*, at VII.C.

p. *Punitive damages*

As another alternative to fines under § 504B.391 (formerly § 566.35), the court may award punitive damages. Punitive damages are available in civil actions upon clear and convincing evidence that the acts of the party show deliberate disregard for the rights or safety of others. Minn. Stat. §549.20. A party may not seek punitive damages in an initial pleading, but may move to amend the pleading to claim punitive damages. Minn. Stat. §549.191. *Judge v. Rio Hot Properties, Inc.*, No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (tenants' motion in consolidated cases to add punitive damages denied where court found no independent tort, but tenant granted leave to proceed with claims for contempt where the landlord had failed to complete repairs for almost one year.

q. *Compliance hearings*

Once the tenant has proven a violation of a covenant of habitability, the court may retain

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attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees. The court later issued a stayed $500 fine, and ultimately lifted the stay and allowed the tenant to credit it against rent. (Dec. 9, 1998, Jan. 4, 1999). The court later authorized the tenant to pay another water bill and credit the payment against rent, and ordered a stayed fine of $750. (Mar. 10, 1999). *See Dunger v. Markowitz*, No: UD-1971224504 (Minn. Dist. Ct. 4th Dist. Jul. 27, 1998) (Appendix 326B) (first stayed fine of $250 assessed); *id* (Jan. 20, 1999) (Appendix 326C) (stayed second fine of $500 assessed, to be credited against rent if repairs not completed by deadline); *id*, (Mar. 15, 1999) (Appendix 326D) (Landlord's sale of ownership interest did not relieve landlord of obligation to complete repairs in order to avoid lifting of a stayed fine to enforce a repair order; stay lifted on second fine of $500 and awarded to tenant).

jurisdiction and schedule a compliance hearing to determine whether the rent abatement should continue in future months. The landlord has the burden of proving completion of repairs in order to cancel the rent abatement. *Central Manor Apartments v. Beckman*, Nos. UD-1980609509, UD-1980513525 (Minn. Dist. Ct. 4th Dist. July 29, 1998) (Appendix 319B) (Landlord proved completion of repair order by a preponderance of the evidence).

Careful monitoring of landlord compliance with repair orders of the court along with the use of compliance hearings can lead to significant abatements over time where landlord's fail to comply with court orders.

In *Himraj v. _____,* No. HC-1060117546 (Minn. Dist. Ct. 4th Dist. April 25, 2006) (Appendix 682) (Judge McGunnigle), the landlord filed an eviction action alleging partial nonpayment of rent and late fees. The tenant argued that the landlord violated the covenant of habitability by not making repairs, including but not limited to, severe heating inadequacies, as she had no heat in her home for many winter months and many security issues with her back door. The court determined that the landlord proved the nonpayment of rent, the defendant successfully defended by proving a violation of the statutory covenants of habitability, but awarded landlord costs and rent deposited to the court to the landlord, and gave landlord 14 days to comply with corrections required by the city because plaintiff's habitability violation warranted a court order of immediate repair due to the emergency nature of the violation. The tenant filed a notice of request for judge review. The landlord did not respond. The court stated that "[w]here the court finds for the defendant, [it] shall enter judgment for the defendant and tax the costs to the plaintiff" and ordered that (1) judgment be entered for tenant, (2) the costs be awarded to tenant (allowing tenant to withhold equivalent amount in future rent if costs were not paid), (3) tenant may deposit future rent with the court pending landlord's compliance with any outstanding repair orders, (4) defendant may petition the court for rent abatement, and (5) part of the order requiring her to refrain from legal action for 14 days be stayed.

See Sumpter v. _____, No. HC-1011108523 (Minn. Dist. Ct. 4th Dist. Dec. 5, 2001) (Appendix 683) (in eviction action, litigation of rent abatement from previous rent escrow action barred by res judicata; rent abatement continued for landlord's failure to make all repairs; compliance hearing scheduled); *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: rent abatement increase to $300 from $650 (46%) after 1 ½ years of failure to complete repairs; fine of $750 payable to county; $1000 statutory damages and $200 rent abatement for two interruptions of utilities; $1000 for ten privacy violations; landlord ordered to stop privacy violations). *See* Washington Rent Abatement Table (Appendix 427). In *Huffman v. Ellis*, No. UD-1991119518 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2000) (Appendix 397), the parties settled an unlawful detainer action for nonpayment of rent with habitability defenses for rent abatement and a deadline to complete repairs. When the landlord did not complete repairs by the deadline, the tenant moved for relief based on breach of the settlement agreement. The court found the breach of the agreement, diminished use of enjoyment of the premises, and awarded rent abatement. After taking testimony on damage to the tenant's car allegedly caused by repair problems not contemplated in the settlement agreement, the court concluded that the damages were excluded from rent abatement and would not be considered *res judicata* as to future claims.

r. *Housing agency inspections and records*

(1) Statutes

(a) Inspections

Minn. Stat. § 504B.185 provides for housing inspections where a jurisdiction has a housing code.

504B.185 INSPECTION; NOTICE.

Subdivision 1.Who may request.

If requested by a residential tenant, a housing-related neighborhood organization with the written permission of a residential tenant, or, if a residential building is unoccupied, by a housing-related neighborhood organization, an inspection shall be made by the local authority charged with enforcing a code claimed to be violated.

Subd. 2.Notice.

(a) After the local authority has inspected the residential building under subdivision 1, the inspector shall inform the landlord or the landlord's agent and the residential tenant or housing-related neighborhood organization in writing of any code violations discovered.

(b) A reasonable period of time must be allowed in which to correct the violations.

(b) Records

Sometimes tenants have difficulty obtaining information on housing court violations from a Housing Inspections Department. Data on code violations is governed by several statutes. Under the Minnesota Government Data Practices Act, generally code violations data are public. Minn. Stat. § 13.442. The identities of individuals who register complaints are private. § 13.44. Data collected for pending civil legal actions are protected. § 13.39. Criminal investigative data is confidential. § 13. 82. Persons who request public government data shall be permitted to inspect and copy it at reasonable times and places. § 13.03.

Chapter 504B regulates disclosure of inspection records by landlords. § 504B.195(formerly § 504.245) requires landlords to disclose certain outstanding inspection orders to tenants, applicants and purchasers. A landlord’s violation of the disclosure statute entitles the tenant to remedies under the private Attorney General Enforcement Statute, § 8.31, Subd. 3a, and other equitable relief as determined by the court. Such relief could include dismissal or rent abatement in an unlawful detainer action.

504B.195 DISCLOSURE REQUIRED FOR OUTSTANDING INSPECTION AND CONDEMNATION ORDERS.

Subdivision 1. Disclosure to tenant. (a) Except as provided in subdivision 3, a landlord, agent, or person acting under the landlord's direction or control shall provide a copy of all outstanding inspection orders for which a citation has been issued, pertaining to a rental unit or common area, specifying code violations issued under section 504B.185, that the housing inspector identifies as requiring notice because the violations threaten the health or safety of the tenant, and all outstanding condemnation orders and declarations that the premises are unfit for human habitation to:

(1) a tenant, either by delivery or by United States mail, postage prepaid, within 72 hours after

issuance of the citation;

(2) a person before signing a lease or paying rent or a security deposit to begin a new tenancy; and

(3) a person prior to obtaining new ownership of the property subject to the order or declaration. The housing inspector shall indicate on the inspection order whether the violation threatens the health or safety of a tenant or prospective tenant.

(b) If an inspection order, for which a citation has been issued, does not involve code violations that threaten the health or safety of the tenants, the landlord, agent, or person acting under the landlord's control shall post a summary of the inspection order in a conspicuous place in each building affected by the in- spection order, along with a notice that the inspection order will be made available by the landlord for review, upon a request of a tenant or prospective tenant. The landlord shall provide a copy of the inspection order for review by a tenant or a prospective tenant as required under this subdivision.

Subd. 2. Penalty. If the landlord, agent, or person acting under the landlord's direction or control violates this section, the tenant is entitled to remedies provided by section 8.31, subdivision 3a, and other equitable relief as determined by the court.

Subd. 3. Exception. A landlord, agent, or person acting under the landlord's direction or control is not in violation of this section if:

(1) the landlord, agent, or person acting under the landlord's direction or control has received only an initial order to repair;

(2) the time allowed to complete the repairs, including any extension of the deadline, has not yet expired, or less than 60 days has elapsed since the expiration date of repair orders and any extension or no citation has been issued; or

(3) the landlord, agent, or person acting under the landlord's direction or control completes the repairs within the time given to repair, including any extension of the deadline.

Subd. 4. Landlord's defense. It is an affirmative defense in an action brought under this section for the landlord, agent, or person acting under the landlord's control to prove that disclosure was made as required under subdivision 1.

Subd. 5. Remedies additional. The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void.

8.31 ADDITIONAL DUTIES OF ATTORNEY GENERAL.

. . . .

Subd. 3a. Private remedies. In addition to the remedies otherwise provided by law, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and

recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may, as appropriate, enter a consent judgment or decree without the finding of illegality. In any action brought by the attorney general pursuant to this section, the court may award any of the remedies allowable under this subdivision.

. . . .

After a local authority had inspected a residential building, the inspector must give written notice of code violations to the landlord, the tenant, and any housing-related neighborhood organization which requested the inspection. § 504B.185 (formerly § 566.19). Old § 504.23 set out a process for obtaining code violation information from the inspection agency. Section 504.23 was to be replaced by § 504B.191, but the current published edition of Chapter 504B does not contain 504B.191.

While tenants often rely on inspection reports to raise habitability issues, the report may be subject to objection unless it is certified, or used in connection with the testimony of an inspector. *See State v. Northway*, 588 N.W.2d 180 (Minn. Ct. App. 1999) (copy of federal agency report not admissible without certification by an official custodian of the report that the copy is a correct copy of the agency report).

(2) Ordinances

See Housing Law Links
http://povertylaw.homestead.com/files/Reading/links.htm#TOC1_4

s. *Studies of effects of inadequate housing conditions*

Air quality conditions in housing which adversely affect tenant health should violate the covenants of habitability. *See* Denise Grady, *Perseverance is Key to a Good Life with Asthma*, N.Y. TIMES SCIENCE (Oct. 19, 1999); Sheryl Gay Stolberg, *Poor Fight Baffling Surge in Asthma*, N.Y. TIMES, NATIONAL (Oct. 18, 1999). Inadequate housing may have a significant impact on the children who live in it. In *There's No Place Like Home: How America's Housing Crisis Threatens Our Children*, (Boston Medical Center Housing America, www.irc.org/housingamerica), substandard housing is linked with increased asthma attacks, anemia, house fires, burns from exposed home radiators, and lost IQ points due to lead poisoning.

t. *Subsequent owner liability*

A new owner may be bound by predecessor landlord's obligations. _____ *v. Gibson*, and _____ *v. Gibson*, Nos. 1000301900 and 1000301901 (Minn. Dist. Ct. 4th Dist. Mar. 27, June 30, 2000) (Appendix 439) (emergency tenant remedies action, 100% rent abatement for condemnation, and additional treble damages, tenant may repair and deduct costs from rent, replacement housing, fines; subsequent order that new owner bound by predecessor landlord's obligations, $1800 in attorney's fees, injunction against retaliation). *See* Orders (Minn. Dist. Ct. 4th Dist. Mar. 9 and 13, 2000) (Appendix 383).

u. *Manufactured (mobile) home park lot tenancies*

The manufactured (mobile) home park lot statutes also contain covenants of habitability. Minn.

Stat. § 327C.10, subd. 1. *See Larson v.* _____, No. HC 030324502 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2004) (Appendix 528) (referee will not reconsider judge's order on waiver; tenant meets definition of disabled; requiring mobility disabled tenant to park vehicle further away than other tenants is not a reasonable accommodation; while parking tenant's vehicle near the home violated an ordinance, most other tenants also violated the unenforced ordinance; tenant's ordinance violations were repeated but not serious; tenant may raise landlord's violation of the covenants of habitability as a cause of tenant violation of the lease, where park owner's park design violated a local ordinance and forces tenant to violate the same ordinance); *Potvin v.* _____, No. C2-03-1604 (Minn. Dist. Ct. 9th Dist. Sep. 19, 2003) (Appendix 562) (tenant first rent manufactured home (not in a park) and land under it, then purchased home and rented land, and fell behind on rent but landlord did not deliver title to tenant; court stayed writ for one week after landlord delivers title to tenant); *Sargent v. Bethel Properties, Inc.*, 653 N.W.2d 800 (Minn. Ct. App. 2002) (addition of utility charges to an existing manufactured-home park rental agreement is a new rule that substantially modifies the agreement and renders the agreement unenforceable). *Larson v. Anderson*, No. C9-96-416 (Minn. Dist. Ct. 9th Dist. Oct. 11 and Nov. 8, 1996) (Appendix 264) (Rent abatement of $6,910 over five years failing to repair discharge of raw sewage on the premises; landlord's notice to quit was in retaliation for tenant's complaint to health department). *See also* discussion, *infra*, at VI.E.11.

2. Rental licenses and other housing condition defenses

a. *Illegal contracts: violation of housing code precluding action for rent*

While the covenants of habitability include compliance with housing codes, *see* discussion, *supra* at VI.E.1., violation of the housing code may be a separate and additional defense.

Generally a contract entered into in violation of a statute or ordinance which imposes a prohibition and a penalty for an action is void and unenforceable. However, the court first must consider the nature and circumstances of the contract in light of the statute or ordinance. The court will not infer that the legislative body intended the contract to be void unless such is necessary to accomplish its purpose. The courts have voided contracts where the violations offended important public policies with respect to health and safety of the public, and have upheld contracts where the legislative intent did not indicate that its sanction should apply where the violation is slight, not seriously injurious to the public order, and where no wrong has resulted from want of compliance. *New Bonn Company v. Herman*, 271 Minn. 105, 135 N.W.2d 222 (1965).

Violation of ordinances, including housing codes, may be punishable as a misdemeanor. *See* Mpls. Code of Ord. § 1.30. In *Leuthold v. Stickney*, 116 Minn. 299, 133 N.W. 856 (1911), the landlord brought an action for rent and the tenant defended by alleging that the landlord did not provide a fire escape before commencing the tenancy or at any time during the tenancy, in violation of a state statute and punishable as a misdemeanor. In affirming judgment for the tenant, the court held that the violation rendered the lease void and without consideration, precluding the landlord's action for rent. *Id*. at 302-03, 133 N.W. at__. *Accord Millier v. Pouliot*, 199 Minn. 331, 333, 271 N.W. 818, _ (1937) (violation of Minneapolis building code may be a defense to an action for rent).

In *Niskanen v. Fielder*, C9-96-600751 (Minn. Dist. Ct. 6th Dist. May 23, 1996) (Appendix 212), the court held that the landlord had entered into an illegal contract by renting unlicensed property in Duluth and could not profit from her wrongdoing.

b. *Agency housing repair orders*

Some cities have an administrative proceeding within the code enforcement agencies, in which a hearing officer or board may grant rent abatements or allow tenants to make repairs and deduct the expense from the rent. In Minneapolis, if the Health, Housing Inspections, or Fire Departments find an emergency to exist regarding enforcement of the housing maintenance code which requires immediate action to protect health, safety or welfare of the occupants, the Department may issue an emergency order. Mpls. Code of Ord. § 244.160. If the Department issues an emergency repair order, it also shall notify the Minneapolis Emergency Violations Hearing Board, which shall hold a hearing as soon as the deadline date for completing the repairs has passed. Among other remedies, the Board may allow the occupants to make the repairs and deduct the expense from the occupants rent. *Id*. § 244.180.

c. *Rental dwelling licenses*

For more information rental dwelling licenses in other landlord and tenant actions, *see* discussion at XII.B.3.f1.

(1) Appellate Decisions

(a) *Beaumia v. Eisenbraun* - 2007

Many cities in Minnesota have ordinances which require residential landlords to obtain a license before renting their properties. In *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. Ct. App. Sept. 4, 2007) (unpublished), the Court of Appeals held that failure to pay rent could not be a ground for eviction where the landlord failed to comply with a municipal requirement to license or register the rental unit. The Alexandria City Ordinance made it unlawful to lease any residential property unless it had been registered with the City as a rental unit, and a registration fee had been paid. *Id.,* citing Alexandria Code of Ord, Sect. 5.08, Subds. 3(1)5. A landlord filed an eviction action when the tenants told the landlord they did not have the money to pay rent. The District Court ruled for the landlord, concluding that failure to register the rental unit was irrelevant to whether the landlord had the right to recover possession of the property.

The Court of Appeals reversed, first noting that if a tenant's duty to pay rent is excused, the eviction action must fail. *Id.*, citing *MAC-DUE Properties v. LaBresh*, 392 N.W.2d, 315, 316-17 (Minn. Ct. App. 1986), *review denied* (Minn. Oct. 29, 1986), landlord's failure to acquire city-required certificate of occupancy eliminated tenant's duty to pay rent, rendering eviction improper. The court held that the tenants had no rental obligation during the period in which the property was unregistered, and that the tenants could credit rent paid during this period against rent which was unpaid after the landlord registered the property. The court concluded that because the credit for rent paid but not due was larger than the rent due for the period in which the landlord had registered the property, the district court erred by evicting the tenants. *Id.*

(b) *ARU Props., LLC v. Clark* - 2017

In *ARU Props., LLC v. Clark,* No. A16-1126, 2017 Minn. App. Unpub. LEXIS 288 (Minn. Ct. App. April 3, 2017) (unpublished), the owner filed an eviction action alleging breach and rent. The referee bifurcated the trial as required by Minn. Stat. § 504B.285, subd. 5. The referee denied the tenant's motion for dismissal for disclosing only a commercial mailbox service. The tenant asserted that the landlord did not have rental license under the Plymouth City Code, but the evidence admitted at trial indicates that the property was licensed for the relevant period that tenant resided there.

After a trial on the breach claim, the referee entered judgment for tenant. The referee then ordered tenant to pay into court $8,400 in past-due rent and all future rent as it came due as security for the trial on the rent claim. The tenant failed to pay and the referee entered judgment for owner and authorized issuance of a writ of recovery. The tenant filed a notice of review and the district court ordered tenant to pay into court $8,400 in past-due rent and all future rent amounts to stay the judgment pending the review.

The tenant then appealed and the district court set the appeal bond at $30,219.76, which the Court of Appeals reduced to $21,300 on review. The tenant did not pay the appeal bond and the owner received the writ of recovery. The Court of Appeals affirmed the district court in an unpublished decision. The Court concluded that since the tenant's rental license claim was without merit, the district court did not err in ordering the tenant to pay the past and future rent into court. It is unfortunate that the court affirmed requiring the tenant to pay into court the amount of rent at issue in the litigation, rather than limiting it to the rent that would come due appeal as directed by the statute and rule. As *ARU Props., LLC* is unpublished, it is not precedential. *See* discussion at I.A.3.

(c) *Guminiak v. Sowokinos* - 2017

In *Guminiak v. Sowokinos*, No. A16-1796, 2017 Minn. App. Unpub. LEXIS 396 (Minn. Ct. App. May 1, 2017) (unpublished), the court affirmed the district court eviction judgment for the landlord where the landlord claimed nonpayment of rent and breach of lease. The tenant claimed to the district court that the landlord failed to register the property as required by the City of Eagan. The landlord immediately registered the property. The district court found that the failure to register the property did not compromise habitability or void the lease. *Id.* at *2-3. The Court of Appeals affirmed, noting:

> Eagan's rental-property registration ordinance does not require a showing that the premises are maintained in compliance with health or safety laws. The ordinance provides that upon completion of a basic registration form that requires no information about a rental house aside from its address, "the city shall issue to the registrant a certificate of registration as proof of the registration." Eagan, Minn., City Code § 6.55, subd. 5(B) (2015). Furthermore, the Eagan ordinance does not prohibit a landlord from collecting rent in the absence of a registration certificate, and the statutory covenants do not expressly require compliance with business-licensure requirements.

The court held that the district court properly concluded that failing to registered the property did not violate the requirement of Minn. Stat. § 504B.161, subd. 1(a)(4) to maintain the premises in compliance with the applicable health and safety laws.

(d) *Wajda v. Schmeichel* - 2018

In *Wajda v. Schmeichel,* No. A18-0060, 2018 Minn. App. Unpub. LEXIS 981, 2018 WL 6165295 (Minn. Ct. App. Nov. 26, 2018) (unpublished), *rev. den.* (Minn. Feb. 19, 2019), the court reversed the district court decision awarding eviction. The court held that an eviction for breach of lease was improper where the lease is void on public-policy grounds because the landlord had rented the property without a license required by Minneapolis. The court discussed its holding in great detail.

> The lease is void and unenforceable on public policy grounds. A landlord may not seek eviction for breach of a lease if the landlord is unlicensed and commits a criminal act by entering into a lease and renting a dwelling.

In Minneapolis, it is a crime to rent out a dwelling without a license. Under Minneapolis, Minn., Code of Ordinances (MCO) § 244.1810 (2017):

> No person shall allow any dwelling unit to be occupied, or let or offer to let to another any dwelling unit for occupancy, or charge, accept or retain rent for any dwelling unit unless the owner has a valid license, administrative registration, short term rental registration or provisional license under the terms of this article.

Under MCO § 244.1980 (2017):

> A person who allows to be occupied, lets or offers to let to another, any dwelling unit, without a license as required by this article, is guilty of a misdemeanor . . . .

In Minnesota, the general rule is that a contract entered into for business, in violation of a statute that prohibits such business if unlicensed, is void if the statute as a whole indicates that the legislature intended such a contract to be illegal. *Dick Weatherston's Assoc. Mech. Servs., Inc. v. Minn. Mut. Life Ins. Co.*, 100 N.W.2d 819, 824 (Minn. 1960). Whether a contract is void as a matter of law is an issue decided de novo. *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90, 92 (Minn. 2006). Although we are dealing with Minneapolis city ordinances and not statutes, we see no reason why the ordinances at issue should be given any less effect. Minneapolis is a home-rule charter city with the power to legislate in regard to municipal affairs and enact ordinances that promote health and safety. *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 306 (Minn. 2017); *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 6 (Minn. 2008); *A.C.E. Equip. Co. v. Erickson*, 152 N.W.2d 739, 741 (Minn. 1967); *see also Lew Bonn Co. v. Herman*, 135 N.W.2d 222, 223-24 (Minn. 1965) (considering whether failure to file plans and specifications as required by city ordinance resulted in contract being void).

"Not every illegal contract must be voided in order to protect public policy," and we must examine the particular contract "to determine whether the illegality has so tainted the transaction that enforcing the contract would be contrary to public policy." *Isles Wellness, Inc.*, 725 N.W.2d at 92-93. Here, we examine "the nature and circumstances of the [lease] in light of the applicable . . . ordinance." *Lew Bonn Co.*, 135 N.W.2d at 225.

The Minneapolis rental-dwelling-license ordinances make no reference to the validity of lease agreements entered into without proper licensing, but they strongly imply that such agreements are void and unenforceable on public-policy grounds. *See* MCO §§ 244.1800-.2020 (2017). As stated, MCO § 244.1810 not only prohibits renting a dwelling without a license, but it prohibits even offering a dwelling, and it expressly prohibits "charg[ing], accept[ing] or retain[ing] rent." MCO § 244.1980 criminalizes renting a dwelling without a license. MCO § 244.1970 requires a dwelling occupied without a license to be vacated within a "reasonable time," indicating that any contractual lease term is effectively void. These ordinances are designed to ensure that dwellings meet minimum health and safety standards. *See* MCO § 244.1910 (licensing standards). While respondent seeks only eviction, deeming the lease valid would directly contradict the city ordinances and signals to landlords that they may sidestep the minimum health and safety standards inherent in rental licensure. It is simply illogical to conclude that appellant breached her duty to pay rent when MCO § 244.1810 prohibits respondent from charging or accepting rent. Respondent cannot rely upon the lease to seek eviction.

2018 Minn. App. Unpub. LEXIS 981 *5-8.

(2) Minneapolis

(a) 1990 ordinance

In 1990 the Minneapolis City Council passed a new set of ordinances regulating rental dwelling licenses. Minneapolis Code of Ordinances Art. XVI, §§ 244.1800-244.2010. The effective date of the ordinances was January 1, 1991. (Appendix 11.A). The ordinance was strengthened in 2012. *See* discussion, *infra*, at VI.E.2.c.(2)(c).
https://library.municode.com/mn/minneapolis/codes/code_of_ordinances?nodeId=COOR_TIT12HO_CH244MACO_ARTXVIREDWLI

The ordinance provided that owners of rental dwellings and dwelling units, including rented single family dwellings and rented dwelling units in owner-occupied dwellings, must obtain a license or a provisional license to rent the property. Excluded from this requirement are licensed hotels, licensed lodging houses, convents, monasteries, licensed nursing homes, licensed board and care homes, parsonages, parish homes, manses and rectories, hospitals, and dwellings in cooperative or condominium buildings. §§ 244.1810, 244.1820. By April 1, 1991 (90 days after the effective date of the ordinance), owners of rental dwellings had to apply for a license. § 244.1840.

Dwelling is defined broadly in § 244.40.

> Dwelling: Any building or structure, or portion thereof, except temporary housing, which is wholly or partly used or intended to be used for living or sleeping by human occupants.
>
> Dwelling unit: Any habitable room located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, cooking and eating.

Licenses must be renewed on an annual basis. § 244.1860. Licenses are not transferrable. § 244.1870. This section of the ordinance was strengthened in 2012. *See* discussion, *infra*, at VI.E.2.c.(2)(c).

A license may be denied, revoked, suspended, or not renewed for any of the following reasons: (a) nonpayment of the license fee, (b) dwelling units exceeding the maximum number of dwelling units permitted by the zoning code, (c) dwelling or rental dwelling units over occupied or illegally occupied in violation of the zoning code or housing maintenance code, (d) a rental dwelling used or converted to rooming units in violation of the zoning code, (e) a rental dwelling under condemnation as hazardous or unfit for human habitation under this code or state statute, (f) the owner has allowed weeds, vegetation, junk, debris, or rubbish to accumulate repeatedly on the exterior of the premises so as to create a nuisance condition under the code, or (g) the rental dwelling or any rental dwelling unit is in substandard condition. §§ 244.1900, 244.1920. The director of inspections shall mail a notice of noncompliance to the owner or owner's agent, and post a notice to the tenants in the building. The owner shall have from ten to 60 days to correct the defects, depending upon the nature of the defect. § 244.1930. The maximum period was reduced from 90 days to 60 days by ordinance, effective July 6, 1995. Minneapolis Ordinance 95-OR-097 (July 6, 1995) (Appendix 128).

After the period has expired, if the dwelling is still in noncompliance, the director shall mail the owner a notice of denial, non-renewal, revocation or suspension of the license or provisional license. The city council will affirm the director's recommendation unless the owner appeals to the Rental Dwelling License Board of Appeals. § 244.1940-244.1970. When an application is denied or a license or

provisional license is revoked, suspended, or not renewed, the director shall order the dwelling or dwelling units vacated within a reasonable time. § 244.1970. A person who allows any dwelling unit to be occupied or rents a dwelling unit to another person without a license is guilty of a misdemeanor. § 244.1980.

The remedies in these ordinances are not exclusive, and are in addition to other remedies available to the city or tenants provided under state law or the code. § 244.1990. On July 6, 1995, the ordinance was amended to reduce the maximum compliance time from 90 to 60 days, allowing entry for rental licensing inspectors to review notices with tenants, and requiring landlords to work with the Community Services Bureau when the conduct of their tenants or guests is considered disorderly. Minneapolis Ordinance 95-OR-097 (July 6, 1995) (Appendix 128).

(b) 1997 amendment

In 1997, Minneapolis amended its housing code to increase the amount of information that the landlord must supply to the inspections department, and created minimum inspection standards for different types of properties. Housing Maintenance Code Amendments (Appendix 243). *See City of Minneapolis v. Swanson*, No. C5-97-312, 1997 WL 471182 (Minn. Ct. App. Aug. 19, 1997) (Appendix 251) (Unpublished: Ordinance requiring landlord to list residential address rather than post office box on rental license is constitutional).

(c) 2012 amendment

In 2012, Minneapolis amended section 244.1810.

> 244.1810. - License required.
> No person shall allow any dwelling unit to be occupied, or let or offer to let to another any dwelling unit for occupancy, or charge, accept or retain rent for any dwelling unit unless the owner has a valid license or provisional license under the terms of this article. The practice of pre-leasing new rental construction shall be exempt from the provisions of this section.

Minneapolis Code of Ordinances § 244.1810, amended by 2012-Or-059, § 1, 8-17-12. The provision that no person "shall ... accept or retain rent for any dwelling unit unless the owner has a valid license or provisional license" strengthens the defense that the landlord without a license cannot evict a tenant for nonpayment of rent since the landlord has not right to accept of retain the rent.

(c1) Finding the code and property status on-line

The licensing ordinance in on-line.
https://library.municode.com/mn/minneapolis/codes/code_of_ordinances?nodeId=COOR_TIT12HO_CH244MACO_ARTXVIREDWLI

Licensing status of properties by address is available Minneapolis Info Address Search.
http://apps.ci.minneapolis.mn.us/AddressPortalApp/

(d) Dismissal

For more information rental dwelling licenses in other landlord and tenant actions, *see* discussion at XII.B.3.f1.

As owners were required to obtain a license or a provisional license to rent the property, the courts have considered various remedies in eviction cases for nonpayment of rent without a rental license. Some courts dismissed the action.

In *Wajda v. Schmeichel,* No. A18-0060, 2018 Minn. App. Unpub. LEXIS 981, 2018 WL 6165295 (Minn. Ct. App. Nov. 26, 2018) (unpublished), *rev. den.* (Minn. Feb. 19, 2019), the court reversed the district court decision awarding eviction. The court held that an eviction for breach of lease was improper where the lease is void on public-policy grounds because the landlord had rented the property without a license required by Minneapolis. The court discussed its holding in great detail.

> The lease is void and unenforceable on public policy grounds. A landlord may not seek eviction for breach of a lease if the landlord is unlicensed and commits a criminal act by entering into a lease and renting a dwelling.
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> In Minneapolis, it is a crime to rent out a dwelling without a license. Under Minneapolis, Minn., Code of Ordinances (MCO) § 244.1810 (2017):
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> > No person shall allow any dwelling unit to be occupied, or let or offer to let to another any dwelling unit for occupancy, or charge, accept or retain rent for any dwelling unit unless the owner has a valid license, administrative registration, short term rental registration or provisional license under the terms of this article.
>
> Under MCO § 244.1980 (2017):
>
> > A person who allows to be occupied, lets or offers to let to another, any dwelling unit, without a license as required by this article, is guilty of a misdemeanor . . . .
>
> In Minnesota, the general rule is that a contract entered into for business, in violation of a statute that prohibits such business if unlicensed, is void if the statute as a whole indicates that the legislature intended such a contract to be illegal. *Dick Weatherston's Assoc. Mech. Servs., Inc. v. Minn. Mut. Life Ins. Co.*, 100 N.W.2d 819, 824 (Minn. 1960). Whether a contract is void as a matter of law is an issue decided de novo. *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90, 92 (Minn. 2006). Although we are dealing with Minneapolis city ordinances and not statutes, we see no reason why the ordinances at issue should be given any less effect. Minneapolis is a home-rule charter city with the power to legislate in regard to municipal affairs and enact ordinances that promote health and safety. *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 306 (Minn. 2017); *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 6 (Minn. 2008); *A.C.E. Equip. Co. v. Erickson*, 152 N.W.2d 739, 741 (Minn. 1967); *see also Lew Bonn Co. v. Herman*, 135 N.W.2d 222, 223-24 (Minn. 1965) (considering whether failure to file plans and specifications as required by city ordinance resulted in contract being void).
>
> "Not every illegal contract must be voided in order to protect public policy," and we must examine the particular contract "to determine whether the illegality has so tainted the transaction that enforcing the contract would be contrary to public policy." *Isles Wellness, Inc.*, 725 N.W.2d at 92-93. Here, we examine "the nature and circumstances of the [lease] in light of the applicable . . . ordinance." *Lew Bonn Co.*, 135 N.W.2d at 225.
>
> The Minneapolis rental-dwelling-license ordinances make no reference to the validity of lease agreements entered into without proper licensing, but they strongly imply that such agreements

> are void and unenforceable on public-policy grounds. *See* MCO §§ 244.1800-.2020 (2017). As stated, MCO § 244.1810 not only prohibits renting a dwelling without a license, but it prohibits even offering a dwelling, and it expressly prohibits "charg[ing], accept[ing] or retain[ing] rent." MCO § 244.1980 criminalizes renting a dwelling without a license. MCO § 244.1970 requires a dwelling occupied without a license to be vacated within a "reasonable time," indicating that any contractual lease term is effectively void. These ordinances are designed to ensure that dwellings meet minimum health and safety standards. *See* MCO § 244.1910 (licensing standards). While respondent seeks only eviction, deeming the lease valid would directly contradict the city ordinances and signals to landlords that they may sidestep the minimum health and safety standards inherent in rental licensure. It is simply illogical to conclude that appellant breached her duty to pay rent when MCO § 244.1810 prohibits respondent from charging or accepting rent. Respondent cannot rely upon the lease to seek eviction.

2018 Minn. App. Unpub. LEXIS 981 *5-8.

In *Mehralian v. _____,* No. 27-CV-HC-11-5373 (Minn. Dist. Ct. 4th Dist. Sep. 1, 2011) (Appendix 741) (Judge Meyer), the plaintiff landlord filed a claim for eviction against tenant for unpaid rent but plaintiff did not have a rental license. The court stated that it is a misdemeanor to rent a residential property without a license and that the dwelling needs to be inspected and meet the minimum standards for licensing to be met. The court granted the defendant's motion stating that plaintiff's claim for eviction was dismissed because plaintiff had not obtained a rental license in violation of the city code and the covenant of habitability. The court added that since the covenant of habitability and the covenant for payment of rent are mutually dependent, defendants were not required to pay rent until plaintiff obtained a rental license. The court also clarified that the plaintiff's argument that a rental license was not needed because the residence was homesteaded was inaccurate because this exemption only applies for people who own and occupy the house and have a paying roommate. Since the plaintiff did not live in the house, he was not exempted. Lastly, the court added that the plaintiff could "have a cause of action regarding possession of the residence, but eviction [was] not available to him at [that] time."

In *Smith v. _____,* No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 678) (Judge Lange), the court granted reversal of the referee decision for eviction, holding that Minneapolis landlord cannot collect rent without a license, lack of license requires dismissal, the landlord constructively locked out the tenant by obtaining restraining order in bad faith, and the tenant did not provide sufficient evidence of privacy violations. The court dismissed and expunged, and awarded the tenant $500 for constructive lockout, along with $500 in attorney's fees.

See Parks v. _____, No. HC 030409567 (Minn. Dist. Ct. 4th Apr. 22, 2003) (Appendix 640) (eviction dismissed for lack of rental license); *Hamid v. _____*, 27-CV-HC-08-5349 (Minn. Dist. Ct. 4th Dist. July 8, 2008) (Appendix 604) (nonpayment of rent eviction action dismissed and expunged where landlord has no rental license); *Taylor v. _____*, No. HC 031202508 (Minn. Dist. Ct. 4th Dist. Dec. 26, 2003) (Appendix 582a) (dismissal for lack of rental license); *Ukatu v. _____*, No. HC 0307614501 (Minn. Dist. Ct. 4th Dist. July 30, 2003) (Appendix 586) (dismissal for no license at time of filing, even though landlord later obtained license; eviction case is moot when tenants have vacated; expungement granted); *Parks v. _____*, No. HC 030409567 (Minn. Dist. Ct. 4th Dist. Apr. 22, 2003) (Appendix 557) (dismissal for lack of rental license); *Uptown Classic Properties v. _____,* No. 1021119509 (Minn. Dist. Ct. 4th Dist. Dec. 12, 2002) (Appendix 684) (dismissed the eviction action and ruled that the tenant was a prevailing party, granting expungement); *Albrecht v. _____,* No. HC 011129507 (Minn. Dist. Ct. 4th Dist. Dec. 13, 2001) (Appendix 461) (dismissal of nonpayment of rent case; landlord without a license shall not rent the premises, and rent collection is suspended until compliance); *Tri Star Developers, LLC*

v. _____, No. HC 1011002522 (Minn. Dist. Ct. 4th Dist. Oct. 16, 2001) (Appendix 585) ("renting without a rental license requires dismissal;" securing license after filing the action does not purge the defect in filing without one; expungement granted); *Connelly v. Schiff*, No. HC-1000417515 (Minn. Dist. Ct. 4th Dist. May 23, 2000) (Appendix 386) (dismissal without prejudice where landlord failed to secure rental license; tenant awarded $200 costs under § 549.02 and $40 in disbursements under § 549.04 for witness fees; expungement granted; plaintiff's motion to vacate and reopen treated as untimely motion for judge review under Minn. R. Gen. Prac. 611 when filed 11 days after oral announcement of decision).

(e) Rent abatement

For more information rental dwelling licenses in other landlord and tenant actions, *see* discussion at XII.B.3.f1.

Some courts held that the landlord's failure to license the property supports a complete rent abatement. In *Uptown Classic Properties v. _____,* No. 1021119509 (Minn. Dist. Ct. 4th Dist. Dec. 12, 2002) (Appendix 684), the court held that the eviction action plaintiff must provide sworn testimony to prove allegations of complaint; the landlord who obtained rental license on November 18 and filed eviction action on November 19 could not seek rent for July through November; and the claim for December rent is not ripe for eviction action filed in November. The court dismissed the eviction action and ruled that the tenant was a prevailing party, granting expungement. *See Matsumoto v. _____,* No. AC 02-2123 (Minn. Dist. Ct. 4th Dist. Apr. 19, 2002) (Appendix 534) (Judge Alton) (after license was revoked, landlord's rental was unlawful and was not entitled to collect rent; rent abatement of $2695; landlord violated shared meter statute, tenant entitled to reimbursement for payments made; landlord not entitled to late fees when he did not have a rental license; landlord proved some cleaning expenses deducted from the security deposit, but not other damages and penalties; tenant entitled to deposit penalties where part of landlord's withholding was in bad faith); *Cregg v. _____,* No. HC 1001006502 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2000) (Appendix 488) ("landlord is prohibited from collecting rent if license is not obtained, ... the rental value of the premises is zero unless a landlord first obtains a rental license;" action dismissed with prejudice; costs and disbursements awarded); *Haney v. _____,* No. HC 10001002527 (Minn. Dist. Ct. 4th Dist. Oct. 17, 2000) (Appendix 510) (landlord had no right to collect rent without a license; tenant may recoup rent paid in June and July when there was no license against rent not paid in September and October when there was a license).

Earlier, some court suspended the right to collect rent. In *Brown v. Owens*, No. UD-1940726506 (Minn. Dist. Ct. 4th Dist. Aug. 18, 1994) (Appendix 48), the court concluded that the landlord's failure to obtain the rental license warranted a suspension for collection of rent until compliance. The court prohibited the landlord from demanding or collecting rent from the tenant until the landlord complied with the licensing requirements. *Id*. at 6-7. *See Pocklington v. Brown*, No. UD-1950113512 (Minn. Dist. Ct. 4th Dist. Jan. 26, 1995) (following *Brown v. Owens*) (Appendix 98); *Drews v. Ennis*, No. UD-1950512523 (Minn. Dist. Ct. 4th Dist. June 5, 1995) (Appendix 125). In *Washington v. Okoye*, Nos. UD-1980909564 and UD-1981029901 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1999) (Appendix 354G), the court ordered that the tenant could remedy violations and deduct the cost from rent, rent abatement would increase from $100 to $200 out of monthly rent of $650, or from 15% to 31% if the landlord did not complete repairs, the tenant could credit payments on the landlord's water bill against rent, the landlord must obtain a rental license, the landlord's right to collect rent was suspended until he obtained the license, and prior orders relating to court approval of future filings remained in effect.

Some courts have limited rent abatement. In *Humphrey v. _____,* No. HC 031015540 (Minn.

Dist. Ct. 4th Dist. Apr. 26, 2006) (Appendix 655) (Judge Reilly), the court reversed the referee decision, awarded only rent abatement of 50% for lack of rental license due to equitable considerations, with additional rent abatement for habitability violations assessed per violation, with late fees not due where the tenants entitled to withhold rent. *See Smith v. _____,* No. HC 1010417559 (Minn. Dist. Ct. 4th Dist. May 21, 2001) (Appendix 571) (failure to renew license with accurate address information suspended right to collect rent; tenant could not recoup rent paid during period before the period of the landlord's rent claim in which there was no license; landlord liable for statutory penalties for interrupting water service; habitability rent abatement of $100 per month);

(3) Other cities

For more information rental dwelling licenses in other landlord and tenant actions, *see* discussion at XII.B.3.f1.

(a) Alexandria

In *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. Ct. App. Sept. 4, 2007) (unpublished), the Court of Appeals held that failure to pay rent could not be a ground for eviction where the landlord failed to comply with a municipal requirement to license or register the rental unit. The Alexandria City Ordinance made it unlawful to lease any residential property unless it had been registered with the City as a rental unit, and a registration fee had been paid. *Id.,* citing Alexandria Code of Ord, Sect. 5.08, Subds. 3(1)5. A landlord filed an eviction action when the tenants told the landlord they did not have the money to pay rent. The District Court ruled for the landlord, concluding that failure to register the rental unit was irrelevant to whether the landlord had the right to recover possession of the property.

The Court of Appeals reversed, first noting that if a tenant's duty to pay rent is excused, the eviction action must fail. *Id.*, citing *MAC-DUE Properties v. LaBresh*, 392 N.W.2d, 315, 316-17 (Minn. Ct. App. 1986), *review denied* (Minn. Oct. 29, 1986), landlord's failure to acquire city-required certificate of occupancy eliminated tenant's duty to pay rent, rendering eviction improper. The court held that the tenants had no rental obligation during the period in which the property was unregistered, and that the tenants could credit rent paid during this period against rent which was unpaid after the landlord registered the property. The court concluded that because the credit for rent paid but not due was larger than the rent due for the period in which the landlord had registered the property, the district court erred by evicting the tenants. *Id.*

(b) Brooklyn Park

Leasing property in Brooklyn Center without a rental license is a misdemeanor under Section 12-901 of the Brooklyn Center Code of Ordinances, in association with Section 12-1302. http://www.cityofbrooklyncenter.org/index.asp?Type=B_BASIC&SEC=%7B463B184D-73EB-4409-ABD8-039D060CA9F1%7D.

In *Peterson v. Pearson,* UD-2951204800 (Minn. Dist. Ct. 4th Dist. Feb. 12, 1996) (Appendix 211), the court ordered rent abatement until the landlord registered property under Brooklyn Park licensing ordinance. *See Wersal v. Guggisberg*, No. UD-2970513211 (Minn. Dist. Ct. 4th Dist. May 23, 1997), *withdrawn by stipulation* (May 29, 1997) (Appendix 303). (Action dismissed for failure to obtain a license under Brooklyn Park Ordinance § 455.10).

(c) Duluth

In *Niskanen v. Fielder*, C9-96-600751 (Minn. Dist. Ct. 6th Dist. May 23, 1996) (Appendix 212), the court held that the landlord had entered into an illegal contract by renting unlicenced property in Duluth and could not profit from her wrongdoing. In *City of Mankato v. Mahoney*, 542 N.W.2d 689 (Minn. Ct. App. 1996): the Court of Appeals reversed the city council's revocation of a landlord's rental license, holding that the revocation was arbitrary and capricious because evidence did not support a finding that three noise disturbances occurred during one year within the meaning of the city code.

(d) Eagan

In *Guminiak v. Sowokinos*, No. A16-1796, 2017 Minn. App. Unpub. LEXIS 396 (Minn. Ct. App. May 1, 2017) (unpublished), the court affirmed the district court eviction judgment for the landlord where the landlord claimed nonpayment of rent and breach of lease. The tenant claimed to the district court that the landlord failed to register the property as required by the City of Eagan. The landlord immediately registered the property. The district court found that the failure to register the property did not compromise habitability or void the lease. *Id.* at *2-3. The Court of Appeals affirmed, noting:

> Eagan's rental-property registration ordinance does not require a showing that the premises are maintained in compliance with health or safety laws. The ordinance provides that upon completion of a basic registration form that requires no information about a rental house aside from its address, "the city shall issue to the registrant a certificate of registration as proof of the registration." Eagan, Minn., City Code § 6.55, subd. 5(B) (2015). Furthermore, the Eagan ordinance does not prohibit a landlord from collecting rent in the absence of a registration certificate, and the statutory covenants do not expressly require compliance with business-licensure requirements.

The court held that the district court properly concluded that failing to registered the property did not violate the requirement of Minn. Stat. § 504B.161, subd. 1(a)(4) to maintain the premises in compliance with the applicable health and safety laws.

(d) New Hope

In *McGarrity v.* _____, No. 27-CV-HC-08-5946 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2008) (Appendix 608), the court ruled that the landlord who failed to obtain license from City of New Hope could not claim rent due, except for pro rated amount after landlord obtained license. *See* New Hope, Minnesota, Code of Ordinances § 3-31.

(e) Plymouth

In *ARU Props., LLC v. Clark,* No. A16-1126, 2017 Minn. App. Unpub. LEXIS 288 (Minn. Ct. App. April 3, 2017) (unpublished), the owner filed an eviction action alleging breach and rent. The referee bifurcated the trial as required by Minn. Stat. § 504B.285, subd. 5. The referee denied the tenant's motion for dismissal for disclosing only a commercial mailbox service. The tenant asserted that the landlord did not have rental license under the Plymouth City Code, but the evidence admitted at trial indicates that the property was licensed for the relevant period that tenant resided there.

After a trial on the breach claim, the referee entered judgment for tenant. The referee then ordered tenant to pay into court $8,400 in past-due rent and all future rent as it came due as security for

the trial on the rent claim. The tenant failed to pay and the referee entered judgment for owner and authorized issuance of a writ of recovery. The tenant filed a notice of review and the district court ordered tenant to pay into court $8,400 in past-due rent and all future rent amounts to stay the judgment pending the review.

The tenant then appealed and the district court set the appeal bond at $30,219.76, which the Court of Appeals reduced to $21,300 on review. The tenant did not pay the appeal bond and the owner received the writ of recovery. The Court of Appeals affirmed the district court in an unpublished decision. The Court concluded that since the tenant's rental license was without merit, the district court did not err in ordering the tenant to pay the past and future rent into court. It is unfortunate that the court affirmed requiring the tenant to pay into court the amount of rent at issue in the litigation, rather than limiting it to the rent that would come due appeal as directed by the statute and rule. As *ARU Props., LLC* is unpublished, it is not precedential. *See* discussion at I.A.3.

(f) Saint Paul

Saint Paul requires a certificate of occupancy or rental registration.

Certificate of Occupancy
https://www.stpaul.gov/departments/safety-inspections/city-information-complaints/resident-handbook/certificate-occupancy

Rental Registration
https://www.stpaul.gov/departments/safety-inspections/city-information-complaints/resident-handbook/rental-registration

The status of properties is available on line.
https://www.stpaul.gov/departments/safety-inspections
https://online.stpaul.gov/stpaulportal/sfjsp?interviewID=PublicSearch

(4) Challenges to license revocations

The temporary taking or suspension of a rental license does not result in a taking of the owner's property, under the United States and Minnesota Constitutions, as the ordinance was properly designed as a means for, and likely to succeed in, preventing harm to the community. *Zeman v. City of Minneapolis*, 552 N.W. 2d 548 (Minn. 1996). Revocation of a rental dwelling license is proper, where the owner received sufficient notice and was given the opportunity to be heard, and the record demonstrates that revocation was based on the issues of which the owner had notice. *Zorbalas v. City of Minneapolis*, No. A05-2141, 2006 WI 3490455 (Minn. Ct. App. Dec. 5, 2006) (unpublished).

In *City of Golden Valley v. Wiebesick,* 881 N.W.2d 143 (Minn. Ct. App. June 13, 2016), the landlord's rental license was renewed, and the landlord was instructed to schedule the required triennial inspection. However, the landlord and tenants refused to consent to the inspection, so the City petitioned the district court for an administrative search warrant. The district court refused to issue the warrant because an individualized suspicion of a code violation was not presented. Both parties agreed that the United States Constitution does not require an individualized suspicion. However, the landlord argued that the Minnesota Constitution may provide greater protection from searches. The Court of Appeals reversed the underlying decision, stating that the federal and state provisions are materially identical, and there was no principled basis to construe the rights granted thereunder differently. In a rental housing

inspection, tenants are given advance notice of the search and the search is of the building itself, not of the personal belongings of the tenants, and therefore, the invasion of privacy is limited. Moreover, the need for routine inspections is great because it is the only way to detect certain dangerous living conditions. Accordingly, no individualized suspicion of a code violation is required to obtain an administrative search warrant for a rental property inspection.

On appeal, the Minnesota Supreme Court affirmed in *In re An Admin. Search Warrant v. Wiebesick,* 899 N.W.2d 152 (Minn. 2017), holding that city's petition for an administrative search warrant for a rental unit inspection, which was limited to verifying compliance with the city housing code, did not require a showing of individualized suspicion of a code violation under Minn. Const. Art. I, § 10, and that there was no basis for interpreting it differently from the U.S. Supreme Court's interpretation of Fourth Amendment of the United States Constitution. The Court also held that residential tenant was entitled to reasonable notice under the circumstances of the intent to enter, under the privacy statute, Minn. Stat. § 504B.211, subds. 2-3 (2016), and an opportunity to be heard.

In *Azam v. City of Columbia Heights,* No. 14-CV-1044, 2016 WL 424966 (D. Minn. February 3, 2016) (unpublished), the landlord experienced significant problems at his apartment buildings, which were located in areas with high incidences of crime, poverty and minorities, eventually leading to a revocation of his rental licenses. The landlord sued in federal court and alleged several claims, all of which required a showing of discriminatory intent. However, the landlord failed to present evidence supporting an inference he was discriminated based on his Indian descent or on his tenants' protected status. Further, the city did not inconsistently enforce any laws, but instead, the evidence showed that the heightened improper activity on the landlord's properties required more active involvement by the city. Moreover, the landlord failed to show any causal connection to a discriminatory effect; such as the housing code enforcement causing increased costs for all low-income property owners, or a reduction of affordable housing (because the landlord's units were purchased and being operated by another licensee after the revocation). There was also no showing that the city had any alternative way to enforce the legitimate government interest of ensuring compliance with health and safety codes. Finally, the landlord failed to show that he had a reasonable expectation of privacy in the common areas of his buildings, and landlord also failed to show a violation of substantive due process because the city's actions were not truly irrational or oppressive or such that they would shock the conscience or offend judicial notions of fairness. Accordingly, the district court entered summary judgment in favor of the city.

The Eighth Circuit Court of Appeals affirmed in *Azam v. City of Columbia Heights,* 865 F.3d 980 (8th Cir. 2017), holding that (1) the landlord did not demonstrate, as a matter of law, the city violated his substantive due process rights under the Fourteenth Amendment, in that the city's conduct was not arbitrary, oppressive, and shocking to the conscience, and (2) in viewing the alleged facts in the light most favorable to the landlord, there was no genuine dispute of material fact regarding whether the city violated the landlord's Fourth Amendment rights, as the landlord did not have a reasonable expectation of privacy in the common spaces entered by the city's police officers, and the landlord waived the claim that the police officers may have physically intruded on constitutionally protected areas by trespassing in the landlord's buildings to search for incriminating evidence.

In *Minnesota Realty and Management LLC v. Minneapolis Department of Regulatory Services, et al.*, No. A14-1958, 2015 WL 4611965 (Minn. Ct. App. August 3, 2015) (unpublished), the landlord twice violated a city occupancy ordinance because rooms with below-required ceiling heights were used as bedrooms in the rented properties. In both instances, the landlord was instructed to, and did, achieve compliance prior to the hearing dates. However, the administrative hearing officer still revoked the

realtor's license, and the city council approved the revocation. The landlord alleged that the revocation was contrary to the ordinance because it was based on only two violations and compliance was achieved before the hearing dates. The Court of Appeals reversed the license revocation because it was based on Mpls. Code of Ord. § 244.1910, which provides an opportunity to comply with the ordinance and to appeal the recommendation of revocation. The revocation was not based on Mpls. Code of Ord. § 244.1930(a), which provides for an automatic revocation following a second violation.

In *McCaughtry v. City of Red Wing*, 831 N.W.2d 518 (Minn. 2013), the court held that a facial challenge to the constitutionality of a rental property inspection ordinance on the ground that the ordinance authorizes inspections without individualized suspicion of a housing code violation failed because the plaintiffs did not show that the rental property inspection ordinance at issue in this case is unconstitutional in all of its applications.

In *In re Khan*, 804 N.W.2d 132 (Minn. Ct. App. 2011), the city revoked the landlord's rental license and the landlord appealed. The court held that (1) having city hearing officers preside over rental license revocation proceeding did not violate licensee's due process rights; (2) the evidence was sufficient to support revocation of license where the basement was illegally occupied; (3) the landlord was bound to ensure ordinance compliance, rejecting the landlord's lack of knowledge claim; and (4) Mpls. Code of Ord.§ 244.400 did not require knowing act on part of landlord in order to find violation. *Id.* at 137-43. The landlord also claimed that invoking revocation proceedings after two violations of the same provision of the code without a time limit was unfair, but the court concluded that "Without a record showing that this policy is one with which landlords have difficulty complying, or that the department exercises its discretion in an arbitrary or prejudicial manner, we cannot meaningfully address this issue." *Id.* at 143.

In *City of Morris v. Sax Investments, Inc.*, 730 N.W.2d 531 (Minn. Ct. App. 2007), the Court of Appeals considered a challenge to a local habitability ordinance on the grounds that it was preempted by the state building code. The court concluded that the state building code did not preempt local regulation of habitability. On appeal, the Minnesota Supreme Court held that the authority of municipalities to enact and enforce habitability standards for rental housing is constrained by the prohibition on municipal regulation of building code provisions in Minn. Stat. § 16B.62, subd. 1. *City of Morris v. Sax Investments, Inc.*, 749 N.W.2d 1, 3 (Minn. 2008).

(5) Appeal

In *ARU Props., LLC v. Clark,* No. A16-1126, 2017 Minn. App. Unpub. LEXIS 288 (Minn. Ct. App. April 3, 2017) (unpublished), the owner filed an eviction action alleging breach and rent. The referee bifurcated the trial as required by Minn. Stat. § 504B.285, subd. 5. The referee denied the tenant's motion for dismissal for disclosing only a commercial mailbox service. The tenant also asserted that the landlord did not have rental license under the Plymouth City Code, but the evidence admitted at trial indicates that the property was licensed for the relevant period that tenant resided there.

After a trial on the breach claim, the referee entered judgment for tenant. The referee then ordered tenant to pay into court $8,400 in past-due rent and all future rent as it came due as security for the trial on the rent claim. The tenant failed to pay and the referee entered judgment for owner and authorized issuance of a writ of recovery. The tenant filed a notice of review and the district court ordered tenant to pay into court $8,400 in past-due rent and all future rent amounts to stay the judgment pending the review.

The tenant then appealed and the district court set the appeal bond at $30,219.76, which the Court of Appeals reduced to $21,300 on review. The tenant did not pay the appeal bond and the owner received the writ of recovery. The Court of Appeals affirmed the district court in an unpublished decision. The Court concluded that since the tenant's rental license was without merit, the district court did not err in ordering the tenant to pay the past and future rent into court. It is unfortunate that the court affirmed requiring the tenant to pay into court the amount of rent at issue in the litigation, rather than limiting it to the rent that would come due appeal as directed by the statute and rule. As *ARU Props., LLC* is unpublished, it is not precedential. *See* discussion at I.A.3.

3. Breach of an express covenant which creates a condition precedent to payment of rent

In *Mac-Du Properties v. LaBresh*, 392 N.W.2d 315 (Minn. Ct. App. 1986), a commercial lease provided that rent shall begin thirty days after the city granted an occupancy permit to the tenant and the landlord completed improvements; and that the lease was written and accepted by the parties subject to the city approving the occupancy by the tenant. The landlord did not complete the improvements, the city did not issue the permit, the tenant did not pay the rent, and the landlord filed an unlawful detainer action for nonpayment of rent. *Id*. at 316-17. On appeal the court held that the lease created a condition precedent to the tenant's obligation to pay rent and that the tenant did not owe rent. *Id*. at 317-18.

4. Tenant payment of utility or essential services following landlord's nonpayment. *See* discussion, *infra*, at VI.E.18.d.

5. Rent abatement for actual or constructive lockout or exclusion

A tenant who regains possession of the premises following a wrongful eviction may seek a rent abatement in defense of an unlawful detainer action for nonpayment of rent. *Yauch v. Caine*, No. UD-1900403548 at 3 (Minn. Dist. Ct. 4th Dist. Apr. 20, 1990) (Appendix 11.D). In *Yauch*, the tenant had not paid March rent. On March 15, he was locked out of the apartment. The tenant petitioned for recovery of the premises, which the court ordered on March 16. The landlord later brought an unlawful detainer action for nonpayment of March and April rent in the amount of $406.00 ($203.00 per month). The court granted a rent abatement of $175.00 (86 percent of the March rent). The court noted that:

> Under the somewhat unique circumstances of this case, the court is disinclined to abate rent in the amount of $500.00 as argued by the defendant particularly in light of Plaintiff's legitimate concerns for the well-being of other residents and the security of their property. It is further noted that this Court immediately issued an Order granting the defendant herein relief from the lockout upon his petition for same.

No. UD-1900403548 at 3 (Appendix 11.D). It may be that in other circumstances, the tenant may be able to obtain a rent abatement in the amount of $500.00 statutory damages. *See LeDoux v. Zanosko*, No. CX-95-1001 (Minn. Dist. Ct. 9th Dist. Oct. 16, 1995) (Appendix 124) (unlawful detainer action: two month rent abatement, relocation damages of $115 for motel room, $500 in statutory damages, and attorney's fees following unlawful termination of utilities).

In *Smith v. _____,* No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 678) (Judge Lange), the court granted reversal of the referee decision for eviction, holding that Minneapolis landlord cannot collect rent without a license, lack of license requires dismissal, the landlord constructively locked out the tenant by obtaining restraining order in bad faith, and the tenant did not provide sufficient evidence of privacy violations. The court dismissed and expunged, and

awarded the tenant $500 for constructive lockout, along with $500 in attorney's fees.

For more on lockout actions and damages, *see* discussion, *infra*, at XII.B.1.

6. Taxes on the land paid by the tenant

Minn. Stat. § 272.45 provides in part as follows:

> When any tax on land is paid by or collected from any occupant or tenant, or any other person, which, by agreement or otherwise, ought to have been paid by the owner, lesser, or other party in interest, such occupant, tenant, or other person may recover by action the amount which such owner, lesser, or party in interest ought to have paid with interest thereon at the rate of 12 percent per annum, or may retain the same from any rent due or accruing from the person to such owner or lesser for land on which such tax is so paid.

In *Space Center, Inc. v. 451 Corp.*, 298 N.W.2d 443 (Minn. 1980), the lease provided that the tenant shall pay to the landlord as additional rent all taxes and assessments due and payable, that the landlord shall submit to the tenant statements for such taxes, and that the tenant shall pay the landlord said taxes at least ten days before the same became due. The court concluded that:

> In a true landlord-tenant relationship the additional-rents clause might not constitute an agreement by the landlord to pay the taxes. However, under the facts of this case, where the parties were also in a long-term relationship as optionor-optionee followed by vendor-purchaser, and where defendants had agreed to convey marketable title, we hold that defendants were obligated to pay the real estate taxes; their failure to do so entitled plaintiff to pay them and withhold rents for that purpose. *Id.* at 452.

7. Improper notice to increase rent or fees

If the lease does not provide for increasing the rent, the landlord may not increase the rent until the lease expires, unless the tenant agrees to an increase. If the lease provides for increasing the rent with notice, the landlord must comply with the notice provision. Some provisions for rent increases may be unconscionable. *See* discussion, *infra* at VI.G.13-14.

In a month-to-month lease, the landlord should give notice of the rent increase at least one month before the rent increase, since rent often is the most significant element of the lease, increasing the rent is equivalent to terminating the present lease and entering into a new lease with a higher rent, and termination of a month-to-month lease requires written notice before the last month of the tenancy. *Grider v. Hardin*, No. UD-1980501520 (Minn. Dist. Ct. 4th Dist. May 19, 1998) (Appendix 335) (no change in rent or late fees where landlord failed to give written notice); *Minneapolis Public Housing Authority v. Papasodora*, No. UD-1960611515 (Minn. Dist. Ct. 4th Dist. Jul. 17, 1996) (Appendix 213) (public housing notice to increase rent is equivalent to notice to terminate month-to-month lease and initiate new lease with new rent under Minn. Stat. Section 504.06 (now § 504B.135); notice mailed February 29 could not be received in February and was untimely for an April 1 rent increase; void notice could not be a basis for a future rent increase); *Donovic v. Dodson*, No. C2-96-600607 (Minn. Dist. Ct. 6th Dist. Apr. 29, 1996) (Appendix 201) (month-to-month tenant entitled to one month grace period to accept or reject term to pay one half of utilities). *See* discussion, *infra* at VI.F.1.

It is unclear whether the landlord has the right to unilaterally modify the terms of a periodic tenancy by giving the same kind of notice as is required to terminate the tenancy. Landlords argue that it

is a common practice for landlords to give notice of changes in the rent or building rules, and for these changes to be accepted as part of the lease without the need for specifically terminating the existing tenancy or informing the tenant that the tenant must move if the tenant does not accept the new terms. Alternatively, landlords argue that such a notice is actually a notice to terminate the old periodic tenancy combined with an offer to re-rent the premises on new terms.

Tenants should argue that if the tenant objects to the rent increase, the tenant cannot be bound to a new lease by implication. *See* FUNDAMENTALS OF LANDLORD/TENANT LAW AND PRACTICE, *supra*, § 4.1-02(3) at 3-4. However, a notice that explicitly terminates an existing tenancy, offers to renew the lease at an increased rent, and specifies that the offer may be accepted by remaining in possession past the expiration of the original term should be effective.

In a manufactured (mobile) home park lot lease, the landlord must give sixty (60) days written notice of the rent increase, and may increase the rent only twice in any twelve (12) month period. Minn. Stat. § 327C.06. The rent also may not be increased to pay any court or government imposed civil or criminal penalty. Minn. Stat. § 327C.11. Only reasonable rent increases may be enforced against existing tenants. Minn. Stat. § 327C.02, subd. 2.

7a. Acquiescence to notice to increase rent

In *Gardner v. Board of County Commissioners of Dakota County,* 21 Minn. 33 (1874), Dakota County rented space from Gardner while Dakota County was waiting for a new courthouse to be built. The original lease was for a three year period beginning on January 1, 1863, for an annual rent amount of $600, to be paid quarterly. The lease contained a provision stating that if county buildings were completed prior to the expiration of the lease Dakota County could vacate and terminate the lease with no penalties. The original lease also contained an option for Dakota County to renew for one to three years after its expiration, based on all the same terms and conditions. The lease expired on December 31, 1866, but was continued by agreement until December 31, 1868. Dakota County continued to occupy the space past December 31, 1868. On January 7, 1869, Gardner sent Dakota County a letter stating that the rent needed to be increased to $800 annually. Following the receipt of that letter, negotiations occurred between the parties, but no new agreement was ever finalized. In July 1871, Dakota County gave notice to Gardner that they would be vacating by October 1, 1871, as construction for the new Dakota County courthouse had been completed.

Dakota County vacated, and Gardner filed suit seeking rent for the remainder of that year. Despite the fact that no new agreement was reached, the trial court found, and the Minnesota Supreme Court affirmed on appeal, that because Dakota County continued to retain the premises after receiving notice from Gardner that the rent was going to be increased, that Dakota County assented to the increase of rent. The court further held that because Dakota County had assented to the increased rent, that portion of the original written lease was no longer in effect. However, the court held that the remainder of the written lease, including the provision stating that Dakota County could vacate if county buildings were constructed, remained in full force and effect. Therefore, the court held Dakota County had properly terminated the lease and did not owe Gardner rent for the remainder of the year.

8. Waiver of notice to increase rent

In *First National Realty v. Gumm,* No. UD-1910508527 (Minn. Dist. Ct. 4th Dist. May 31, 1991) (Appendix 11.F), the landlord increased the rent effective November 1, but continued to accept rent at the old amount from November through April. The court concluded that the landlord waived the right to

evict the tenant for failure to pay the difference between the old rent and the new rent by continuing to accept the old amount of rent without demanding the new amount.

9. Retaliatory rent increase or services decrease

a. Statutory retaliation defenses

Under Minn. Stat. § 504B.285 (formerly § 566.03), subd. 3, the defendant must tender to the court or the plaintiff the amount of rent due before the increase, and prove by a preponderance of the evidence that (1) the defendant, in good faith attempted to secure or enforce the defendant's rights under the lease or federal, state, or local laws, or reported the plaintiff's violation of any health, safety, housing, or building code or ordinance to a governmental authority, and (2) the plaintiff increased the rent or decreased service as a penalty in whole or in part for the defendant's protected activity.

Proving retaliation under § 504B.285 (formerly § 566.03), subd. 3 may be difficult in most cases. However, if the defendant is the only tenant who has made complaints and the only tenant whose rent was increased, a case could be made for retaliation.

Proving retaliation under Minn. Stat. § 504B.441 (formerly § 566.28) is considerably easier. While § 504B.285 (formerly § 566.03), subd 3 does not create a presumption of retaliation in certain cases, § 504B.441 (formerly § 566.28) does include a presumption of retaliation if the landlord tries to evict the tenant, increase the tenant's obligations or decrease services to the tenant within 90 days after the tenant files a complaint about a violation of a code, a violation of the covenants of habitability, or a violation of the lease.

In *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019), the Court held that "Minn. Stat. § 504B.441 prohibits retaliation for a residential tenant's complaint of a violation to a government entity, such as a housing inspector, or commencement of a formal legal proceeding. But it does not provide a defense to retaliation based on an expression of dissatisfaction to the landlord." While the eviction involved a claim of a non-monetary breach of lease, the holding was not limited to breach cases, making the defense available in nonpayment of rent evictions.

In *Smith v. Brinkman* and *Brinkman v. Smith*, Nos. HC-1000124900 and HC-1000202517 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2000) (Appendix 418), in consolidated eviction and rent escrow actions, the court held that landlord failed to prove statutory notice to quit, notice to increase rent given November 1 was not effective to increase rent December 1, and the presumption of retaliation applied to a rent increase notice with the landlord failing to prove a non-retaliatory purpose, citing Minn. Stat. § 504B.441 (formerly § 566.28). *But see Lewis Properties v. Pruitt*, No. UD-19503151516 (Minn. Dist. Ct. 4th Dist. May 11, 1995) (Appendix 99) (landlord overcame presumption that rent increase was retaliatory).

If the defendant proves a retaliatory rent increase, the rent would remain at the pre-increase amount. *Line v. Reynolds*, No. UD-1960612512 (Minn. Dist. Ct. 4th Dist Aug 12, 1996) (App. 175) (consolidated unlawful detainer and rent escrow actions; tenant proved that proposed 21% rent increase was in retaliation for tenant's complaints of repair needs, and landlord did not prove that the rent increase was based on other factors); *Lundstrom v. Colglazier*, No. UD-1960524502 (Minn. Dist. Ct. 4th Dist. Jun. 17, 1996) (Appendix 210) (tenants proved that landlord's proposed rent increase was in retaliation for complaints about repairs). If the defendant proves a retaliatory decrease in services, it appears that the defendant would be entitled to a rent reduction or a resumption of the pre-decrease level

of services. Without such relief, the defense would appear meaningless, since the plaintiff would receive the full rent while the defendant received decreased services. Where the rent is reduced, the appropriate measure of damages would be the same as in the breach of covenants cases. *See* discussion, *supra* at VI.E.1. If the defendant fails to prove retaliation, the defendant still would be able to redeem the tenancy by paying the increased rent plus costs. *See* discussion, *infra* at VI.E.20.

In manufactured (mobile) home park lot tenancies, under Minn. Stat. § 327C.12, the defendant's protected activity includes a good faith, a complaint to the park owner or a governmental agency or official, or an attempt to exercise rights or remedies pursuant to federal or state law. The 1995 Legislature clarified the application of the statute to a landlord's adverse action against the tenant following the tenant joining and participating in the activities of a resident association. Minn. Stat. § 327C.12, *amended by* 1995 Minn. Laws Ch. 13, Art. 1. If the plaintiff increases rent, decreases services, alters an existing lease, or seeks possession of the premises, or threatens such action, within ninety (90) days of the defendant's protected activity, the plaintiff has the burden of proving non-retaliation. *Id.* The retaliatory eviction statute, Minn. Stat. § 504B.285 (formerly § 566.03), subd. 2, which also includes the ninety (90) day test, requires the plaintiff to prove that the notice to quit was not served in whole or part for a retaliatory purpose. If the plaintiff takes any of the listed illegal actions more than ninety (90) days after defendant's protected activity, the defendant must make a *prima facie* case of retaliation, and then the plaintiff must prove otherwise. Minn. Stat. § 327C.12 (emphasis added).

In *Schaff v. Hometown America, LLC*, No. A04-1778, 2005 WL 1545525 (Minn. Ct. App. July 5, 2005) (unpublished), manufactured home park residents challenged a park rent increase as being retaliatory. The Court of Appeals affirmed the trial court ruling that the rent increase in combination with a utility billing decrease resulted in a marginal rent increase which was both reasonable and not retaliatory. *See Hellen v. Hometown America LLC*, No. A06-1545, 2007 WL 2472337 (Minn. Ct. App. Sept. 4, 2007) (unpublished) (affirmed district court decision that rent increase was not retaliatory).

b. Ordinances prohibiting retaliation

Some local ordinances include protection against retaliation. Minneapolis Code of Ordinances § 244.80 (Appendix 138) provides a presumption of retaliation where the landlord attempts to terminate the tenancy after the tenant complains to the inspection agency, or the tenant of City sues the landlord over housing conditions. *The presumption has no time limit.* The tenant also may be entitled to rent abatement for retaliation. *See* discussion, *supra*, at VI.E.1.d.(3) (Violation of covenants of habitability).

c. Common law retaliation defense

In *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019), the Court recognized common law defense to landlord evictions in retaliation for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease. The Court noted that the "defense fills a gap that the Legislature left open, perhaps inadvertently." *Id.*, at 409. While the eviction involved a claim of a non-monetary breach of lease, the holding was not limited to breach cases, making the defense available in nonpayment of rent evictions.

See Retaliation, *infra* at VI.E.25, VI.F.3., VI.G.18.

10. Late fees

Rent is a sum stipulated for the use and enjoyment of the premises. *Ambrozich v. City of Eveleth*,

200 Minn. 473, 483, 274 N.W. 635, 640 (1937); BLACK'S LAW DICTIONARY 1166 (5th ed. 1979). Late fees, damage deposits and other fees are not rent, and should not be included as rent in a nonpayment of rent action. Nonpayment of proper late fees, deposits and other fees may constitute a breach of the lease.

Some courts have held that utilities and other charges may be considered rent, entitling defendant to redeem the premises by paying the amount due. These case could support a claim that late fees may be included in a claim for rent. *See Central Union Trust Co. v. Blank*, 168 Minn. 312, 316, 210 N.W. 34, __ (1926) (covenant to pay taxes is part of consideration for payment of lease); *American Land Real Estate Investment Corp. v. Pokorny*, No. C0-90-1649 (Minn. Ct. App. Dec. 18, 1990) (Appendix 53) (unpublished: obligation to buy insurance equivalent to paying rent); *Kahn v. Greene*, No. UD-1940330506 at 7 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46) (water bill deemed as rent); *Schaapveld v. Crump*, No. UD-1951011528 (Minn. Dist. Ct. 4th Dist. Oct. 31, 1995) (Appendix 115) (the parties' prior conduct demonstrated that tenants agreed to pay gas utilities and landlord agreed to pay water, sewer and recycling costs).

The tenant must decide whether it is advantageous to litigate late fees in a nonpayment of rent case rather than a breach of the lease case. In a nonpayment of rent case, if the court determines that the late fees are proper and owing, the tenant has the right to redeem the tenancy by paying the unpaid amounts. *See* discussion, *infra* at VI.E.20. However, in a breach of lease case, if the court finds that the tenant has not paid proper late fees, the tenant may not have the right to cure the breach of the lease by paying the late fee. *See* discussion, *infra* at VI.G.20.

Some leases provide for an additional fee to be paid if the rent is not paid by a certain date. Some leases provide for a flat fee, while others provide for a daily fee.

a. *Late fees regulated by Minn. Stat. § 504B.177*

In 2010 the Minnesota Legislature enacted Minn. Stat. § 504B.177 to regulate late fees.

504B.177 LATE FEES.

(a) A landlord of a residential building may not charge a late fee if the rent is paid after the due date, unless the tenant and landlord have agreed in writing that a late fee may be imposed. The agreement must specify when the late fee will be imposed. In no case may the late fee exceed eight percent of the overdue rent payment. Any late fee charged or collected is not considered to be either interest or liquidated damages. For purposes of this paragraph, the "due date" does not include a date, earlier than the date contained in the written or oral lease by which, if the rent is paid, the tenant earns a discount.

(b) Notwithstanding paragraph (a), if a federal statute, regulation, or handbook permitting late fees for a tenancy subsidized under a federal program conflicts with paragraph (a), then the landlord may publish and implement a late payment fee schedule that complies with the federal statute, regulation, or handbook.

Id.

(1) Effective date

The effective date of the statute was January 1, 2011, for leases entered into or renewed on or

after that date. Minn. Laws 2010 Ch. 315 § 5. It does not apply to leases entered into January 1, 2011 that were not renewed on or after that date.

Some landlord have argued that leases that predate January 1, 2011 and use the term "extended" rather than "renewed" are not covered by statutes that use the latter. It is true that there is a legal distinction between an extension and a renewal of a lease, but the language of the lease is not itself dispositive. The test is "[i]f any contractual term for the additional period must be negotiated or determined, the statue of frauds requires a new lease, and the new period is a renewal. If the lease is continued by the party holding the option merely on timely notice or some other condition, no new lease is required, and the option is an extension. *Med-Care Assocs., Inc. v. Noot*, 329 N.W.2d 549 (Minn. 1983) (citations omitted).

If the lease retains for the landlord the ability to raise the rent, it would be a "contractual term for the additional period" yet to be "negotiated or determined" at the time of the expiration of the original written lease, the lease was renewed each month regardless of whether the contract language called it 'extension' or a renewal. *See Winger Assocs., Inc. v. Acky-Mennetonka Ltd. P'ship*, 2001 WL 1607659 (Minn. Ct. App. Dec. 18, 2001) (unpublished) (calling a lease a renewal rather than an extension when rental price was the only term of the contract not determined at the time of renewal).

Even if a lease was extended or renewed, the resulting month-to-month tenancy renews rather than extends on a monthly basis. As each month passes, each of the parties has the option to terminate it with proper notice. More importantly, the landlord retains the right to increase the rent or change terms of the tenancy with proper notice. *See FJK Assocs. v. Karkoski*, 725 A.2d 991 (Conn. App. Ct. 1999) ("In the case of a rental on a month-to-month basis the tenancy is not regarded as a continuous one. The tenancy for each month is one separate from that of every other month. The renewal of a month-to-month tenancy requires the payment of rent by the tenant and the acceptance of payment by the landlord or 'other circumstances showing an agreement to continue the lease.'" (citations omitted)).

Regardless of whether the continued month-to-month tenancy is an extension and not a renewal, the courts and the legislature have used the terms interchangeably. *Med-Care Assocs., Inc.*, 329 N.W.2d at 552 ("We have used the term 'renewal' to refer to both extensions and renewals and conclude that the legislature used the term in the same manner. Thus, we hold that the legislature intended to include extensions through the use of the term 'renewal'. . .").

In *Knight v. McGinty,* 868 N.W.2d 298, 302 (Minn. Ct. App. 2015), the Court of Appeals held that the lease in question was not covered by the statute.

> The written lease provided that Knight was entitled to $5 per day "if [McGinity] does not pay the full rent by the fifth day of the month in which it is due." Because we have concluded that the written lease governed the parties' rental arrangement, Knight is entitled to recover late fees from McGinity. The district court noted that any late fees owed to Knight would be limited to 8% of the rent amount under Minn. Stat. § 504B.177. But Minn. Stat. § 504B.177 became effective January 1, 2011, and applies to "leases entered into or renewed on or after that date." 2010 Minn. Laws ch. 315, § 5, at 852. Here, the parties neither entered into nor renewed the written lease on or after January 1, 2011. Consequently, section 504B.177 is inapplicable to the written lease and does not limit the late fees that Knight may recover.

(2) <u>The late fee must be in writing with a specified imposition date</u>

"A landlord of a residential building may not charge a late fee if the rent is paid after the due date, unless the tenant and landlord have agreed in writing that a late fee may be imposed. The agreement must specify when the late fee will be imposed." Minn. Stat. § 504B.177 (a).

(3) The late fee may not exceed eight percent of the overdue rent

"In no case may the late fee exceed eight percent of the overdue rent payment. Any late fee charged or collected is not considered to be either interest or liquidated damages." Minn. Stat. § 504B.177 (a). This represents a significant change to state case law, which previously analyzed late fees as either liquidated damages, penalties, and interest. *See* discussion, *infra*, at VI.E.10.b.

In *Housing and Redevelopment Authority of Duluth v. Lee,* 852 N.W.2d 683 (Minn. 2014), the Minnesota Supreme Court held the statute applied to public housing authority lease and was not preempted by federal law, affirming the Court of Appeals decision, 832 N.W.2d 868 (Minn. Ct. App. 2013), and reversing the trial court decision.

A fee that violates the statute is invalid and should be voided and not reduced to the legal limit. *See Housing and Redevelopment Authority of Duluth v. Lee*, 832 N.W.2d 868 (Minn. Ct. App. 2013) ("Because appellant's monthly rent was $50, the three $25 late fees imposed by respondent were invalid. And because there would have been no legal basis for eviction had respondent complied with Minn.Stat. § 504B.177(a), we reverse."), affirmed *Housing and Redevelopment Authority of Duluth v. Lee,* 852 N.W.2d 683 (Minn. 2014).

(4) Public and subsidized housing

In *Housing and Redevelopment Authority of Duluth v. Lee,* 852 N.W.2d 683 (Minn. 2014), the Minnesota Supreme Court held the statute applied to public housing authority lease and was not preempted by federal law, affirming the Court of Appeals decision, 832 N.W.2d 868 (Minn. Ct. App. 2013), and reversing the trial court decision.

b. *Late fees not regulated by Minn. Stat. § 504B.177*

There are two types of leases that would not be covered by the statute. First, leases that predate the effective of the statute that were not renewed would not be covered. *See* discussion, *supra*, at VI.E.10.a.i.

Second, the statute provides that "Notwithstanding paragraph (a), if a federal statute, regulation, or handbook permitting late fees for a tenancy subsidized under a federal program conflicts with paragraph (a), then the landlord may publish and implement a late payment fee schedule that complies with the federal statute, regulation, or handbook." Minn. Stat. § 504B.177 (b). In *Housing and Redevelopment Authority of Duluth v. Lee,* 852 N.W.2d 683 (Minn. 2014), the Minnesota Supreme Court held the statute applied to public housing authority lease and was not preempted by federal law, affirming the Court of Appeals decision, 832 N.W.2d 868 (Minn. Ct. App. 2013), and reversing the trial court decision. The court found no conflict between the state statute and 42 U.S.C. § 1437d(l)(2), which requires every PHA to "utilize leases which ... do not contain unreasonable terms and conditions," and 24 C.F.R. § 966.4(b)(3), which provides that "[a]t the option of the PHA," a lease "may provide for payment of penalties for late payment" but does not set a amount of late fees. *Id*. at 687-694.

Where late fees are not regulated by Minn. Stat. § 504B.177, they still may be analyzed as

liquidated damages or interest. *Begin v. Reissman*, 1995 WL 348043 (Conn. Super. May 17, 1995) (unpublished) ($5.00 per day late charge constantly accruing was unconscionable and a penalty; 5% of one month's rent or a $25.00 flat fee can be justified by the administrative costs necessary to monitor late payments).

(1) Liquidated damages and penalties

(a) Appellate cases discussing liquidated damages and penalties

In leases, fees based upon a breach of the lease must be in the form of liquidated damages, *see Local 34 State, County & Mun. Employees v. County of Hennepin*, 310 Minn. 283, 288, 246 N.W.2d 41, 44 (1976) (*dictum*); and not an unenforceable penalty. *See Palace Theatre, Inc. v. Northwest Theatres Circuit, Inc.*, 186 Minn. 548, 553, 243 N.W. 849, 851 (1932).

Generally, liquidated damages serve as a reasonable forecast of general damages resulting from a breach. *Zirinsky v. Sheehan*, 413 F.2d 481, 485 (8th Cir. 1969), *cert. denied*, 396 U.S. 1059 (1970). The controlling factor is whether the amount agreed upon is reasonable or unreasonable in light of the contract as a whole, the nature of the damages contemplated, and the surrounding circumstances, and not the intention of the parties nor their expression of intention. *Gorco Const. Co. v. Stein*, 256 Minn. 476, 481-82, 99 N.W.2d 69, 74 (1959) (emphasis added). Where actual damages cannot be measured, liquidated damages not manifestly disproportionate to actual damages are enforceable. *Id.* at 482, 99 N.W.2d at 75. Where actual damages are susceptible of definite measurement, an amount greatly disproportionate is an unenforceable penalty. *Id.*, at 483, 99 N.W.2d at 75.

The Court's analysis in the *Gorco Const. Co.* Decision is instructive.

> 5. The construction order signed by the defendant contained a provision that, if he cancelled it after its acceptance, he agreed to pay plaintiff as liquidated damages a sum equal to 15 percent of the contract price to cover expenses incurred by plaintiff for the following items: Salesman's commissions, advertising, and the committing of labor and equipment to perform the work. Pursuant to this provision, the trial court instructed the jury to award plaintiff $ 270 in damages if they found a contract existed. The court erred. The modern trend is to look with candor, if not with favor, upon a contract provision for liquidated damages when entered into deliberately between parties who have equality of opportunity for understanding and insisting upon their rights, since an amicable adjustment in advance of difficult issues saves the time of courts, juries, parties, and witnesses and reduces the delay, uncertainty, and expense of litigation. Accordingly this court has long regarded provisions for liquidated damages as prima facie valid on the assumption that the parties in naming a liquidated sum intended it to be a fair compensation for an injury caused by a breach of contract and not a penalty for nonperformance.
>
> Although favorably disposed to giving effect to a provision for liquidated damages, this court has not hesitated, however, to scrutinize a particular provision to ascertain if it is one for a penalty or one for damages. In determining the issue neither the intention of the parties nor their expression of intention is the governing factor. The controlling factor, rather than intent, is whether the amount agreed upon is reasonable or unreasonable in the light of the contract as a whole, the nature of the damages contemplated, and the surrounding circumstances.
>
> ". . .The law adopts as its guiding principles that the injured party is entitled to receive a fair equivalent for the actual damages necessarily resulting from failure to perform the contract and

no more."

Punishment of a promisor for breach, without regard to the extent of the harm that he has caused, is an unjust and unnecessary remedy and a provision having an impact that is punitive rather than compensatory will not be enforced.

6-7. The Minnesota rule is in accord with Restatement, Contracts, § 339, which provides:

"(1) An agreement, made in advance of breach, fixing the damages therefor, is not enforceable as a contract and does not affect the damages recoverable for the breach, unless

"(a) the amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach, and

"(b) the harm that is caused by the breach is one that is incapable or very difficult of accurate estimation."

This court has held that where the actual damages resulting from a breach of the contract cannot be ascertained or measured by the ordinary rules, a provision for liquidated damages not manifestly disproportionate to the actual damages will be sustained. On the other hand, when the measure of damages resulting from a breach of contract is susceptible of definite measurement, we have uniformly held an amount greatly disproportionate to be a penalty.

In the instant case the provision for liquidated damages covered specific elements of damages which were clearly and readily susceptible of definite measurement and proof by ordinary rules. These elements were: (1) Salesman's commission, (2) advertising, and (3) commitment of labor and equipment to perform contract. Obviously the amount of a salesman's commission is easily ascertained. No attempt was made to prove the payment of any commission. Likewise the actual committing of any labor or equipment to perform the contract was susceptible of proof without difficulty. The record, however, discloses that plaintiff learned that defendant had cancelled the contract prior to any commitment of labor or equipment and therefore no expenses therefor were incurred by plaintiff. Whether any advertising expense was attributable to the solicitation of defendant's order does not appear, but in any event it was another item susceptible of proof.

The plaintiff sought to justify the reasonableness of the figure of $ 270 provided for by the stipulated-damages provision by the testimony of Mr. Coplin, its president. He testified, over the defendant's objection, that Gorco Construction Company's ratio of selling expense to total sales was either 7.74 or 7.75, and its ratio of general and administrative expense to sales was 9.21. In view of the fact that it does not appear that plaintiff incurred any selling expense (i.e., salesman's commissions) as a result of the solicitation of defendant's order, it is difficult to see precisely what bearing plaintiff's ratio of selling expense to total sales has on the reasonableness of the stipulated-damages provision here under consideration. On cross-examination of Mr. Coplin it was brought out that plaintiff's ratio of general and administrative expenses to sales included such expenses as rent, utilities, the bookkeeper's salary, and accounting and legal fees. With respect to these types of expenses, this court in *Goodell v. Accumulative Income Corp.* 185 Minn. 213, 219, 240 N.W. 534, 537, in holding that a stipulated-damage provision was a penalty, made the following comment:

"Defendant states that the court will take judicial notice that defendant suffered damages in the

matter of expense of selling the certificate, salaries of officers, maintenance of office, bookkeeping, investment of funds, etc. These are general expenses of conducting its business. Plaintiff's default neither increased nor decreased such expenses."

In fact the provision for liquidated damages relates to specific items which have no relation to rent, utilities, bookkeeper's salary, and accounting and legal fees.

Since the provision for liquidated damages relates solely to items readily subject to definite proof, and in view of the fact that the record is almost devoid of any evidence that would tend to support a conclusion that the sum stipulated for liquidated damages (i.e., 15 percent of $ 1,800 or $ 270) bears any reasonable relation to plaintiff's pecuniary loss, it must be concluded that the provision for liquidated damages is in the nature of a penalty and is therefore unenforceable.

The order of the trial court is reversed and a new trial granted.

Reversed and new trial granted.

256 Minn. at 481-84, 99 N.W.2d at 74-76. *See Meuwissen v. H.E. Westerman Lumber*, 218 Minn. 477, 483, 16 N.W.2d 546, 549-50 (1944).

(b) Liquidated damages and penalty analysis of late fees

Liquidated damages can not be recovered if they are not provided for in the lease. *Cook v. Finch*, 19 Minn. 407, __, 19 Minn. (Gil.) 350, 358 (1873). *Brooklyn Center Leased Housing v. _____,* No. HC 030819518 (Minn. Dist. Ct. 4th Dist. Sep. 16, 2003, and Mar. 10, 2004) (Appendix 480) (ambiguities in lease concerning the deposit, rent and pro-rated rent and lack of documentation construed against landlord, no late fees if not contained in lease, redemption; later expunged).

Failure to license the property may block the claim for late fees. *Matsumoto v. _____,* No. AC 02-2123 (Minn. Dist. Ct. 4th Dist. Apr. 19, 2002) (Appendix 534) (Judge Alton) (after license was revoked, landlord's rental was unlawful and was not entitled to collect rent; rent abatement of $2695; landlord violated shared meter statute, tenant entitled to reimbursement for payments made; landlord not entitled to late fees when he did not have a rental license; landlord proved some cleaning expenses deducted from the security deposit, but not other damages and penalties; tenant entitled to deposit penalties where part of landlord's withholding was in bad faith).

The actual damages for late payment of rent may be measured without difficulty: the legal rate of interest plus the actual costs caused by the late payment. *United Shoe Machinery Co. v. Abbott*, 158 F. 762, 763 (8th Cir. 1908). *See Mandlin v. American Savings & Loan Ass'n.*, 63 Minn. 358, 367, 65 N.W. 645, 649 (1896) (actual damages of breach of term to pay money susceptible of definite measurement).

A daily late fee may be excessive. *Begin v. Reissman*, 1995 WL 348043 (Conn. Super. May 17, 1995) (unpublished) ($5.00 per day late charge constantly accruing was unconscionable and a penalty; 5% of one month's rent or a $25.00 flat fee can be justified by the administrative costs necessary to monitor late payments).

The courts have found certain late fee provisions to be unenforceable penalties. *Wheeler v. _____*, No. HC 030905517 (Minn. Dist. Ct. 4th Dist. Oct. 3, 2003) (Appendix 594) ($1005 in late fees were excessive, tenant did not prove habitability violations, tenant may redeem); *Miller v. George*, No.

UD-1941223501 (Minn. Dist. Ct. 4th Dist. Jan. 10, 1995) (Appendix 129) ($25.00 late fee for non-payment of $10.00 rent is unconscionable); *Cherrier v. Harper*, No. UD-1940113508 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1994) (Appendix 50) (late charge of $15 if rent was more than one day late, and $20 after two days, was an unenforceable penalty); *Central Community Housing Trust v. Anderson*, No. UD-1900611534 at 3 (Minn. Dist. Ct. 4th Dist. July 6, 1990) (Appendix 18.B) (government subsidized housing: $20.00 late fee bore no relation to cost of landlord's preparation of form notice and slipping the notice under the tenant's door, triggering the tenant's prompt action in paying the rent); *Auchampach v. IGO Co.*, Nos. C7-90-10716, C6-90-10559, and S9-90-6084 at 6-7 (Minn. Dist. Ct. 2nd Dist. Dec. 5, 1990) (Appendix 18.C) (late charge of 4 percent of the amount of rent unpaid plus $2.00 per day is excessive and unenforceable, intended as a penalty for nonperformance of the tenant's obligation to pay rent in a timely manner); *Larson v. Cooper*, No. UD-1880209557 at 8 (Minn. Dist. Ct. 4th Dist. Mar. 21, 1988) (Appendix 6) ($10.00 per day late fee was an unenforceable penalty).[10]

A late was upheld in *606 Vandalia Partnership v. JLT Mobil Building Ltd. Partnership*, No. C3-99-1723 (Minn. Ct. App. Apr. 25, 2000) (unpublished) (affirmed District Court conclusions that commercial late fee was a proper liquidated damage and not an unenforceable penalty or unconscionable provision).

(2) Usurious interest

Usury elements include: (a) a loan of money or forbearance of a debt, (b) an agreement between the parties that the principal shall be repayable absolutely, (c) the exaction of a greater amount of interest or profit than is allowed by law, and (d) the presence of an intention to evade the law at the inception of the transaction. *Rathbun v. W.T. Grant Co.*, 300 Minn. 223, 230, 219 N.W.2d 641, 646 (1974). Minn. Stat. § 334.01, subd. 1 sets general annual interest rates at 6 and 8 percent.

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[10]Courts in other jurisdictions have found certain late fees provisions to be unenforceable penalties. In *Hobson Grove Apartments v. Edmonds,* No. 92-C-00219 (Ky. Dist. Ct. Warren Cty. Apr. 6, 1992) (Appendix 18.F.1), the monthly rent was $94.00. The lease provided for a late fee of $5.00 on the sixth day of the month, and one dollar for each additional day. Plaintiff alleged nonpayment of $22.00 rent and $249.00 in late fees. The court found that the damages resulting from late payment of rent should have been easily ascertainable, since plaintiff's employee followed an established routine to process late rent charges that required a minimal amount of work. The court found that the liquidated damages set forth in the lease were disproportionate to the amount of damages actually suffered, and concluded that the clause was unenforceable. *See Highgate Associates, Ltd. v. Merryfield,* No. 79-4-88WnC (Vt. Dist. Ct. Wash. Cty. Dec. 22, 1989) (Appendix 18.E). *aff'd* 597 A.2d 1280 (Vt. 1991) (Appendix 18.F) (subsidized housing lease late fee of $5.00 on the sixth day of the month and $1.00 for each additional day was an unenforceable penalty because it was disproportionate to the landlord's actual loss, damages from late rent payment are not difficult to ascertain, and the clause was intended to penalize late payment rather than compensate the landlord; excellent example of facts needed to contest a late fee); *Fellows v. National Can Co.*, 257 F. 970, 972 (6th Cir. 1919) (10% penalty for ten day delinquency in payment of rent for lease of equipment held penalty, since it bore no relation to actual damages); *Spring Valley Gardens Associates v. Earle*, 112 Misc. 2d 786, 787-88, 447 N.Y.S.2d 629, 630-31 (Rockland Cty. Ct. 1982) ($50.00 late fee on $405.00 rent paid 11 days late held unconscionable and a penalty); *Hankin v. Armstrong*, 109 Misc. 2d 709, 713, 440 N.Y.S.2d 972, 975-76 (Rockland Cty. Ct.), *aff'd*, 113 Misc. 2d 24, 25, 451 N.Y.S.2d 334, 335 (Appendix Term. 1981) ($1.00 per day late fee held unreasonable and a penalty); *Burstein v. Liberty Bell Village*, 120 N.J. Super. 54, __, 293 A.2d 238, 240 (1972) (late fee of $5.00 after the fifth day of month and $1.00 per day for each successive day was excessive and unenforceable). *See generally* 5A CORBIN ON CONTRACTS § 1065 (1964).

Usury ordinarily is a question of fact. *Kantack v. Kreuer*, 280 Minn. 232, 240, 158 N.W.2d 842, 848 (1968). Minn. Stat. § 334.03 provides that where usury is found to exist, the underlying debt is void. However, while courts have invalidated the interest, some courts have been reluctant to void the entire debt. *Katz & Lange, Ltd v. Beugen*, 356 N.W.2d 733, 735 (Minn. Ct. App. 1984) (12% interest on unpaid legal fees held usurious). In *Dairy Farm Leasing Co. v. Sticha*, C3-95-2698 (Minn. Ct. App. July 30, 1996), FINANCE AND COMMERCE at 40 (Aug. 2, 1996) (Appendix 214), the court held that a violation of usury laws does not require specific intent, as long as the party intended to collect the amount of money stated on the face of the contract, and that amount is usurious.

Courts in Minnesota and other jurisdictions have found certain late fees in leases to be usurious. *Cherrier v. Harper*, No. UD-1940113508 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1994) (Appendix 50) (late charge of $15 if rent of $73 per week was more than one day late, and $20 after two days was usurious); *Auchampach v. IGO Co.*, Nos. C7-90-10716, C6-90-10559, and S9-90-6084 at 6-7 (Minn. Dist. Ct. 2nd Dist. Dec. 5, 1990) (Appendix 18.C) (late fees assessed at rate of 4 percent of the amount of unpaid rent plus $2.00 per day were usurious); *Gramith v. Thibodeau*, No. UD-1941223506 (Minn. Dist. Ct. 4th Dist. Jan. 13, 1995) (Appendix 100) (late fee limited to $20.00); *Fellows v. National Can Co.*, 257 F. 970 972 (6th Cir. 1919) (10% penalty for ten day delinquency in payment of rent for lease of equipment held usurious): *Bonfanti v. Davis*, 487 So. 2d 165, 168 (La. Ct. App. 1986) (18% interest charged on late rent held usurious). *But see Widmark v. Northrup King Co.*, 530 N.W. 2d 588 Minn. Ct. App. 1995) (late fee in contract for sale of agricultural seeds was not subject to usury laws).

For an example of calculating annual interest for late fees, see Appendix 51.

c. *Waiver of late fees*

Like other lease provisions, late fees can be waived. *See* discussion, *infra*, at VI.G.2. *See also Chaska Village Townhouses and Lifestyle, Inc. v. Edberg*, No. 91-27365 (Minn. Dist. Ct. 1st Dist. Apr. 1, 1991) (Appendix 11.L) (plaintiff induced defendant to believe that late rental payments would continue to be accepted without consequences).

d. *Public housing and subsidized housing*

The state statute provides that "Notwithstanding paragraph (a), if a federal statute, regulation, or handbook permitting late fees for a tenancy subsidized under a federal program conflicts with paragraph (a), then the landlord may publish and implement a late payment fee schedule that complies with the federal statute, regulation, or handbook." Minn. Stat. § 504B.177 (b).

In *Housing and Redevelopment Authority of Duluth v. Lee,* 852 N.W.2d 683 (Minn. 2014), the Minnesota Supreme Court held the statute applied to the public housing authority lease and was not preempted by federal law, affirming the Court of Appeals decision, 832 N.W.2d 868 (Minn. Ct. App. 2013), and reversing the trial court decision. The court found no conflict between the state statute and 42 U.S.C. § 1437d(l)(2), which requires every PHA to "utilize leases which ... do not contain unreasonable terms and conditions," and 24 C.F.R. § 966.4(b)(3), which provides that "[a]t the option of the PHA," a lease "may provide for payment of penalties for late payment" but does not set a amount of late fees. *Id*. at 687-694.

In most government subsidized housing projects, the landlord may not evict the tenant for not paying late fees. HUD Handbook No. 4350.3, ¶ 4-14(d). This provision does not apply to Section 202 Elderly Handicap Housing Projects receiving Section 8 or Rent Supplement assistance. In the two

subsidized housing project programs not covered by HUD Handbook No. 4350.3, the Section 8 Moderate Rehabilitation and Project-Based Certificate Assistance Program the regulations do not provide for late fees or other charges in addition to rent. 24 C.F.R. §§ 882.401 *et. seq.* 882.701 *et. seq.*

In the Section 8 Existing Housing Certificate program, the landlord may not attempt to evict the tenant for not making additional payments in addition to rent. This arguably includes late fees. HUD Handbook No. 7420.7, ¶ 4-17(c) (Appendix 11.I). Since there is no handbook for the Section 8 Existing Housing Voucher Program, and since the program is almost identical to the Certificate program, it appears that this provision would apply. The Handbook may be out of date, given new regulations, but the regulations only provide for late fees payable by the housing authority for late subsidy payments, and do not provide for tenant late fees. 24 C.F.R. § 982.451.

e. *Manufactured (mobile) home park lot tenancies*

In manufactured (mobile) home park lot tenancies, the arrearage may not include any fees other than those specified in Minn. Stat. § 327C.03 (certain fees for installation and removal of the home, late rent, pets, maintenance, and security deposits). Minn. Stat. § 327C.10, subd. 1. *See Hedlund v. Davis,* No. C1-91-1687 (Minn. Dist. Ct. 10th Dist. Dec. 31, 1991) (Appendix 15.F) (improper maintenance charges); *Allison v. Sherburne Country Mobile Home Park*, 475 N.W.2d 501 (Minn. Ct. App. 1991) (park owner may charge electricity service fee identical to fee residents would have to pay to public utility, even if the fee exceeds the cost to the park owner).

f. *No late fee is due because the tenant properly withheld rent*

Tenants are not liable for late fees where the tenant property withheld rent. In *Humphrey v. _____,* No. HC 031015540 (Minn. Dist. Ct. 4th Dist. Apr. 26, 2006) (Appendix 655) (Judge Reilly), the court reversed the referee decision, awarded only rent abatement of 50% for lack of rental license due to equitable considerations, with additional rent abatement for habitability violations assessed per violation, with late fees not due where the tenants entitled to withhold rent.

See Central Manor Apartments v. Beckman, No. UD-1980513525) (Minn. Dist. Ct. 4th Dist. May 27, 1998) (Appendix 319A) ("When a tenant withholds rent due to habitability issues which are then proven by the tenant, fees for late payment of rent are not due for the month a tenant withheld rent. Assessing a late fee would frustrate the tenant's right to withhold rent to remedy habitability problems, and is contrary to public policy."). *The Hornig Companies v. Mmubango*, No. UD-1950213513 (Minn. Dist. Ct. 4th Dist. Mar. 6, 1995) (Appendix 93); *U and W, Inc. v. Grove*, No. UD-1950403505 (Minn. Dist. Ct. 4th Dist. Apr. 25, 1995) (Appendix 111).

g. *Plaintiff did not prove existence of late fees*

Minn. Stat. § 504B.177 (a) requires that late fees be in a written agreement. Case law also has required the landlord to provde the existence of late fees. In *Smithrud v. McDaniel*, No. UD-195050529 (Minn. Dist. Ct. 4th Dist. May 22, 1995) (Appendix 130), neither party testified regarding the landlord's late fee claim of $150.00. The court found that it was not clear what late fees they landlord asserted were due and for which months, concluding that the landlord had not proven that the tenants owed $150.00 for late fees. *See Clark v. Urban Investments*, No. UD-1970821901 (Minn. Dist. Ct. 4th Dist. Sep. 10, 1997) (Appendix TR 145) (Late fees were not based on lease but on later notice to increase late fees; landlord did not prove it was entitled to unilaterally amend lease to increase late fees); *Cedar Associates LLP v. Curtis*, No. UD-1970108508 (Minn. Dist. Ct. 4th Dist. May 20, 1997) (Appendix 250) (No late

fee in lease); *Little v. Katzovitz,* No. UD-1970902903 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1997 (Appendix 268) (Landlord did not prove tenants owed prior rents or late fees).

10a. Other fees

Some leases contain fees for services provided by the landlord or alleged violations of the lease by the tenant. Fees can be challenged with a number of claims.

a. *Fees for tenants to perform habitability maintenance*

See discussion at VI.E.1.a2. - VI.E.1.a3.

b. *Fees in violation of statutes*

See discussion at VI.G.12.

c. *Liquidated damages and penalties*

See discussion at VI.E.10.b.1.

d. *Unconscionable provisions*

See discussion at VI.G.13.

e. *Adhesion contract*

See discussion at VI.G.14.

11. Manufactured (mobile) home park lot tenancies

a. *Breach of the covenants of habitability*

See Minn. Stat. § 327C.10, subd. 1. *See Larson v. Anderson*, No. C9-96-416 (Minn. Dist. Ct. 9th Dist. Oct. 11 and Nov. 8, 1996) (Appendix 264) (Rent abatement of $6,910 over five years failing to repair discharge of raw sewage on the premises; landlord's notice to quit was in retaliation for tenant's complaint to health department). *See generally* discussion, *supra*, at VI.E.1.u.

b. *Improper notice to terminate the lease*

The landlord must give ten (10) days written notice to the tenant and the secured party. Minn. Stat. § 327C.09, subd. 2. *See* discussion, *infra*, VI.F.7 (manufactured (mobile) home park lot defenses) and VI.G.11 (manufactured (mobile) home park lot breach defenses).

c. *The arrearage includes improper fees*

See Minn. Stat. § 327C.03, 327C.10, subd. 7. *See* discussion, *supra*, at VI.E.10.e (manufactured (mobile) home park lot late fees).

d. *Waiver of notice*

See Hedlund v. Davis, No. C1-91-1687 (Minn. Dist. Ct. 10th Dist. Dec. 31, 1991) (Appendix 15.F) (waiver of notice alleging failure to pay maintenance charges where landlord accepted and retained rent check and brought it to the hearing). *See* discussion, *infra*, at VI.F.4 (waiver of notice).

e. *Improper rent increases*

Lower courts had held that rent increases must be reasonable. *Nichols v. Harmon,* No. MX-89-8879 (Minn. Dist. Ct. 4th Dist. Apr. 30, 1990) (Appendix 11.G) (rent increases must be reasonable); *Pilgrim v. Crescent Lake Mobile Colony*, 582 S.2d 649 (Fla. Ct. App. 1991) (Appendix 11.N) (rent increase 15 to 55% above fair market rent with deteriorated conditions was unconscionable). But, the Court of Appeals said they do not.

In *Skyline Village Park Ass'n v. Skyline Village L.P.*, 786 N.W.2d 304 (Minn. Ct. App. 2010), the resident association of a manufactured home park brought action against owner of park, claiming in part that proposed rent increase was unreasonable and unenforceable. The district court entered judgment for the owner's favor. The association appealed and the court affirmed, holding that Minn. Stat. § 327C.02, subd. 2, does not impose a reasonableness requirement on rent increases, *id.* at 306-13 and the Minn. Stat. § 327C.05, subd. 1 the prohibition on the owner engaging in a course of conduct which is unreasonable does not apply to manufactured-home-park-lot rent increases, *id.* at 313-14. For more on rent increases, *see* discussion, *supra* at VI.E.7.

f. *Retaliatory rent increase or services decrease*

See discussion, *supra* at VI.E.9.

h. *Redemption*

See discussion, *infra* at VI.E.20.

i. *Secured parties*

The secured party to the purchase of the manufactured (mobile) home may not bring an unlawful detainer action for nonpayment on the contract. *Hermantown Federal Credit Union v. Leddy*, No. CX-97-601417 (Minn. Dist. Ct. 6th Dist. Aug. 11, 1997) (Appendix 260) (Remedy is under Minn. Stat. § Ch. 327, not Ch. 566 (now Ch. 504B)).

12. Public housing and government subsidized housing

Notice requirements vary depending on the program. In government subsidized housing projects and public housing the landlord must give written notice before commencement of an eviction (unlawful detainer) action for nonpayment of rent. *See* discussion, *infra* at VI.F.10.

a0. *Lack of cause or tenant fault*

Even if the tenant did not pay the rent, the tenant may argue that nonpayment of rent is simply a *prima facie* cause for termination of the lease, and that the tenant may rebut the showing that nonpayment was occasioned by circumstances beyond the tenant's control, the tenant notified the landlord of this, and the tenant made a diligent effort to pay when the tenant was able. *Real Properties Services Management Services v. Harigle*, No. 3-96-21, 1997 WL 4307773, 1997 LEXIS 3486 (Ohio Ct.

App. July 30, 1997), HDR CURRENT DEVELOPMENTS 250 (Aug. 25, 1997) (Appendix 288) (No good cause for eviction for nonpayment of rent where tenants paid rent late or into court); *Stark Metropolitan Housing Authority v. Ruffin*, No. CA-8751, 1992 Ohio Appendix LEXIS 3254 (Aug. 17, 1992) (Appendix 11.J.1); *Housing Authority of St. Louis County v. Boone*, 747 S.W.2d 311 (Mo. Ct. App. 1988) (public housing, tenant not at fault for nonpayment of rent); *Regency Park Apartments v. Gidcumb*, No. 86-X-003 (Kty. Cir. Ct. Warren Cty. Apr. 3, 1986), *affirming* No. 86-C-062 (Kty. Dist. Ct. Warren Cty. Feb. 6, 1986) (Appendix 153) (no material non-compliance with lease where tenant paid rent late but landlord accepted it; and tenant caused $114 in damage, could not pay it within 15 days after receiving bill while receiving low income on AFDC, tenant offered to pay $78 before filing and had all of the money before hearing); *Maxton Housing Authority v. McClean*, 313 N.C. 277, 328 S.E.2d 290 (1985) (public housing, tenant not at fault for nonpayment of rent).

A small amount of rent might not be cause for eviction. *See B & L Properties, LLC v. Bernard,* No. SA-10-408 (Maine Dist. Ct. Bangor July 14, 2010) (Appendix 785) (Section 8 Voucher eviction: one time failure to pay full amount of tenant rent of $33 was not a serious violation); *Northgate Housing Limited v. Kirkland*, No. 2002-152, 2002 WL 34422174 (Vt. Nov. Term 2002) (unpublished) (claims for possession based on termination notices had not properly accrued, as the lawsuit was filed prior to the stated termination dates; trial court did not err in finding that $6.00 in unpaid rent was *de minimus* and failed to provide a basis for possession).

In cases where the public housing authority has provided less than the proper housing assistance payment to the landlord, either by miscalculating the tenant's income and rent or by improperly terminating the subsidy, the tenant may wish to file a third party complaint against the public housing authority. *See* discussion, *supra* at V.C.

In *JHCJ Associates v. Bryant*, No. UD-1960606502 (Minn. Dist. Ct. 4th Dist. Jul. 31, 1996) (Appendix 217), the Section 8 certificate landlord did not waive the right to evict for back rent because landlord regularly and consistently notified tenant of landlord's continuing claim for rent, but the court hesitated to evict the Section 8 tenant who has made timely rent payments recently, and authorized prospective monthly payments on the back rent.

a. *Section 8 existing housing certificate and voucher programs*

(1) Side Payments

Court have consistently held that the landlord may not require the tenant to pay additional fees or rents not approved by the housing authority. In *Hermel v. _____*, No. 27-CV-HC-17-493 (Minn. Dist. Ct. 4th Dist. Feb. 17, 2017) (Appendix 734), the Section 8 Voucher landlord filed an eviction action for tenant's failure to pay rent in January and February. The landlord argued that aside from the amount owed by the tenant under the subsidized lease, the tenant also owed him a separate amount under a separate lease agreement for tenant to rent out the garage. The court stated that the landlord and tenant were not allowed to make their own "side deal" without the agreement of the housing authority and therefore landlord could not charge tenant for any rent other than that specified on the Housing Assistance Payment (HAP) contract. In addition, the court held that costs to repair the refrigerator, furnace and air conditioner paid for by tenant were the responsibility of landlord and therefore such amounts needed to be reimbursed. Lastly, the court denied the tenant's request to be reimbursed by landlord for buying a lawnmower at the landlord's request stating that the lawnmower belongs to tenant who is able to sell it. The court also ordered the tenant to receive a credit of such overpaid amounts towards future rent owed by the tenant (but at the termination of the tenancy, any remaining amounts

should be paid to tenant in cash 30 days prior to the end of the tenancy). The tenant was allowed to remain in possession of the premises and awarded allowable costs and disbursements.

See Hwang v. Jones, No. UD-1960319526 (Minn. Dist. Ct. 4th Dist. Apr. 4. 1996) (Appendix 215) (Section 8 certificate: landlord cannot charge any rent, extra deposit, extra fees or other extra costs not approved by the public housing authority); *Robinson v. Schaapveld*, No. UD-1951006523 (Minn. Dist. Ct. 4th Dist. Dec 15, 1995) (Appendix 209) (rent collected in excess of rent set in the Section 8 lease violates law and policy); *Swanson v. Wallner*, No. _____ (Minn. Dist. Ct. 4th Dist. Sept. 7, 1995) (Appendix 131) (subsequent lease for higher rent not agreed to in Section 8 agreement void as contrary to federal law); *Waterston v. Minneapolis Public Housing Authority*, No. AC-93-4511 (Minn. Dist. Ct. 4th Dist. July 26, 1993) (Appendix 78) (landlord violated contract with public housing authority by seeking additional $50 per month from tenant); *Cooper v. Chit*, No. AC-90-15146 (Minn. Dist. Ct. 4th Dist. Oct. 12, 1990) (Appendix 11.M) (landlord not entitled to side payments in addition to rent). *But see Z & S Management Company v. Jankowicz*, No. UD-1920219515 at 10 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1992) (Appendix 9.B) (plaintiff may charge defendant for garage rent under the lease agreement).

(2) Withheld housing assistance payments

Since the tenant is only responsible for the tenant's share of the rent, the landlord may not recover from the tenant government subsidies withheld by the housing authority for the landlord's failure to keep the apartment in reasonable repair. *See Dydell v. Sumpter,* No. HC 010918901 (Minn. Dist. Ct. 4th Dist.Nov. 5, 2001) (Appendix 644) (rent escrow action: RAFS subsidized housing tenant awarded rent abatement for disrepair; tenant not responsible for RAFS subsidy; lease provision requiring tenant to maintain property cannot waive Minn. Stat. § 504B.161; landlord ordered to complete repairs); *Johnson v.* _____, No. HC 1001005514 (Minn. Dist. Ct. 4th Dist. Oct. 18, 2000) (Appendix 526) (directed verdict entered on drug claim where witness testified no drugs were found in raid, and testimony on earlier controlled purchase of drugs was not pled; nonpayment of rent was by Section 8 and not tenant, so tenant not required to pay filing fee to redeem); *Denning v. Swanstrom*, No. A-97-761, 1998 WL 867250 (Neb. Ct. App. Nov. 3, 1998) (Appendix 325) (Unpublished). *See Wiley v. Flax*, No. UD-1961107516 (Minn. Dist. Ct. 4th Dist. Nov. 25, 1996) (Appendix 304) (Landlord only could enforce Section 8 lease, and could not enforce contradictory private lease for a higher rent or a subsequent side agreement for still higher rent and change in responsibility for utilities); *Mattson v. Harmon*, No. UD-1961203552 (Minn. Dist. Ct. 4th Dist. Jan. 28, 1997) (Appendix 269) (Tenant not responsible for rent subsidy withheld by housing authority which is not due to tenant's conduct; landlord cannot require tenant to pay full rent or evict tenant for failing to pay full rent; landlord bound by housing authority's reinstatement of contract); *Z & S Management Company v. Jankowicz*, No. UD-1920219515 at 9-10 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1992) (Appendix 9.D) (rent abatement in addition to, and not offset by withheld government subsidies); *Kray v. Humphrey*, No. UD-1950110500 (Minn. Dist. Ct. 4th Dist. Feb. 8, 1995) (Appendix 132) (rent withheld by the Public Housing Authority not subject to unlawful detainer action against tenant); 24 C.F.R. §§ 982.310(b), 982.451(b)(4) (Appendix 109). Additionally, the decision in *Westminster Corp. v. Anderson*, 536 N.W. 2d 340 (Minn. Ct. App. 1995) supports the position that the landlord may not claim from the tenant payments allegedly due to the landlord from the housing authority. In *Westminster Corp*., the court held that the government subsidy to the landlord was not rent, so the landlord's acceptance of the subsidy did not waive the tenant's alleged breach of lease, while acceptance of the tenant's rent would have constituted waiver. Since the subsidy is not rent, and is not payable by the tenant, the landlord may not claim it from the tenant.

b. *Subsidized housing projects*

Most government subsidized housing projects are covered by HUD Handbook No. 4350.3. Projects not covered by the handbook include the Section 8 Moderate Rehabilitation and Project-Based Certificate Assistance Programs. For the termination procedure, *see* HUD Handbook No. 4350.3, ¶¶ 8-11 - 8-16.

The following defenses may be applicable:

(1) Plaintiff did not give the tenant ten days notice before filing the eviction (unlawful detainer) action

In *Buffalo Court Apartments v. Velde*, No. C6-98-1798 (Minn. Dist. Ct. 10th Dist. Sep. 14, 1998) (Meyer, J.) (Appendix 313), the subsidized housing project sent a letter to the tenant retroactively terminating the subsidy, claiming that another person was living with her in violation of the lease. The tenant claimed that the person was a guest and not a resident, and provided documentation. The landlord did not give the required ten day notice to remove the subsidy, or the 30 day notice to terminate the lease. The court concluded that the landlord had not proven that the tenant violated the lease, the landlord failed to comply with regulations in increasing the tenant's rent, and failure to provide proper notice prevented the landlord from removing the tenant's rent subsidy. The court dismissed the action and ordered that the landlord immediately reinstate the tenant's rent subsidy, and that if the subsidy was not available, the landlord must credit the tenant's rent in the same amount.

In *Horning Properties v. Wang*, No. C3-98-1211 (Minn. Dist. Ct. 10th Dist. Jun. 23, 1998) (Appendix 337) (Meyer, J.), the landlord of a Rural Housing and Community Development Service Subsidized Housing Project filed an action for nonpayment of rent and breach of lease. The court concluded that there was no lease violation where the tenant tendered but the landlord refused April rent, so this event did not support the eviction notice. The court noted that the landlord did not give the required warning notice, and concluded that the termination notice was improper where given after commencement of the unlawful detainer action but before the hearing. The court found that the tenant legally resided on the property during her incarceration so as to not breach the lease. Finally, the court concluded that the landlord improperly removed her subsidy and increased her rent.

In *Northgate Housing Limited v. Kirkland*, No. 2002-152, 2002 WL 34422174 (Vt. Nov. Term 2002) (unpublished), the court held that claims for possession based on termination notices had not properly accrued, as the lawsuit was filed prior to the stated termination dates, and that the trial court did not err in finding that $6.00 in unpaid rent was *de minimus* and failed to provide a basis for possession.

See HUD Handbook No. 4350.3, ¶¶ 8-11 - 8-16; *Mathews Park Cooperative Townhomes v. Sanders*, No. UD-1910719523, partial transcript (Minn. Dist. Ct. 4th Dist. Aug. 7, 1991) (Appendix 11.J); *See Loring Towers Limited Partnership v. Seamon*, No. UD-1920810515 (Minn. Dist. Ct. 4th Dist. Aug. 31, 1992) (dismissal for giving only four days notice) (Appendix 11.I.1); *Loring Towers Limited Partnership v. Sheehy*, No. UD-1920810513 (Minn. Dist. Ct. 4th Dist. Sept. 4, 1992) (dismissal for giving only four days notice) (Appendix 11.I.2); *Loring Towers Apartments Limited Partnership v. Redcloud*, No. UD-1921210529 (Minn. Dist. Ct. 4th Dist. Jan 20, 1993) (Appendix 11.I.5). There are no exceptions to the notice requirement. *Sentinel Management Co. v. Kraft,* No. UD-1920806546 at 3 (Minn. Dist. Ct. 4th Dist. Aug. 12, 1992) (Appendix 11.I.3).

(2) Plaintiff alleged in the complaint grounds for eviction not stated in the notice. *See* HUD Handbook No. 4350.3, ¶ 8-13(B)(5).

(3) Waiver of notice. *See* discussion, *infra* at VI.F.4-6.

(4) Violation of the covenants of habitability. *See* discussion, *supra* at VI.E.1.

(5) Plaintiff did not properly calculate the tenant's rent

See HUD Handbook No. 4350.3, Chs. 3, 5; *Innsbruck Limited Partnership v. Askvig*, No. C-5-95-0604 (Minn. Dist. Ct. 3rd Dist. Apr. 19, 1995) (Appendix 133) (tenant did not under report income and paid too little rent, since tenant could pool income and expenses from both of her jobs);

(6) Plaintiff improperly terminated the government subsidy and raised the tenant's rent to market rent.

See HUD Handbook No. 4350.3, ¶¶ 8-3 - 8-7.

In *Loring Towers Preservation Limited Partnership v. _____,* No. 27CVHC 10-8274 (Minn. Dist. Ct. 4th Dist. Feb. 11, 2010) (Appendix 712), the landlord brought an eviction action against tenant under a one year HUD Subsidized Model Lease, based on the tenant's failure to report his new employment and pay increased rent under the lease. The landlord argued that the tenant was required to give notice of his new employment within 10 days. The tenant notified the landlord of his new employment on July 16, 2010, approximately one month after he began his employment, but the landlord failed to give notice of a recertification and increase in rent until three months later, on October 27, 2010, when the tenant was informed that his rent had been adjusted from $45 to $428.00 effective December 1, 2010. The landlord then refused to accept tenant's payment of $45 in November 2010 and his payment of $428.00 in December 2010. The landlord claimed that the tenant's rental increase was effective September 1, 2010, and therefore the tenant had a past due balance for unpaid rent in September and October. The landlord delivered a notice of lease termination to tenant and initiated an eviction action.

The court held that there was no ten day requirement to report new employment in the lease, and that the tenant properly gave notice of his employment to landlord. The court further held that under the lease and the provisions in the HUD Handbook, the tenant was entitled to a 30-day notice of an increase in rent, and therefore the rental increase was not effective until December 2010. The court noted that the tenant is not required to reimburse the landlord for undercharges in rent caused by the landlord's failure to follow HUD's procedures in calculating rent. The landlord's failure to process the interim recertification or give notice of the increase in rent prior to October 27, 2010 resulted in the landlord being unable to collect additional rent for September, October, and November from the tenant. The court allowed the tenant to redeem with the money paid into court.

In *Buffalo Court Apartments v. Velde*, No. C6-98-1798 (Minn. Dist. Ct. 10th Dist. Sep. 14, 1998) (Meyer, J.) (Appendix 313), the subsidized housing project sent a letter to the tenant retroactively terminating the subsidy, claiming that another person was living with her in violation of the lease. The tenant claimed that the person was a guest and not a resident, and provided documentation. The landlord did not give the required ten day notice to remove the subsidy, or the 30 day notice to terminate the lease. The court concluded that the landlord had not proven that the tenant violated the lease, the landlord failed to comply with regulations in increasing the tenant's rent, and failure to provide proper notice prevented the landlord from removing the tenant's rent subsidy. The court dismissed the action and ordered that the landlord immediately reinstate the tenant's rent subsidy, and that if the subsidy was not available, the landlord must credit the tenant's rent in the same amount.

In *Horning Properties v. Wang*, No. C3-98-1211 (Minn. Dist. Ct. 10th Dist. Jun. 23, 1998) (Appendix 337) (Meyer, J.), the landlord of a Rural Housing and Community Development Service Subsidized Housing Project filed an action for nonpayment of rent and breach of lease. The court concluded that there was no lease violation where the tenant tendered but the landlord refused April rent, so this event did not support the eviction notice. The court noted that the landlord did not give the required warning notice, and concluded that the termination notice was improper where given after commencement of the unlawful detainer action but before the hearing. The court found that the tenant legally resided on the property during her incarceration so as to not breach the lease. Finally, the court concluded that the landlord improperly removed her subsidy and increased her rent.

(7) Plaintiff may not evict the tenant for not paying late fees

Except in Section 202 Elderly and Handicap Housing Projects receiving Section 8 or Rent Supplement Assistance. *See* HUD Handbook No. 4350.3, ¶ 6-23; *see generally* discussion, *supra* at VI.E.10.

(8) Plaintiff is charging illegal side payments in addition to rent

Except for Section 202 Elderly and Handicap Housing Projects receiving Section 8 or Rent Supplement Assistance. *See* HUD Handbook No. 4350.3 Ch. 5.

(9) Plaintiff did not offer a reasonable payment plan for corrected past rent

See HUD Handbook No. 4350.3, ¶ 8-21 - 8-22.

c. *Public housing*

A public housing authority can set a minimum rent from $0 to $50, regardless of the tenant's income. Pub. L. No. 104-204, § 201(e), 110 Stat. 2893 (1996).

In *Stuart Co. v. Ramsey,* No. A14–0639, 2014 WL 5800462 (Minn. Ct. App. Nov. 10, 2014) (unpublished), the Court of Appeals affirmed eviction of the public housing tenant for nonpayment of rent, holding that (1) lack of the federally required eviction notice did not deprive the district court of jurisdiction, (2) the *pro se* tenant before the district court waived the notice defense by not raising it below, and (3) the tenant similarly waived the requirement of material noncompliance by not raising it.

In *Minneapolis Public Housing Authority v. Papasodora*, No. UD-1960611515 (Minn. Dist. Ct. 4th Dist. Jul. 17, 1996) (Appendix 213), the court held that a public housing notice to increase rent is equivalent to notice to terminate month-to-month lease and initiate new lease with new rent under Minn. Stat. Section 504.06 (now § 504B.135); and the notice mailed February 29 could not be received in February and was untimely for an April 1 rent increase. *See Minneapolis Public Housing Authority v. Papasodora*, No. UD-1960611515 (Minn. Dist. Ct. 4th Dist. Nov. 14, 1996) (Appendix 280) (Judge affirmed referee decision requiring public housing notice to increase rent to be a one month notice); *Public Housing Authority v. Swickard,* No. UD-1920812518 (Minn. Dist. Ct. 4th Dist. Sept. 1, 1992) (Appendix 15.G) (rent reminder notice failed to satisfy eviction notice requirement).

In *St. Cloud Housing and Redevelopment Authority v. Slayton*, No. C9-98-1671 (Minn. Dist. Ct. 10th Dist. Nov. 3, 1998) (Appendix 365) (Danforth, J.), the court concluded that the public housing authority accepted the tenant's late recertification and the repayment agreement between the parties over

back rent did not provide for eviction as a consequence for non-payment or late payment. The court gave the tenants seven days to pay the arrearage of $1,200 and fees. *See Community Development Authority of Madison v. Yoakum*, No. 91-0641-FT, 1992 WL 50167 (Wis. Ct. App. Jan. 16, 1992) (Appendix 321) (unpublished: public housing tenant was entitled to 30 day notice rather than 14 day notice where landlord alleged claims other than nonpayment of rent; notice also was improper in that it did not include notice to right to review documents; trial court erred in granting judgment on grounds not listed in the complaint).

In *Minneapolis Public Housing Authority v. McKinley*, Nos. UD-1980312507 (Minn. Dist. Ct. 4th Dist. Aug. 21, 1998) (Appendix 348B) (Oleisky, J.), the referee concluded that arrearages in a service charge repayment schedule were not rent under Minn. Stat. §504.02 (now § 504B.291), so the tenant did not have the right to redeem by payment of arrearage, and that the tenant violated other material terms of the lease, including failure to provide necessary information and failing to attend scheduled meetings. On judge review, the court reversed the referee's ruling on service charges, concluding that the service charges were rent under §504.02. However, the court affirmed the referee's conclusion on the other causes for eviction.

In *St. Cloud HRA v. Rothchild*, No. C7-99-4306 (Minn. Dist. Ct. 7th Dist. Dec. 21, 1999) (Appendix 419), the public housing authority filed eviction action based on nonpayment of rent and material lease violations by repeated late payment of rent. The court held that tenant's statutory right to redeem could not be defeated by a claim of material violation related to rent.

d. *Bankruptcy and public housing rent*

In *Stoltz v. Brattleboro Housing Authority,* 315 F.3d 80 (2d Cir. 2002), the Second Circuit Court of Appeals resolved a conflict between 11 U.S.C. § 525(a) and 11 U.S.C. § 365 and affirmed the district court's reversal of a bankruptcy court's grant of relief of the automatic stay, barring the landlord's eviction action. During her chapter 13 case, the debtor leased an apartment from a public housing authority and defaulted on her rent during the lease term. Later, the debtor converted her chapter 13 case to chapter 7 and received a discharge. The prepetition rent owed to the public housing authority was discharged, but unpaid. The public housing lease was deemed rejected pursuant to § 365(d)(1) because the chapter 7 trustee did not assume the lease under § 365(b)(1). Upon rejection of a lease, the lease ceases to be property of the estate, and the non-debtor lessor is free to pursue state law remedies relative to the lease, including eviction. Section § 525(a), however, bars bankruptcy-based discrimination. The bankruptcy court granted the public housing authority's motion for relief from stay to permit the housing authority to proceed with eviction, but the district court reversed the bankruptcy court and reinstated the automatic stay. The Second Circuit affirmed the district court, concluding that a public housing lease was a protected grant under a plain reading of § 525(a), and holding that when § 365 and § 525(a) conflict, § 525(a) prevails to protect the tenant from eviction for nonpayment of discharged prepetition rent.

13. Waiver of rent due by accepting partial payment

A landlord who accepts a partial payment of rent in arrears waives an action for possession based on the remaining balance, absent a written agreement to the contrary. Minn. Stat. § 504B.291, subd. 1(c) (formerly 504.02). Before enactment of the partial payment statute, case law supported the argument that accepting partial payments in real estate contracts waived any claimed default of contractual payment provisions and the right to rescind or declare a forfeiture. *Brack v. Brack,* 218 Minn. 503, 509-11, 16 N.W. 2d 557, 560-61 (1944).

Section 504B.291 implies that acceptance of a partial payment of rent *without a written agreement* may waive the eviction (unlawful detainer) action based on the remaining rent due. *Howard v. _____,* No. 27-CV-HV-13-3143 (Minn. Dist. Ct. 4th Dist. June 19, 2013) (Appendix 792) (expungement granted under inherent authority for acceptance of part payment of rent for oral lease); *Union Hall Apartments v. _____,* No. 27-CV-HC-12-3761 (Minn. Dist. Ct. 4th Dist. May 14, 2013) (Judge Kaman) (Appendix 793) (expungement granted and referee decision reversed where complaint pled less than one month's rent due, defendant claimed partial payment of rent that plaintiff did not contest, and plaintiff did not introduce the lease or any written nonwaiver agreement); *Bottineau Commons Limited Partnership v. _____,* No. 27-CV-HC-12-7930 (Minn. Dist. Ct. 4th Dist. Apr. 3, 2013) (Judge Rosenbaum) (Appendix 794) (expungement granted and referee decision reversed for accepting partial payments of rent equaling the full rent without a written non-waiver agreement); *Sumner Field Partners 2, L.P. v. _____,* No. 27-CV-HC-12-7838 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2013) (Appendix 702) (expungement granted for partial payment of rent before action commenced and full payment of rent before service of complaint); *Singh v. _____,* No. 27-CV-08-1136 (Minn. Dist. Ct. 4th Dist. Nov. 16, 2012) (Appendix 795) (Judge Hedlund) (expungement granted and referee decision reversed where complaint pled less than full rent due and landlord accepted partial payment of rent before filing action); *Dibba v. _____,* No. 27-CV-HC-12-3108 (June 25, 2012, June 14, 2012) (Appendix 789) (expungement granted after dismissal based on partial rent payment accepted without written agreement required under statute); *J&M Homes, L.L.C. v. _____,* No. 27-CV-HC-11-5292 (Minn. Dist. Ct. 4th Dist. Aug. 25, 2011) (Appendix 790) (dismissal and expungement granted where eviction case was based on partial rent payment accepted without written agreement required under statute); *Borsay v. _____,* No. 27-CV-HC-09-9322 (Minn. Dist. Ct. 4th Dist. Dec. 30, 2009) (Judge Swenson) (Appendix 796) (dismissal and expungement for accepting partial payment of rent in violation of Minn. Stat. § 504B.291); *Azzam v._____,* No. 27-CV-HC-09-6888 (Minn. Dist. Ct. 4th Dist. Jan. 27, 2010, Sep. 9, 2009) (Appendix 791) (expungement granted after dismissal based on accepted partial payment without written agreement required under statute); *Weniger v. _____,* No. 27-CV-HC-09-4460 (Minn. Dist. Ct. 4th Dist. June 30, 2009) (Appendix 749) (plaintiff waived right to prompt payment of rent by accepting late rent 5 or more times; tenant awarded $200 in costs that can be deducted from rent); *Rush v. _____*, No. 27-CV-HC-09-361 (Minn. Dist. Ct. 4th Dist. Jan. 26, 2009) (Appendix 618) (eviction dismissed where landlord accepted part payment of rent after filing action, and lease did not contain a non-waiver clause); *Ali v. _____,* No. 060310538 (Minn. Dist. Ct. 4th Dist. Mar. 24, 2006) (Appendix 666) (eviction dismissed for improper pleading and partial payment of rent; costs awarded); *Exodus Community Development Co. v. _____*, No. HC 040109515 (Minn. Dist. Ct. 4th Dist. Jan. 23, 2004) (Appendix 495) (dismissal where landlord accepted part payment of rent); *Svendsen v. _____*, No. HC 1031006510 (Minn. Dist. Ct. 4th Dist. Oct. 15, 2003) (Appendix 582a) (dismissal where landlord accepted part payment of rent); *Brooklyn Park Housing Associates I, LLP v. _____*, No. HC 1010124505 (Minn. Dist. Ct. 4th Dist. Feb. 7, 2001) (Appendix 482) (landlord may pursue claim for part payment of rent only if there is a written document reserving that right; landlord may amend complaint to claim current rent claim not waived by part payment, with tenant retaining right to redeem); *Valley Investment & Management, Inc. v. _____,* No. HC 000927525 (Minn. Dist. Ct. 4th Dist. Nov. 1, 2000) (Appendix 589a) (14 day notice requirement for termination of month-to-month tenancy for nonpayment of rent in Minn. Stat. § 504B.135 (formerly 504.06) is not required for a nonpayment of rent eviction action; landlord's acceptance of part payment without a written agreement to retain an eviction claim for the balance waives the eviction claim; plaintiff cannot amend complaint once defendant has served an answer).[11]

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[11] *O'Connor v. Miller*, UD-194-0211505 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1994) (Appendix 178); *Jensen v. Bosto*, No. UD-1931203513 (Minn. Dist. Ct. 4th Dist. Dec. 17, 1993) (Appendix 74) (landlord may not evict

In *Filister v. Okabue*, No. C6-97-61 (Minn. Ct. App. July 1, 1997), FINANCE AND COMMERCE at 45 (July 3, 1997) (Appendix 254) (Unpublished), the Court of Appeals, without citing Minn. Stat. § 504.02 (now § 504B.291), affirmed decision for landlord where landlord made monthly written rent payment requests noting possibility of legal action, lease included lost rent and non-waiver clauses, and tenants' underpayment was too small to justify immediate legal action.

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tenant for nonpayment of rent if landlord accepted part payment of rent in absence of written agreement with tenant); *Jorgenson v. Bishop*, No. UD-1930913525 (Minn. Dist. Ct. 4th Dist. Sept. 24, 1993) (Appendix 12.A) (acceptance of part payment for September rent without written agreement preserving right to pursue writ for the balance required dismissal).

The issue was been confused by the decision in *Jackson v. Minor*, No. UD-1949119514 (Minn. Dist. Ct. 4th Dist. Apr. 11, 1994) (Appendix 52). In *Jackson*, the district court judge reversed the decision of the housing court referee, which was consistent with Section 504.02 (now § 504B.291), *Jensen*, and *Jorgenson*. The court concluded, against the language of the statute, that the statute required the tenant to obtain a written agreement from the landlord if the partial payment was intended to satisfy the entire balance due. It appears that the court was concerned that strict application of the statute would prohibit the landlord from ever obtaining the remaining rent from the tenant. However, Section 504B.291 simply prohibits the landlord from *evicting* the tenant for the remaining rent if the landlord has not preserved the remedy in a written agreement. The statute does not prohibit the landlord from seeking the remaining rent by withholding the tenant's security deposit, or filing a rent claim in conciliation court. Since the *Jackson* decision, the housing court referee has been following *Jackson*. *See Kahn v. Greene*, No. UD-1940330506 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46). Counsel should argue that *Jackson* simply misreads the statute, apparently based on the incorrect assumption that strict application of the statute would prohibit the landlord from ever receiving the entire rent due.

Beginning in 1995, the courts went back to the earlier and correct reading of the statute, and have not followed *Jackson*. *Regal Estates Mobile Home Park v. Braun*, No. C3-98-2003 (Minn. Dist. Ct. 7th Dist. Dec. 1, 1998) (Judge Kirk) (Appendix 416) (Landlord acceptance of part payment in September waived unlawful detainer action for prior rents, but would not affect landlord's action to recover prior rents in a contract damages action); *Marvin Gardens Limited Partnership v. Becker*, Transcript No. UD-2981207200 (Minn. Dist. Ct. 4th Dist. Dec. 17, 1998) (Appendix 344) (Connolly, J.: Dismissal where landlord held tenant's part payment of rent for two weeks, returning it just prior to hearing); *Pow-Bel, L.L.P. v. Schultz*, No. UD-2970122203 (Minn. Dist. Ct. 4th Dist. Feb. 3, 1997) (Appendix 287) (Dismissal for part payment); *Goldview Properties v. McFarland*, No. UD-4970718401 (Minn. Dist. Ct. 4th Dist. July 28, 1997) (Appendix 256); *Jackson*. *Bebault v. Cox,* No. UD-950718854 (Minn. Dist. Ct. 4th Dist. Aug. 3, 1995) (Appendix 134) (wavier by part payment of services as rent); *Highland Management Group, Inc. v. Swanger*, No. UD-495071205 (Minn. Dist. Ct. 4th Dist. July 24, 1995) (Appendix 135) (waiver by acceptance of part payment); *Eden Park Apartments v. Baxter*, Transcript, No. UD-2950612808 (Minn. Dist. Ct. 4th Dist. June 22, 1995) (Appendix 136) (waiver by acceptance of part payment not affected by receipt signed two days later); *Dube v. Dahill*, Partial Transcript, No. 2941107802 (Minn. Dist. Ct. 4th Dist. Nov. 17, 1994) (Appendix 137) (waiver by acceptance of part payment without a written agreement to the contrary). In *H & Val J. Rothschild, Inc. v. Sampson*, No. CX-95 396 (Minn. Ct. App. Oct. 24, 1995), FINANCE & COMMERCE at 28 (Oct. 27, 1995) (Appendix 157), the raised the issue of waiver by part payment of rent, but the landlord notified the tenant by letter of back rent due and proposed a payment plan. The trial court found that the tenant has not complied with the letter and held for the landlord, and the Court of Appeals affirmed. While the court appeared confused about application of the statute, the statute did not apply in this case. *See* SUMMARY RESIDENTIAL LANDLORD-TENANT ACTIONS IN HOUSING COURT: A BENCH BOOK FOR JUDGES, REFEREES AND MEDIATORS at 21 (Fourth Jud. Dist. Hous. Ct. Rev. Feb. 1996).

In *JHCJ Associates v. Bryant*, No. UD-1960606502 (Minn. Dist. Ct. 4th Dist. Jul. 31, 1996) (Appendix 217), the Section 8 certificate landlord did not waive the right to evict for back rent because landlord regularly and consistently notified tenant of landlord's continuing claim for rent, but the court hesitated to evict the Section 8 tenant who has made timely rent payments recently, and authorized prospective monthly payments on the back rent.

A provision in a lease purporting to be a non-waiver clause might not cover part payment of rent. *The Wirth Companies v. Victor*, No. UD-1931108551 (Minn. Dist. Ct. 4th Dist. Nov. 30, 1993) (Appendix 420), (a landlord may satisfy the requirement for a written agreement stating that part payment of rent does not waive eviction with a provision in the lease, but a non-waiver clause directed at non-financial breaches does not include part payment of rent).

14. Waiver of past rent due by accepting rent for later months

Section 504B.291 (formerly 504.02) provides that rental payments intended to redeem the tenancy must first be applied to rent claimed in the complaint for prior rental periods before being applied to the most recent period, *unless the court finds the claim for earlier rent has been waived. Id.* (emphasis added). This implies that the landlord can waive past rent claims, probably by acceptance of rent for later months.

15. Receipts, money orders, and when and how much rent is due

a. *Amount of rent*

The plaintiff must prove that rent is due by the preponderance of the evidence. *Lewandoski v. _____,* No. 27-CV-HC-15-3209 (Minn. Dist. Ct. 4th Dist. Aug. 6, 2015) (Appendix 783) (dismissal at close of plaintiff's case where landlord testified about lease, $18,000 in unspecified rent, and termination notice but provided no exhibits and tenant testified she paid rent and utilities and received no notice; expungement granted; costs awarded); *Busse v. _____,* No. 27-CV-HC-14-5955 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2014) (Appendix 784) (judgment for tenant where lease stated rent was due 28th of month but did not state amount and landlord filed action on the 6th; expungement granted; costs awarded). *See* discussion at V.H.6.

Where the parties have agreed to a rent credit, the court should enforce the credit. *See Scherrier v. Harper*, No. UD-1940113508 at 2 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1994) (Appendix 50); *Brown v. Owens*, No. UD-1940726506 at 2-3, 5, 6 (Minn. Dist. Ct. 4th Dist. Aug. 18, 1994) (Appendix 48) (oral agreement for rent credit enforced).

The parties may agree to rent payments in installments. *Judnick v. Boje*, No. C7-96-600537 (Minn. Dist. Ct. 6th Dist. Apr. 19, 1996) (Appendix 202) (parties agreed to semi-monthly rent payments); *Brook v. Boyd*, No. C8-96-47 (Minn. Dist. Ct. 9th Dist. Feb. 13, 1996) (Appendix 207) (rent payable semi-monthly).

Where the landlord's agent received the rent and appropriated it to the agent's own use, the tenant is not liable for the rent. *Gjersten Realty Co., v. Holland Investment Co.*, 148 Minn. 473, 474, 180 N.W. 774, 775 (1921). *See Z & S Management Co. v. Jankowicz,* No. UD-1920219515 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1992) (in dispute over whether tenant paid rent, court found that tenant paid rent).

a1. *Premature rent claim*

See discussion, *supra*, at VI.D.19.

b. *No agreement on when the rent is due*

Where the lease and the custom of the parties do not indicate when the rent is due, the rent may not be due until the end of the term. *Johanson v. Hoff*, 63 Minn. 296, 297, 65 N.W. 464 (1895); *First Nat'l Bank of Omaha v. Omaha Nat'l Bank*, 191 Neb. 249, __, 214 N.W.2d 483, 485 (1974); *Bashor v. Turpin*, 506 S.W.2d 412, 421 (Mo. 1974). R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT, § 539 at 348-49 (1980) (list of cases). *See Cheney v. Attaway,* No. UD-1910717523 (Minn. Dist. Ct. 4th Dist. July 30, 1991) (Appendix 11.K) (dismissed complaint filed July 17, where parties agreed rent was due on or before July 30).

When the parties have neither a written nor oral agreement of undisputed terms but act as if there is a rental agreement by continuing all the indicia of a landlord/tenant relationship, the court must determine the applicable terms by their actions and the surrounding circumstances. The landlord's regular acceptance of a specific sum from the tenant based on the tenant's written offer to pay that sum, and the landlord's acceptance of it for the following eight months without any written or oral objections to it, establishes the parties' agreement to rent at that sum. *Orchestra Hall Associates v. Crawford*, No. UD-1960119508 (Minn. Dist. Ct. 4th Dist. Feb. 13, 1996) (Appendix 177).

c. *Waiver of prompt payment of rent*

The landlord may waive prompt payment of rent by accepting, without objection, late rental payments. *See Gardner Investments, Inc. v. _____*, No. HC 040102502 (Minn. Dist. Ct. 4th Dist. Jan. 15, and Mar. 10, 2004) (Appendix 504) (dismissal where landlord waived prompt payment of rent; later expunged); *Jim Bern Co. v. LeRoy*, No. HC 011228400 (Minn. Dist. Ct. 4th Dist. Jan. 10, 2002) (landlord accepted late payments of rent over 5 years); *Eldemire v. Shilts*, 442 So.2d 1351, 1352 (La. Ct. App. 3rd Cir. 1983), *cert. denied*, 445 So.2d 452 (La. 1984); *Butterfield v. Duquesne*, 66 Ariz. 29, __, 182 P.2d 102, 103 (1947); R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT, § 539 (Bancroft-Whitney 1980 and Supp. 2008); RESTATEMENT (SECOND) OF PROPERTY § 12.1 comment c (1977). *See also Cobb v. Midwest Recovery Bureau Co.* 295 N.W.2d 232, 237 (Minn. 1980) (secured party's repeated acceptance of late payments waives right of repossession until notice of requirement of strict compliance with contract is given); *Steichen v. First Bank Grand*, 372 N.W.2d 768, 771 (Minn. Ct. App. 185) (followed *Cobb*); In *Chaska Village Townhouses and Lifestyle, Inc. v. Edberg,* No. 91-27365 (Minn. Dist. Ct. 1st Dist. Apr. 1, 1991) (Appendix 11.L) the court held plaintiff induced defendant to believe that late rent payments would continue to be accepted, citing *Cobb and Steichen. See* discussion, *supra*, at VI.D.19.

No waiver occurs where the lease contains a non-waiver clause. *Taherzadeh v. Clements,* 781 F.2d 1093, 1098 (5th Cir. 1986); R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT, § 539 (Bancroft-Whitney 1980 and Supp. 2008); RESTATEMENT (SECOND) OF PROPERTY § 12.1 comment c (1977). The landlord can reassert the right to prompt payments by giving sufficient notice to the tenant that strict compliance with the terms of the lease are required. *See LaSalle Nat'l Bank v. Helry Corp.*, 136 Ill. Ct. App. 3d 897, __, 483 N.E.2d 958, 963 (1985); R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT, § 539 (Bancroft-Whitney 1980 and Supp. 2008); RESTATEMENT (SECOND) OF PROPERTY § 12.1 comment c (1977). *See also Cobb* 295 N.W.2d at 237 (repossession); *Steichen*, 372 N.W.2d at 771 (repossession).

d. *Receipts required for cash*

In 2010 the Minnesota Legislature enacted Minn. Stat. § 504B.118, which provides: "A landlord receiving rent or other payments from a tenant in cash must provide a written receipt for payment immediately upon receipt if the payment is made in person, or within three business days if payment in cash is not made in person." Proof of a violation would be the landlord's admission of money where rent was paid without an evidence of a written receipt.

The statute does not include a remedy. Options for remedies include abatement of rent or dismissal of the action, or precluding the landlord to claim unpaid rent now when the landlord failed to provide receipts when rent was paid.

e. *Money orders*

In 2010 the Minnesota Legislature amended Minn. Stat. § 504B.291, subd. 1, to provide:

> There is a rebuttable presumption that the rent has been paid if the tenant produces a copy or copies of one or more money orders or produces one or more original receipt stubs evidencing the purchase of a money order, if the documents: (i) total the amount of the rent; (ii) include a date or dates approximately corresponding with the date rent was due; and (iii) in the case of copies of money orders, are made payable to the landlord. This presumption is rebutted if the landlord produces a business record that shows that the tenant has not paid the rent. The landlord is not precluded from introducing other evidence that rebuts this presumption.

If the tenant has a copy of one or more money orders, or original receipt stubs evidencing the purchase of a money order, which total the rent amount, are dated on or around the date rent was due, and are made payable to the landlord, there is a rebuttable presumption that the tenant paid the rent.

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix 708), the landlord Meldahl brought this eviction action to remove the tenants from his property for non-payment of rent and breach of the lease. Meldahl claimed that the tenants breached the lease by owing an outstanding water bill, late rent fees, and moving fees. On his nonpayment of rent charge, Meldahl claimed the tenants failed to pay rent for two months. The district court held that none of Meldahl's asserted breach claims constituted a material breach. Further, Meldahl claimed that the tenants breached the lease by allowing housing inspectors into the house without providing him prior notice. The court denied this claim and found the clause in the lease requiring such notice unconscionable and thus unenforceable.

In regards to the non-payment of rent, simply filing an eviction notice is not enough to warrant actual eviction. Instead, Meldahl was required to show by a preponderance of the evidence that (1) there is a lease agreement with a rental amount due; and (2) that the rental amount was not paid pursuant to the agreement. Meldahl failed to meet this burden, as the tenants were able to provide credible evidence that they had, in fact, paid rent. Under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption. The tenants sought the abatement of rent because, they claim, Meldahl breached his covenants of habitability, due to numerous and unresolved problems with the house (e.g., holes in the floor, a malfunctioning toilet, flooding in the basement, etc.). The court entered judgment for the tenants and referenced rent abatement ordered in a companion emergency tenant remedies action. The court granted the right to remain in possession of the

premises, allowable costs, rent abatement, and expungement.

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. Meldahl argued that the referee erred by (1) finding the tenants had not materially breached the lease; (2) finding the tenants' testimony was credible, while Meldahl's was not; and (3) failing to address the tenants' allegations of improper service. The court affirmed the referee's findings in their entirety. First, the tenants did not materially breach the lease by failing to mow the lawn, failing to pay the water bill, allowing housing inspectors into the house without Meldahl's prior notice, or failing to pay rent. The referee's findings were not clearly erroneous and the court upheld his conclusions. Furthermore, under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption, and thus the court determined Meldahl cannot base an eviction action on mere allegations. Next, in addressing Meldahl's credibility argument, the court stated that it defers to the referee's credibility determinations and would not reconsider those. And finally, the court addressed the tenants' allegations of improper service, but found that service was proper because tenants failed to prove otherwise by clear and convincing evidence.

16. Discrimination *See* discussion, *infra* at VI.F.8, VI.G.8.

17. Reasonable accommodation of disabilities *See* discussion, *infra* at VI.G.9.

In *FHRC of Southeastern PA v. Morgan* (E.D. Pa., April 11, 2017) http://www.paed.uscourts.gov/documents/opinions/17D0260P.pdf, the court held that a rental management company's strict policy requiring rent to be paid on the first of the month may violate the Fair Housing Act and Pennsylvania Human Relations Act. The Fair Housing Rights Center (FHRC) in Southeastern Pennsylvania sued a rental management company, Morgan, alleging that Morgan's strict rent policy made housing unavailable to Social Security Disability Insurance (SSDI) recipients, who rely on government checks that can arrive on the second, third, or fourth Wednesday of the month, and that Morgan's refusal to modify that policy upon request amounts to a refusal to make a reasonable accommodation. Morgan filed a motion for judgment on the pleadings. The court denied the motion, holding that the facts pled by FHRC were sufficient to establish a claim for relief.

As to whether the rental policy effectively makes housing unavailable on the basis of disability, the court said: "Since many SSDI recipients rely almost exclusively on their SSDI check for financial support, Defendants' strict rental policy makes it burdensome for SSDI recipients to reside in Defendants' properties without incurring late fees and court costs. Clearly, Defendants' current policy may well deter disabled persons from residing in Defendants' rental units."

As to reasonable accommodation, the Court held that the FHRC alleged sufficient facts to support a claim, but left room for Morgan to defeat that claim at trial by showing that the requested relief (modification of the due dates for recipients of SSDI) would be unduly burdensome, or that Morgan's policy of requiring the first month's rent in advance provides a reasonable alternative to the requested accommodation because SSDI recipients would receive their check before the next month's rent is due.

18. Utilities

a. *Tenant or landlord liability under the lease*

Utilities and other charges may be considered rent, entitling defendant to redeem the premises by paying the amount due. *Central Union Trust Co. v. Blank*, 168 Minn. 312, 316, 210 N.W. 34, __ (1926) (covenant to pay taxes is part of consideration for payment of lease); *American Land Real Estate Investment Corp. v. Pokorny*, No. C0-90-1649 (Minn. Ct. App. Dec. 18, 1990) (Appendix 53) (unpublished: obligation to buy insurance equivalent to paying rent); *Kahn v. Greene*, No. UD-1940330506 at 7 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46) (water bill deemed as rent); *Schaapveld v. Crump*, No. UD-1951011528 (Minn. Dist. Ct. 4th Dist. Oct. 31, 1995) (Appendix 115) (the parties' prior conduct demonstrated that tenants agreed to pay gas utilities and landlord agreed to pay water, sewer and recycling costs).

Where the landlord claims that the tenant owes money on utility bills, but the account was in the landlord's name and the landlord has not given the tenant copies of the bills, the court should order the landlord to give the tenant the bills, and give the tenant time to make arrangements to pay them. *Aker v. Kennedy*, No. UD-1950908541 (Minn. Dist. Ct. 4th Dist. Oct. 19, 1995) (Appendix 165) (landlord given deadline to provide bills to tenant, but tenant not given deadline to make arrangements to payment). *See Amsler v. Wright*, No. UD-1960502510 (Minn. Dist. Ct. 4th Dist. May 30, 1996) (Appendix 186) (landlord required to pay water bills where specific lease provisions state such, and general lease term permitting landlord to assess water bills from tenants is invalid; landlord ordered not to collect water bill payments from tenants).

b. *Landlord liability with shared meters*

(1) 1995 statute

In 1995 Minn. Stat. § 504B.215 (formerly § 504.185) was amended to require landlords to be the customer of record and responsible bill payer for utility services provided to a residential building with a single meter providing service to an individual unit *and* all or parts of the common areas or other units. 1995 Minn. Laws Ch. 192. The landlord must advise the utility provider about the status of the building. The landlord's failure to comply with the statute is a violation of the covenant of habitability in Section 504B.161 (formerly § 504.18), subd. 1(a), and Section 504B.221 (formerly § 504.26). This requirement may not be waived by contract or other method. The statute does not require the landlord to contract and pay for utility service provided to each residential unit through separate meters which accurately measure the units use only.

Before the year 2000, a landlord using shared meters who wanted to shift the burden of paying for utilities to the tenant has two options: (1) calculate past usage and factor it into the rent, or (2) install separate and accurate meters. The landlord could not simply pay the utility bill and then rebill the tenant. *Carr v. Jerry Schlink, Associated Enterprises of Minneapolis*, No. UD-1980601900 (Minn. Dist. Ct. 4th Dist. Apr. 1, 1999) (Appendix 318) (Referee decision affirmed on judge review on reconsideration: clear language of Minn. Stat. § 504.185 (now § 504B.215), Subd. 1a, and legislative history prohibit landlord rebilling for utility service on shared meters). *See Britton v. Foundtainplace Apartments and Equity Residential Properties Trust*, No. UD-1990810901 and Conc. Ct. 990810050 (Minn. Dist. Ct. 4th Dist. Oct. 18, 1999) (Appendix 381) (Landlord's use of mathematical formula for apportioning the bill of a shared meter to separate tenants violated the shared meter statute. Tenant awarded $250 in costs for landlord's failure to register trade name with the Secretary of State; costs may be set off against rent; a flat monthly fee for trash removal does not violate the shared meter statute., affirmed, *Britton v. Foundtainplace Apartment, Equity Residential Properties, and Melair Associates Limited Partnership*, No. 1990810901 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999) (Appendix 381) (Referee's decision affirmed, following *Car v. Schlink. See Amsler v. Wright*, No. UD-1960502510 (Minn. Dist. Ct. 4th Dist. May 30,

1996) (Appendix 186) (landlord responsible for all utilities services which do not separately and accurately measure the tenant's sole use of utilities); *Robinson v. Schaapveld*, No. UD-1951006523 (Minn. Dist. Ct. 4th Dist. Dec 15, 1995) (Appendix 209) (utility meter which can operate as a separate meter or a shared meter cannot reliably and accurately measure usage, requiring the owner to contract with the utility for service; when one tenant pays gas service for another tenant of a separate unit, the owner is responsible for one half of the tenant's service costs); *Henderson v. Schaapveld*, No. UD-1950127501 (Minn. Dist. Ct. 4th Dist. Apr. 10, 1995) (Appendix 119), the court ordered the landlord to pay a reasonable portion of the utility bill where the tenant did not have a separate and accurate meter.

In *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999) (Appendix 426), in a compliance order in consolidated unlawful detainer and emergency tenant remedies actions, the court concluded that the landlord violated unlawful exclusion statute by excluding tenant from the basement; landlord violated shared meter statute where the tenant's meter covered her first floor apartment and the common basement which the landlord used for an office and for personal use; the landlord violated the tenant's privacy for coming on the property to do repairs without notice, and by interrogating guests of the tenant; the tenant proved that landlord did not provide a certificate of rent paid; the landlord failed to prove that tenant failed to pay rent in a timely manner; the tenant was awarded monthly rent abatement of $300 from $650 (46%) ongoing, $500 for exclusion from the basement, $500 for privacy violations, $500 for violation of the shared meter statute, all of which could be credited against rent; the landlord was ordered to cease violations of tenant's privacy, and immediately provide the tenant with a certificate of rent paid.

(1a) Common areas

Shared meters are common in duplex units. Even where there are meters for each unit, one meter may be covering the common areas. *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999) (Appendix 426) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: landlord violated shared meter statute where tenant's meter covered her first floor apartment and the common basement which the landlord used for an office and for personal use; $500 for violation of the shared meter statute, all of which could be credited against rent).

(2) 2000 amendment

In 2000 the Minnesota Legislature revised Minn. Stat. § 504B.215 (formerly § 504.185) to allow a landlord in narrowly prescribed circumstances to apportion a shared meter bill among residential tenants. Minn. Laws 2000, Chapter 268. The revision is effective August 1, 2000, but is retroactive to August 1, 1995, only for leases which already included a provision for apportioning shared meter utility charges where no judicial or administrative court had rendered a decision. The amended statute includes a new subdivision to small a, which provides the conditions under which a landlord of a singled metered residential building may apportion bills among tenants. The landlord must provide prospective tenants with notice of the total utility cost for the building for each month of the most recent calendar year. The landlord must state in writing an equitable method of apportionment and the frequency billing by the landlord. The lease must contain a provision that upon a tenant's request, the landlord must provide a copy of the actual utility bill for the building along with each apportioned utility bill. Upon a tenant's request, the landlord must also provide past copies of actual utility bills for any period of the tenancy for which the tenant received an apportioned utility bill for the proceeding two years or the period since the landlord acquired the building, whichever is less. The landlord and tenant may agree to use a lease term

of one year or more with the option to pay bills under an annualized budget plan providing for level monthly payments based on a good faith estimate of the annual bill. By September 30 of each year, the landlord must inform tenants in writing of the possible availability of Energy Assistance, including the toll-free telephone number of the administering agency.

Local ordinances may contain similar requirements to the amended statute. *See* Minneapolis Code of Ordinances § 244.270 (Appendix 138); discussion, *supra*, at VI.E.1.d.(3).

(2a) Post-2000 amendment cases

(a) Rent abatement

The reference to the covenants of habitability should make it clear that a tenant is entitled to rent abatement when the tenant is forced to pay for utility service through a single meter which does not reflect the use in the tenant's apartment. *Alex Prop. Inc. v. _____,* No. 27-CV-HC-11-4241 (Minn. Dist. Ct. 4th Dist. Aug. 18, 2011) (Appendix 761) (rent abatement of $50 per month for a total of $600 for landlord's failure to strictly comply with shared meter statute); *Wilson v. Lowe*, No. UD-1991123901 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 429) (Rent escrow action: tenant awarded treble what she paid on shared electrical meter covering basement and common areas in addition to her unit, and rent abatement of $2,600 over eight months (37%)).

(b) Damages

The tenant entitled to reimbursement for payments made on an illegally shared meter. *Matsumoto v. _____,* No. AC 02-2123 (Minn. Dist. Ct. 4th Dist. Apr. 19, 2002) (Judge Alton) (after license was revoked, landlord's rental was unlawful and was not entitled to collect rent; rent abatement of $2695; landlord violated shared meter statute, tenant entitled to reimbursement for payments made; landlord not entitled to late fees when he did not have a rental license; landlord proved some cleaning expenses deducted from the security deposit, but not other damages and penalties; tenant entitled to deposit penalties where part of landlord's withholding was in bad faith); _____ *v. Siganos*, No. HC 020201900 (Minn. Dist. Ct. 4th Dist. Mar. 5, 2002) (Appendix 451) (rent escrow action; habitability rent abatement of $100 per month for $1700, which can be credit against future rent with notice; tenant's payments for repairs and on shared meter credited against rent; tenant authorized to repair); *Wilson v. Lowe*, No. UD-1991123901 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 429) (Rent escrow action: tenant awarded treble what she paid on shared electrical meter covering basement and common areas in addition to her unit, and rent abatement of $2,600 over eight months (37%)).

In *Walters v. Demmings*, No. UD-1990916517 (Minn. Dist. Ct. 4th Dist. Nov. 15, 1999) (Appendix 422), the duplex had separate electrical and gas meters for each unit. The electrical meter for the downstairs tenant also covered the basement and hallways, with the court concluding that it was a shared meter. After the furnace became inoperable and the landlord failed to supply adequate temporary heat and the tenant withheld rent, the landlord and tenant filed unlawful detainer and emergency tenant remedies actions, which the court consolidated. The court dismissed the landlord's notice to quit claim as premature, as the action was filed before the effective date of the notice. The court awarded rent abatement at $200 a month from $480 per month rent (42%), $500 in shared meter statutory damages, $500 for utility service interruption damages, all of which could be credited against future rent. The tenant moved for reconsideration of the shared meter damages, arguing that her damages exceeded the $500 statutory minimum. The court rejected the argument, concluding that the tenant must prove how

much usage occurred outside of her unit. *Demmings v. Walters*, No. UD-1991006902 (Minn. Dist. Ct. 4th Dist. Mar. 22, 2000) (Appendix 422).

In *Kutscheid v. Emerald Square Properties, Inc.*, No. 27-CV-HC-08-3439 (Minn. Dist. Ct. 4th Dist. May 21, 2010) (Appendix 763), the court limited ing damages to the difference between what the tenant paid and what the tenant expected to pay in the initial term of the lease, or $115 plus costs and attorney's fees.

Tenants should argue that the *Demmings* and *Kutscheid* decisions are incorrect. The decision are based on the conclusion that the tenant is responsible for electricity consumed in the tenant's unit. However, where the landlord employs an illegal shared meter, the statute requires the landlord to be the bill payer of record, in other words, it is the landlord who is responsible for electricity consumed in the tenant's unit. The tenant's damages should be the amount paid by the tenant on what should have been the landlord's account, with the amount trebled under the statute.

In *Walters v.* _____, No. HC 10101004526 (Minn. Dist. Ct. 4th Dist. Oct. 26, 2001) (Appendix 593), the court held the landlord responsible for shared meter bills, and liable for treble damages or $500 to be credited against rent; the tenant payment on the bill was deemed payment of rent; the tenant entitled to costs and disbursements from successful Court of Appeal case; the habitability rent abatement was $150-175 per month; leave was granted to file a motion for attorney's fees; and $3818 was disbursed from court to the tenant.

(c) Treble damages or $500

In *Walters v.* _____, No. HC 10101004526 (Minn. Dist. Ct. 4th Dist. Oct. 26, 2001) (Appendix 593), the court held the landlord responsible for shared meter bills, and liable for treble damages or $500 to be credited against rent; the tenant payment on the bill was deemed payment of rent; the tenant entitled to costs and disbursements from successful Court of Appeal case; the habitability rent abatement was $150-175 per month; leave was granted to file a motion for attorney's fees; and $3818 was disbursed from court to the tenant. *See Wilson v. Lowe*, No. UD-1991123901 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 429) (Rent escrow action: tenant awarded treble what she paid on shared electrical meter covering basement and common areas in addition to her unit, and rent abatement of $2,600 over eight months (37%)).

(d) Common areas

In *Wilson v. Lowe*, No. UD-1991123901 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 429), in a rent escrow actions, the tenant was awarded treble what she paid on shared electrical meter covering basement and common areas in addition to her unit, and rent abatement of $2,600 over eight months (37%)).

(e) Dismissal of eviction action

Dismissal of an eviction action is another remedy. *BIRDMA, LLC v.* _____, No. HC 1011102511 (Minn. Dist. Ct. 4th Dist. Dec. 7, 2001) (Appendix 476) (action filed on the 2nd was premature to claim service fee due on the 5th; tenant tendered but landlord refused rent; landlord failed to prove amount of utility bills; lease did not comply with shared meter statute conditions; eviction action dismissed);

(3) *Kutscheid v. Emerald Square Properties, Inc.*

In *Kutscheid v. Emerald Square Properties, Inc.*, 770 N.W.2d 529 (Minn. Ct. App. 2009), the tenant filed a rent escrow action against her landlord, claiming that the landlord violated Minn. Stat. § 504B.215, subd. 2a by failing to disclose the total utility cost for the building for each month of the most recent calendar year before she became a tenant in the single-metered multi-unit residential apartment building. The landlord argued that disclosure of the average monthly cost for a single unit over the course of one year was sufficient. The referee ruled to the landlord, and the district court judge affirmed. *Id.* at 530-31.

The Court of Appeals reversed, holding that "statute requires disclosure of the total utility cost for the building for each month of the most recent calendar year." *Id.* at 531-32. The court also concluded that the treble damages provision on Minn. Stat. § 504B.221(a) did not apply to shared meters, and remanded for a determination of damages. *Id.* at 532-33.

On remand, the housing court referee award the tenant $1800 in overpaid utilities, costs and attorney's fees. *Kutscheid v. Emerald Square Properties, Inc.*, No. 27-CV-HC-08-3439 (Minn. Dist. Ct. 4th Dist. Dec. 29, 2009) (Appendix 762). On judicial review, the decision was reversed in part, limiting damages to the difference between what the tenant paid and what the tenant expected to pay in the initial term of the lease, or $115 plus costs and attorney's fees. *Kutscheid v. Emerald Square Properties, Inc.*, No. 27-CV-HC-08-3439 (Minn. Dist. Ct. 4th Dist. May 21, 2010) (Appendix 763).

However, other decisions have not limited damages in this fashion. *See* discussion, *supra*, at VI.E.18.b.(2a)

(4) 2010 amendment overruling *Kutscheid* regarding damages

In 2010 the Minnesota Legislature made a number of changes to Minn. Stat. § 504B.215, subd. 2a, including overruling *Kutscheid* regarding damages. 2010 Minn. Laws Ch. 315 § 7. It now reads:

> Subd. 2a. Conditions of separate utility billing to tenant in single-meter buildings.
>
> (a) A landlord of a single-metered residential building who bills for utility charges separate from the rent:
>
> > (1) must provide prospective tenants notice of the total utility cost for the building for each month of the most recent calendar year;
> >
> > (2) must predetermine and put in writing for all leases an equitable method of apportionment and the frequency of billing by the landlord;
> >
> > (3) must include in the lease a provision that, upon a tenant's request, the landlord must provide a copy of the actual utility bill for the building along with each apportioned utility bill. Upon a tenant's request, a landlord must also provide past copies of actual utility bills for any period of the tenancy for which the tenant received an apportioned utility bill. Past copies of utility bills must be provided for the preceding two years or from the time the current landlord acquired the building, whichever is most recent; and
> >
> > (4) may, if the landlord and tenant agree, provide tenants with a lease term of one year or more the option to pay those bills under an annualized budget plan providing for level monthly payments based on a good faith estimate of the annual bill.

(b) By September 30 of each year, a landlord of a single-metered residential building who bills for gas and electric utility charges separate from rent must inform tenants in writing of the possible availability of energy assistance from the Low Income Home Energy Assistance Program. The information must contain the toll-free telephone number of the administering agency.

(c) A failure by the landlord to comply with this subdivision is a violation of sections 504B.161, sub- division 1, clause (1), and 504B.221.

(5) Shared meter fees

In *Persigehel et al. v. Ridgebrook Investments Ltd. Partnership et. al.*, 858 N.W.2d 824 (Minn. Ct. App. 2015) tenants in two apartment complexes with single meter utilities brought a class action against their landlords and the company that provided the utility billing services. The tenants alleged the add-on fees assessed with their apportioned utility bills were either prohibited entirely or were inequitable in violation of Minn. Stat. § 504B.215. Plaintiffs also brought an unjust enrichment claim against the utility billing services company. After the defendants moved to dismiss, the district court held that Minn. Stat. § 504B.215 does not prohibit landlords from charging add-on fees, but the fees must be equitable and reasonable in comparison to the cost of the utility itself. The district court dismissed the unjust enrichment claim because the tenants had an adequate remedy at law. Both parties separately appealed and the district court certified a question as to whether Minn. Stat. § 504B.215 requires utility add-on fees charged tenants to be equitable and reasonable in comparison to the cost of services rendered or the utility costs paid. After consolidating the appeals and determining that the district court's question was properly certified, the Court of Appeals held as follows: (1) the plain language of Minn. Stat. § 504B.215 does not prohibit a landlord with a single-meter residential building from charging tenants fees in connection with their utility bills; (2) because Minn. Stat. § 504B.215, subd. 2a(a)(2) does not relate to utility add-on fees, the add-on fees do not need to be equitable and reasonable in comparison to the cost of the utility itself; and (3) the unjust enrichment claim failed as a matter of law because the benefit retained via the add-on fees was not prohibited or limited by law.

Judge Peterson dissented, asserting that "if a fee billed as part of the method of apportionment is not equitable, the method of apportionment is not equitable." *Id.* at 836 (dissent). *See State v. Northtown Village Limited Partnership*, (Minn. Dist. Ct. 10th Dist. July 21, 2003) (Appendix 576) (consent judgment: landlord enjoined from collecting administrative fees in connection with allocating shared meter bills, retaining interest on tenant payments made before utility bills are due, and allocating shared meter utility bills without the lease language required by Minn. Stat. § 504B.215 (formerly § 504.185); landlord required to write off tenant debts in connections with violation of the statute and enjoined from reporting such debts to others).

c. *Landlord termination of utilities*

A landlord may not unlawfully terminate or interrupt utility service to the tenant. Minn. Stat. § 504B.221 (formerly § 504.26). Remedies may include an order for restoration of service, rent abatement, statutory damages of the greater of treble actual damages or $500.00, and attorney's fees.

In *Soto v. Mananyi,* Nos. UD-1991022901 and UD-1991022902 (Minn. Dist. Ct. 4th Dist. Jan. 25, 2000) (Appendix 679), in an emergency tenant remedies action, the court awarded full rent abatement for 17 housing code violations and malfunctioning gas water heater requiring tenant to vacate property; tenant awarded damages for shelter, storing property, and transportation of $678 trebled to

$2034, costs, and attorney's fees; expungement of earlier eviction action settlement granted.

In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees.

The court later ordered that the tenant could remedy violations and deduct the cost from rent, rent abatement would increase from $100 to $200 out of monthly rent of $650, or from 15% to 31% if the landlord did not complete repairs, the tenant could credit payments on the landlord's water bill against rent, the landlord must obtain a rental license, the landlord's right to collect rent was suspended until he obtained the license, and prior orders relating to court approval of future filings remained in effect. *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1999) (Appendix 354G).

Later in 1999, the court issued more orders. *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: rent abatement increase to $300 from $650 (46%) after 1 ½ years of failure to complete repairs; fine of $750 payable to county; $1000 statutory damages and $200 rent abatement for two interruptions of utilities; $1000 for ten privacy violations; landlord ordered to stop privacy violations). *See* Washington Rent Abatement Table (Appendix 427). *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999) (Appendix 426) (compliance order in the consolidated unlawful detainer and emergency tenant remedies actions: landlord violated unlawful exclusion statute by excluding tenant from the basement; landlord violated shared meter statute where tenant's meter covered her first floor apartment and the common basement which the landlord used for an office and for personal use; landlord violated tenant privacy for coming on the property to do repairs without notice, and by interrogating guests of the tenant; tenant proved that landlord did not provide a certificate of rent paid; landlord failed to prove that tenant failed to pay rent in a timely manner; tenant awarded monthly rent abatement of $300 from $650 (46%) ongoing, $500 for exclusion from the basement, $500 for privacy violations, $500 for violation of the shared meter statute, all of which could be credited against rent; landlord ordered to cease violations of tenant's privacy, and immediately provide tenant with a certificate of rent paid.

In *Judge v. Rio Hot Properties, Inc.*, Nos. UD-1981202903, UD-1981005518, and UD-1981104522 (Minn. Dist. Ct. 4th Dist. Dec. 18, 1998), (Appendix 362D), in consolidated unlawful detainer and emergency tenant remedies action, the court concluded that the tenants were entitled to additional rent abatement beyond an ongoing rent abatement for loss of utilities, and the tenants were entitled to $500 in statutory damages for termination of utility services which they could credit against future rent.

In *LeDoux v. Zanosko*, No. CX-95-1001 (Minn. Dist. Ct. 9th Dist. Oct. 16, 1995) (Appendix 124), the plaintiff-landlord disconnected the defendant-tenants propane heat supply. The tenant filed an emergency tenants remedies action, the landlord refused to abide by the order, forcing the tenant to rent a motel room. The landlord then commenced an unlawful detainer action, alleging non-payment of rent and deposit, holding over after notice, in breach of the oral lease. The court concluded that the action was retaliatory, the notice to quit was improper, and the disconnection of propane was wrongful. The

court ordered complete retroactive and prospective rent abatement until the landlord reconnected service, and awarded the tenant judgment for relocation damages of $115 for a motel room, wrongful disconnection statutory damages of $500.00 under Minn. Stat. § 504.26 (now § 504B.221), and attorney's fees and costs of $500.00. *See Walters v. Demmings*, No. UD-1990916517 (Minn. Dist. Ct. 4th Dist. Nov. 15, 1999) (Appendix 422) (unlawful detainer and emergency tenant remedies actions,$500 for utility service interruption damages).

The landlord's termination of the tenant's utility service also constitutes a misdemeanor under Minn. Stat. §§ 504B.225 (formerly § 504.25), 609.606.

d. *Tenant payment of utility or essential services following landlord's nonpayment*

Minn. Stat. § 504B.215, Subd. 3 (formerly § 504.185) provides that when a municipality or company supplying home heating oil, propane, natural gas, electricity or water to residential housing has disconnected service or has given notice to disconnect service because the landlord who has contracted for the service has failed to pay for it, the tenant may pay to have the service reconnected. Before paying for the service, the tenant must give the landlord or landlord's agent oral or written notice of the tenant's intent to pay the bill after 48 hours, or a shorter period if reasonable under the circumstances, if the owner does not pay for the service. If the notice is oral, the tenant must mail or deliver written notice within 24 hours after giving the oral notice. If natural gas, electricity or water have been discontinued or if the landlord has not paid the bill after notice by the tenant, the tenant may pay the outstanding bill for the most recent billing period if the company or municipality will restore the service for at least one billing period. If home heating oil or propane has been discontinued or if the landlord has not paid the bill after the tenant's notice, the tenant may order and pay for one month's supply of a proper grade and quality of oil or propane.

The tenant's payment to the company or municipality is considered payment of rent to the landlord, and the tenant may deduct the payment to the company or municipality from the next rent payment to the landlord after submitting receipts for the payment to the landlord. § 504B.215 (formerly § 504.185) , subd. 3. The tenant's rights under the statute do not apply to conditions caused by the willful, malicious, or negligent conduct of the tenant or tenant's agent; may not be waived or modified; and are an addition to and do not limit other rights available to the tenant, including the right to damages. § 504B.215 (formerly § 504.185), subd. 4.

In 2008, the Legislature changed the statutes in several respects. First, it stated requirements for posting of the service disconnection notice. Second, it clarified that the tenant may continue service by paying only current and not past charges. Third, it allows tenants in buildings with less than 5 units to restore gas or electric service by becoming the prospective payer of record, with the utility treating the tenant like a new customer. Minn. Stat. § 504B.215, 2008 Minn. Laws Ch. 313.

In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees.

The court later ordered that the tenant could remedy violations and deduct the cost from rent, rent

abatement would increase from $100 to $200 out of monthly rent of $650, or from 15% to 31% if the landlord did not complete repairs, the tenant could credit payments on the landlord's water bill against rent, the landlord must obtain a rental license, the landlord's right to collect rent was suspended until he obtained the license, and prior orders relating to court approval of future filings remained in effect. *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1999) (Appendix 354G).

Later in 1999, the court issued more orders. *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: rent abatement increase to $300 from $650 (46%) after 1 ½ years of failure to complete repairs; fine of $750 payable to county; $1000 statutory damages and $200 rent abatement for two interruptions of utilities; $1000 for ten privacy violations; landlord ordered to stop privacy violations). *See* Washington Rent Abatement Table (Appendix 427). *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999) (Appendix 426) (compliance order in the consolidated unlawful detainer and emergency tenant remedies actions: landlord violated unlawful exclusion statute by excluding tenant from the basement; landlord violated shared meter statute where tenant's meter covered her first floor apartment and the common basement which the landlord used for an office and for personal use; landlord violated tenant privacy for coming on the property to do repairs without notice, and by interrogating guests of the tenant; tenant proved that landlord did not provide a certificate of rent paid; landlord failed to prove that tenant failed to pay rent in a timely manner; tenant awarded monthly rent abatement of $300 from $650 (46%) ongoing, $500 for exclusion from the basement, $500 for privacy violations, $500 for violation of the shared meter statute, all of which could be credited against rent; landlord ordered to cease violations of tenant's privacy, and immediately provide tenant with a certificate of rent paid.

See Moore v. Shelly, No. UD-1980619500 (Minn. Dist. Ct. 4th Dist. Jul. 8, 1998) (Appendix 351) (credit against rent for tenant payment after notice of $1,086 for water and gas services).

Alternatively, city ordinances may allow the tenant to pay and deduct. Minneapolis Code of Ordinances § 244.590 governs discontinuance of utility service from utility companies supplying service through a single meter to a multiple dwelling or duplex. The utility company must provide a notice of delinquency in payment of utility bills after utility bills are 60 days in arrears, or a notice of intent to discontinue such service for failure to pay utility bills not less than 31 days before the effective date of discontinuance. After the utility company has posted either notice at the building, the tenants in the building may pay any rents owing to the owner or operator of the building directly to the utility company. The utility company shall not discontinue service if it has received payments from the tenants sufficient to cover the current bill and either (1) 1/3 of the past due bill within 31 days after posting the original notice, (2) 2/3 of the past due bill within 62 days after posting the original notice, or (3) 100 percent of the past due bill within 92 days after posting the original notice. (Appendix 11.B). St. Paul Ordinance § 49.03 also allows the tenant to make payments to the utility company and deduct the cost from the rent after giving notice to the landlord. The amount deducted from the rent may not exceed three months rent in any twelve month period. (Appendix 11.C).

19. Combined actions for nonpayment of rent and material lease violations

Section 504B.285 (formerly § 566.03), subd. 5 allows the landlord to combine actions for nonpayment of rent and material lease violations. These claims shall be heard as alternative grounds. The hearing is bifurcated to first cover material violations of the lease, and then nonpayment of rent if the landlord does not prevail on the material lease violations claim. The tenant is not required to pay into

court outstanding rent, interest or cost to defend against the material lease violation claim. If the court reaches the nonpayment of rent claim, the tenant shall be permitted to present defenses. The tenant shall be given up to seven days to pay any rent and costs determined by the court to be due, either into court or to the landlord.

In *Olson v. _____,* No. 27-CV-HC-13-1834 (Minn. Dist. Ct. 4th Dist. July 13, 2015) (Appendix 700), the landlord filed an eviction complaint alleging tenant failed to pay rent for March and April 2013, and that the tenants materially breached the terms of the rental agreement by failing to pay the water bill since they moved in, refusing entry to the landlord to inspect the property, failing to keep property insurance, failing to provide proof of property insurance and suspected damage to the property. The court held that plaintiff failed to establish material breach of the lease because (1) while tenants failed to pay the water bill, and while this was a breach of the lease, the harm from the breach was not irreparable because damages would suffice and because landlord held $11,000 in security deposits which more than covered any outstanding amount; (2) landlord or his agent were either invited in or allowed in to inspect the premises, so landlord could not establish he was refused access; (3) tenant actually did maintain property insurance, so landlord could not establish tenant breached for failing to maintain insurance; (4) while tenant failed to provide proof of insurance, which was a breach, it was not a material breach and did not give rise to right of eviction; and (5) while landlord may have suspected damage to the property, the evidence suggested there was no such damage. Consequently, the landlord could not establish material breach. The landlord, however, did establish failure to pay rent, and the Court held that unless tenants pay the outstanding rent to redeem the premises, landlord would be entitled to retake possession.

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix 708), the landlord Meldahl brought this eviction action to remove the tenants from his property for non-payment of rent and breach of the lease. Meldahl claimed that the tenants breached the lease by owing an outstanding water bill, late rent fees, and moving fees. On his nonpayment of rent charge, Meldahl claimed the tenants failed to pay rent for two months. The district court held that none of Meldahl's asserted breach claims constituted a material breach. Further, Meldahl claimed that the tenants breached the lease by allowing housing inspectors into the house without providing him prior notice. The court denied this claim and found the clause in the lease requiring such notice unconscionable and thus unenforceable.

In regards to the non-payment of rent, simply filing an eviction notice is not enough to warrant actual eviction. Instead, Meldahl was required to show by a preponderance of the evidence that (1) there is a lease agreement with a rental amount due; and (2) that the rental amount was not paid pursuant to the agreement. Meldahl failed to meet this burden, as the tenants were able to provide credible evidence that they had, in fact, paid rent. Under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption. The tenants sought the abatement of rent because, they claim, Meldahl breached his covenants of habitability, due to numerous and unresolved problems with the house (e.g., holes in the floor, a malfunctioning toilet, flooding in the basement, etc.). The court entered judgment for the tenants and referenced rent abatement ordered in a companion emergency tenant remedies action. The court granted the right to remain in possession of the premises, allowable costs, rent abatement, and expungement.

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. Meldahl argued that the referee erred by (1) finding the tenants had not materially

breached the lease; (2) finding the tenants' testimony was credible, while Meldahl's was not; and (3) failing to address the tenants' allegations of improper service. The court affirmed the referee's findings in their entirety. First, the tenants did not materially breach the lease by failing to mow the lawn, failing to pay the water bill, allowing housing inspectors into the house without Meldahl's prior notice, or failing to pay rent. The referee's findings were not clearly erroneous and the court upheld his conclusions. Furthermore, under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption, and thus the court determined Meldahl cannot base an eviction action on mere allegations. Next, in addressing Meldahl's credibility argument, the court stated that it defers to the referee's credibility determinations and would not reconsider those. And finally, the court addressed the tenants' allegations of improper service, but found that service was proper because tenants failed to prove otherwise by clear and convincing evidence.

See discussion, *infra*, at VI.E.20.c (Redemption); VI.G.21 (Combined Actions); *Thomas v. Dobyne*, No. U-1980616536 (Minn. Dist. Ct. 4th Dist. Jul. 8, 1998) (Appendix 370B) (combined action for breach and rent; breach claims dismissed for lack of a right of re-entry clause, and where landlord failed to prove tenant conduct on the property which amounted to breach of lease; matter rescheduled for trial on rent issues).

20. Redemption

An eviction (unlawful detainer) action based upon nonpayment of rent "is equivalent to a demand for rent . . ." Minn. Stat. § 504B.291 (formerly 504.02). "[I]f, at any time before possession has been delivered to the plaintiff . . ., the [tenant] pays to the plaintiff or brings into court in the amount of the rent then in arrears, with interest and the costs of the action, and an attorney's fee not exceeding $5.00 and performs other [tenant] covenants . . . , the [tenant] may be restored to the possession . . ." *Id.* The statute restricts the landlord's right to restitution of the premises. *614 Co. v. D. H. Overmayer*, 297 Minn. 395, 397, 211 N.W.2d 891, 893-94 (1973); *Hanson v. Byrne*, No. C3-87-1408 (Minn. Ct. App. Feb. 16, 1988) (unpublished); *Valley Investment & Management, Inc. v. _____,* No. HC 000927525 (Minn. Dist. Ct. 4th Dist. Nov. 1, Dec. 19, 2000) (Appendix 590) (on motion to vacate judgment, tenant may redeem by paying rent, late fee, court filing fee, service fee, and $5 attorney fee, but not a conciliation court filing fee or statutory costs).

The right to redeem does not apply to an action for breach which does not include a claim for rent. *Castaways Marina, Inc. v. Dedrickson,* No. C1-02-1425, 2003 WL 1961861 (Minn. Ct. App. April 29, 2003) (unpublished)

The phrase "[a]t any time before possession has been delivered to the plaintiff" has been interpreted in two commercial cases. In *614 Co. v. D. H. Overmayer*, 297 Minn. 395, 397, 211 N.W.2d 891, 894 (1973), the court noted in *dictum* that the right of redemption exists "until a court has issued an order dispossessing the tenant and permitting reentry by the landlord." In *Paul McCusker & Associates, Inc. v. Omodt*, 359 N.W.2d 747, 749 (Minn. Ct. App. 1985), *petition for cert. denied* (Minn. Mar. 29, 1985), the Court of Appeals held that the right of redemption exists until the court signs the order restoring the premises to the landlord. The court rejected the argument that redemption is available until the sheriff executes the writ, since such a rule would be vague, encourage litigation, and expose the sheriff to potential liability. *Id.* at 748-49. *See Gear Properties v. Jacobs*, No. C1-97-2266 (Minn. Ct. App. Sep. 1, 1998) (Appendix 332) (unpublished: redemption must occur before possession has been delivered to the plaintiff).

A subtenant also may redeem. *See Warnert v. MGM Properties*, 362 N.W.2d 364, 368-69 (Minn. Ct. App. 1985).

1992 Minn. Laws Art. 1, § 2 amended the redemption statute, Minn. Stat. § 504.02 (now § 504B.291) in three respects. First, the court may permit a tenant who wants to redeem and has already paid or brought into court all of the rent in arrears, but is unable to pay the statutory interest, attorney's fee and cost, to pay these additional amounts in the period when the court otherwise stays issuance of the writ of restitution under § 504B.345 (formerly § 566.09). The change formalizes what is now common practice in some courts. Second, the parties can agree *only in writing* that partial payment of rent, accepted by the landlord before issuance of the order for the writ of restitution, may be applied to the balance due and does not waive the landlord's action for possession based on nonpayment of rent. *See generally,* discussion, *supra* at VI.E.13-14. Third, rental payments intended to redeem the tenancy must first be applied to rent claimed in the complaint for prior rental periods before being applied to the most recent period, *unless the court finds the claim for earlier rent has been waived. See generally id.*

a. *The court may deny restitution of the premises, conditioned on the defendant's payment of the arrearage within a specific time to be determined by the court*

While many attorneys and judges have stated that the time limit for redemption is seven days, there are no deadline set by statute or appellate decisions. Minn. Stat. § 504B.291 (formerly 504.02). In *614 Co. v. D. H. Overmayer*, 297 Minn. 395, 396, 211 N.W.2d 891, 894 (1973), *affirming* the First and Secondary Interlocutory Orders, Number 204678, Appellant's Appendix at A.51-A.55, A.69-A.72 (Minn. Dist. Ct. 2d Dist. Apr. 22 and July 9, 1972) (Appendix 54), the court affirmed trial court orders allowing commercial tenant *one month* to pay amounts in default.

The notion of a seven limit might be based on the statute that limits stays of writs of recovery to seven days, but the statute does not cover redemption. Minn. Stat. § 504B.345 (formerly § 566.09). The redemption statute contains no time limit. Minn. Stat. § 504B.291 (formerly 504.02).

The court should allow for redemption within a specific time period, *id.*, or during the stay of the writ of restitution, since: (1) the courts abhor forfeiture. *614 Co.*, 297 Minn. at 398, 211 N.W.2d at 894; (2) the tenants' harm from eviction from the tenants' home far outweighs the landlord's harm from delay in full compensation; (3) forfeiture of the premises is not favored if the party seeking forfeiture is adequately protected by means other than forfeiture, *614 Co.* at__, 211 N.W. 2d at 894; *Kostakes v. Daly*, 246 Minn. 312, 318, 75 N.W.2d 191, __ (1956); and (4) the *Omodt* Court's concerns are resolved, since a specific deadline is retained.

A number of court have granted a longer period of time. *JHCJ Associates v. Bryant*, No. UD-1960606502 (Minn. Dist. Ct. 4th Dist. Jul. 31, 1996) (Appendix 217) (court hesitates to evict Section 8 tenant who has made timely rent payments recently, and will authorize prospective monthly payments on the back rent); *Ellis v. McDaniel*, No. UD-1960318520 (Minn. Dist. Ct. 4th Dist. Apr. 4, 1996) (Appendix 203) (10 days); *Schaapveld v. Crump*, No. UD-1951011528 (Minn. Dist. Ct. 4th Dist. Oct. 31, 1995) (Appendix 115) (agency providing assurance of payment given one month to pay portion of rent due, and tenant given two weeks from date of hearing to pay balance); *Schwanke v. Magnuson,* No. C0-90-0640 (Minn. Dist. Ct. 8th Dist. Jan. 9, 1991) (Appendix 5.L) (following rent abatement trial, court determined defendant owed plaintiff $50.00 beyond money paid into court and allowed defendant to redeem); *Nguyen v. Veit,* No. UD 1910115616 (Minn. Dist. Ct. 4th Dist. Feb. 15, 1991) (Appendix 5.0) (following rent abatement trial, defendant allowed an additional seven days to pay into court additional rent to which plaintiff was entitled); *Yauch v. Caine,* No. UD-1900403548 (Minn. Dist. Ct.

4th Dist. Apr. 20, 1990) (Appendix 11D). The parties also may agree to extend the time period for redemption. *Bratton v. Dockery*, No. UD-1940912513 (Minn. Dist. Ct. 4th Dist. Sept. 30, 1994) (Appendix 33) (18 days).

Where the landlord claims that the tenant owes money on utility bills, but the account was in the landlord's name and the landlord has not given the tenant copies of the bills, the court should order the landlord to give the tenant the bills, and give the tenant time to make arrangements to pay them. *Aker v. Kennedy*, No. UD-1950908541 (Minn. Dist. Ct. 4th Dist. Oct. 19, 1995) (Appendix 165) (landlord given deadline to provide bills to tenant, but tenant not given deadline to make arrangements to payment).

b. *Redemption apparently applies to more than just traditional nonpayment of rent cases*

In *American Land Real Estate Investment Corp. v. Pokorny*, No. C0-90-1649, (Minn. Ct. App. Dec. 18, 1990) (Appendix 53) (unpublished), the landlord alleged that the tenants violated a contract provision requiring them to provide insurance for the premises they occupied under an option agreement. The landlord terminated the lease by giving a ten day notice to cure the default as required by the lease. The landlord then commenced an unlawful detainer action. The trial court permitted the tenants to make a payment to the landlord to satisfy the contractual obligation. On appeal, the court noted that the tenants "defaulted on their obligation to buy insurance, an obligation *equivalent* to paying rent." *Id*. (emphasis added). The court added that the "[landlords] notice, aimed at terminating the lease, does not preclude redemption." *Id*., citing *614 Co.*, 297 Minn. at 397-98, 211 N.W.2d at 894. *See Central Union Trust Co. v. Blank*, 168 Minn. 312, 316, 210 N.W. 34, __ (1926) (covenant to pay taxes part of consideration for payment for lease); *Kahn v. Greene*, No. UD-1940330506 at 7 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (Appendix 46) (water bill deemed as rent).

Redemption did not apply to the sale of cooperative apartment association stock of a tenant in *Mehralian v. River Tower Home Owners Assoc., Inc.*, 464 N.W.2d 571 (Minn. Ct. App. 1990). In *Mehralian*, the Association replaced windows in the complex and assessed its members for their share of the cost as provided by the bylaws. When the tenant did not pay the assessment, the association foreclosed its lien against the tenant's stock in the association, and sold the stock to a new tenant. The new tenant commenced an unlawful detainer action against the old tenant, and the old tenant brought a separate action seeking to redeem his interest under § 504.02 (now § 504B.291). The court affirmed the trial court's decision that § 504.02 did not apply to the foreclosure of Cooperative Housing Stock.

c. *Combined actions for nonpayment of rent and material lease violations*

These claims shall be heard as alternative grounds. The hearing is bifurcated to first cover material violation of the lease, and then nonpayment of rent if the landlord does not prevail on the material lease violation claim. The tenant is not required to pay into court outstanding rent, interest or costs to defend against the material lease violation claim. If the court reaches the nonpayment of rent claim, the tenant shall be permitted to present defenses. The tenant shall be given up to seven days to pay any rent and costs determined by the court to be due, either into court or to the landlord. *Kahn v. Greene*, No. UD-1940330506 (Minn. Dist. Ct. 4th Dist. May 9, 1994) (Appendix 55). *See generally* discussion, *infra*, at VI.G.21.

In *Olson v. _____*, No. 27-CV-HC-13-1834 (Minn. Dist. Ct. 4th Dist. July 13, 2015) (Appendix 700), the landlord filed an eviction complaint alleging tenant failed to pay rent for March and April 2013, and that the tenants materially breached the terms of the rental agreement by failing to pay the

water bill since they moved in, refusing entry to the landlord to inspect the property, failing to keep property insurance, failing to provide proof of property insurance and suspected damage to the property. The court held that plaintiff failed to establish material breach of the lease because (1) while tenants failed to pay the water bill, and while this was a breach of the lease, the harm from the breach was not irreparable because damages would suffice and because landlord held $11,000 in security deposits which more than covered any outstanding amount; (2) landlord or his agent were either invited in or allowed in to inspect the premises, so landlord could not establish he was refused access; (3) tenant actually did maintain property insurance, so landlord could not establish tenant breached for failing to maintain insurance; (4) while tenant failed to provide proof of insurance, which was a breach, it was not a material breach and did not give rise to right of eviction; and (5) while landlord may have suspected damage to the property, the evidence suggested there was no such damage. Consequently, the landlord could not establish material breach. The landlord, however, did establish failure to pay rent, and the Court held that unless tenants pay the outstanding rent to redeem the premises, landlord would be entitled to retake possession.

d. *Attorney's fees*

Minn. Stat. § 504B.291 (formerly 504.02) provides for fees not exceeding $5.00. In a commercial case where the lease provided for attorney's fees in an action based upon breach of the lease, the trial court's denial of restitution conditioned upon payment of rent, interest and attorney's fees was upheld. *614 Co.*, 297 Minn. at 398-99, 211 N.W.2d at 894.

However, in *Cheyenne Land Co. v. Wilde*, 463 N.W.2d 539 (Minn. Ct. App. 1990), the court affirmed the trial court's decision that the statutory limitation of $5.00 in attorney's fees governs residential cases. The court noted that "*614 Co.* is not applicable to this case. The trial court did not find the defaults of [the tenant] resulted from calculated commercial conduct as in *614 Co.* This court is compelled to follow the limitation on attorney's fees of Section 504.02 in this case." *Id*. at 540. However, the court added that "[w]e recognized the potential for abuse of the statute by lessees who take advantage of the fee limit by repeatedly withholding rent. Fairness would be served by amending Section 504.02 to require the payment of the lessors reasonable attorney's fees in all redemption cases." *Id*. at 540-41. *See Cityview Cooperative v. Marshall*, No. C6-99-968, 2000 WL 16334 (Minn. Ct. App. Jan. 11, 2000) (unpublished) ($5 attorney's fee limit applied to Cooperative which chose landlord-tenant law to govern the relationship and the unlawful detainer action as a remedy).

When costs are assessed, they normally include the landlord's filing fee of $322.00. Since the assessment of costs and attorney's fees can be a significant impediment to a tenant's ability to redeem the tenancy, costs and attorney's fees should not be assessed when the tenant has prevailed on a defense against a claim for nonpayment of rent. For instance, in nonpayment of rent cases where the tenant successfully asserts a rent abatement claim based on breach of the covenants of habitability, the courts do not require the tenant to pay costs and attorney's fees. *See* discussion, *supra*, VI.E.1.m.; (Appendices 6-11). *But see Yauch v. Caine*, No. UD-1900403548 at 3 (Minn. Dist. Ct. 4th Dist. Apr. 20, 1990) (Appendix 11.D) (successful tenant on rent abatement claim for wrongful eviction assessed costs and attorney's fees apparently based on unique circumstances).

In *ACC OP (University Commons) LLC v. Rodriguez,* 906 N.W.2d 509 (Minn. Ct. App. 2017), the landlord filed the first eviction action for rent and the tenant redeemed. The landlord applied the bulk of the payment to the landlord's attorney's fees and filed a second eviction action for rent. The district court concluded that the landlord was limited to recovering five dollars in attorney's fees, as permitted by statute, and that the tenant was not in arrears at the time the landlord initiated the eviction action. The

Court of Appeals affirmed, holding that the landlord could not evict the tenant for failure to pay attorney's fees in excess of five dollars arising out of a previous eviction action against respondent for nonpayment of rent. The Court noted that

> permitting landlords to evict tenants for nonpayment of attorney fees incurred in a previous eviction action would plunge tenants into a potentially endless eviction loop in which timely rent payments could still lead to eviction proceedings, which would in turn generate additional attorney fees. This result would also conflict with the judiciary's longstanding "abhorrence of forfeitures."

Id. at 512. The Court added that it did not address whether a landlord could pursue its attorney's fees claim in a separate proceeding. *Id*. at 511-12.

e. *Month-to-month tenancies*

In *University Community Prop. v. New Riverside Café*, 268 N.W.2d 573 (Minn. 1978), the court held that the right of redemption was unavailable to periodic tenants, including month-to-month tenants. *Id.* at 575-76. *See Birk v. Lane*, 354 N.W.2d 594, 596-98 (Minn. Ct. App. 1984).

New Riverside Café should be read narrowly. The tenancy was a commercial tenancy. 268 N.W.2d at 574. The plaintiff served a fourteen (14) day notice under Minn. Stat. § 504B.135 (formerly 504.06); and thus the defendant could have paid the rent during this period. *See id.* at 574. Usually, the summons and complaint is the first notice that the defendant receives and it serves as a demand for rent. Minn. Stat. § 504B.291 (formerly 504.02). The defendants attempted redemption after the trial. 268 N.W.2d at 574. In *Stevens Court v. Steinberg*, Nos. UD-92932, UD-92480, UD-92483 (Henn. Cty. Mun. Ct., Aug. 30, 1978), the court distinguished *New Riverside Café* on the above grounds, noting that the Supreme Court did not intend to disenfranchise the majority of tenants in the state. *Id.* (Appendix 12).

In *Kjellbergs, Inc. v. Herrera*, No. CX-98-0363 (Minn. Dist. Ct. 10th Dist. Mar. 11, 1998) (Appendix 340) (Mossey, J.), the manufactured (mobile) home park lot owner brought an unlawful detainer action for non-payment of rent. The tenant, who did not speak English and was unfamiliar with the court system, waited in the hallway for his case to be called and defaulted. The tenant moved to vacate the default judgment. The landlord claimed that, as a month-to-month tenant, the tenant did not have the right to redeem, so the motion should be denied, citing *University Community Properties v. New Riverside Café*, 268 N.W. 2d 573 (Minn. 1978). The court concluded that the tenant defaulted due to excusable neglect, and that the tenant had the right to redeem the property. The court distinguished *New Riverside*, noting that the *New Riverside* Court concluded that redemption would be negligible in a month-to-month tenancy at will as the lease could be terminated on one month's notice, while in this case, the landlord could terminate the lease only for cause and with proper notice.

f. *In manufactured (mobile) home park lot tenancies*

The tenant may redeem only twice in any twelve (12) month period, unless the tenant pays the landlord's actual reasonable attorney's fees for each additional redemption. Minn. Stat. § 327C.11, subd. 1. In *Kjellbergs, Inc. v. Herrera*, No. CX-98-0363 (Minn. Dist. Ct. 10th Dist. Mar. 11, 1998) (Appendix 340) (Mossey, J.), the manufactured (mobile) home park lot owner brought an unlawful detainer action for non-payment of rent. The tenant, who did not speak English and was unfamiliar with the court system, waited in the hallway for his case to be called and defaulted. The tenant moved to vacate the default judgment. The landlord claimed that, as a month-to-month tenant, the tenant did not have the

right to redeem, so the motion should be denied, citing *University Community Properties v. New Riverside Café*, 268 N.W. 2d 573 (Minn. 1978). The court concluded that the tenant defaulted due to excusable neglect, and that the tenant had the right to redeem the property. The court distinguished *New Riverside*, noting that the *New Riverside* Court concluded that redemption would be negligible in a month-to-month tenancy at will as the lease could be terminated on one month's notice, while in this case, the landlord could terminate the lease only for cause and with proper notice.

g. *No waiver of right to redeem*

Waiver of the right of redemption requires clear and convincing evidence of such intent so as to override judicial abhorrence of forfeiture. *See 614 Co.*, 297 Minn. at 398, 211 N.W.2d at 894; *Soukup v. Molitor*, 409 N.W.2d 253, 256-57 (Minn. Ct. App. 1987). A lease requirement waiving the tenant's right to the eviction (unlawful detainer) process and the right to redeem the premises is void as a violation of public policy. *Duling Optical Corp. v. First Union Management, Inc.,* No. C5-95-2718 (Minn. Ct. App. Aug. 13, 1996), FINANCE & COMMERCE at 66 (Aug. 16, 1996) (Appendix 181) (unpublished decision).

h. *Landlord extension of tenant's right to redeem*

If the landlord accepts the rent and costs after "issuance of the order," the landlord may have waived the right to proceed with the eviction. *See* discussion, *infra* at VIII.D; *Lowe v. Cotton*, No. UD-01990224515 (Minn. Dist. Ct. 4th Dist. Oct. 7, 1999 (Appendix 404) (landlord agreed to give tenant eight days to redeem).

i. *Waiver of costs and service fees*

In *Crystal Towers Apts. v. Schuneman*, UD-1960104502 (Minn. Dist. Ct. 4th Dist. Jan 31, 1996) (Appendix 217), the court found that it would be a hardship to require the tenant to pay the filing and service fees (27% of unpaid rent) when the landlord filed the case one day before the late fee date. The court did not rule on the tenant's request that her *in forma pauperis* status cover the fees.

j. *Good faith effort to redeem*

In *Huntington Place v. Scott*, Partial Transcript, No. UD-1980409509 (Minn. Dist. Ct. 4th Dist. Apr. 30, 1998) (Appendix 338), the court ordered the tenant to pay rent that day. The tenant contacted county emergency assistance that day, which agreed to make payment but did not accomplish it that day. The court concluded that the tenant made a good faith effort to redeem, and in fact redeemed, and ordered the judgment and writ vacated. *See Covenant Capital LLC v. _____,* No. 27-CV-HC- 15-4312 (Minn. Dist. Ct. 4th Dist. Dec. 11, 2015) (Appendix 752) (motion to vacate judgment granted where defendant attempted to tender amount to redeem tenancy and plaintiff refused to cooperate, tenant had reasonable excuse for not complying with court's posting order where tenant received order after deadline, tenant acted with reasonable diligence, and landlord did not show prejudice); *Jarvi v. _____,* No. 27-CV-HC-13-1010 (Minn. Dist. Ct. 4th Dist. April 1, 2013) (Appendix 755) (motion to vacate judgment granted where landlord and tenant settled for payment plan with court approval, tenant did not comply but landlord and tenant negotiated new plan without court approval and tenant made substantial payments, and landlord obtained and enforced writ for violation of new plan); *State v. Clobes*, No. C7-97-240 (Minn. Dist. Ct. 5th Dist. Feb. 27, 1997) (Appendix 294) (Previous order denying right of redemption to tenant set aside; tenant allowed to redeem).

But see Clark v. Smith, No. A04-1850, 2005 WL 1669123 (Minn. Ct. App. July 19, 2005)

(unpublished) (eviction affirmed where tenant had promised rent payment but had not made payment before the trial court's decision, noting that statutory right of redemption under Minn. Stat. § 504B.291, subd. 1(a) "before possession been delivered" might be inconsistent with case law holding redemption is available only until the court issues its order"); *Willow Point Partners, LLC v. Willows on the Water, LLC*, No. A03-225, 2003 WL 22998880 (Minn. Ct. App. Dec. 23, 2003) (unpublished) (tenant was in default under the lease and tenant was not entitled to notice and an opportunity to cure; tenant failed to satisfy the settlement agreement when it issued a check with insufficient funds; tenant was not required to pay the full amount due under the lease for future months to redeem the property); *Jasa v. LaMac Cleaners, Inc.*, No. C4-02-1239, 2003 WL 174729 (Minn. Ct. App. Jan. 28, 2003) (unpublished) (affirmed referee determination that tenant did not redeem the rented premises in a timely manner, rejecting a substantial compliance argument).

21. Violation of tenant privacy

The 1995 Minnesota Legislature created § 504.183 (now § 504B.211), which provides that a landlord may enter the tenants premises only for a reasonable business purpose and after making a good faith effort to give the tenant reasonable notice under the circumstances. A tenant may not waive and the landlord may not require the tenant to waive the tenant's right to prior notice. Minn. Stat. § 504B.211 (formerly § 504.183), subd. 2, 1995 Minn. Laws Ch. 226, Art. 4 § 21. The statute sets out several reasonable business purposes for landlord entry, and several exceptions to the notice requirement. If the landlord substantially violates the statute, the tenant may use a tenants remedies action or emergency tenants remedies action to enforce the statute and ask for a rent reduction, full recission of the lease, recovery of any damage deposit less amounts retained under the damage deposit statute, and up to a $100.00 civil penalty. *The statute does not provide for enforcement through an eviction (unlawful detainer) action defense.*

However, privacy can be raised in eviction defense under other bases, such as quiet enjoyment and habitability, and when consolidated with a tenant-filed action, such as a rent escrow action or tenant remedies action. *See* discussion, *infra*, at XII.B.2.

21a. Quiet enjoyment of the premises

See discussion, *infra*, at XII.B.2a.

21b. Tenant security

Violations of tenant privacy and problems with security also may violate the covenant of habitability dealing with fitness of the premises for the use intended by the parties. *See* discussion, *supra*, at VI.E.1.d.(3). *But see Sandy Hill Apartments v. Kudawoo*, No. 05-2327 (PAM/JSM), 2006 WL 2974305 at *4 (D.Minn. Oct. 16, 2006) (unpublished) *(*failing to prevent noise does not constitute unlawful entry and invasion of privacy).

For information on tort liability for personal injury and property damage, *see* discussion, *infra*, at XII.B.3.g.

22. Landlord refused to accept rent

In *L. Earl Bakke, Inc. v. O'Donnell*, No. UD-1941201517 (Minn. Dist. Ct. 4th Dist. Feb. 9, 1995) (Appendix 139), the landlord filed an unlawful detainer action for non-payment of rent after refusing to

accept rent. By the time the court issued its decision, the landlord had accepted and cashed the rent payment. The court still concluded that a defense to a claim of non-payment of rent is that the landlord refused to accept rent. *Id.* at 6. While the tenant was able to redeem the tenancy in this case, there may be cases where the landlord may refuse rent and induce the tenant to spend the rent money on other items, leaving the tenant vulnerable to an eviction (unlawful detainer) action for non-payment of rent. Counsel should argue that the landlord's actions in refusing the accept rent, especially when not relevant to the landlord's litigation position in a prospective eviction (unlawful detainer) action, may waive the landlords' ability to obtain restitution of the premises for non-payment of rent.

In *Horning Properties v. Wang*, No. C3-98-1211 (Minn. Dist. Ct. 10th Dist. Jun. 23, 1998) (Appendix 337) (Meyer, J.), the landlord of a Rural Housing and Community Development Service Subsidized Housing Project filed an action for nonpayment of rent and breach of lease. The court concluded that there was no lease violation where the tenant tendered but the landlord refused April rent, so this event did not support the eviction notice.

23. Rent credit for work done for the landlord by the tenant

Lehikoinen v. Salinas, No. C3-95-601058 (Minn. Dist. Ct. 6th Dist. July 11, 1995) (Appendix 122) (parties agreed that in exchange for tenant's work for landlord around the premises, tenant would receive rent credit and an hourly rate; work credit abated from rent).

24. Tenant financial obligations under a separate agreement with the landlord may not be rent

In *St. Cloud Housing and Redevelopment Authority v. Slayton*, No. C9-98-1671 (Minn. Dist. Ct. 10th Dist. Nov. 3, 1998) (Appendix 365) (Danforth, J.), the court concluded that the Public Housing Authority accepted the tenant's late recertification and the repayment agreement between the parties over back rent did not provide for eviction as a consequence for non-payment or late payment. The court gave the tenants seven days to pay the arrearage of $1,200 and fees. *See Apple Square, Inc. v. Muldrow*, No. UD-1950213547 (Minn. Dist. Ct. 4th Dist. Mar. 2, 1995) (Appendix 120) (tenants agreement to reimburse landlord for cost of replaced refrigerator was not part of the lease and the promised payment was not rent; tenants debt on the agreement was not properly the subject of an unlawful detainer complaint).

25. Retaliation

a. Statutory retaliation defenses

Section 504B.285 (formerly § 566.03), Subd. 3. applies to commercial as well as residential landlord-tenant relationships. It does not apply in breach of lease cases, or where the rights asserted by the tenant were unrelated to the landlord-tenant relationship. *Cloverdale Foods of Minnesota, Inc.,* 580 N.W.2d 46 (Minn. Ct. App. 1998). *See* discussion, *supra*, at VI.E.9 (Retaliatory rent increase or service decrease), and *infra*, at VI.F.3 (Holding over: retaliation), VI.G.18 (Breach: retaliation).

Retaliation claims under § 504B.441 (formerly § 566.28) and some local housing codes are not limited to notice to quit or rent increase notice claims. In *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019), the Court held that "Minn. Stat. § 504B.441 prohibits retaliation for a residential tenant's complaint of a violation to a government entity, such as a housing inspector, or commencement of a formal legal proceeding. But it does not provide a defense to retaliation based on an expression of dissatisfaction to the landlord." While the eviction involved a claim of a non-monetary breach of lease,

the holding was not limited to breach cases, making the defense available in nonpayment of rent evictions.

The claim of retaliation in a non-payment of rent case also may be available under the covenants of habitability, Minn. Stat. § 504B.161 (formerly § 504.18). Since the covenants of habitability include violation of housing codes, a violation of a housing code provision on retaliation would be a violation of the covenant's habitability. Also, since the covenants may not be waived and must be liberally construed, a landlord's effort to defeat enforcement of the covenant by filing an unlawful detainer action for non-payment of rent may constitute retaliation. *See* Memorandum of Paul Birnberg (Dec. 11, 1998) (Appendix 345).

Tenants have had mixed results trying to prove retaliation in a nonpayment of rent case. In *Brook v. Boyd*, No. C8-96-47 (Minn. Dist. Ct. 9th Dist. Feb. 13, 1996) (Appendix 207), in consolidated unlawful detainer and rent escrow actions, the court found that the non-payment of rent unlawful detainer action was in retaliation for tenant's complaints to landlord and housing inspector. *See Judnick v. Boje*, No. C7-96-600537 (Minn. Dist. Ct. 6th Dist. Apr. 19, 1996) (Appendix 202) (action for non-payment of rent was retaliatory). *But see Zeman v.* _____, No. HC 031002500 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2003) (Appendix 595) (50% rent abatement, retaliation defenses to not apply in nonpayment of rent case); *Gear Properties v. Jacobs*, No. C1-97-2266 (Minn. Ct. App. Sep. 1, 1998) (Appendix 332) (unpublished: a failure to pay rent when due is a proper legal basis for an eviction in response to a retaliation claim); *D & D Real Estate Investment, L.L.P. v. Hughes*, Nos. UD-1990311505 (Minn. Dist. Ct. 4th Dist. Mar. 30, 1999) (Appendix 323A) (defense of retaliation is not available in non-payment of rent or breach of lease cases, citing Minn. Stat. § 566.03 (now § 504B.285), Subd. 2.

b. Ordinances prohibiting retaliation

Some local ordinances include protection against retaliation. Minneapolis Code of Ordinances § 244.80 (Appendix 138) provides a presumption of retaliation where the landlord attempts to terminate the tenancy after the tenant complains to the inspection agency, or the tenant of City sues the landlord over housing conditions. *The presumption has no time limit.* The tenant also may be entitled to rent abatement for retaliation. *See* discussion, *supra*, at VI.E.1.d.(3) (Violation of covenants of habitability).

c. Common law retaliation defense

In *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019), the Court recognized common law defense to landlord evictions in retaliation for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease. The Court noted that the "defense fills a gap that the Legislature left open, perhaps inadvertently." *Id.*, at 409. While the eviction involved a claim of a non-monetary breach of lease, the holding was not limited to breach cases, making the defense available in nonpayment of rent evictions.

26. Notice for rent in month-to-month tenancies

In *Butler v. Cohns*, No. C2-96-6599 (Minn. Dist. Ct. 2d Dist. Oct. 22, 1996) (Appendix 218), the referee ruled for the landlord on the claim that the tenants were a threat to the landlord and the landlord's property. On a request for judge review, the court concluded that whether or not there is an implied covenant in oral leases against threatening behavior, any termination of an oral lease must comply with Minn. Stat. Sec. 504B.135 (formerly 504.06): a one month notice to quit for violations of an oral lease, and a fourteen day notice for failure to pay rent. *But see Valley Investment & Management, Inc. v.*

_____, No. HC 000927525 (Minn. Dist. Ct. 4th Dist. Nov. 1, 2000) (Appendix 589a) (14 day notice requirement for termination of month-to-month tenancy for nonpayment of rent in Minn. Stat. § 504B.135 (formerly § 504.06) is not required for a nonpayment of rent eviction action; landlord's acceptance of part payment without a written agreement to retain an eviction claim for the balance waives the eviction claim; plaintiff cannot amend complaint once defendant has served an answer).

Section 504B.135 (formerly 504.06) states that to terminate (§ 504.06 stated "determine") an estate at will in the case of nonpayment of rent, 14 days notice in writing is required. Tenants can argue that Section 504B.135 requires 14 days written notices in all nonpayment of rent cases for month-to-month tenants. The benefit of the requirement would be a built it grace period before the landlord could file the case, which might lead to less cases being filed and more out of court settlements not tracked by tenant screening agencies. The downside is that when the notice is given, there might not be a right to redeem. *University Community Prop. v. New Riverside Café*, 268 N.W.2d 573 (Minn. 1978). The question for tenant advocates to consider if where is the best place to have the grace period: (1) a shorter period before the case is filed without additional costs, or (2) a longer period through the date of hearing but including additional costs.

27. Illegal lease provisions. *See* Illegal lease provisions, *infra* at VI.G.12.

28. Manufactured (mobile) homes not in mobile home parks

In *Nygren v. Nix*, No. C1-96-42 (Minn. Dist. Ct. 9th Dist. Jan. 25, 1996) (Appendix 199), the defendant agreed to purchase a manufactured (mobile) home from the plaintiff by a promissory note which stated monthly payments, and rented the land below it by a lease which did not state rent payments. The plaintiff brought an action for non-payment of rent and late fees, and the defendant answered that the action should be dismissed because the plaintiff prepared and issued the summons in violation of Minn. Stat. § 504B.321 (formerly § 566.05), the action was not an appropriate forum since the dispute was more properly governed by the Manufactured Home Repossession Security Act (MHRSA, Minn. stat. Sec. 327.62 *et seq.*, rent was improperly calculated, and restitution would be unconscionable, and moved for dismissal and attorney's fees under Minn. R. CIV. P. 11 for failing to sign the complaint. The court dismissed the action for preparing and issuing a summons which should have been prepared and issued by the court, and for not signing the complaint. The court also ordered that if the plaintiffs refiled the action, they must pay defendant's counsel attorney's fees as a condition to refile the action.

29. Tenant or landlord in bankruptcy. *See* Bankruptcy, *supra* at VI.D.12.

30. Assessment of rent from guest

The landlord does not have the right to assess additional rent from a guest. *Cedar Associates LLP v. Curtis*, No. UD-1970108508 (Minn. Dist. Ct. 4th Dist. May 20, 1997) (Appendix 250) (Tenant could not be assessed rent for when she was a guest of another tenant who rented from the same landlord).

31. Landlords actual or acquiescence in unlawful activities

In 1997 the drug covenant was expanded to cover other types of unlawful activity, and to cover landlords as well as tenants. Minn. Stat. § 504.181 (now § 504B.171), *amended by* 1997 Minn. Laws Ch. 239, Art. 12, § 4 (Appendix 242). Now, both the tenant and the landlord, as well as the licensor and licensee, covenant that neither will (1) unlawfully allow illegal drugs on the premises, the common area

or curtilage, (2) allow prostitution or prostitution related activity to occur in the premises, common area or curtilage, or (3) allow the unlawful use or possession of certain firearms in the premises, common area, or curtilage. The parties also covenant that the common area and curtilage will not be used by them or persons acting under their control to carry out activities in violation of illegal drug laws. For more on curtilage and common areas, *see* discussion, *supra*, at I.D.12.

Neither of the *drug* covenants are violated if someone other than one of these parties possesses or allows illegal drugs on the property, unless the party knew or had reason to know of the activity. The Legislature did not extend this part of the statute to the prostitution and firearms covenants. It is unclear whether that was intention or a drafting oversight. However, the fact that each of the covenants uses the word (allow) suggests that the test for liability is whether the party was directly involved or acquiesced in the conduct of others.

The tenant can enforce the covenant in a tenant remedies, rent escrow or emergency action. Minn. Stat. § 504B.001 (formerly § 566.18).

A landlord's violation of the covenant may give rise to defenses in nonpayment of rent cases. In a nonpayment of rent case, the tenant should have the remedy of rent abatement that is available for a landlord's violation of the only other implied lease covenants, the covenants of habitability under 504B.161 (formerly § 504.18). The covenants are similar in that they deal with basic issues of safety and security, the Legislature has created the same enforcement mechanisms for them in the tenant remedies statutes, which also are part of the unlawful detainer chapter.

Even before full extension of the covenants to landlords, the tenant could claim that the landlord's failure to remove unlawful activities from the building violated the tenant's right to quiet enjoyment. *See Ricke v. Villebrun*, No. UD-1961112566 (Minn. Dist. Ct. 4th Dist. Dec. 5, 1996) (Appendix 289) (Nonpayment of rent unlawful detainer action: every lease contains right of quiet enjoyment; landlord's failure to remove known risk created by illegal drug activity violated covenant of quiet enjoyment; landlord ordered to notify court of immediate and continuing steps to enforce right to quiet enjoyment and tenants may pay rent into court if landlord does not).

See discussion, *infra*, at VI.G.16 (unlawful activity), XII.B.2a (quiet enjoyment).

32. Rent claims under prior leases

It is unclear whether the landlord can claim nonpayment of rent under prior leases as a basis for eviction. *Filister v. Okabue*, No. C6-97-61 (Minn. Ct. App. July 1, 1997), FINANCE AND COMMERCE at 45 (July 3, 1997) (Appendix 254) (Unpublished: affirming judgment for landlord, noting no reason why landlord could not extend lease yet still be entitled to amounts owed for prior lease periods). *But see Arcade Investment Co. v. Gieriet*, 99 Minn. 277, 279, 109 N.W. 250, 252 (1906) (Subsequent lease waives prior notice to quit; *Rio Hot Properties, Inc. v. Judge*, No. UD-1981005518 (Minn. Dist. Ct. 4th Dist. Oct. 29, 1998) (Appendix 362B) (Amounts due from earlier lease between the parties for a different property could not be raised in the current action for rent under the current lease); *Common Bond Housing v. Beier*, No. UD-1951204625 (Minn. Dist. Ct. 4th Dist. Feb. 23, 1996) (Appendix 227) (Waiver of breach by renewing lease); *Espeland v. Fondren*, No. UD-1961112556 (Minn. Dist. Ct. 4th Dist. Dec. 26, 1996) (Appendix 252) (Landlord did not prove that past due amount from lease on former apartment with tenant was part of the parties' new oral rental agreement on the new apartment). The tenant should argue that while the landlord may be entitled to damages under the old lease, the landlord is not entitled to evict the tenant for rent due under the old lease if the tenant is complying with the

current lease.

33. Garnishment of rent

Sometimes a judgment creditor of the landlord, such as a former tenant, may seek to garnish the rent from a current tenant to satisfy the former tenant's judgment against the landlord. If the creditor successfully garnishes the rent, the tenant does not owe rent to the landlord. What is a more difficult question is what the current tenant should do if the tenant receives the garnishment summons before the rent is due, since rent that is not due yet may not be subject to garnishment. If the tenant withholds the rent from the landlord due to a reasonable and good faith belief that the rents are covered by the garnishment summons, the tenant should not be evicted for nonpayment of rent. *Omar Investments, Inc. v. Taylor*, No. UD-1970908563 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1997) (Appendix 284) (Tenant not evicted where tenant withheld part of August rent and September rent after receiving garnishment summons on August 30; rent paid into court to be held until decision from other court which issued the judgment for collection).

34. Fair Debt Collection Practices Act defenses

a. *The Act*

The Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692o, "prohibits a debt collector from, among other conduct, using 'any false, deceptive, or misleading representation or means in connection with the collection of any debt,' 15 U.S.C.A. § 1692e, and using 'unfair or unconscionable means to collect or attempt to collect any debt.' 15 U.S.C.A. § 1692f. *Hodges v. Sasil Corp.*, 189 N.J. 210, 222, 915 A.2d 1,8 (N.J. 2007).

Because an eviction action "is equivalent to a demand for the rent and a reentry upon the property" and gives rise to the tenant's right to redeem the property. Minn. Stat. § 504B.291 (formerly 504.02), the FDCPA applies to *some* unlawful detainer actions for nonpayment of rent. The Act applies to debt collectors, including attorneys who regularly engage in debt collection, collection agencies, creditors collecting for third parties, and creditors collecting under the name of another, *but do not include* an officer or employee of the creditor collecting in the name of the creditor. §1692a(6).

While the Act does not apply to landlords, their employees, or managing agents for landlords, it does apply to attorneys who regularly engage in debt collection, and landlord agents who do not manage the property and regularly collect debts or commence unlawful detainer actions for nonpayment of rent. *Hodges v. Sasil Corp.*, 189 N.J. 210, 915 A.2d 1 (N.J. 2007) (law firm and attorneys that regularly filed summary dispossess actions for nonpayment of rent were considered debt collectors subject to the FDCPA).

The Act's application is triggered by a communication regarding the debt. The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium. §1692a(2). If the debt collector's initial communication is a written notice for nonpayment of rent, as opposed to a pleading for nonpayment of rent, the notice must state what is often called the "mini-Miranda warning": "that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose." §1692e(11). Section 1692g(a) adds:

> Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the

initial communication or the consumer has paid the debt, send the consumer a written notice containing ....

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; [and]

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector ....

If within thirty days of receiving the required notice, the consumer disputes the debt or requests verification of the debt or the name of the original creditor, the collector must stop collection activity until the information is provided in writing. §1692g(b). Violation of the Act can create liability for actual damages, additional damages up to $1,000, and costs and attorney's fees. §1692k(a).

While a pleading in a civil action is not the debt collector's initial communication, §1692g(d), and the "mini-Miranda warning" *does not apply*, §1692e(11), it still is a communication, making other requirements of Act applicable. Before amendment of the statute, several courts had held that the pleading was an initial communication. *Goldman v. Cohen,* 445 F.3d 152 (2nd Cir. 2006); *Oppong v. First Union Mortg. Corp.,* 2008 WL 2853252, No. CIV. A. 02-2149 (E.D.Pa. Jul 24, 2008); *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich,* 502 F.Supp.2d 686, 691 (N.D.Ohio Jun 20, 2007); *Nichols v. Byrd,* 435 F.Supp.2d 1101, 1106 (D.Nev. Jun 13, 2006).

The statute of limitations is one year from violation. 15 U.S.C. § 1692k(d); *Rotkiske v Klemm,* 140 S.Ct. 355 (2019).

b. *Application to eviction actions in other states*

The Act has been applied to eviction cases. In *Romea*, the landlord's attorneys gave the state required nonpayment of rent notice and then commenced an unlawful detainer action. The tenant sued in federal court, challenging the notice under the Act. The attorneys moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. The district court denied the motion, holding that the FDCPA applied to the attorney's letter. *Romea v. Heiberger & Assocs.*, 988 F.Supp. 712 (S.D.N.Y. 1997). The court then certified the issue for an interlocutory appeal. *Romea v. Heiberger & Assocs.*, 988 F.Supp. 715, 716-17 (S.D.N.Y. 1998). The Second Circuit affirmed, holding that back rent was "debt" within meaning of FDCPA, the notice was a "communication" to collect a debt, within meaning of FDCPA, and the attorneys were acting as "debt collectors" for FDCPA purposes. *Romea v. Heiberger & Associates*, 163 F.3d 111 (2d Cir. 1998).

In *Hodges v. Sasil Corp.*, 189 N.J. 210, 915 A.2d 1 (N.J. 2007), the landlord, through its attorneys, filed summary disposses litigation seeking eviction for non-payment of rent. 189 N.J. at 214, 915 A.2d at 3. In doing so, the landlord's attorneys listed the "rent" due on the summon and complaint as the total amount due and owing, including the actual monthly rent obligation, late charges, attorneys' fees, and miscellaneous fees. *Id.* "The complaint did not advise plaintiffs that in order for them to avoid eviction, they were required to pay only the statutorily-defined rent rather than all amounts itemized in the pleadings." *Id.* As a result, tenants would pay the full amount alleged, rather than just the "rent" due, under the mistaken belief that they had to do so in order to prevent eviction. *Id.* Thereafter, two tenants

who were subjected to the landlord's and its attorneys' actions sued in federal court, claiming violation of the FDCPA arising out of the misstatements in the summonses and complaints filed in the eviction actions. *Id.* Despite the fact that the underlying matter arose out of a summary eviction action, the court concluded that rent, when paid for residential purposes, is a "debt" within the terms of the Act, and that an attorney regularly filing eviction actions, even though (at least in New Jersey) such actions are for possession of the premises, is a "debt collector." *Id*. at 223-29, 915 A.2d at 8-12 (and cases cited therein).

Courts around the country are divided on whether a tenant can raise violations in defense of an eviction action. Decisions recognizing the defense include *Am. Mgmt. Consultant, LLC v. Carter*, 915 N.E.2d 411, 422 (Ill. Ct. App. 2009) (addressing application of the FDCPA in the context of an appeal of an eviction action and stating "[b]ecause the collection of past-due rent directly involves the concerns addressed by the FDCPA we find it permissible to apply the FDCPA to those cases despite any displacement such application may have on 'traditional state regulation'");and *Eina Realty v. Calixte*, 178 Misc.2d 80, 679 N.Y.S.2d 796 (Civ. Ct. 1998) (FDCPA notice requirements preempt inconsistent state statutory requirements). A series of Florida decisions also apply the action to eviction defense of rent claims. *Lauderhill Hous. Auth. v. Houser*, 5 Fla. L. Weekly Supp. 496a (Broward County Ct. Mar. 6, 2008); *Forcier v. Henry*, 15 Fla. L. Weekly Supp. 284b (Broward County Ct. Nov. 28, 2007) (dismissing eviction for failing to comply with FDCPA); *Ortiz v. Stork,* 14 Fla. L. Weekly Supp. 90a (Broward County Ct. Oct. 13, 2006); *Greenfield v. Santiago,* 13 Fla. L. Weekly Supp. 1226a (Broward County Ct. Oct. 3, 2006); *Cooper v. Abraham,* 13 Fla. L. Weekly Supp. 733b (Broward County Ct. Apr. 6, 2006); *Resolutions Group, Inc. v. Marco,* 13 Fla. L. Weekly Supp. 604b (Broward County Ct. Mar. 21, 2006); *Campos v. Pittman-Star,* 13 Fla. L. Weekly Supp. 387a (Broward County Ct. Jan. 16, 2006) (all decisions available from author). *But see Dearie v. Hunter*, 705 N.Y.S.2d 519 (N.Y. App. Term. 2000) (FDCPA does not provide that failure to comply can be used as a defense to eviction for nonpayment); *Barstow Rd. Owners, Inc. v. Billing*, 687 N.Y.S.2d 845 (N.Y. Dist. Ct. 1998) (FDCPA does not preempt state statutory notice requirements; therefore, three-day notice still valid as condition precedent to eviction action even if it violates the FDCPA).

c. *Minnesota*

In Minnesota, most nonpayment of rent unlawful detainer actions do not require notice before commencing the action, and few landlords voluntarily give such notice. Written notice is required in most public and subsidized housing programs, and in manufactured (mobile) home park lot tenancies. However, notice given by the landlord would not trigger the statute, since the landlord is not a debt collector under the statute, but notice given by the landlord's attorney would be covered. Even though an eviction complaint filed by the landlord's attorney would not trigger the statute, any other communication would, including oral or written communications to the tenant before or after filing the action. Violations of the Act should result in dismissal. Damages, costs and attorney's fees also may be available.

Given the Act's applicability to eviction actions, tenants should be able to raise violations as a defense to the eviction rather than having to resort to separate litigation. While no Minnesota reported decision had addressed the issue, applying the Act to eviction actions, and permitting violation of the Act as a defense to an eviction action, is consistent with Minnesota law. *See, e.g., Fritz v. Warthen*, 298 Minn. 54, 213 N.W.2d 339 (Minn. 1973) (permitting breach of the covenant of habitability as a defense to an eviction action even though statutory basis did not reference eviction actions). Minn. R. Civ. P. 1 makes clear that the overarching goal in litigation is the "just, speedy, and inexpensive determination of action." To conclude that a determination on the violation of the FDCPA must proceed separately from

the very action in which the violation occurred would at best delay a determination of liability, in an inefficient process.

Where the notice complies with the Act, if the tenant disputes the debt or requests verification of the debt or the name of the original creditor, the court should continue the hearing until the information is provided in writing. In most cases, it should take the debt collector little time to supply the information.

The tenant could raise the claim against the violator of the Act, which covers persons collecting debts of others. So, if the landlord on the lease is the plaintiff and the violation is by the attorney or possibly an agent of the landlord who is not an employee of the landlord, the tenant could consider adding the violator as a party and asserting a claim against the violator. The options include third-party practice, Minn. R. Civ. P. 14, joinder of persons needed for just adjudication, Minn. R. Civ. P. 19, and permissive joinder of parties, Minn. R. Civ. P. 20. *See* discussion, *supra*, at V.C.

35. Joint liability only if provided in lease

Many housing attorneys, including the author, have interpreted Minn. Stat. § 504B.125 (formerly § 504.04) to provide for joint liability among co-tenants. That may not be the case. Section 504B.125 provides:

> Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold or for any term of years, shall be liable for the amount or proportion of rent due from the land in possession, although it be only a part of the land originally demised. Such rent may be recovered in a civil action, and the deed, demise, or other instrument showing the provisions of the lease may be used in evidence by either party to prove the amount due from the defendant. Nothing herein contained shall deprive landlords of any other legal remedy for the recovery of rent, whether secured to them by their leases or provided by law.

The case law indicates that the statute, which was based on a Massachusetts statute, did not create new liability between tenants and landlord, but did protect the landlord from losing the right to collect rent where the tenant assigned her interest to two or more persons. *See Baehr v. Penn-O-Tex*, 258 Minn. 533, 104 N.W.2d 661 (1960); *McLaughlin v. Minnesota L & T*, 192 Minn. 203, 255 N.W. 839 (1934); *Minnesota Loan & Trust v. Medical Arts Building*, 192 Minn. 6, 255 N.W. 839 (1934); *Campbell v. Stetson*, 2 Metcalf (Mass) 504 (1839); 22 Pick (Mass.) 565 (1839). Under § 504B.125 (formerly § 566.04), (1) each tenant or assignee is liable only for the reasonable value of her physical share of the property, unless the lease creates joint liability, and (2) each tenant or assignee is liable only for the time he occupies the property, unless the lease creates liability past the date that occupancy ends. *See generally* Birnberg Letter (Jan. 15, 1998) (Appendix 311). Since the statute does not contain a non-waiver clause, the parties may be free to contact for joint liability.

36. Right to cure under the lease

Whether there is a right to cure separate from the right to redeem is governed by the lease. *Willow Point Partners, LLC v. Willows on the Water, LLC*, No. A03-225, 2003 WL 22998880 (Minn. Ct. App. Dec. 23, 2003) (unpublished) (tenant was in default under the lease and tenant was not entitled to notice and an opportunity to cure; tenant failed to satisfy the settlement agreement when it issued a check with insufficient funds; tenant was not required to pay the full amount due under the lease for

future months to redeem the property).

37. Notice to prospective tenants of mortgage foreclosure of residential rental property

The relationship between the landlord and tenant is not changed during the mortgage foreclosure process. The tenant remains liable for the rent and other obligations under the lease and landlord tenant laws, and the landlord remains obligated to maintain the property and comply with the lease and landlord tenant laws.

The landlord is required by statute to notify a prospective tenant in writing that the property is in foreclosure, and may not accept rent or a deposit before giving notice. If the landlord and tenant then enter into a lease, the lease is limited to the time in which the landlord continues to own the property. The statute does not apply if the foreclosing entity agrees to honor the lease after the landlord's ownership interest expires. Minn. Stat. § 504B.151.

504B.151 Restriction on Residential Lease Terms for Buildings in Financial Distress; Required Notice of Pending Foreclosure.

Subdivision 1. Limitation on lease and notice to tenant.

(a) Once a landlord has received notice of a contract for deed cancellation under section 559.21 or notice of a mortgage foreclosure sale under chapter 580 or 582, or summons and complaint under chapter 581, the landlord may only enter into (i) a periodic residential lease agreement with a term of not more than two months or the time remaining in the contract cancellation period or the mortgagor's redemption period, whichever is less or (ii) a fixed term residential tenancy not extending beyond the cancellation period or the landlord's period of redemption until:

(1) the contract for deed has been reinstated or paid in full;

(2) the mortgage default has been cured and the mortgage reinstated;

(3) the mortgage has been satisfied;

(4) the property has been redeemed from a foreclosure sale; or

(5) a receiver has been appointed.

(b) Before entering into a lease under this section and accepting any rent or security deposit from a tenant, the landlord must notify the prospective tenant in writing that the landlord has received notice of a contract for deed cancellation or notice of a mortgage foreclosure sale as appropriate, and the date on which the contract cancellation period or the mortgagor's redemption period ends.

(c) This section does not apply to a manufactured home park as defined in section 327C.01, subdivision 5.

(d) A landlord who violates the requirements in this subdivision is liable to the lessee for a civil penalty of $500, unless the landlord falls under the exception in subdivision 2. The remedy provided under this paragraph is in addition to and shall not limit other rights or remedies available to landlords and tenants.

Subd. 2. Exception allowing a longer term lease.

This section does not apply if:

(1) the holder or the mortgagee agrees not to terminate the tenant's lease other than for lease violations for at least one year from the commencement of the tenancy; and

(2) the lease does not require the tenant to prepay rent for any month commencing after the end of the cancellation or redemption period, so that the rent payment would be due prior to the end of the cancellation or redemption period.

For the purposes of this section, a holder means a contract for deed vendor or a holder of the sheriff's certificate of sale or any assignee of the contract for deed vendor or of the holder of the sheriff's certificate of sale.

Subd. 3. Transfer of tenancy by operation of law.

(a) A tenant who enters into a lease under subdivision 2 is:

(1) deemed by operation of law to become the tenant of the holder immediately upon the holder succeeding to the interest of the landlord under the lease; and

(2) bound to the holder under all the provisions of the lease for either the balance of the lease term or for one year after the start of the tenancy, whichever occurs first.

(b) A tenant who becomes the tenant of the holder under this subdivision is not obligated to pay rent to the holder until the holder mails, by first class mail to the tenant at the property address, written notice that the holder has succeeded to the interest of the landlord. A letter from the holder to the tenant to that effect is prima facie evidence that the holder has succeeded to the interest of the landlord.

Subd. 4. Holder not bound by certain acts.

A holder succeeding to an interest in a lease lawfully entered into under subdivision 2 is not:

(1) liable for any act or omission of any prior landlord;

(2) subject to any offset or defense which the tenant had against any prior landlord; or

(3) bound by any modification of the lease entered into under subdivision 2, unless the modification is made with the holder's consent.

In addition to the $500 statutory penalty for violations, tenants should argue that a violation of the disclosure requirement renders the lease illegal and void, entitling tenant to a full abatement of rents illegally obtained. *Hauer v. _____,* No. 50-CV-13-2717 (Minn. Dist. Ct. 3rd Dist., Moser County, Jan. 2, 2014) (Judge Wellman) (Appendix 805) (eviction action dismissed and expunged where plaintiff failed to give written notice to defendants of foreclosure before entering a lease or accepting money; plaintiff is not entitled to collect rent; plaintiff ordered to refund $1,790 in rents and fees and pay $500 penalty

under Minn. Stat. § 504B.151 to defendants, and refund $700 deposit to Mower County Health and Human Services, within 10 days); *Hwang v. _____*, No. 19WS-CV-09-1876 (Minn. Dist. Ct. 1st Dist. Jan. 26, 2010) (action dismissed and expungement granted where landlord failed to disclose mortgage foreclosure to a prospective tenant) (Appendix XXX, to be added, presently posted at http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html). *See* discussion, *supra*, at VI. E.2.a (Violation of Housing Code Precluding Action for Rent) and VI. E.2.c (Rental Dwelling Licenses). Some cities have enacted similar requirements that do include remedies of rent abatement. *See* Minneapolis Code of Ord. Title 12, § 244.265; St. Paul Code of Ord. §§ 53.01-53.04.

A tenant in the last month of the foreclosure redemption or contract for deed termination period may withhold the rent and have the deposit cover it. Minn. Stat. § 504B.178, subd. 8.

Following expiration of the redemption period, the foreclosing bank steps in the shoes of the landlord as the owner of the property, until the bank terminates the tenancy. *See* discussion, *supra*, at I.E (Statutory Definitions); *infra*, at VI.F.1.d. (Termination of lease following cancellation of a contract for deed or a mortgage foreclosure).

38. Domestic violence defenses

a. *Private housing*

The landlord might file an unlawful detainer action for nonpayment of rent after the victim excludes the abuser from the household and the abuser no longer contributes toward rent. The victim could argue that eviction is not appropriate where the victim is not responsible for the nonpayment of rent, and only needs additional time to obtain assistance with the rent. *Maxtin Housing Authority v. McLean*, 328 S.E.2d 290 (N.C. 1985) (Public housing: default on payment of rent rested with abuser and not the remaining victim); *614 CO. v. D. H. Overmayer*, 297 Minn. 395, 396, 211 N.W.2d 891, 893 (1973), *affirming* First and Second Interlocutory orders, No. 204678 (Minn. Dist. Ct. 2nd Dist. Apr. 22 and July 9, 1972) (Appendix 54) (Affirmed trial court orders allowing commercial tenant one month to pay amount in default).

Another rent scenario is where the victim has left the property with proper notice but the landlord includes the tenant in eviction or rent claims anyway. Minn. Stat. § 504B.206 provides the defense that the defendant or another tenant or authorized occupant in the household has been a victim of domestic abuse, criminal sexual conduct, or stalking, and that the tenant ended the lease as required by Minn. Stat. § 504B.206 and does not have any rent obligation to the landlord following termination of the tenancy.

b. *Public housing and subsidized housing*

If the rent the landlord is trying to collect from the victim includes the income of the abuser/attacker/stalker who is excluded from the household, the tenant can claim that the rent must be recalculated based on actual household composition and income, before the court determines how much rent the landlord has a right to collect from the victim. Section 8 Vouchers: 42 U.S.C. 1437f (c) (3) and (o)(2); 24 C.F.R. §§ 5.2001-5.2009, 982.551-982.553; Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11; Public Housing: 42 U.S.C. §1437d (l); Violence Against Women Reauthorization Act of 2013, 42 U.S.C. 4043e-11; 24 C.F.R. §§ 5.2001-5.2009, 966.4; HUD Subsidized Projects: 42 U.S.C. § 1437f (c) (3) and (o)(2); Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11.

If the landlord alleges that the victim owes for damage that is the result of incidents of domestic violence, dating violence, sexual assault or stalking, the victim can claim that these charges are not a legal basis to terminate the tenancy. Section 8 Vouchers: 42 U.S.C. § 1437f (c); 24 C.F.R. § 5.2001-5.2009, 24 C.F.R. § 982.310; Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11; Public Housing: 42 U.S.C. § 1437d(l); Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11; 24 C.F.R. § 5.2001-5.2009, 966.4; HUD Subsidized Projects: 42 U.S.C. §§ 14043e-2, 1437f (c); Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11; 24 C.F.R. § 5.2001-5.2009.

Another defense is that the rent has not been paid as a result of incidents of domestic violence, dating violence, sexual assault or stalking so cannot be the basis to evict the victim. Section 8 Vouchers: 42 U.S.C. § 1437f (c)(9)(B) and (C); 42 U.S.C. § 1437f (o)(20); 24 C.F.R. §§ 5.2001-5.2009, 982.551; Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11; Public Housing: 42 U.S.C. § 1437d (l)(5); Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11; 24 C.F.R. §§ 5.2001-5.2009, 966.4; HUD Subsidized Projects: 42 U.S.C. § 1437f (c)(9)(B) and (C); 42 U.S.C. § 1437f (o)(20); 24 C.F.R. §§ 5.2001-5.2009, 880.607, 884.216, 886.127, 886.328, 891.630; Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11.

For more information on domestic violence litigation under federal and state laws, see Housing Protections for Survivors of Violence http://nhlp.org/ovwgrantees (Nat. Housing Law Project).

39. Premature action that had not accrued

See discussion, *supra*, at VI.D.19.

40. Acceptance of rent before commencement of action

An action is commenced at the time of service, not at the time of filing. Minn. R. Civ. P. 3.0l(A); *Appletree Square I, Limited Partnership v. W.R. Grace & Co.,* 29 F.3d 1283, 1286 (8th Cir. 1994); *Appletree Square I Limited Partnership v. O'Connor & Hannan*, 575 N.W.2d 102, 103 (Minn. 1998). A landlord's acceptance of rent prior to commencement of an eviction action is a basis for the court to dismiss the action and order expungement. *See Sumner Field Partners 2, L.P. v. _____,* No. 27-CV-HC-12-7838 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2013) (Appendix 702) (expungement granted for partial payment of rent before action commenced and full payment of rent before service of complaint); *Minneapolis Public Housing Authority v. ____,* No. 27-CV-HC-09-5431 (Minn. Dist. Ct. 4th Dist. Nov. 25, 2009) (Appendix 701) (dismissed and expunged for accepting full rent before commencement of action by service of summons and complaint).

41. Landlord rejected rent before filing action

In *Sandy Pine Apartments v. _____,* No. 58-CV-14-309 (Minn. Dist. Ct. 10th Dist., Pine County, Aug. 6, 2014) (Appendix 750) (Judge Martin), the court ruled for the tenant, concluding that (1) the co-defendant who no longer lived on the premises was dismissed from action; (2) the subsidized landlord waived breach by accepting rent from tenant through a vendor, distinguishing *Westminster Corp. v. Anderson,* 536 N.W. 2d 340 (Minn. Ct. App. 1995) where payment was from housing authority and not the tenant; (3) the subsidized housing notice of termination inaccurately stated amount of rent due, and by including garage and late fees that are not rent, and was not specific on calculation of arrearage and claim of housekeeping violations; (4) the plaintiff did not show that notices and visits to defendant's apartment were more than *de minimus* costs; (5) the defendant cannot be evicted for rent

when plaintiff rejected payments; and (6) the defendant was given 7 days to pay garage fee.

42. *De minimus* rent and fees

In *Sandy Pine Apartments v. _____,* No. 58-CV-14-309 (Minn. Dist. Ct. 10th Dist., Pine County, Aug. 6, 2014) (Appendix 750) (Judge Martin), the court ruled for the tenant, concluding that (1) the co-defendant who no longer lived on the premises was dismissed from action; (2) the subsidized landlord waived breach by accepting rent from tenant through a vendor, distinguishing *Westminster Corp. v. Anderson,* 536 N.W. 2d 340 (Minn. Ct. App. 1995) where payment was from housing authority and not the tenant; (3) the subsidized housing notice of termination inaccurately stated amount of rent due, and by including garage and late fees that are not rent, and was not specific on calculation of arrearage and claim of housekeeping violations; (4) the plaintiff did not show that notices and visits to defendant's apartment were more than *de minimus* costs; (5) the defendant cannot be evicted for rent when plaintiff rejected payments; and (6) the defendant was given 7 days to pay garage fee.

43. Laches

"The doctrine of laches is an equitable doctrine intended to prevent one who has not been diligent in asserting a known right from recovering at the expense of one who has been prejudiced by the delay." *Aronovitch v. Levy,* 238 Minn. 237, 242, 56 N.W.2d 570, ____ (1953). Laches is an eviction defense. *Minneapolis Pub. Hous. Auth. v. Lor,* 591 N.W.2d 700, 702 n.13 (Minn.1999).

In *G & L Investments v. _____,* No. UD-1930512564 (Minn. Dist. Ct. 4th Dist. June 18, 1993) (Appendix 814), the court concluded:

> That in the set of circumstances before the Court, it would be unfair to dispossess the Defendant from the premises for the nonpayment of rent for the year 1991 in light of the fact that the parties entered into new lease agreements in January, 1992 and again in January, 1993. That the Defendant is unable to produce at this time the records to disprove the negative, that is, the nonpayment of rent, for a time period that is almost three years old, remote in terms of residential lease arrangements. That these proceedings are summary in nature and the Plaintiff's right to the remedy, to wit: Writ of Restitution, should have been exercised in a more timely manner at that time. Therefore, the Court will invoke the doctrine of laches which provides that for the purposes of calculating the amount of money the Defendant owes to the Plaintiff to redeem the premises pursuant to Minn. Stat. Sec. 504.22 [now Minn. Stat. § 504B.291], the same will be restricted to the nonpayment of rent for 1992.

Id. at 2.

See B & L Properties, LLC v. Bernard, No. SA-10-408 (Maine Dist. Ct. Bangor July 14, 2010) (Appendix 785) (Section 8 Voucher eviction: one time failure to pay full amount of tenant rent of $33 was not a serious violation); *Northgate Housing Limited v. Kirkland*, No. 2002-152, 2002 WL 34422174 (Vt. Nov. Term 2002) (unpublished) (claims for possession based on termination notices had not properly accrued, as the lawsuit was filed prior to the stated termination dates; trial court did not err in finding that $6.00 in unpaid rent was *de minimus* and failed to provide a basis for possession).

F. HOLDING OVER AND NOTICE TO QUIT DEFENSES

1. Improper notice to quit, VI.F.1

2. The lease does not provide for termination of the tenancy before expiration of the lease, VI.F.2
3. Retaliatory eviction, VI.F.3
4. Waiver of Notice to quit by acceptance of rent, VI.F.4
5. Waiver of notice by issuing a later notice, extending a notice or executing a new lease, VI.F.5
6. Waiver of notice by demanding subsequent rent in an eviction (unlawful detainer) action, VI.F.6
7. Manufactured (mobile) home park lot tenancies, VI.F.7
8. Discrimination, VI.F.8
9. Reasonable accommodation of disabilities, VI.F.9
10. Public and government subsidized housing, VI.F.10
11. Contract for deed cancellation, VI.F.11
12. Mortgage foreclosure, VI.F.12
13. Subtenants, VI.F.13
14. Tenant revocation of tenant's notice to quit, VI.F.14
15. Expiration of lease following tenant's failure to give proper notice of renewal, VI.F.15
16. Uniform Relocation Act, VI.F.16

1. Improper notice to quit

a. *Periodic tenancies, month-to-month tenancies, and tenancies at will*

(1) Minn. Stat. § 504B.135

Minn. Stat. § 504B.135 (formerly § 504.06) provides:

504B.135 Terminating Tenancy at Will.

(a) A tenancy at will may be terminated by either party by giving notice in writing. The time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less.

(b) If a tenant neglects or refuses to pay rent due on a tenancy at will, the landlord may terminate the tenancy by giving the tenant 14 days notice to quit in writing.

See Johnson v. Theo Hamm Brewing Co., 213 Minn. 12, 16, 4 N.W.2d 778, 781 (1942).

If the interval between rent payments is a month, a 30-day notice is not adequate if there are 31 days in the month. *Johnson v. Schoen*, 2004 WL 614857 at *1 (Minn. Ct. App. Mar. 30, 2004) (unpublished) ("Johnson was obligated to give a one-month (not 30 days) advance notice to effectively terminate her tenancy. The record clearly shows that she did not do this.").

In *Wajda v. Schmeichel,* No. A18-0060, 2018 Minn. App. Unpub. LEXIS 981, 2018 WL 6165295 (Minn. Ct. App. Nov. 26, 2018) (unpublished), *rev. den.* (Minn. Feb. 19, 2019), the court reversed the district court decision awarding eviction. The court held that an eviction for breach of lease was improper where the lease is void on public-policy grounds because the landlord had rented the property without a license required by Minneapolis. The court then noted that because the lease was

void, the parties created a tenancy at will by paying and accepting rent. The court held the eviction for holdover after notice to quit was improper because landlord did not give proper written notice to the tenant appellant terminating the tenancy at will by giving only 8 days notice. *Id.* *8-9.

(2) Strict compliance required

In *Annex Properties, LLC v. TNS Research Intern*, 712 F.3d 381 (8th Cir. Minn. 2013), the commercial landlord filed a damages action in state court against the commercial tenant seeking unpaid rent and penalties allegedly owed under the lease. The action was removed to federal court, which entered partial summary judgment for landlord, concluding that the tenant terminated the at-will holdover tenancy with notice. *Id.* at 382. The Eighth Circuit United States Court of Appeals noted first that one email from the tenant did not terminate the tenancy, as the tenant held over and waived the notice. *Id.* at 383, citing *King v. Durkee-Atwood Co.*, 126 Minn. 452, 148 N.W. 297, 298 (1914).

The court reviewed the history of Minnesota Supreme Court decisions interpreting Minn. Stat. § 504B.135(a), reversing that district court's conclusion that the law has evolved from strict compliance to substantial compliance with the termination notice requirement. The court noted that the Minnesota Supreme Court historically used and continues to use of the terms "strict compliance," "reasonable exactness" and "substantial compliance," and concluded that the proper standard is that "'the [statutory] notice should fix with reasonable exactness the time at which these consequences may begin to take effect.'" *Id.* at 383-85, quoting *Grace v. Michaud*, 50 Minn. 139, 141, 52 N.W. 390, 390 (Minn.1892). The court then concluded:

> Viewed from this perspective, TNS's [the tenant's] July 7 letter, even read in the context of its earlier May email, did not substantially comply with a statutory notice requirement that the Supreme Court of Minnesota has repeatedly said requires reasonable exactness. First, the letter was not a notice; rather, it responded to a landlord inquiry that reasonably assumed the holdover lease was still in effect. Second, the letter declared that TNS had vacated the premises. Under well-established Minnesota law, simply vacating leased premises does not terminate a lease unless the landlord accepts surrender of the premises. Finally, the letter made no mention of lease termination. In referring to TNS's prior action, it did not name a wrong termination date; it named no date at all, other than to confirm the oral advice that TNS had "moved out." No landlord with any familiarity with Minnesota law would con-strue this letter as a statutory notice of termination. Thus, Annex [the landlord] was on sound legal ground when it promptly responded that it did not accept surrender, a response which meant that a statutory notice of termination was required to terminate this holdover lease. In these circumstances, the letter's statements that the holdover lease had ended and no more rent was owing were nothing more than erroneous legal conclusions. If the letter had clearly stated, "TNS intends to end the lease on August 31, 2011," we would have a different case.

Id. at 385-86. Justice Loken, joined by Justice Melloy, concurred but asserted that state case law does not support unlimited ongoing rent liability of the tenant to the landlord. *Id.* at 386-87. *See Homlquist v. _ ___*, No. HC 050927536 (Minn. Dist. Ct. 4th Dist. Oct. 6, 2005) (Appendix 651) (eviction dismissed for improper service time, improper notice, and waiver of notice by acceptance of rent).

(3) Service and receipt of notice

Notice must be served (and received) before the first day of the month in which the tenancy is to terminate. *Oesterreicher v. Robertson*, 187 Minn. 497, 501, 245 N.W. 825, 825 (1932); *Coker v. Hulsey*,

No. UD-1991101520 (Minn. Dist. Ct. 4th Dist. Nov. 12, 1999) (Appendix 384) (Notice must be actually received before October 1 to terminate lease at the end of October; notice to quit sent by registered mail on September 29 resulting in failed deliveries on October 1 and October 6 was untimely); *Minneapolis Public Housing Authority v. Papasodora*, No. UD-1960611515 (Minn. Dist. Ct. 4th Dist. Jul. 17, 1996) (Appendix 213) (notice mailed February 29 could not be received in February and was untimely for an April 1 rent increase); *Hegg v. Martinez*, UD-1951206549 (Minn. Dist. Ct. 4th Dist. Jan 19, 1996) (Appendix 219) notice claim dismissed due to lack of proper and timely service of notice); *Ochoa v. Kenneth*, UD-1950919505 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1995) (notice dated 1st of month untimely); *Kahn v. Morrow*, No. UD-1940504534 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (notice dated 1st of month untimely); *Lehikoinen v. Salinas*, No. C3-95-60158 (Minn. Dist. Ct. 6th Dist. July 11, 1995) (7 days notice untimely); *Valley Manor Apts. v. Gullickson*, No. CX-94-10 (Minn. Dist. Ct. 8th Dist. Feb. 3, 1994) (Appendix 56); *Karlson v. Ellis*, No. UD-1931102538 (Minn. Dist. Ct. 4th Dist. Nov. 26, 1993) (Appendix 61); *Phillips Neighborhood Housing Trust v. Chaboyea*, No. UD-1890502548 (Minn. Dist. Ct. 4th Dist. May 12, 1989) (Appendix 13) (notice received on April 1st ineffective for April 30).

(4) Termination date

The notice must state a termination date before rent is due. If the notice states the date on which rent is due, then the tenancy would start another month, and would not be terminated. *See Oesterreicher v. Robertson*, 187 Minn. at 501, 245 N.W. at 825. Strict compliance is required. *Markoe v. Naiditch & Sons*, 303 Minn. 6, 7, 226 N.W.2d 289, 290 (1975).

(4a) Defective notice is void and is not effective later

A defective notice is void, and does not become effective at the end of the next month. *See Eastman v. Vetter*, 57 Minn. 164, 166, 58 N.W. 989, 989-90 (1894); *Minneapolis Public Housing Authority v. Papasodora* (Appendix 213); *Phillips Neighborhood Housing Trust v. Chaboyea*, No. UD-1890502548 (Minn. Dist. Ct. 4th Dist. May 12, 1989) (Appendix 13)*; Valley Manor Apts. v. Gullickson*, No. CX-94-10 (Minn. Dist. Ct. 8th Dist. Feb. 3, 1994) (Appendix 56) (dicta).

(5) Oral leases

In *State v. Lilienthal,* 889 N.W.2d 780 (Minn. Feb. 1, 2017) the appellant met the victim through a mutual friend and, after learning that the victim needed a place to stay, agreed to rent a room in his house to the victim for $100 per week. The victim and the appellant had a disagreement and appellant asked victim to move out. That same day, because victim refused to move out, appellant poured gasoline on the victim and lit the gasoline on fire. The appellant was convicted of first-degree premeditated murder. He appealed arguing, among other things, that the district court erred in denying his request to give a jury instruction on defense of dwelling. The Minnesota Supreme Court found that the district court did not abuse its discretion because the defense of dwelling cannot be asserted against those with "rights to the dwelling" and the victim had a tenancy at will with the appellant which entitled him to written notice of the termination of the tenancy. The Court explained that the appellant's arguments that (i) the victim's tenancy terminated when the appellant expressed that he did not want the victim to continue to live with him and (ii) the victim had not paid rent in a while both failed because the appellant did not provide a notice in writing to the victim to terminate the tenancy.

In *Butler v. Cohns*, No. C2-96-6599 (Minn. Dist. Ct. 2d Dist. Oct. 22, 1996) (Appendix 218), the referee ruled for the landlord on the claim that the tenants were a threat to the landlord and the landlord's

property. On a request for judge review, the court concluded that whether or not there is an implied covenant in oral leases against threatening behavior, any termination of an oral lease must comply with Minn. Stat. Sec. 504B.135 (formerly 504.06).

In *Thomas v. Dobyne*, No. UD-1980513503 (Minn. Dist. Ct. 4th Dist. Jun. 3, 1998) (Appendix 370A), the landlord alleged an agreement with the tenant to vacate the property based on a telephone conversation with the tenant's attorney and a meeting, after which the parties intended to reduce the agreement to writing. The parties never executed a written agreement and the landlord did not give a written notice to quit. The court dismissed the action.

(6) Oral notices are ineffective

In *Andersen v._____,* No. 27-CV-HC-15-198 (Minn. Dist. Ct. 4th Dist. Jan. 28, 2015) (Appendix 786), the court concluded that (1) the landlord was not credible where his attorney repeatedly used leading questions; (2) the landlord has burden of proving provisions of lease and violations of it; (3) the landlord did not prove that oral lease included right of reentry and a valid driver's license; (4) the right of reentry provision is required by *Bauer v. Knoble,* distinguishing *C & T Properties v. McCallister;* (5) the oral notice did not terminate month-to-month lease; (6) possible future violation does not support present claim for breach of lease; and (7) priority writ statute Minn. Stat. § 504B.361 created a remedy but not a cause of action.

In *Rio Hot Properties, Inc. v. Judge*, No. UD-1981102522 (Minn. Ct. Dist. 4th Dist. Nov. 19, 1998) (Appendix 362C), the landlord claimed the notice to quit for October 31 was given to tenants on September 16, but the tenants testified that they did not receive it until October 16 at a court hearing in their previous unlawful detainer action. The court concluded that notice was not given until October 16, and earlier oral statements were ineffective to terminate the lease.

(7) Notices of less than one month are ineffective

In *Wajda v. Schmeichel,* No. A18-0060, 2018 Minn. App. Unpub. LEXIS 981, 2018 WL 6165295 (Minn. Ct. App. Nov. 26, 2018) (unpublished), *rev. den.* (Minn. Feb. 19, 2019), the court reversed the district court decision awarding eviction. The court held that an eviction for breach of lease was improper where the lease is void on public-policy grounds because the landlord had rented the property without a license required by Minneapolis. The court then noted that because the lease was void, the parties created a tenancy at will by paying and accepting rent. The court held the eviction for holdover after notice to quit was improper because landlord did not give proper written notice to the tenant appellant terminating the tenancy at will by giving only 8 days notice. *Id.* *8-9.

In *Sumpter v. _____,* No. 27-CV-HC-12-6974 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2012) (Appendix 690), the court dismissed the eviction without prejudice, holding that (1) the individual landlord could be represented by another person with a power of authority, (2) the landlord failed to disclose his name an address in the oral lease or otherwise 30 days prior to bringing the eviction action as required by Minn. Stat. § 504B.181; (3) the landlord's 12 day written notice did not terminate the tenancy at will, (4) the landlord did not filed an affidavit of service, (5) the landlord cannot state the tenants were not in the state when she admitted she viewed them at home when she attempted service, (5) names of defendants who did not live on the property would be removed from the caption. *See Windorpski v. _____,* No. 27-CV-HC-11-3453 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2012) (Judge Howard) (Appendix 778) (referee decision reversed and expungement granted where landlord had no rental license and gave written notice to terminate oral lease on May 3 to be effective May 31); *Ochoa v.*

Kenneth, UD-1950919505 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1995) (notice dated 1st of month untimely); *Kahn v. Morrow*, No. UD-1940504534 (Minn. Dist. Ct. 4th Dist. May 25, 1994) (notice dated 1st of month untimely); *Lehikoinen v. Salinas*, No. C3-95-60158 (Minn. Dist. Ct. 6th Dist. July 11, 1995) (7 days notice untimely).

(8) Landlord has the burden of proof

In *Gisslen v. _____,* No. 27-CV-HC-15-3756 (Minn. Dist. Ct. 4th Dist. Oct. 2, 2015) (Appendix 730), the landlord alleged breach of lease and holding over after notice. On the breach claim, the court found that the tenants had not materially breach the residential use limitation in the lease by operating a business with the knowledge and support of the landlord, the tenants had not materially breach the lease requirement to pay utility bills when there had been not disruptions and the accounts were current, and the land provided no evidence of denial of entry by the tenants. On the notice claim, the landlord provided no information on the notice or a copy of it, and the tenants moved for judgment on the claim. The court entered judgment for the tenants, awarded costs and disbursements, granted expungement, and allowed the tenants to move for attorney's fees under Minn. Stat. § 504B.172. *See Lewandoski v. _____,* No. 27-CV-HC-15-3209 (Minn. Dist. Ct. 4th Dist. Aug. 6, 2015) (Appendix 783) (dismissal at close of plaintiff's case where landlord testified about lease, $18,000 in unspecified rent, and termination notice but provided no exhibits and tenant testified she paid rent and utilities and received no notice; expungement granted; costs awarded).

In *Rio Hot Properties, Inc. v. Judge*, No. UD-1981102522 (Minn. Ct. Dist. 4th Dist. Nov. 19, 1998) (Appendix 362C), the landlord claimed the notice to quit for October 31 was given to tenants on September 16, but the tenants testified that they did not receive it until October 16 at a court hearing in their previous unlawful detainer action. The court concluded that notice was not given until October 16, and earlier oral statements were ineffective to terminate the lease. *See Lawler v. _____*, No. HC 010817525 (Minn. Dist. Ct. 4th Dist. Sep. 6, 2001) (Appendix 529) (notice to quit claim dismissed where landlord failed to prove he delivered notice; breach claim dismissed where landlord did not give three day notice with right to cure as required by lease; remaining claims settled); *O'Brian v. _____,* No. HC 1010402506 (Minn. Dist. Ct. 4th Dist. Apr. 18, 2001) (Appendix 552) (breach claims dismissed where oral lease contained no right of re-entry clause; notice claim dismissed where landlord failed to attached notice to complaint, and failed to prove notice was given; expungement granted); *Smith v. Brinkman* and *Brinkman v. Smith*, Nos. HC-1000124900 and HC-1000202517 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2000) (Appendix 418) (Consolidated eviction and rent escrow actions: landlord failed to prove statutory notice to quit).

b. *Periodic tenancies with no rent term*

Under Minn. Stat. § 504B.135(a) (formerly § 504.06), the "time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less." Where there is no rent term, the notice must be a three month notice. *Hagen v. Bowers*, 182 Minn. 136, 233 N.W. 822 (1931) (three month notice required where dairy farmer gave landlord 50% of harvest of cream in lieu of rent); *Ricks v. _____,* No. 27-CV-HC-14-6380 (Minn. Dist. Ct. 4th Dist. Dec. 18, 2014) (Appendix 797) (judgment and costs for tenant; written lease with no end date and no rent was tenancy at will requiring three month written notice, so one month notice was ineffective; parol evidence rule precluded evidence of landlord's intent of a term lease); *Marlett v. _____*, No. 27CVHC 09-66, Order (Minn. Dist. Ct. 4th Dist. Jan. 22, 2009) (Appendix 607) (plaintiff owned the property and cohabited with defendant, plaintiff vacated, defendant remained, and plaintiff filed eviction action; court concluded defendant was tenant at will without a rent obligation, requiring three month notice to terminate, but plaintiff could seek

reasonable rent).

b1. *Year-to-year tenancies*

Year-to-year tenancies are uncommon currently. They are like month-to-month tenancies with rent paid annually. *Backus v. Stenberg*, 59 Minn. 403, 61 N.E. 335 (1894); *Hunter v. Frost,*, 47 Minn. 1, 49 N.W. 327 (1891).

In *Bongard v. Premium Tax Servs., Inc.,* No. 27CVHC 12-6392 207 (Minn. Dist. Ct. 4th Dist. Dec. 5, 2012) (Appendix 695), in a commercial eviction action, the court granted partial summary judgment in favor of the tenant and dismissed the landlord's claims for eviction for breach of lease due to the lack of a right of re-entry clause in the lease, and termination of lease for public nuisance due to the lack of notice from a prosecuting attorney as required by Minn. Stat. § 617.81. The court noted the lease was year-to-year rather than month-to-month requiring a three month notice under Minn, Stat. § 504B.135, but if the effective date was after the action was commenced, the action would not have accrued. Because the lease's starting date remained a disputed fact, the issue was set for termination at trial.

On appeal in *Bongard v. Premium Tax Services, Inc.,* No. A13-1666, 2014 WL 1660927 (Minn. Ct. of App. April 28, 2014) (unpublished), the landlord in a year-to-year lease, provided two separate notices of termination. The first notice of termination was sent on April 24, 2012, and demanded that the tenant vacate by June 1, 2012. The Court of Appeals held that this notice was not effective because the lease was a year-to-year tenancy that ran through November 30 of each year. While the first lawsuit was pending, the attorney for the landlord sent a second notice to terminate. The Court held that the second notice was effective. That notice, given on October 29, 2012, demanded that the premises be vacated November 30, 2012. The Court of Appeals held that, since Minn. Stat. § 504B.135(a) requires a notice of termination to be at least as long as the interval between the time the rent is due or three months, whichever is later, the October 29, 2012 notice was valid because the rent was due on the first of each month and the tenants were given more than a month's notice.

c. *Term leases*

Leases may provide for notice to terminate the lease before the end of the term. Failure to give the notice requires dismissal. *Gramentz v. _____,* No. 27-CV-HC- 07-7351 (Minn. Dist. Ct. 4th Dist. Sep. 19, 2007) (Appendix 649) (eviction dismissed where landlord failed to give notice required by lease); *Osuji v. Coleman*, No. HC-01991118524 (Minn. Dist. Ct. 4th Dist. Nov. 30, 1999) (Appendix 411) (Action dismissed where landlord failed to provide written notice as required by the lease, and failed to abide by the terms of the notice); *Okoye v. Washington*, No. UD-1980909564 (Minn. Dist. Ct. 4th Dist. Oct. 2, 1998) (Appendix 354A) (Lease required 30 day termination notice for breach of lease); *Commonwealth Terrace Cooperative, Inc. v. Jassim,* No. C6-90-8892, slip op, at 6 (Minn. Dist. Ct. 2nd Dist. Oct. 3, 1990) (Appendix 13.A) (restitution denied where plaintiff issued notice to quit that did not contain the language required by the lease; plaintiff could not retroactively modify the requirement). However, in some cases, the notice period may be unconscionable. *See Pickerign v. Pasco Marketing, Inc.*, 303 Minn. 442, 446, 228 N.W.2d 562, 565 (1975) (lease providing for 30-day notice to service station operator may be unconscionable). *See also* discussion, *infra* at VI.G.13-14.

Some leases do *not* grant the landlord the right to terminate the lease by notice without cause. *Valley Manor Apts. v. Gullickson*, No. CX-94-10 (Minn. Dist. Ct. 8th Dist. Feb. 3, 1994) (Appendix 56).

d. *Notice to tenants following mortgage foreclosure or contract for deed cancellation*

(1) State Law

(a) Mortgage foreclosure

The purchaser can not terminate a tenancy which preceded the mortgage. *See Claflin v. Commercial State Bank of Two Harbors,* 487 N.W.2d 242 (Minn. 1992) (actual and open possession of property was sufficient to put mortgage lender on inquiry notice of possible rights in property).

For tenancies which postdate the mortgage, the Minnesota Legislature enacted several changes to the relative rights of landlord, tenants, and bank from 2008 to 2013. The current statute, Minn. Stat. § 504B.285, Subd. 1a, provides:

Subd. 1a.Grounds when the person holding over is a tenant in a foreclosed residential property.

(a) With respect to residential real property or a dwelling where the person holding the residential real property or dwelling after the expiration of the time for redemption on foreclosure of a mortgage was a tenant during the redemption period under a lease of any duration, and the lease began after the date the mortgage was executed, but prior to the expiration of the time for redemption, the immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the date of the expiration of the time for redemption, and effective no sooner than 90 days after the date of the expiration of the time for redemption, provided that the tenant pays the rent and abides by all terms of the lease.

(b) With respect to residential real property or a dwelling where the term of a bona fide lease extends more than 90 days beyond the date of the expiration of the time for redemption, the immediate successor in interest must allow the tenant to occupy the premises until the end of the remaining term of the lease, and provide at least 90 days' written notice to vacate, effective no sooner than the date the lease expires, provided that the tenant pays the rent and abides by all terms of the lease, except if the immediate successor in interest or an immediate subsequent bona fide purchaser will occupy the unit as the primary residence, the immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the date of the expiration of the time for redemption, effective no sooner than 90 days after the date of the expiration of the time for redemption, provided that the tenant pays the rent and abides by all terms of the lease.

For purposes of this section, a "bona fide lease" means:

(1) the mortgagor or the child, spouse, or parent of the mortgagor is not the tenant;

(2) the lease or tenancy was the result of an arm's-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized by a federal, state, or local subsidy.

(c) With respect to residential real property or a dwelling involving a tenancy subject to section 8

> of the United States Housing Act of 1937, as amended, where the term of the lease extends more than 90 days beyond the date of the expiration of the time for redemption, the immediate successor in interest must allow the tenant to occupy the premises until the end of the remaining term of the lease and provide at least 90 days' written notice to vacate, effective no sooner than the date the lease expires, provided that the tenant pays the rent and abides by all terms of the lease, except if the immediate successor in interest will occupy the unit as the primary residence, the immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the date of the expiration of the time for redemption, effective no sooner than 90 days after the date of the expiration of the time for redemption, provided that the tenant pays the rent and abides by all terms of the lease.

The statute was based on federal law in effect at the time. *See* discussion, *infra*, at VI.F.1.d.ii.

There are a couple of scenarios where tenants have defenses against an eviction filed by the successor in ownership of the property following expiration of the foreclosure redemption period:

1. The lease began after the date the mortgage was executed and prior to the expiration of the redemption period: The immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the expiration of the redemption period, and effective no sooner than 90 days from the expiration of the redemption period.

2. The tenant has a bona fide lease that extends more than 90 days beyond the date the redemption period expires: If the tenant is not a child, spouse, or parent of the mortgagor, the lease resulted from an arms-length transaction, the rent is not substantially less than fair market rent, and there is no new owner who will occupy the property as a primary residence, the tenant can stay until the end of the lease term.

In *Fed. Nat'l Mortgage Ass'n v. _____,* 27-CV-HC-15-3656 (Minn. Dist. Ct. 4th Dist. Aug. 12, 2015) (Appendix 707), Federal National purchased the property in question at a foreclosure sale and subsequently brought an eviction action to evict the residing tenant. However, in her answer, the tenant raised the affirmative defense that Federal National failed to comply with Minn. Stat. § 504B.285(1a) by failing to provide her with proper notice to vacate. Looking to the statute, the court determined five requirements a tenant must meet in order to qualify for the 90-day notice requirement: (1) the property in question must be real property of a dwelling; (2) the person holding over after the time for foreclosure redemption must be a "tenant"; (3) the tenant must be under a lease of any duration; (4) the lease must begin after the date the mortgage was executed; and (5) the lease began prior to the expiration of the time for redemption. Based on these five requirements, the court determined the tenant was in fact a tenant under an appropriate lease, and thus entitled to a 90-day notice before she can be evicted from the residence. Because Federal National did not give the tenant such timely notice, the court dismissed for failure to comply with Minn. Stat. § 504B.285(1a) and granted mandatory expungement under Minn. Stat. § 484.014, Subd. 3.

(b) Contract for deed cancellation

Prior to August 1, 2008, termination of the tenancy of a tenant renting from a owner following cancellation of a contract for deed or a mortgage foreclosure required one month written notice. Minn. Stat. § 504B.285 (formerly § 566.03), subd. 1. In 1992, the statute was amended to clarify when notice to vacate must be provided to a tenant whose tenancy is being terminated due to an contract for deed cancellation or mortgage foreclosure. The change specified that the tenant must be given one month's

written notice (1) to vacate no sooner than one month after the date the redemption or termination period expires, or (2) to vacate no later than the date when the redemption or termination period expires. If the second option requiring the earlier vacate date is chosen, the notice must state that the sender of the notice will hold the tenant harmless if the tenant breaches the lease by vacating before the end of the redemption period and the mortgage is subsequently redeemed.

In *Broszko v. Principal Mutual Life Ins. Co.*, 533 N.W.2d 656 (Minn. Ct. App. 1995), the court held that persons who began occupying foreclosed property beginning late in the redemption period were not tenants of the bank at the end of the redemption period. The court stated that the mortgagor does not have the power to create a tenancy in the redemption period which extends beyond the redemption period, after which any tenant of the mortgagor becomes a trespasser. The court noted that the person did not have a lease, did not pay rent for the last half year, knew foreclosure was taking place and they would have to move, knew the end of the redemption period, was served with process by substitute service, did not attend the hearing, then later contacted the bank's attorney to ask when she had to lease, giving the bank its first notice of her presence on the property, and did not attempt to reopen the unlawful detainer action, but rather sued after execution of the writ of restitution. The broad holding limits application of the statute to persons who began renting from the mortgagor before the foreclosure sale, giving no protection to the large number of persons who rent from mortgagors during the redemption period.

In 2008, the Legislature amended the statute to overrule *Broszko* and require a longer notice. Minn. Stat. § 504B.285 now provides:

> Subd. 1b.Grounds when the person holding over is a tenant in a property subject to a contract for deed.
>
> The person entitled to the premises may recover possession by eviction when any person holds over real property after termination of contract to convey the property, provided that if the person holding the real property after the expiration of the time for termination was a tenant during the termination period under a lease of any duration and the lease began after the date the contract for deed was executed but prior to the expiration of the time for termination, and the person has received:
>
> (1) at least two months' written notice to vacate no sooner than one month after the expiration of the time for termination, provided that the tenant pays the rent and abides by all terms of the lease; or
>
> (2) at least two months' written notice to vacate no later than the date of the expiration of the time for termination, which notice shall also state that the sender will hold the tenant harmless for breaching the lease by vacating the premises if the contract is reinstated.

(2) Federal Law

In 2009 Congress created protections for tenants whose landlords are in foreclosure. Pub. L. No. 111-22, § 702-04 123 Stat 1632, 1660-62 (May 20, 2009). The protections expired on December 31, 2014, but were restored effective June 23, 2018. Economic Growth, Regulatory Relief, and Consumer Protection Act, Public Law No. 115-74, § 1, Title III, § 304. The original Act applies "[i]n the case of any foreclosure ... after the date of enactment of this title..." See Public L. No. 111-22, title VII, § 702, 123 Stat. 1632, 1660-61 (effective May 20, 2009). The plain language of the original Act and the

Restoration Act, makes it applicable to foreclosures occurring on or after June 23, 2018. Minn. Stat. § 504B.285, Subd. 1a was based on it. *See* discussion, *supra*, at VI.F.1.d.(1).

All qualified tenants (not a child, spouse, or parent of the mortgagor; arms-length transaction; rent that is not substantially less than fair market rent for the property) would receive a 90 day notice from the successor in interest, normally the bank. The foreclosing bank was not a successor until the redemption period ends, so it is a 90 day notice on top of the redemption period.

Tenants who started a term lease before the foreclosure notice would get to keep the lease until it expires, unless the successor sold to a third party who would occupy the premises, and gave the 90 day notice. Since the successor could not sell until it became an owner at the end of the redemption period, the tenant would get a 90 day notice on top of the redemption period at a minimum, and longer if the lease is longer (i.e. two year lease) and there was no sale to a person who would occupy the premises.

Foreclosure was not good cause for Section 8 voucher eviction, and did not end the Section 8 lease and contract. The successor in interest would pick up the Section 8 voucher contract rights and obligations. However, if a new owner was going to occupy the unit, the new owner could give the 90 day notice before becoming the owner, to be effective when becoming an owner. If the new owner did not occupy the property, the owner could not end the lease with a 90 day notice.

In *Sims v. Moore,* 2013 CVG 018609 (Ohio. Mun. Ct. Jan. 10, 2014) (Appendix 706), Sims purchased a piece of property at a sheriff's foreclosure sale that Moore currently resided in. As part of the eviction process, Sims served Moore with a three-day notice pursuant to Ohio law, which vested jurisdiction of the this court. However, the federal Protecting Tenants at Foreclosure Act of 2009 ("PTFA") requires successors in interest of a federally-related mortgage loan foreclosure to provide a bona fide tenant with ninety-day notice, in addition to the three-day state law requirement. PTFA places the burden of disprove a tenant's bona-fide status on that of the successor owner. Because Sims failed to prove Moore was not a bona fide tenant, the court concluded that Moore was and thus entitled to a ninety-day notice of eviction. In light of Sims' failure to serve such notice, the case was dismissed.

In *Webster Bank v. Occhipinti*, No. CV-970059147S, 1998 WL 846105 (Conn. Sup. Ct. Nov. 20, 1998) (Appendix 372), which predated the federal laws on tenants in foreclosure, the court held that federal Section 8 law preempted state mortgage foreclosure law, which provided that foreclosure terminated the interest of the tenant of the mortgagor. Thus, the foreclosing mortgagee or the purchaser at the foreclosure sale could terminate the Section 8 lease only in accordance with the Section 8 statutes and regulations.

e. *Different notice lengths for landlord and tenant*

Court differ on whether the parties may be bound to different notice periods for terminating the lease. Courts have held that a month-to-month lease that requires a minimum occupancy greater than the term of the lease to obtain return of the deposit lacks mutuality, since the landlord could terminate the lease within the same period without penalty. _____ *v. Apartment Management Co., Inc.*, No. AC-87-6066 (Minn. Dist. Ct. 4th Dist. July 29, 1987) (Appendix 434A); _____ *v. Steele*, No. AC-667 (Minn. Dist. Ct. 4th Dist. Nov. 28, 1986) (Appendix 452A). The Minnesota Attorney General has challenged a similar provision as violating the Prevention of Consumer Fraud and Uniform Deceptive Practices Acts. *In re Chinyere Ike Njake*, No. 453070 (Minn. Dist. Ct. 2d Dist. Aug. 25, 1981) (order and assurance of discontinuance of use of clause) (Appendix 522A). *But see SJM Properties, Inc. v.* _____, No. HC 020402501 (Minn. Dist. Ct. 4th Dist. Apr. 11, 2002, Feb. 12, 2003) (Appendix 570) (dismissal where

Rental Assistance for Family Stabilization (RAFS) Program landlord failed to serve the Section 8 office; different notice periods for landlord and tenant might be proper; costs and disbursements awarded, which may be credited against rent; expungement granted later).

2. The lease does not provide for termination of the tenancy before expiration of the lease

In *Excelsior Devel. LLC v. Musse,* No. 27-CV-HC-09-20, Second Amended Order (Minn. Dist. Ct. 4th Dist. June 15, 2009) (Appendix 645) (Judge Karasov), the court reversed the referee's decision in a commercial eviction, concluding that (1) the landlord failed to rebut tenant's evidence of exercise of lease renewal option; (2) lease offered by landlord to tenant and signed by tenant but not landlord was binding lease; (3) the copy of alleged termination notice of tenant offered into evidence by landlord but denied by tenant lacked consideration and was invalid; (4) and the tenant given 30 days to vacate one commercial space under one expired lease but allowed to retain possession of two other spaces under other leases until expiration.

3. Retaliation

Minn. Stat. § 504B.285 (formerly § 566.03) provides in part:

Subd. 2. Retaliation defense.

It is a defense to an action for recovery of premises following the alleged termination of a tenancy by notice to quit for the defendant to prove by a fair preponderance of the evidence that:

(1) the alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, under the laws of the state or any of its governmental subdivisions, or of the United States; or

(2) the alleged termination was intended in whole or part as a penalty for the defendant's good faith report to a governmental authority of the plaintiff's violation of a health, safety, housing, or building code or ordinance.

If the notice to quit was served within 90 days of the date of an act of the tenant coming within the terms of clause (1) or (2) the burden of proving that the notice to quit was not served in whole or part for a retaliatory purpose shall rest with the plaintiff.

Subd. 3. Rent increase as penalty.

In any proceeding for the recovery of premises upon the ground of nonpayment of rent, it is a defense if the tenant establishes by a preponderance of the evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part for any lawful act of the tenant as described in subdivision 2, providing that the tenant tender to the court or to the plaintiff the amount of rent due and payable under the tenant's original obligation.

Subd. 4. Nonlimitation of landlord's rights.

Nothing contained in subdivisions 2 and 3 limits the right of the landlord pursuant to the provisions of subdivision 1 to terminate a tenancy for a violation by the tenant of a lawful,

material provision of a lease or contract, whether written or oral, or to hold the tenant liable for damage to the premises caused by the tenant or a person acting under the tenant's direction or control.

Section 504B.285, Subd. 3. applies to commercial as well as residential landlord-tenant relationships. It does not apply in breach of lease cases, or where the rights asserted by the tenant were unrelated to the landlord-tenant relationship. *Cloverdale Foods of Minnesota, Inc.,* 580 N.W.2d 46 (Minn. Ct. App. 1998). *See* discussion, *supra* at VI.E.9 and *infra* at VI.G.18.

The retaliatory defense statute does not apply to a mortgagor holding over after foreclosure of the mortgage unless the mortgagor can show an established landlord-tenant relationship. *Federal Land Bank of St. Paul v. Obermoller*, 429 N.W.2d 251, 257-58 (Minn. Ct. App. 1988).

a. *Protected tenant activity*

Under Minn. Stat. § 504B.285 (formerly § 566.03), subd. 2, the defendant's protected activity includes the defendant's good faith attempt to secure or enforce the rights under the lease or federal, state, or local laws, or report of the plaintiff's violation of any health, safety, housing, or building code or ordinance to a governmental authority. It appears that these rights could be those of the tenant, or of others.

Examples of protected activity include:

(1) Requesting repairs from the landlord.

Parkin v. Fitzgerald, 307 Minn. 423, 427, 240 N.W.2d 828, 831 (1976); *Payne v.* _____, No. HC 1010801519 (Minn. Dist. Ct. 4th Dist. Aug. 23, 2001) (Appendix 558) (presumption of retaliation applied even though tenant call for housing department inspection after notice was given, but had complained to landlord before notice was given; landlord failed to rebut presumption where rent payment history and clogged toilet problems paled in comparison to seriousness of habitability problems; expungement granted); *Line v. Reynolds*, No. UD-1960612512 (Minn. Dist. Ct. 4th Dist Aug 12, 1996) (App. 175); *Ochoa v. Kenneth*, UD-1950919505 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1995) (Appendix 79); *Harris v. Carlson*, No. C8-92-10809 (Minn. Dist. Ct. 10th Dist. Nov. 16, 1992) (Appendix 57).

(2) Reporting housing code violations to the housing inspector.

Parkin v. Fitzgerald, 307 Minn. 423, 427, 240 N.W.2d 828, 831 (1976); *Payne v.* _____, No. HC 1010801519 (Minn. Dist. Ct. 4th Dist. Aug. 23, 2001) (Appendix 558) (presumption of retaliation applied even though tenant call for housing department inspection after notice was given, but had complained to landlord before notice was given; landlord failed to rebut presumption where rent payment history and clogged toilet problems paled in comparison to seriousness of habitability problems; expungement granted); *Line v. Reynolds*, No. UD-1960612512 (Minn. Dist. Ct. 4th Dist Aug 12, 1996) (App. 175); *Ochoa v. Kenneth*, UD-1950919505 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1995) (Appendix 79); *Olowu v. Patterson*, No: UD-1950606520 (Minn. Dist. Ct. 4th Dist. July 3, 1995) (Appendix 142); *Harris v. Carlson*, No. C8-92-10809 (Minn. Dist. Ct. 10th Dist. Nov. 16, 1992) (Appendix 57). *But see Lehikoinen v. Salinas*, No. C3-95-60158 (Minn. Dist. Ct. 6th Dist. July 11, 1995) (Appendix 122) (no retaliation where landlord did not know of tenant's complaint).

(3) Insisting on the right to rent without illegal discrimination.

Barnes v. Weis Management Co., 347 N.W.2d 519, 521-22 (Minn. Ct. App. 1984). *See* discussion, *infra* at VI.F.8.

(4) Contacting the police.

Howard Lake Mobile Home Park v. _____, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B); *Stock v. Beaulieu* (Minn. Dist. Ct. 9th Dist. Mar. 9, 1995) (Appendix 140) (reporting a crime of domestic abuse committed by the plaintiff in which the defendant was the victim); *Salvation Army v. Luten*, No. UD-1860523522 (Henn. Cty. Mun. Ct., June 12, 1986) (Appendix 14).

(5) Commencing an action to restore possession of the premises following a lockout.

Salvation Army v. Luten, No. UD-1860523522 (Henn. Cty. Mun. Ct., June 12, 1986) (Appendix 14).

(6) Withholding rent or defending a previous eviction (unlawful detainer) action on the grounds that the landlord violated the covenants of habitability.

Donovic v. Dodson, No. C2-96-600607 (Minn. Dist. Ct. 6th Dist. Apr. 29, 1996) (Appendix 201) (Notice to quit following tenant's withholding of rent was retaliatory); *Olowu v. Patterson*, No: UD-1950606520 (Minn. Dist. Ct. 4th Dist. July 3, 1995) (Appendix 142); *Floyd v. Myers*, Nos. UD-1930601511 and UD-1930602512 (Minn. Dist. Ct. 4th Dist. June 28, 1993) (Appendix 6.C) (rent abatement of $285.00 from $425.00; subsequent eviction notice retaliatory and technical lease violation not material); *Zeman v. Arnold*, No. UD-1910102533 at 2-3 (Minn. Dist. Ct. 4th Dist. Jan. 23, 1991) (Appendix 14.A); *Zeman v. Currington*, No. UD-1910102534 at 3 (Minn Dist. Ct. 4th Dist. Jan. 23, 1991) (Appendix 14.B).

(7) Commencing an action to restore utility service to the premises following the landlord's termination of utility service.

LeDoux v. Zanosko, No. CX-95-1001 (Minn. Dist. Ct. 9th Dist. Oct. 16, 1995) (Appendix 124) (disconnected propane heat supply).

(8) Complaining about landlord's entry onto the premises.

Grommes v. Williams, No. UD-1950901500 (Minn. Dist. Ct. 4th Dist. Nov. 8, 1995) (Appendix 141).

(9) Commencing a rent escrow action.

McNair v. Doub, No. UD-1960708524 (Minn. Dist. Ct. 4th Dist. Aug.12, 1996) (Appendix 205)

(landlord's claim for eviction was in retaliation to tenant's initiation of rent escrow claim; proof of retaliation may void a landlord's non-waiver lease provision).

(10) Failure to cooperate with landlord's attempt to place water service in the tenant's name while payment remaining the landlord's responsibility.

Anya v. Rulford, UD-1960501506 (Minn. Dist. Ct. 4th Dist. May 24, 1996) (Appendix 220).

(11) Tenant inquiries about the landlord's insurance carrier.

Anya v. Rulford, UD-1960501506 (Minn. Dist. Ct. 4th Dist. May 24, 1996) (Appendix 220).

(12) Protected activity should include enforcement of the tenant's rights under statute.

Minn. Stat. § 504B.205 (formerly § 504.215), in which a landlord may not "(1) bar or limit a tenant's right to call for police or emergency assistance in response to domestic abuse or any other conduct; or (2) impose a penalty on a tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct," and attempts to enforce the implied landlord covenants on illegal activities. Minn. Stat. § 504.181 (now § 504B.171). In *Real Estate Equities, Inc. v. Schmidt*, No. CX-00-297 (Minn. Dist. Ct. 10th Dist. Mar. 14, 2000) (Judge Mossey) (Appendix 415), the tenant was assaulted on the property both before and after she obtained a restraining order, leading her to call the police. The landlord sent a letter stating it would terminate the tenancy based on late payment of rent, damage to the property, and police calls to the unit. The parties then executed an agreement to vacate. The court concluded that the termination letter, and the resulting agreement, violated § 504B.205, rendering the agreement void as contrary to public policy.

(13) Successful eviction defense.

McCampbell v. _____, No. HC 031002506 (Minn. Dist. Ct. 4th Dist. Nov. 5, 2003, Jan. 22, 2004) (Appendix 537) (successful eviction defense gave rise to presumption of retaliation for subsequent notice to vacate; landlord's evidence of prior tenant claims again the landlord did not prove claims were in bad faith; expungement granted later on judge review, reversing referee denial of expungement).

(14) Complaints to resident association.

Howard Lake Mobile Home Park v. _____, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B).

(15) Making complaints for other tenants.

City View Apartments v. Sanchez, No. C2-00-313, 2000 WL 1064897 (Minn. Ct. App. Aug. 2000) (unpublished: combined eviction action and tenant remedies action; retaliation statute applies to efforts of tenant to make repair complaints to other tenants; the trial court erred by finding the notice was proper without making findings on the factors in *Parkin v. Fitzgerald*, 307 Minn. 423, 240 N.W.2d 828

(1976); trial court erred in dismissing tenant remedies action based on inadequate findings on the notice in the eviction action).

b. *Presumption of retaliation*

If the plaintiff serves a notice to quit within ninety (90) days of the defendant's protected activity, the plaintiff must establish by a fair preponderance of the evidence, a substantial non-retaliatory purpose, arising at or within a short time before service of the notice to quit, wholly unrelated to and unmotivated by the defendant's protected activity. *Parkin*, 307 Minn. at 430, 240 N.W.2d at 832-33; Minn. Stat. § 504B.285 (formerly § 566.03), subd. 2.

See City View Apartments v. Sanchez, No. C2-00-313, 2000 WL 1064897 (Minn. Ct. App. Aug. 2000) (unpublished: combined eviction action and tenant remedies action; retaliation statute applies to efforts of tenant to make repair complaints to other tenants; the trial court erred by finding the notice was proper without making findings on the factors in *Parkin v. Fitzgerald*, 307 Minn. 423, 240 N.W.2d 828 (1976); trial court erred in dismissing tenant remedies action based on inadequate findings on the notice in the eviction action).

See also Equity Residential Holdings LLC v. _____, No. 27-CV-HC-16-128 (Minn. Dist. Ct. 4th Dist. Feb. 5, 2016) (Appendix 774) (judgment for defendant where defendant made numerous requests for repairs and plaintiff failed to prove the alleged non-retaliatory purpose of unauthorized residents); *Liedtke vs Timberland Partners,* 19AV-CV-14-468 (Minn. Dist. Ct. 1st Dist. June 20, 2014) (Judge Carter) (Appendix 780) (in rent escrow action tenant awarded rent abatement for noise from business operating in neighboring apartment, notice to terminate lease retaliatory, landlord failed to rebut retaliation presumption with evidence of breach, property manager's testimony of complaints from other tenant inadmissible hearsay, landlord ordered to renew lease); *Anya v. Rulford*, UD-1960501506 (Minn. Dist. Ct. 4th Dist. May 24, 1996) (Appendix 220) (landlord did not prove absence of retaliatory motive). A notice to not renew a lease also may be retaliatory. *Line v. Reynolds*, No. UD-1960612512 (Minn. Dist. Ct. 4th Dist Aug 12, 1996) (App. 175) (tenant proved that landlord's revocation of offer to continue renting to tenant and notice to vacate were in retaliation for tenant's complaints).

In *Walters v. Demmings*, No. C4-01-2, 2001 WL 641753 (Minn. Ct. App. 2001) (unpublished), the court held that facts of non-retaliatory purpose cannot be raised for the first time in closing argument, the trial court erred in placing the burden of proof on the tenant when the tenant proved a termination notice within 90 days of her enforcement of her rights, since the burden shifted to the landlord to rebut the presumption of retaliation, and the trial court erred in not closely examining the landlord's purposed legitimate business purpose. *But see Tamarack Court, Inc. v. Milliman*, No. C2-02-1787, 2003 WL 21911150 (Minn. Ct. App. Aug. 12, 2003) (unpublished) (affirmed holding of no retaliation, where trial court concluded that tenant did not prove retaliation when the presumption of retaliation applied, but also concluded that manufactured home park had a legitimate economic reason for eviction).

If the plaintiff alleges a non-retaliatory purpose, the defendant should have the opportunity to rebut the alleged purpose by showing that it was a pretext used to cover for the retaliation. *See Barnes*, 347 N.W.2d at 522. If the notice to quit is served more than ninety (90) days after the defendant's protected activity, the defendant must establish retaliation by a fair preponderance of the evidence. *See* Minn. Stat. § 504B.285 (formerly § 566.03), subd. 2.

(1) Failed landlord justifications

Landlord justifications have been rejected many times. *Green v. Formanek*, and *Formanek v. Green*, No. 1991001905 and 4991004400 (Minn. Dist. Ct. 4th Dist. Oct. 27, Nov. 8, 1999) (Judge Bruce Peterson) (Appendix 393) (Consolidated rent escrow and eviction actions: dismissal of eviction action where landlord's notice was not wholly without retaliatory motive); *Amsler v. Harris*, and *Harris v. Amsler*, Nos. UD-1990826901 and UD-1990902500 (Minn. Dist. Ct. 4th Dist. Sep. 20, 1999) (Appendix 376) (landlord failed to prove a non-retaliatory purpose for an eviction complaint filed seven days after the tenant filed an emergency lockout petition); *Hughes v. Schudi*, Nos. 1990208901 and UD-1990205510 (Minn. Dist. Ct. 4th Dist. Feb. 25, 1999) (Appendix 232B) (Scherer J.: rejected landlord's argument that notice to quit was not retaliatory because tenant's emergency tenant remedies action were dismissed for non-appearance, where landlord was aware of tenant's actions in reporting disrepair and initiating court actions; notice to quit and unlawful detainer action were filed in that phase; unlawful detainer file expunged); *Rio Hot Properties, Inc. v. Judge*, No. UD-1981102522 (Minn. Ct. Dist. 4th Dist. Nov. 19, 1998) (Appendix 362C) (landlord failed to prove a non-retaliatory purpose); *Mattson v. Harmon*, No. UD-1961203552 (Minn. Dist. Ct. 4th Dist. Jan. 28, 1997) (Appendix 269) (Retaliation for tenant's efforts to resolve the furnace problem); *Hardy v. Cannady*, No. UD-1960802598 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1996) (Appendix 258) (Retaliation for tenant's oral complaints to landlord and mutual friend about repair needs; landlord did not prove a separate and distinct reason for the notice).

Examples include:

(a) Wish to rent to others

In *Judge v. Rio Hot Properties, Inc.*, Nos. UD-1981202903, UD-1981005518, and UD-1981104522 (Minn. Dist. Ct. 4th Dist. Dec. 18, 1998), (Appendix 362D), in consolidated unlawful detainer and emergency tenant remedies action, the court concluded that a notice to quit which was not effective but the parties agreed to litigate was retaliatory where the landlord only wished to rent to other tenants, and the landlords waived a no pet provision and could not rely on it to show a non-retaliatory purpose.

(b) Wanting a higher rent

See Okeakpu v. _____, No. HC 1020603511 (Minn. Dist. Ct. 4th Dist. July 2, 2002) (Appendix 554) (Judge Sagstuen) (landlord failed to rebut presumption of retaliation for tenant's refusal to pay illegal side payments on top of the Section 8 rent where his claim that when he purchased the property he thought the tenant's rent was higher was not credible; expungement granted).

(c) Late rent

Payne v. _____, No. HC 1010801519 (Minn. Dist. Ct. 4th Dist. Aug. 23, 2001) (Appendix 558) (presumption of retaliation applied even though tenant call for housing department inspection after notice was given, but had complained to landlord before notice was given; landlord failed to rebut presumption where rent payment history and clogged toilet problems paled in comparison to seriousness of habitability problems; expungement granted); *Leshoure v. O'Brian*, No. UD-01000303900 (Minn. Dist. Ct. 4th Dist. May 17, 2000) (Appendix 403) (rent escrow action: landlord failed to overcome presumption of retaliatory notice with claims that the rent was late, since landlord accepted late rent in the past, or that Section 8 repair requirements were too expensive, since tenant had continuously asked for repairs); *Little v. Katzovitz,* No. UD-1970902903 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1997) (Appendix 268) (Landlord did not prove a non-retaliatory purpose for eviction by claiming unreasonable pedestrian traffic or repeated late payment of rent).

(d) Breach not known at time of notice

Reis v. Clayburn, No. UD-1991102507 (Minn. Dist. Ct. 4th Dist. Nov. 22, 1999) (Appendix 417) (Landlord did not overcome presumption of retaliation where landlord knew of inspector ordered repairs, did not know of tenant breaches of the lease at the time the landlord gave the termination notice, and the landlord indicated retaliatory attitude in a notice to all tenants.

(e) Traffic

Little v. Katzovitz, No. UD-1970902903 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1997) (Appendix 268) (Landlord did not prove a non-retaliatory purpose for eviction by claiming unreasonable pedestrian traffic or repeated late payment of rent).

(f) Property sale.

It seems increasingly common for landlords to defend a retaliation claim by asserting that they have sold or are going to sell the property. In *Coker v. Robinson*, Nos. UD-1971103525 and UD-1971103905 (Minn. Dist. Ct. 4th Dist. Dec. 15,1997) (Appendix 320), the notice from the landlord asserted it was being given because of the decision of the new owners. The purchase agreement required all but one tenant to vacate the property, and listed a different tenant. The purchaser also signed a letter making adverse claims against the tenant, which were based solely on information provided by the landlord. The court found that the landlord, rather than the buyer, made the determination to authorize the other tenant to stay but to require the defendant to vacate, thus the landlord had not proven that the notice to quit was not retaliatory. *See Project for Pride in Living, Inc. v.* _____, No. HC 1021121502 (Minn. Dist. Ct. 4th Dist. Dec. 10, 2002, April 7, 2003) (Appendix 564) (landlord's desire to end residential use of building "cannot be used as a pretext to ignore the covenants of habitability; later expunged on judge review by stipulation, reversing referee denial of expungement); *Olasande v.* _____, No. HC 1020906533 (Minn. Dist. Ct. 4th Dist. Oct. 24, 2002) (Appendix 555) (landlord failed to prove that alleged damage, over-occupancy, failure to allow access, and failure to maintain insurance were material breaches to warrant forfeiture; landlord failed to rebut presumption of retaliation where landlord failed to prove that sale of the property required removing the tenant, and the landlord's desire to sell in response to mortgage foreclosure actually was connected to the tenant's enforcement of habitability rights); *Boone v.* _____, No. HC 1010417504 (Minn. Dist. Ct. 4th Dist. June 4, 2001) (Appendix 477) (Judge B. Peterson) (landlord failed to rebut presumption of retaliation where he listed the property for sale with his own company but did not show the property, and he failed to prove tenant violated the lease; expungement granted).

(2) Successful landlord justifications

In *Bool Partners Ltd. Partnership v. Lensing,* No. A15-1419, 2016 WL 2946084 (Minn. Ct. App. May 23, 2016) (unpublished), the low income housing tax credit property tenant was late on several payments and faced several eviction proceedings during two, one-year leases. At one point during second year of the lease, the landlord notified all tenants that those who continued to be late with payments would not have their leases renewed. The tenant still failed to make timely lease payments, and landlord decided not to renew the lease. Later that year, the tenant asked for permission to install hardwood floors in her unit at her own expense because her autistic son and dog were urinating on the carpet. The landlord responded that it would be unwise for her to do so because her lease would not be renewed. The landlord gave confirmation of non-renewal to tenant fourteen days before the landlord was notified of the tenant's discrimination charge for an alleged failure to accommodate her disabled

child. The landlord obtained judgment in an eviction action, and the tenant appealed. The Court of Appeals held that the landlord had good cause to terminate the tenancy due to the late payments, and that the landlord had a business reason for the non-renewal, which was not retaliatory. Further, the landlord had made his decision regarding termination of the tenancy before the tenant even mentioned the need to accommodate her child's needs with the hardwood flooring.

In *Koski v. Johnson*, No. A14-1836, 2015 WL 4393429 (Minn. Ct. App. July 20, 2015) (unpublished), the tenant had an oral month-to month lease from January 1996 until her eviction, with the exception of a one-year written lease that was in effect in 2001. The landlord filed two unsuccessful eviction actions in 2012 and 2014, with the second dismissed in June 2014 for improper notice. The landlord issued an new notice in July, after which the tenant obtained an *ex parte* harassment restraining order against the landlord. In response to the third eviction action, the tenant claimed that she was being retaliated against because she asked the landlord to repair some items and because she obtained an ex parte harassment restraining order against the landlord. The district court found that a non-retaliatory basis for terminating the lease existed because the landlord had been trying to regain possession of the property since 2012, well before the tenant requested repairs or obtained the restraining order. The Court of Appeals affirmed, finding that the landlord had a reasonable motive to terminate the lease that did not involve retaliation, including: (1) the action flowed directly from the prior attempts to terminate the lease, which preceded any of the claimed protected conduct by the tenant; and (2) removal of the unit from the housing market is a reasonable business decision, as evidenced by the fact that the landlord was receiving below-market rent and that he had shown a desire to stop being a landlord by retaining Renter's Warehouse to manage the property.

Landlords also were successful in *Tamarack Court, Inc. v. Milliman*, No. C2-02-1787, 2003 WL 21911150 (Minn. Ct. App. Aug. 12, 2003) (unpublished) (affirmed holding of no retaliation, where trial court concluded that tenant did not prove retaliation when the presumption of retaliation applied, but also concluded that manufactured home park had a legitimate economic reason for eviction); *Aadland v. Jackson*, No. UD-1991101616 (Minn. Dist. Ct. 4th Dist. Nov. 19, 1999) (Appendix 375) (Landlord's retention of November rent without cashing it waived notice to quit effective October 31, as the landlord exercised dominion and control over the funds to the prejudice of the tenant; landlord rebutted presumption of retaliatory notice by proving a non-retaliatory purpose of frustration with tenant's failure to pay rent in a timely manner and landlord's impression of an unacceptable amount of foot traffic.; *Bossen Terrace v. Price*, No. C5-98-434 and C1-98-480 (Minn. Ct. App. Oct. 6, 1998) (Appendix 312) (Unpublished: Landlord proved substantial non-retaliatory reason by proving three incidents where police arrested a tenant for domestic assault and disorderly conduct).

In *Nguyen v. Veit,* No. UD-1910401513 (Minn. Dist. Ct. 4th Dist. Apr. 15, 1991) (Appendix 14.C), the plaintiff established substantial non-retaliatory reason for eviction where defendant requested repairs, defendant assaulted plaintiff, and plaintiff issued a termination notice based on her fear for her safety. The landlord also could allege that there was no retaliation where landlord did not know of tenant's complaint. *Lehikoinen v. Salinas*, No. C3-95-60158 (Minn. Dist. Ct. 6th Dist. July 11, 1995) (Appendix 122).

c. *Housing code ordinance provisions on retaliation*

Local housing codes also may limit the ability of the landlord to evict a tenant without cause after the tenant seeks to enforce rights under the code. *See* Mpls. Code of Ord. § 244.80 (Appendix 138). Section 244.80 provides a presumption of retaliation where the landlord attempts to terminate the tenancy after the tenant complains to the inspection agency, or the tenant of City sues the landlord over

housing conditions. *The presumption has no time limit.* The tenant also may be entitled to rent abatement for retaliation. *See* discussion, *supra*, at VI.E.1.d.(3) (Violation of covenants of habitability).

d. *Litigating retaliation in a tenant initiated case*

With the advent of tenant screening companies and their access to eviction records, along with tight rent markets, tenants facing a retaliatory notice may fear fighting the notice in an eviction action. Tenants may wish to try to beat the landlord to court by filing their own action.

Where the tenant has defenses to a landlord's notice to quit and the landlord has not yet filed an eviction action, the tenant may wish to consider filing a rent escrow action to challenge the notice before the landlord files an eviction action. To do so, the tenant should send a letter to the landlord asserting why the notice is improper (i.e., inadequate time period, retaliation, etc.) and any repair problems or lease violations by the landlord. After fourteen days, the tenant may file a rent escrow action. Minn. Stat. § 504B.385 (formerly § 566.34). While the court may not be required to consider the notice issue, the court may choose to do so in the interests of judicial economy. *Dargay v. Cashman*, No. 1990825900 (Minn. Dist. Ct. 4th Dist. Sep. 17, 1999) (Appendix 387) (Rent escrow action; tenant proved failure to keep property in reasonable repair and awarded rent abatement; in interests of judicial economy, the court may decide whether pending notice to vacate is retaliatory when issue is pleaded in a rent escrow action; tenants may not be evicted or penalized for seeking police assistance, Minn. Stat. § 504B.205; tenant's call to police was a good faith attempt to secure or enforce rights under the laws of the state, Minn. Stat. § 504B.285; when retaliation is alleged and the burden is on the landlord to show a substantial non-retaliatory reason, "the landlord must do more than state a non-retaliatory reason for the eviction . . . [the landlord] must prove the truth of the allegations of loud noise with competent evidence, and prove that the noise has an adverse impact on other residents of the building or neighbors. Accepting less as proof of a non-retaliatory purpose would strip the retaliation statute of any meaning.")

In *Judge v. Rio Hot Properties, Inc.*, Nos. UD-1981202903, UD-1981005518, and UD-1981104522 (Minn. Dist. Ct. 4th Dist. Dec. 18, 1998), (Appendix 362D), in consolidated unlawful detainer and emergency tenant remedies action, the court concluded that a notice to quit which was not effective but the parties agreed to litigate was retaliatory where the landlord only wished to rent to other tenants, and the landlords waived a no pet provision and could not rely on it to show a non-retaliatory purpose. *See Leshoure v. O'Brian*, No. UD-01000303900 (Minn. Dist. Ct. 4th Dist. May 17, 2000) (Appendix 403) (rent escrow action: landlord failed to overcome presumption of retaliatory notice with claims that the rent was late, since landlord accepted late rent in the past, or that Section 8 repair requirements were too expensive, since tenant had continuously asked for repairs); *Amsler v. Harris*, and *Harris v. Amsler*, Nos. UD-1990826901 and UD-1990902500 (Minn. Dist. Ct. 4th Dist. Sep. 20, 1999) (Appendix 376) (consolidated actions: landlord failed to prove a non-retaliatory purpose for an eviction complaint filed seven days after the tenant filed an emergency lockout petition).

e. *Term leases*

In *Dominium Management Services, Inc. v. C.L.,* No. HC-1021106500 (Minn. Dist. Ct. 4th Dist. Mar. 4, 2003) (Appendix 492), the trial court found that a Section 8 Voucher notice of lease termination required by term lease constituted notice to quit under Minn. Stat. § 504B.285 (formerly § 566.03), Subd. 2; and the defendant complained of conditions, some of which were found by the city inspector and plaintiff as well-founded. The court concluded that the plaintiff did not overcome the presumption of retaliation by claiming failure to allow the plaintiff to enter the apartment, where the tenant complied with her separate agreement over notice for apartment visits. The court also concluded that the plaintiff

reasonably accommodated the defendant's disability in the past, but failed to comply with this ongoing obligation when the plaintiff failed to respond to the defendant's proposal of a mental health case management workers serving as a communication intermediary between plaintiff and defendant. The court dismissed that action and awarded the defendant costs and disbursements.

The Court of Appeals affirmed in *Dominium Management Services, Inc. v. C.L.,* No. A03-85, 2003WL 22890386 (Minn. Ct. App. Dec. 9, 2003) (umpublished). On the retaliation claim, the court focused on the timing of the eviction, concluding that it was "significant that Dominium did not terminate C.L.'s year-to- year lease and file the resulting eviction action until 2002, after C.L. had reported numerous housing violations to the Richfield authorities and after the encounter with the regional property manager." On the reasonable accommodation claim, the court affirmed the trial court's finding that the defendant was disabled, and concluded that the defendant's request for neutral third party involvement would not impose an undue hardship on the plaintiff.

In *Arrow Southampton, LLC v. Akinnola*, No. A15-0731, 2016 WL 363487 (Minn. Ct. App. February 1, 2016) (unpublished), the tenant alleged that oral promises regarding lease renewals were made to him both prior to and after execution of a written one-year lease agreement, which included an express lease renewal term, a non-waiver provision, and an integration clause. Prior to the expiration of the initial lease term, the landlord sent a nonrenewal notice, but then offered, via letter, to enter into a new one-year lease with an increased rent term. The tenant responded that he wished to renew and sent the new rent payment, but did not sign a new lease because he wanted to negotiate one of its provisions. When the original lease expired, the tenant did not vacate the apartment, and the landlord filed an eviction complaint. The housing court held that any oral representations made before the lease was signed were subsumed by the lease terms and that because the lease expired of its own terms (not terminated by the landlord), the retaliation defense (regarding the tenant's complaints about un-leashed large dogs on the property and other safety issues) did not apply. The Court of Appeals declined to decide whether a notice of nonrenewal qualifies as a notice to quit under the Minnesota Statues prohibiting retaliatory eviction because the tenant could not demonstrate any retaliation and was actually given a chance to sign a new lease, but refused to do so.

f. *Manufactured (mobile) home park lot tenancies*

In manufactured (mobile) home park lot tenancies, under Minn. Stat. § 327C.12, the defendant's protected activity includes a good faith, a complaint to the park owner or a governmental agency or official, or an attempt to exercise rights or remedies pursuant to federal or state law. The 1995 Legislature clarified the application of the 90 day presumption of retaliation to a landlord's adverse action against the tenant following the tenant joining and participating in the activities of a resident association. Minn. Stat. § 327C.12, *amended by* 1995 Minn. Laws Ch. 13, Art. 1.

If the plaintiff increases rent, decreases services, alters an existing lease, or seeks possession of the premises, or threatens such action, within ninety (90) days of the defendant's protected activity, the plaintiff has the burden of proving non-retaliation. Id. The retaliatory eviction statute, Minn. Stat. § 504B.285 (formerly § 566.03), subd. 2, which also includes the ninety (90) day test, requires the plaintiff to prove that the notice to quit was not served in whole or part for a retaliatory purpose. If the plaintiff takes any of the listed illegal actions more than ninety (90) days after defendant's protected activity, the defendant must make a prima facie case of retaliation, and then the plaintiff must prove otherwise. Minn. Stat. § 327C.12 (emphasis added).

See discussion, *supra*, at VI.F.3 (Retaliation)

(1) Protected activity

(a) Contacting the police.

Howard Lake Mobile Home Park v. _____, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B)

(b) Complaints to resident association.

Howard Lake Mobile Home Park v. _____, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B).

(c) Complaints for code enforcement agencies

Larson v. Anderson, No. C9-96-416 (Minn. Dist. Ct. 9th Dist. Oct. 11 and Nov. 8, 1996) (Appendix 264) (Rent abatement of $6,910 over five years failing to repair discharge of raw sewage on the premises in manufactured (mobile) home park; landlord's notice to quit was in retaliation for tenant's complaint to health department).

(d) Other protected activity

See discussion, *supra*, at VI.F.3.a.

(2) Owner justification

Tamarack Court, Inc. v. Milliman, No. C2-02-1787, 2003 WL 21911150 (Minn. Ct. App. Aug. 12, 2003) (unpublished) (affirmed holding of no retaliation, where trial court concluded that tenant did not prove retaliation when the presumption of retaliation applied, but also concluded that manufactured home park had a legitimate economic reason for eviction).

For other justifications, *see* discussion, *supra*, at VI.F.3.b.

3a. Common law retaliation defense

In *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019), the Court recognized common law defense to landlord evictions in retaliation for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease. The Court noted that the "defense fills a gap that the Legislature left open, perhaps inadvertently." *Id.*, at 409. While the eviction involved a claim of a non-monetary breach of lease, the holding was not limited to breach cases, making the defense available in other evictions.

4. Waiver of Notice to quit by acceptance of rent

There is disagreement over when payment and acceptance of rent waives a notice to quit. Landlords argue that acceptance of rent does not necessarily manifest the intent to waive notice. *See MCDA v. Powell*, 352 N.W.2d 532, 534 (Minn. Ct. App. 1984), citing *Arcade Investment Co. v. Gieriet*, 99 Minn. 277, 279, 109 N.W. 250, 252 (1906). In *Arcade Investment Co.*, the court stated that:

> The landlord may evidence his intention to waive the termination of the tenancy by such notice by any conduct sufficiently manifesting such intention. Thus if he gives a second notice, he thereby waives his right to proceed under the first notice. So also the subsequent acceptance of rent accrued after the giving of the notice is evidence competent to be submitted to the jury as intending to show waiver of the notice. By party of reasoning, if after the landlord has given notice to the tenant to quit, he subsequently agrees with the tenant for a continuance of the possession of the premises, he thereby waives the effect of the notice. That there may have been "no consideration, no agreement to pay rent, nor any of the elements of a contract for lease" in such a concession by the landlord, would affect the character of the right of the tenant holding over, but would not necessarily deprive the landlord's act of its natural tendency to show a waiver of the notice to quit previously given.

99 Minn. at 279, 109 N.W. at 252 (citations omitted). *See Burlington Coat Factory of Minnesota, LLC v. Chapman,* No. A07-1456, 2008 WL 4006736 *2 (Minn. Ct. App. Sept. 2, 2008) (unpublished).

Tenants argue that the payment and acceptance of rent constitutes unconditional waiver of a notice to quit. *King v. Durkee-Atwood, Co.*, 127 Minn. 452, 455, 148 N.W. 297, 298 (1914) (waiver of tenant's notice); *Pappas v. Stark*, 123 Minn. 81, 83, 142 N.W. 1042, 1047 (1913) (waiver of landlord's notice). *See Linden Corp. v. Simard*, No. 3-87-1599 (Minn. Ct. App. Feb. 9, 1988) (Appendix 15) (analysis of waiver of notice case, but citing waiver of breach cases; while it is questionable whether receipt of a check without cashing it constitutes waiver, receipt of a money order or cash constitutes waver of notice). None of these cases discuss *Arcade* nor a requirement to show intent.

See also Homlquist v. _____, No. HC 050927536 (Minn. Dist. Ct. 4th Dist. Oct. 6, 2005) (Appendix 651) (eviction dismissed for improper service time, improper notice, and waiver of notice by acceptance of rent)*; Pham v. _____*, No. HC 030131517 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2003) (Appendix 560) (dismissal for failure to present lease for breach claim and notice for holdover claim, and for waiver of notice by acceptance of rent); *Rydrych v. Comer*, No. UD-01961125504 (Minn. Dist. Ct. 4th Dist. Dec. 6, 1996) (Appendix 291) (Waiver of notice by acceptance of rent); *Donovic v. Dodson*, No. C2-96-600607 (Minn. Dist. Ct. 6th Dist. Apr. 29, 1996) (Appendix 201); *Olowu v. Patterson*, No: UD-1950606520 (Minn. Dist. Ct. 4th Dist. July 3, 1995) (Appendix 142); *Etna Woods Apartment v. Ramgran,* No. C8-92-2614 (Minn. Dist. Ct. 2nd Dist. Mar. 25, 1992) (Appendix 15.D); *Buckeye Realty Co. v. Elias,* No. CX-91-0697 at 4-7 (Minn. Dist. Ct. 10th Dist. Aug. 6, 1991) (Appendix 15.E).

Tenants also should argue that the *Powell* Court discussed acceptance of rent in *dicta* and misstated Minnesota law on the subject. In *Powell*, the issue was whether a non-waiver clause in a public housing lease was valid. The court held that it was valid, but then went on to say in *dicta* that acceptance of rent does not necessarily manifest the intent to waive notice. The court did not discuss *King* or *Pappas*.

The *Powell* decision has received both support and criticism by the lower courts. *See Loring Towers Apartments Limited Partnership v. Ferrer*, No. UD-1901226507 at 4 (Minn. Dist. Ct. 4th Dist.

Jan. 10, 1991) (Appendix 15.A); *Ewing Square Associates v. Koerner*, No. UD-2910104802 at 6-7 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1991) (Appendix 15.B) (support of *Powell*); *Bigos Prop. v. Roby*, No.__ __, Transcript of Proceedings at 2-3 (Ram. Cty. Ct. June 4, 1985) (Appendix 16) (criticism of *Powell*).

Even where a court accepts the *Arcade-Powell* analysis, under *Arcade* the tenant should assert that the acceptance of rent creates a rebuttable presumption of an intention to waive the termination notice, since it is inconsistent with an intention to declare the tenancy terminated. The payment and acceptance of rent indicates an intention by both parties of continued rental for another month. Even if a lease has been properly terminated, the payment and acceptance of rent indicates an intention to continue renting on a month-to-month basis. Under this analysis, the landlord may be able to rebut such a presumption by returning the rent to the tenant immediately after the landlord has received it. If the landlord retains the rent until the tenant raises the waiver defense in an eviction (unlawful detainer) action, the landlord's return of the rent at that time should not be relevant, since it does not relate to the landlord's intention at the time the rent originally was received. *See Loring Towers Apartments Limited Partnership v. Ferrer* at 3-4. (Appendix 15.A).

In some cases, such as in subsidized housing or in private housing where the lease requires a termination notice based on breach of the lease, the landlord may not have waived the notice, but may have waived the breach upon which the notice relies. In such cases, waiver of the breach should remove the basis for the notice, rendering the notice void.

a. *In public housing and government subsidized housing*

Before August 1995, tenants had successfully argued that the landlord's acceptance of the government subsidy, or housing assistance payment (HAP), may waive the notice, depending on the circumstances. *Etna Woods Apartment v. Ramgran,* No. C8-92-2614 (Minn. Dist. Ct. 2nd Dist. Mar. 25, 1992) (Appendix 15.D) (acceptance of rent and subsidy waived breaches); *Buckeye Realty Co. v. Elias,* No. CX-91-0697 at 4-7 (Minn. Dist. Ct. 10th Dist. Aug. 6, 1991) (Appendix 15.E) (FmHA project: acceptance of tenant's rent (as opposed to HAP from HRA) vendored by social service agency; *Secretary of U.S. Dept. HUD v. Madison*, No. UD-1861104544 (Minn. Dist. Ct. 4th Dist. Nov. 18, 1986) (Appendix 17). *But see Loring Towers Apartments Limited Partnership v. Ferrer*, No. UD-1901226507 (Minn. Dist. Ct. 4th Dist. Jan. 10, 1991) (Appendix 25A).

But, in *Westminster Corp. v. Anderson*, 536 N.W.2d 340 (Minn. Ct. App. 1995), the court held that in a breach of lease case, the acceptance of housing assistance payments (HAP) from the Minnesota Housing Finance Agency (MHFA) did not waive the tenant's alleged breach of the lease, holding that HAPs were not rent. The holding probably also applies to waiver of notice cases, so that acceptance of the HAP would not waive notice. However, the court noted that it made no ruling on treatment of the tenant's rent payments, as opposed to the HAP, implying that the subsidized and public housing tenant rent would be treated the same as rent by private tenants for waiver purposes.

Counsel should argue that where the landlord accepts the *tenant's rent*, regardless of whether the landlord accepted the *HAP*, waiver has occurred, under *Westminster Corp.*, the private housing waiver appellate cases, and the subsidized housing lower court decisions where the tenant paid rent in addition to the housing authority paying the HAP.

b. *Manufactured (mobile) home park lot tenancies*

Minn. Stat. § 327C.11, subd. 2 (emphasis added), provides that acceptance of rent: (1) after

notice of violations or repeated serious violations of park rules or certain laws, or notice of park improvements or closure, does not waive the notice; (2) for a period after expiration of a final notice to quit waives the notice, unless the parties agree otherwise in writing.

In *Lea v. Pieper*, 345 N.W.2d 267 (Minn. Ct. App. 1984), the court held that rent received before expiration of the notice to quit, but covering a period extending beyond the expiration date, waived the notice. *Id.* at 271. *Howard Lake Mobile Home Park v. Reinke*, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B).

It appears that where a notice of violations includes a notice to vacate, it will be treated as a final notice for purposes of waiver. *See Rainbow Terrace, Inc. v. Hutchens*, 557 N.W.2d 618 (Minn. Ct. App. 1997) (Minn. Stat. Ch. 327C applies to manufactured (mobile) home park lot tenancies, regardless of whether the parties have a written lease; acceptance of rent after expiration of a notice to vacate waived the notice; notice to quit was invalid because it did not state the reason for termination, depriving the tenants of an opportunity to remedy the violation). In *Hedlund v. Davis,* No. C1-91-1687 (Minn. Dist. Ct. 10th Dist. Dec. 31, 1991) (Appendix 15.F), the court held that acceptance and retention of rent check by landlord and failure to return it prior to hearing waived notice to quit. *But see Hi Vue Park v. Schneider*, No. CX-99-83, 1999 Minn. App. LEXIS 858 (Minn. Ct. App. July 27, 1999) (unpublished) (affirmed manufactured (mobile) home eviction judgment for park owner; residents threatening behavior constituted endangerment, substantial annoyance and repeated serious violations; notice which did not include times for alleged violations was proper where it referenced court records discussing the events; notice was proper where residents had sufficient information to know what conduct was unacceptable and what needed to be done to avoid eviction; owners acceptance of rent during the notice period did not waive breaches as there was no showing that the owner intended to waive its right to evict; receipt of rent after the effective date of the notice did not waive the notice where the owner stated in the notice that it would not accept rent and a later letter stated that it refused the rent payment and would return it at the court hearing.

c. *Landlord not depositing the rent*

Landlords have had some success avoiding the waiver defense by not cashing rent payments and then arguing that they had not accepted rent, or by alleging very serious lease violations which encouraged the court to look for an exception to the waiver doctrine. *Carriagehouse Apartments v. Stewart*, No. UD-1970107501 (May 13, 1997) (Appendix 249) (No waiver of notice or breach where landlord received but did not cash, deposit or return money orders for rent, landlord instructed agents to not accept rent on the tenant's account, and landlord alleged tenant started a fire at the apartment); *Loring Towers Apartments Limited Partnership v. Ferrer*, No. UD-1901226507 (Minn. Dist. Ct. 4th Dist. Jan. 10, 1991) (Appendix 15.A).

However, landlord were not successful in *Aadland v. Jackson*, No. UD-1991101616 (Minn. Dist. Ct. 4th Dist. Nov. 19, 1999) (Appendix 375) (Landlord's retention of November rent without cashing it waived notice to quit effective October 31, as the landlord exercised dominion and control over the funds to the prejudice of the tenant; landlord rebutted presumption of retaliatory notice by proving a non-retaliatory purpose of frustration with tenant's failure to pay rent in a timely manner and landlord's impression of an unacceptable amount of foot traffic); *Heights Realty Assoc. v. Smith*, NEW YORK LAW

JOURNAL (July 28, 1999) (www.nylj.com)(landlord's retention of rent by uncashed check, without a claim of inadvertence, attempt to return, or other act which showed the landlord's intent to preserve the right to terminate the tenancy, waived the notice).

d. *Nonwaiver clause in lease*

In *Arrow Southampton, LLC v. Akinnola*, No. A15-0731, 2016 WL 363487 (Minn. Ct. App. February 1, 2016) (unpublished), Akinnola alleged that oral promises regarding lease renewals were made to him both prior to and after execution of a written one-year lease agreement, which included an express lease renewal term, a non-waiver provision, and an integration clause. Prior to the expiration of the initial lease term, the landlord sent a nonrenewal notice, but then offered, via letter, to enter into a new one-year lease with an increased rent term. Akinnola responded that he wished to renew and sent the new rent payment, but did not sign a new lease because he wanted to negotiate one of its provisions. When the original lease expired, Akinnola did not vacate the apartment, and the landlord filed an eviction complaint. The Court of Appeals held that the landlord did not waive its right to evict by accepting rent payments because the agreement contained a nonwaiver provision and there was no history of conduct alleged to support modification of that lease provision.

e. *Waiver of application of a nonwaiver clause*

See discussion, *infra*, at VI.G.4.c.

f. *Ongoing lease violations*

If the landlord can prove ongoing lease violations which also are current lease violations, acceptance of rent might not waive the breach claim. *Christy v. Berends,* No. A07-1451, 2008 WL 2796663 *3-4 (Minn. Ct. App. July 22, 2008) (sublease is not an ongoing lease violation).

5. Waiver of notice by issuing a later notice, extending a notice or executing a new lease

See generally, discussion, *supra* at VI.F.4 (waiver of notice by acceptance of rent). If a landlord gives a second notice to quit, the landlord automatically waives the right to proceed under the first notice. *Arcade Investment Co. v. Gieriet,* 99 Minn. 277, 279, 109 N.W. 250, 252 (1906); *Ewing Square Associates v. Koerner,* No. UD-2910104802 at 3 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1991) (Appendix 15.B). If the landlord subsequently agrees to a continuance of possession of the premises, as in executing a new lease, the landlord waives the effect of the notice. *Arcade Investment Co.,* 99 Minn. at 279, 109 N.W. at 252. *See Hegg v. Martinez*, UD-1951206549 (Minn. Dist. Ct. 4th Dist. Jan 19, 1996) (Appendix 219) (waiver of notice by agreeing to extend notice).

6. Waiver of notice by combined claims for nonpayment of rent and holding over after notice

An eviction (unlawful detainer) action based upon nonpayment of rent "is equivalent to a demand for rent. . ." Minn. Stat. § 504B.291 (formerly 504.02). Generally, the defendant can redeem by paying the rent, interest, costs, $5.00 in attorney's fees, and performing other lease covenants, until the court issues an order dispossessing the tenant and permitting re-entry by the landlord. *See* discussion, *supra* at VI.E.20 (redemption).

Based upon Minn. Stat. § 504B.291 (formerly 504.02) and the waiver of notice cases, *see*

discussion, *supra* at VI.F.4, an eviction (unlawful detainer) action based upon both notice to quit and nonpayment of rent accrued after the notice constitutes a waiver of the notice and should go forward only as a nonpayment of rent case, in which the defendant has the right to redeem the tenancy. Alternatively, based upon the same grounds, an eviction (unlawful detainer) action based upon both notice to quit and nonpayment of rent creates the right to redeem the tenancy, and redemption waives the notice to quit. *See Stevens Avenue Limited Partnership v. Hodge*, No. UD-1891108521 at 2 (Minn. Dist. Ct. 4th Dist. Nov. 21, 1989) (Appendix 18A) (rent claim waives notice to quit and known lease violations). *See also Stevens Avenue Limited Partnership v. Armstrong*, No. 1890426508 (Minn. Dist. Ct. 4th Dist. May 5, 1989) (Appendix 18) (by tendering the rent to the court, defendant redeemed her tenancy and plaintiff waived the alleged lease violations); *Yauch v. Caine,* No. UD-1900403548, slip op, at 3-4 (Minn. Dist. Ct. 4th Dist. Apr. 20, 1990) (Appendix 11D); *Nguyen v. Veit,* No. UD-1910401513 at 4 (Minn. Dist. Ct. 4th Dist. Apr. 15, 1991) (Appendix 14.C).

In 1993, the Minnesota Legislature amended the redemption statute to allow landlords to alternatively plead nonpayment of rent and *breach of lease* claims. Minn. Stat. §§ 504.02 (now § 504B.291), 504B.285 (formerly § 566.03), subd. 5. The statute did not authorize pleading alternatively nonpayment of rent and *holding over after notice to quit*. While the Legislature originally considered a bill that would have allowed landlords to plead nonpayment of rent and claims *on other grounds*, H.F. 1058, the final statute limited alternative pleading to nonpayment of rent to *only breach of lease*. 1993 JOURNAL OF THE HOUSE at 701-02 (Mar. 25, 1993); 1993 JOURNAL OF THE SENATE at 1809-10 (Apr. 15, 1993). The courts may consider amendments to legislation as evidence of the legislative intent. *McKee-Johnson v. Johnson*, 444 N.W.2d 259, 264 (Minn. 1989). Legislative materials on this issue are available from Robin Williams, Southside Office of the Legal Aid Society of Minneapolis (827-3774).

Based on the statute, legislative history and case law, the landlord's claim of nonpayment of rent along with holding over after notice grants the tenant the right to redeem the tenancy and waive the notice. *Hegg v. Martinez*, UD-1951206549 (Minn. Dist. Ct. 4th Dist. Jan 19, 1996) (Appendix 219) (waiver of notice by demanding rent in the action). *See Mattson v. Harmon*, No. UD-1961203552 (Minn. Dist. Ct. 4th Dist. Jan. 28, 1997) (Appendix 269) (Waiver of notice effective November 30 by claiming December rent); *Kral v. Traylor*, Defendant's Memorandum of Law, Nos. UD-1970912509 (Minn. Dist. Ct. 4th Dist.) (Appendix 342) (Discussion of legislative history of Minn. Stat. § 504.02 (now § 504B.291).

7. Manufactured (mobile) home park lot tenancies

a. The tenancy may be terminated by the landlord only for cause.

Minn. Stat. § 327C.09. In *Phillips v. Pepin Woods MHC, LLC,* No. 25-CV-16-2236 (Minn. Dist. Ct. 1st Dist., Goodhue County, Feb. 28, 2017) (Appendix 806), the manufactured home park gave the tenant, who owns manufactured home and rents the lot, a notice of "nonrenewal" of lease based on theory that lease was month-to-month and therefore tenant was tenant at will. The tenants sued for a declaratory judgment against the notice. The landlord argued that Minn. Stat. § 504B.135 (terminating tenancy at will) superceded § 327C.09, which provides exclusive bases for termination of lease for manufactured home lot. The court granted tenant's motion for summary judgment, ordering that the landlord identified no lawful basis to evict tenant and that the notice to vacate was a legal nullity. *See* discussion, *infra* at VI.G.11. Different notices are required, depending on the reason for the termination. *Id.*

b. Waiver of notice.

See discussion, *supra* at VI.F.4.

c. Retaliatory eviction.

See discussion, *supra* at VI.E.9 and VI.F.3.f.

8. Discrimination

Discrimination on the basis of the tenants' status as a member of a protected class is a defense to an eviction (unlawful detainer) action. *Barnes v. Weis Management Co.,* 347 N.W.2d 519, 522 (Minn. Ct. App. 1984). *See Ellis v. Minneapolis Commission on Civil Rights,* 319 N.W.2d 702, 704 (Minn. 1982). The claim may be analyzed within the confines of the retaliatory eviction statute. Minn. Stat. § 504B.285 (formerly § 566.03), subd. 2; *see* discussion, *supra* at VI.F.3.

The defendant's "protected activity" is enforcement of the right to rent the premises without illegal discrimination. *Barnes*, 347 N.W.2d at 522. If the notice to quit is served within ninety (90) days of the defendant's protected activity, the plaintiff must establish by a fair preponderance of the evidence a substantial non-retaliatory purpose, arising at or shortly before the notice to quit, which is wholly unrelated to and unmotivated by the defendant's protected activity. *Id.* at 521-22, citing *Parkin v. Fitzgerald*, 307 Minn. at 430, 240 N.W.2d at 832-33. The defendant should have the right to rebut the allegedly non-retaliatory purpose by showing it actually was a pretext used as a cover for discrimination. 347 N.W.2d at 522.

Tenants and tenants' counsel should carefully consider whether they can adequately prove discrimination in the limited time available to prepare for an eviction (unlawful detainer) trial, since unsuccessful prosecution of the discrimination defense may preclude a subsequent discrimination lawsuit or administrative complaint with the United States Department of Housing and Urban Development, Minnesota Human Rights Department, or Minneapolis Civil Rights Department. *See* discussion, *supra* at V.N. (collateral estoppel). One option would be to remove the action along with the discrimination claim to federal court. *See* Defendant's Memorandum In Opposition to Plaintiff's Motion to Remand, *Bossen Terrace v. Ewing*, No. 4-91-Civ. 824 (D. Minn. Nov. 6, 1991) (discussion of cases; action settled in federal court) (Appendix 28).

9. Reasonable accommodation of disabilities. *See* discussion, *infra* at VI.G.9.

10. Public housing and other subsidized housing programs

a. Section 8 existing housing certificate and voucher programs, VI.F.10.a

(1) No notice required for breach cases, VI.F.10.a.(1)
(2) Notice for business reasons, VI.F.10.a.(2)
(3) The endless lease?, VI.F.10.a.(3)
(4) State one year notice requirement, VI.F.10.a.(4)
(5) Mortgage foreclosure, VI.F.10.a.(5)
(6) Section 8 voucher subsidy termination, VI.F.10.a.(6)
(7) Landlord notice to the Section 8 Office, VI.F.10.a.(7)

b. *Subsidized housing projects,* VI.F.10.b

(1) HUD Handbook No. 4350.3 projects, VI.F.10.b.(1)
(2) Moderate rehabilitation projects, VI.F.10.b.(2)
(3) Rural Housing and Community Development Service (RHCDS) and Rural Housing Service (RHS), formerly Farmers Home Administration FmHA Projects, VI.F.10.b.(3)
(4) Low Income Housing Tax Credit Projects, VI.F.10.b.(4)

c. *Public housing,* VI.F.10.c
d. *Revocation of tenant's notice to quit,* VI.F.10.d

Notice requirements vary depending on the programs, but where the landlord is required to give notice, it must be written notice before commencement of an eviction (unlawful detainer) action in all cases, even nonpayment of rent. Also, good cause is required in most cases.

a. *Section 8 existing housing certificate and voucher programs.*

(1) No notice required for breach cases

Before 1995, tenants had successfully argued that the landlord must give the tenant notice in all cases *before* filing an eviction (unlawful detainer) action, and that failure to give such notice *before* filing the action required dismissal.[12] However, in *Eden Park Apartments v. Weston*, 529 N.W.2d 732 (Minn. Ct. App. 1995), *affirming* No. UD-1940701506 (Minn. Dist. Ct. 4th Dist. Sep. 7, 1994) (Appendix 60), the court held that the unlawful detainer summons and complaint satisfied the requirements of notice. The new regulations governing the programs now also do not require a termination notice before filing the action. 24 C.F.R. § 982.310(e), 60 Fed. Reg. 34,704-05 (July 3, 1995) (Appendix 109). The lack of a requirement to give notice before filing the action now makes even

[12]42 U.S.C. § 1437f(d)(2)(B)(iv); S. REP. NO. 101-316, 100th Cong., 1st Sess., 127, *reprinted in* 1990 U.S.C.C.A.N. 5763, 5889. (Appendix 11.H); *Mollins v. Persaud*, No. UD-1940712552 (Minn. Dist. Ct. 4th Dist. July 22, 1994) (Appendix 73); *Rifley v. Pearson*, No. UD-1940504530 (Minn. Dist. Ct. 4th Dist. May 20, 1994) (Appendix 58); *Fragale v. Sims*, No. UD-1930802515 (Minn. Dist. Ct. 4th Dist. Aug. 11, 1993) (Appendix 4.D.1); *Country Inn, Inc. v. Hoffman,* No. UD-4921009901 (Minn. Dist. Ct. 4th Dist. Oct. 26, 1992) (Appendix 11.H.1). *But see Flikeid v. Darrough*, No. UD-1940328501 (Minn. Dist. Ct. 4th Dist. May 3, 1994) (Appendix 59) (unlawful detainer summons and complaint satisfied the requirements of notice).

more important the requirement that the landlord specifically plead the grounds for eviction with sufficient detail. *See* discussion, *supra*, at VI.D.6 (failure to state the facts that authorize recovery of the premises).

(2) Notice for business reasons

During the first year of the lease, the landlord cannot evict the tenant for a business or economic reason, as opposed to the tenant's violation of the lease. 24 C.F.R. § 982.310(d)(2), 60 Fed. Reg. 34,704-05 (July 3, 1995) (Appendix 109) (replacing 24 C.F.R. §§ 882.215(c)(3), 887.213(b)(2). In *Rohlfing v Baker*, No. C4-96-124 (Minn. Dist. Ct. 1st Dist. May 29, 1996) (Appendix 224), the court held that the landlord's attempt to terminate the lease during the first year for a business or economic reason violated the regulation and prevented eviction, even though the lease did not specifically contain the prohibition. The court noted that the lease addendum incorporated the regulations by reference, and even if the regulations were not incorporated into the lease, the doctrine of mutual mistake prevented the landlord from voiding the lease because the landlord bore the risk of mistake by not seeking out information on the regulations.

Before 1996, the law was that after the first year, the landlord may terminate the lease for a business or economic reason after giving the tenant, HUD and the housing authority a 90 day notice.[13] *On April 26, 1996*, Congress passed as part of a continuing resolution on budget matters a suspension of the 90 day notice requirement. Pub. L. No. 104-134, 110 Stat. 1321 (1996). The suspension was extended through September 30, 1997. Pub. L. No. 104-204, § 302(e), 110 Stat. 2893 (!996). Congress later made permanent the suspension of the 90 day notice requirement. While most Section 8 leases do not include the 90 day notice requirement, those that do may bind the landlord until a new lease is used by the parties.

(3) The endless lease?

Before 1996, the Section 8 lease was an endless lease that could be terminated by the landlord only for good cause. However, *on April 26, 1996*, Congress passed as part of a continuing resolution on budget matters a suspension of the requirement, allowing termination without cause at expiration of the lease term. Pub. L. No. 104-134, 110 Stat. 1321 (1996). The suspension was extended through September 30, 1997. Pub. L. No. 104-204, § 302(e), 110 Stat. 2893 (!996). All pre-existing Section 8 leases included the old good cause requirement, and they should bind the landlord until a new lease is used by the parties.

In *Douglas v. Sparby*, No. C8-96-601471 (Minn. Dist. Ct. 6th Dist. Sep. 10, 1996) (Appendix 221), the parties entered into a Section 8 certificate lease in 1994 which, consistent with regulations in

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[13]The housing authority then must approve the lease termination, and the landlord must give the tenant notice of the housing authority's decision. 42 U.S.C. § 1347f(c)(9); 24 C.F.R. §§ 982.310(e)(3), 982.455, 60 Fed. Reg. 34,704-05, 713-14 (July 3, 1995) (Appendix 109). Failure to follow these procedures should result in dismissal. *Rifley v. Pearson*, No. UD-1940504530 (Minn. Dist. Ct. 4th Dist. May 20, 1994) (Appendix 58); *Karlson v. Ellis*, No. UD-1931102538 (Minn. Dist. Ct. 4th Dist. Nov. 26, 1993) (Appendix 61); *Chapter Federal Savings and Loan Assoc. v. Rogalski,* No. SNBR-326 (Conn. Super. Ct. May 23, 1989) (Appendix 17.A); *Cardaropoli v. Perez,* No. 88-SP-6243-S (Mass Trial Ct. Sept. 7, 1988) (Appendix 17.B). *See* Letters from Stephen J. Gronewold, HUD Chief Counsel, to Shawn Fremstad and Michael Corkill-Bomgars (Dec. 29, 1993) (Appendix 62).

effect at the time, provided for an endless lease which could be terminated only for good cause. The landlord issued a termination notice without cause for eviction, arguing that regulatory and statutory changes allowed the landlord to create a month-to-month tenancy after expiration of the first year. The court held that since the landlord did not offer a new lease to the tenant, the old lease remained in effect and the landlord had not properly terminated it. The court also held that the landlord must provide a year termination notice required by Minn. Stat. § 504.32 (now § 504B.255) to terminate or not renew the lease. *See Johnson v. Reed*, No. UD-1961001524 (Minn. Dist. Ct. 4th Dist. Nov. 7, 1996) (Appendix 262) (Current endless lease still in effect was not modified by legislative changes; current lease could not be terminated upon 30 day notice without good cause); *Villa Del Coronado Associates v. West,* No. UD-1960910522 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1996) (Appendix 222) (statutory change from endless leases to one year leases which continue on a month-to-month basis did not change the existing endless lease between the parties); *Eden Park Apts. v. Gilmore*, No. UD-1960913533 (Minn. Dist. Ct. 4th Dist. Oct. 1, 1996) (Appendix 223) (followed *Villa Del Coronado Associates*).

(4) State one year notice requirement

Now that there is no federal requirement for notice, and the life of the endless lease may be short, a little used state statute requiring a one year notice may become significant. Section 504B.255 (formerly § 504.32) states that the subsidized housing owner must give the tenant a one year notice for (1) expiration of the Section 8 contract, (2) owner termination or non-renewal of a Section 8 contract or mortgage, (3) owner prepayment of a mortgage that would terminate federal housing use restrictions, or (4) owner termination of a housing subsidy program. The owner must give the notice at commencement of the lease if any of these events would occur in less than a year. Tenant should argue that the landlord must give the notice to terminate or not renew the lease where the tenant's conduct is not at issue.

In *Occhino v. Grover*, 640 N.W.2d 357 (Minn. Ct. App. 2002), the court held that the requirement for a one year notice to terminate subsidized housing leases under Minn. Stat. § 504B.255 (formerly § 504.32) applies to subsidized projects, but not portable Section 8 assistance. *Contra Douglas v. Sparby*, No. C8-96-601471 (Minn. Dist. Ct. 6th Dist. Sep. 10, 1996) (Appendix 221) (landlord must provide a year termination notice required by Minn. Stat. § 504.32 (now § 504B.255) to terminate or not renew Section 8 certificate lease).

California enacted a statute which requires a landlord who terminates participation or fails to renew a tenant-based Section 8 contract to give a 90 day written notice to the tenant. CAL. CIV. CODE § 1954.535. *See* 30 HOUSING LAW BULLETIN at 28 (National Housing Law Project February 2000, www.nhlp.org) (analysis and conclusion that statute is not preempted by federal law).

(5) Mortgage foreclosure

Mortgage foreclosure should not terminate the Section 8 contract. *See* discussion, *supra*, at VI.F.1.d. *See also Bristol Savings Bank v. Savinelli*, CV-95-0377478-S (Conn. Super. Ct. Mar. 21, 1996), 1996 WL 16,396, 1996 Conn. Super LEXIS 742, HDR CURRENT DEVELOPMENTS at 791 (Apr. 22, 1996) (Appendix 225) (Connecticut Superior Court decision holding that §8 tenancy survived automatic termination by foreclosure). In *Webster Bank v. Occhipinti*, No. CV-970059147S, 1998 WL 846105 (Conn. Sup. Ct. Nov. 20, 1998) (Appendix 372), the court held that federal Section 8 law preempted state mortgage foreclosure law, which provided that foreclosure terminated the interest of the tenant of the mortgagor. Thus, the foreclosing mortgagee or the purchaser at the foreclosure sale could terminate the Section 8 lease only in accordance with the Section 8 statutes and regulations.

(6) Section 8 voucher subsidy termination

(a) Mandatory termination for *eviction for serious violation of the lease*

Historically eviction of the tenant does not require termination of the tenant's rent subsidy. The tenant may have been able to retain the subsidy and look for housing with another landlord who is willing to contract to receive the housing subsidy. However, the subsidy administrator, often called a Section 8 office or public housing authority, sometimes would try to terminate the tenant's subsidy for the same reasons as the landlord tried to evict the tenant.

The regulations have changed to require termination in some cases. The agency "must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease." 24 C.F.R. 982.552(b)(2); *Cole v. Metropolitan Council HRA*, 686 N.W.2d 334 (Minn. Ct. App. 2004) (HRA must terminate Section 8 benefits for a family evicted for a serious violation of the lease, regardless of whether the decision was by default).

In *Wilhite v. Scott County Housing and Redevelopment Authority*, 759 N.W.2d 252 (Minn. Ct. App. 2009), the tenant did not vacate the property at expiration of the one year lease, and the landlord filed and won an eviction action. The HRA then terminated Section 8 rental assistance. The requested an administrative hearing, which upheld the termination, and the tenant appealed. *Id.* at 254. The Court of Appeals noted that the HRA "must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease." *Id.* at 255, *quoting* 24 C.F.R. § 982.552(b)(2). The court concluded that there was substantial evidence in the record supporting the HRA's finding that the failure to vacate the premises was a serious violation of her lease leading to the court-ordered eviction, and that the HRA did not abuse its discretion by applying the mandatory-termination provision. *Id.* at 255-57.

(b) Permissive termination

These reasons for permissive termination of assistance include failure to supply certain information to the housing authority, serious or repeated violations of the lease, drug related or violent criminal activity, housing assistance fraud, and owing monies to the housing authority. 24 C.F.R. §§ 982.551 - 982.553; *Gibbs v. Metropolitan Housing and Redevelopment Authority*, No. A06-1612, 2007 WL 4563920 (Minn. Ct. App. Dec. 31, 2007) (unpublished) (Affirmed administrative hearing decision that failure to pay rent was a serious violation supporting termination of assistance).

In *Ansari v. Metropolitan Housing and Redevelopment Authority*, No. A08-2287 (Minn. Ct. App. December 15, 2009) (unpublished), Ansari's Section 8 housing benefits were terminated when he failed to report other subsidy payments that he received allegedly as the manager of another Section 8 property located in Chippewa County. The hearing officer upheld the termination, and the certiorari appeal was filed. Ansari maintained that he did not use the Chippewa County payments for his own benefit, but applied them to improvements at that property. However, the hearing officer found that some of the payments were deposited into Ansari's personal bank account and there was insufficient evidence to prove that all of the payments were used to benefit the property. Moreover, since Ansari owned the property, even if all payments did improve the property, Ansari ultimately benefited as the owner of the home. The hearing officer also rejected Ansari's argument that the payments were temporary or nonrecurring and found that Ansari violated his ongoing obligation to notify the agency of any increase in income between the recertifications that were filed. The Minnesota Court of Appeals found that the

quasi-judicial determination was supported by substantial evidence and affirmed the termination of benefits. The Court of Appeals also found that Ansari received adequate notice regarding the interests at stake because a detailed explanation of all possible reasons for termination is not required, that the decision was not arbitrary or capricious, and that mitigating circumstances were adequately considered.

(c) Termination procedure

If the housing authority decides to terminate the tenant's housing subsidy, the housing authority must give written notice to the tenant and the right to contest the termination at an informal hearing. 24 C.F.R. § 982.555.

In *Wilhite v. Scott County Housing and Redevelopment Authority*, 759 N.W.2d 252 (Minn. Ct. App. 2009), the court rejected the tenant's argument that the notice was insufficient because it did not list past lease violations that the hearing officer considered. The court noted that the notice need only contain a brief explanation for the termination and effectively communicate the interest at stake, and that the decision to terminate Section 8 benefits was based on the eviction and not on her past lease violations. *Id.* at 257-58.

The court also rejected the tenant's claim that she was denied due process because she did not have to cross examine persons who provided information to the HRA because the HRA did not call them as witnesses. The court held that while *Goldberg v. Kelly*, 397 U.S. 254, 270, 90 S.Ct. 1011, 1021, 25 L.Ed.2d 287 (1970), guarantees the right to confront and cross-examine witnesses, *"Goldberg* does not mandate the HRA to call witnesses only to enable [the tenant] to cross-examine them." *Id.* at 258-59. The court noted that the regulation provides that the tenant is entitled to "the opportunity to examine [and copy] ... any [HRA] documents that are directly relevant to the hearing," and "the opportunity to present evidence, and may question any witnesses." *Id.* at 258, *quoting* 24 C.F.R. § 982.555(e)(2)(i), (e)(5).

In *Carter v. Olmstead County Housing and Redevelopment Authority*, 574 N.W. 2d 725 (Minn. Ct. App. 1998), the court closely reviewed the lay hearing officer's determination to terminate the Section 8 voucher, and concluded that the findings were insufficient and that they failed to mention or explain the basis for failing to credit evidence in support of the tenant's claim, and that the housing authority failed to prove substantial evidence to sustain the termination. The court noted:

> Agency action must be "based on objective criteria applied to the facts and circumstances of the record at hand. [Agency] discretion is not unlimited and must be explained." *In re Northwestern Bell Telephone Co.,* 386 N.W.2d 723, 727 (Minn.1986). In order to facilitate appellate review, an administrative agency must state the facts and conclusions essential to its decision with clarity and completeness. *People for Environmental Enlightenment & Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council,* 266 N.W.2d 858, 871 (Minn. 1978). The agency must explain on what evidence it is relying and how that evidence connects rationally with its choice of action. *Hiawatha Aviation,* 375 N.W.2d at 501. Applying eighth circuit precedent, the United States District Court for the District of Minnesota has held:
>
> > To be legally sufficient, the ALJ must make an express credibility determination, must set forth the inconsistencies in the record which have led to the rejection of the Plaintiff's testimony, must demonstrate that all relevant evidence was considered and evaluated, and must detail the reasons for discrediting pertinent testimony. * * * These requirements are not suggestive guidelines, but are mandates which impose affirmative duties upon the

deliberative process.

> *Garthus v. Secretary of Health & Human Servs.,* 847 F.Supp. 675, 689 (D. Minn.1993) (citations omitted). The Garthus opinion draws no distinction between decisions by a lay hearing officer and by a legally trained administrative law judge, and we find it applicable here because administrative law ultimately derives from federal due-process standards.

574 N.W. 2d at 729-30. *See Hicks v. Dakota County Community Development Agency*, No. A06-1302, 2007 WL 2416872 (Minn. Ct. App. Aug. 28, 2007) (unpublished) (agency decision reversed and remanded where hearing officer failed to make adequate findings and failed to consider mitigating circumstances,

Unfortunately, some appellate decisions have not set a high standard for voucher termination hearings. *See Peterson v. Washington Cnty. Hous. & Redevelopment Auth.*, 805 N.W.2d 558, 563–64 (Minn. Ct. App. 2011), *infra*); *Johnson v. Washington County Housing Authority*, No. C5-00-1021, 2001 WL 214190 (Minn. Ct. App. 2001) (unpublished) (affirmed termination of subsidy claiming failure to report household members, concluding that administrative findings, reliance on hearsay, and failure to subpoena witnesses were proper, citing *Carter v. Olmstead County Housing and Redevelopment Authority*, 574 N.W. 2d 725 (Minn. Ct. App. 1998)); *Thigpen v. Housing and Redevelopment Authority of St. Cloud*, No. CX-96-1753 (Minn. Ct. App. Jan. 21, 1997), FINANCE AND COMMERCE at 36 (Jan. 24, 1997), 1997 WL 20307 (Appendix 296) (Unpublished: hearing officer not required to address all evidence submitted by the tenant, even though policy manual required decision based upon all material issues raised by the parties); *Olchefski v. Metropolitan Council*, No. C4-95-2337 (Minn. Ct. App. Apr. 30, 1996), FINANCE AND COMMERCE at 27 (May 3, 1996), 1996 WL 208484 (Appendix 228) (Unpublished: Reversing and remanding termination of Section 8 certificate where hearing officer's decision stated no factual or legal basis for termination). *See generally Edgecomb v. Housing Authority of Town of Vernon*, 824 F. Supp. 312 (D. Conn. 1993).

The agency's decision to reverse the hearing officer's decision is susceptible to challenge on appeal. *Winston v. Minneapolis Public Housing Authority*, No. A06-1641, 2007 WL 2245777 (Minn. Ct. App. Aug. 7, 2007) (unpublished) (reversed agency determination, where agency overturned hearing officer decision that alleged involvement in criminal activity was an insufficient basis for terminating assistance).

(d) Mitigating circumstances

In 2009, six unpublished Minnesota Court of Appeals decisions involved the question of whether the agency was required to consider mitigating circumstances in its determination to terminate the tenant's benefits. The regulation provides:

> The PHA [Public Housing Authority] may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

24 C.F.R. § 982.552(c)(2)(I).

Some of the decisions concluded that the use of the word "may" meant that the regulation was

permissive, so the Agency was not required to consider mitigating circumstances. *See Jones v. Dakota Cnty. Cmty. Dev. Agency*, No. A08-1603, 2009 WL 2151158, at *6-7 (Minn. Ct. App. July 21, 2009); *Fyksen v. Dakota Cnty. Cmty. Dev. Agency*, No. A08-0372, 2009 WL 605663, at *3 (Minn. Ct. App. Mar. 10, 2009); *Sandstrom v. Dakota Cnty. Cmty. Dev. Agency*, No. A08-0374, 2009 WL 437785, at *2-3 (Minn. Ct. App. Feb. 24, 2009).

In other decisions, the court reversed the Agency termination for failing to consider mitigating circumstances such as English proficiency, *Hassan v. Dakota Cnty. Cmty. Dev. Agency*, No. A08-0373, 2009 WL 437775, at *3 (Minn. Ct. App. Feb. 24, 2009), or the effect of terminating assistance on the tenant and the tenant's children, *see id.; Pittman v. Dakota Cnty. Cmty. Dev. Agency*, No. A07-2063, 2009 WL 112948, at *4 (Minn. Ct. App. Jan. 20, 2009). In yet another decision, the court dodged the issue by noting the issue but concluding that the agency "did not entirely fail to consider an important aspect of the issue. Thus, the hearing officer's decision was not arbitrary and capricious." *Larsen v. Dakota Cnty. Cmty. Dev. Agency*, No. A08-0371, 2009 WL 982124, at *2 (Minn. Ct. App. Apr. 14, 2009).

Earlier appellate decisions concluded that consideration of mitigating circumstances was mandatory. *See Hicks v. Dakota Cnty. Cmty. Dev. Agency*, No. A06-1302, 2007 WL 2416872, at *4 (Minn. Ct. App. Aug. 28, 2007) ("The permissive nature of the regulation does not preclude a determination that mitigating circumstances are an important factor that must be considered in a particular case."); *Alich v. Dakota Cnty. Cmty. Dev. Authority*, No. C4-02-818, 2003 WL 230726, at *2 (Minn. Ct. App. Feb. 4, 2003). In one case the tenant claimed on appeal that the Agency failed to consider mitigating circumstances, but the court reversed the Agency decision because the record was insufficient to support termination of benefits. *See Meyer v. Dakota Cnty. Cmty. Dev. Agency*, No. A06-1290, 2007 WL 2703005,
at *1, 3 (Minn. Ct. App. Sept. 18, 2007).

In 2011, the Court of Appeals recognized its inconsistent decisions concerning mitigating circumstances in a published decision in *Peterson v. Washington County Housing & Redevelopment Authority*, 805 N.W.2d 558, 563–64 (Minn. Ct. App. 2011). The agency terminated the tenant's housing assistance, concluding that the tenant failed to report income within five days of receiving it and the tenant appealed. *Id.* at 560. Among other issues, the tenant claimed that the agency failed to consider mitigating circumstances. *Id.* at 563. The court noted the history of unpublished opinions holding inconsistently on the issue of whether consideration of mitigating circumstances was mandatory or permissive and that there was no published decision on the issue. *Id.* at 563-64. The court found the unpublished opinions holding the consideration of mitigating circumstances as permissive more persuasive and held accordingly. *Id.* at 564. *See generally* 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, 10-14 (2012), on Westlaw at 35 HAMLR 1, and posted at http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html.

In *Ansari v. Metropolitan Housing and Redevelopment Authority*, No. A08-2287 (Minn. Ct. App. December 15, 2009) (unpublished), Ansari's Section 8 housing benefits were terminated when he failed to report other subsidy payments that he received allegedly as the manager of another Section 8 property located in Chippewa County. The hearing officer upheld the termination, and the certiorari appeal was filed. Ansari maintained that he did not use the Chippewa County payments for his own benefit, but applied them to improvements at that property. However, the hearing officer found that some of the payments were deposited into Ansari's personal bank account and there was insufficient evidence to prove that all of the payments were used to benefit the property. Moreover, since Ansari owned the

property, even if all payments did improve the property, Ansari ultimately benefited as the owner of the home. The hearing officer also rejected Ansari's argument that the payments were temporary or nonrecurring and found that Ansari violated his ongoing obligation to notify the agency of any increase in income between the recertifications that were filed. The Minnesota Court of Appeals found that the quasi-judicial determination was supported by substantial evidence and affirmed the termination of benefits. The Court of Appeals also found that Ansari received adequate notice regarding the interests at stake because a detailed explanation of all possible reasons for termination is not required, that the decision was not arbitrary or capricious, and that mitigating circumstances were adequately considered.

(e) Judicial review and appeal

(i) Appeal

The tenant can appeal a Section 8 voucher termination by certiorari to the Court of Appeals under Minn. R. Civ. App. P. §115. The petition for review deadline is 60 days from date of final decision in the administrative hearing to perfect the appeal and serve the writ of certiorari. Minn. Stat. § 606.01; *Barkhudarov v. Rensenbrink*, No. A06-1734, 2007 WL 2703049 (Minn. Ct. App. Sept. 18, 2007) (unpublished) (agencies which administer Section 8 voucher programs are part of the executive branch, and parties cannot challenge their decisions in District Court, but must appeal by certiorari to the Minnesota Court of Appeals within 60 days of receiving notice of the decision).

In *Wilhite v. Scott County Housing and Redevelopment Authority*, 759 N.W.2d 252 (Minn. Ct. App. 2009), the tenant argued that she had not received proper notice of the grounds for termination. The court rejected that HRA's argument that the tenant could not raise notice issues on appeal if not raised below. The court noted that the HRA does not have the authority to hear constitutional challenges, so the tenant may raise them for the first time on appeal. *Id.* at 257 n.1, *citing Neeland v. Clearwater Mem'l Hosp.*, 257 N.W.2d 366, 368 (Minn.1977).

Recently tenants have had mixed results in the Court of Appeals in challenging subsidy terminations. Favorable decisions to tenants include *Pittman v. Dakota County Community Development Agency,* No. 07-2063, 2009 WL 112948 *2-4 (Minn. Ct. App. Jan. 20, 2009) (held agency failed to make findings of fact to support its decision to terminate benefits and the legal basis for termination was unclear, citing *Carter*); *Rinzin v. Olmsted County Housing and Redevelopment,* No. A07-2344, 2008 WL 4977576 *2-4 (Minn. Ct. App. Nov. 25, 2008) (held hearing officer's decision was unsupported by substantial evidence, citing *Carter*); *Hennepin County Community Development Agency*, No. A06-1302, 2007 WL 2416872 (Minn. Ct. App. Aug. 28, 2007) (unpublished) (agency decision reversed and remanded where hearing officer failed to make adequate findings and failed to consider mitigating circumstances, *but see Peterson v. Washington Cnty. Hous. & Redevelopment Auth.*, 805 N.W.2d 558, 563–64 (Minn. Ct. App. 2011), *infra*); *Winston v. Minneapolis Public Housing Authority*, No. A06-1641, 2007 WL 2245777 (Minn. Ct. App. Aug. 7, 2007) (unpublished) (reversed agency determination, where agency overturned hearing officer decision that alleged involvement in criminal activity was an insufficient basis for terminating assistance).

Unfavorable decisions include *Peterson v. Washington Cnty. Hous. & Redevelopment Auth.*, 805 N.W.2d 558, 563–64 (Minn. Ct. App. 2011) (agency may consider mitigating circumstances but is not required to do so); *Wilhite v. Scott County Housing and Redevelopment,* _____ N.W.2d _____, 2009 WL 65595 *2-4 (Minn. Ct. App. 2009) (failure to vacate a leased residential premises upon the expiration of the lease constitutes a serious lease violation mandating the termination of assistance); *Gibbs v. Metropolitan Housing and Redevelopment Authority*, No. A06-1612, 2007 WL 4563920 (Minn. Ct.

App. Dec. 31, 2007) (unpublished) (affirmed administrative hearing decision that failure to pay rent was a serious violation supporting termination of assistance); *Colliers v. Dakota County Development Agency*, No. A06-1993, 2007 WL 4107906 (Minn. Ct. App. Nov. 20, 2007) (unpublished); *Barkhudarov v. Rensenbrink*, No. A06-1734, 2007 WL 2703049 (Minn. Ct. App. Sept. 18, 2007) (unpublished) (affirmed dismissal of district court challenge to calculation of section 8 voucher benefits); *Rawlings v. Washington County Housing and Redevelopment Authority*, No. A06-1257, 2007 WL 2034356 (Minn. Ct. App. July 17, 2007) (unpublished) (affirmed termination); *Blumer v. Dakota County Community Development Agency,* No. A03-1702, 2005 WL 353986 (Minn. Ct. App. Feb. 15, 2005) (unpublished) (affirmed termination); *Williams v. Dakota County Community Development Agency*, No. A04-6, 2004, WL 2340084 (Minn. Ct. App. Oct. 19, 2004) (unpublished); *Schultz v. Dakota County Community Development Agency*, No. A03-1099, 2004 WL 2283586 (Minn. App. Oct. 12, 2004) (unpublished) (affirmed termination).

(ii) Action in district court

Another option is suing in state or federal court under 42 U.S.C. § 1983.

> Civil action for deprivation of rights
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1988 provides for attorney's fees. There is no statute of limitations in these federal laws. The courts apply the most analogous state statute of limitations." *Owens v Okure*, 488 U.S. 235(1989). *See* discussion, *infra*, at XII.B.0.c.

(f) Discrimination

In *Edwards v. Hopkins Plaza Ltd. Partnership*, 783 N.W.2d 171 (Minn. Ct. App. 2010), the tenant challenged that landlord's decision to not renew the Section 8 voucher lease as discrimination. The Court of Appeals affirmed the district court decision for the landlord, concluding that the state ban on discrimination against recipients of public assistance did not apply to Section 8 voucher benefits, *id.* at 175-80, and refusal to accept Section 8 housing vouchers does not constitute a refusal to make a reasonable accommodation for a tenant's disability, *id.* at 180-81.

(g) Reasonable accommodation of disabilities

In *Hinneberg v. Big Stone County Housing and Rede-velopment Authority*, 706 N.W.2d 220 (Minn. 2005), the Minnesota Supreme Court held that the disability discrimination provisions of the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3604, apply to public housing authorities administering Section 8 housing programs, *id.* at 224-25, reversing the Court of Appeals decision to the contrary, *Hinneberg*, 2004 WL 2986536, at *5. The court then concluded that under Americans with Disabilities Act of 1990, § 202, 42 U.S.C.A. § 12132; Civil Rights Act of 1968, § 804(f)(3)(B), 42 U.S.C.A. §

3604(f)(3)(B); United States Housing Act of 1937, § 8(r)(1)(B)(i), 42 U.S.C.A. § 1437f(r)(1)(B)(i); 24 C.F.R. § 982.353(c)(2)(ii), the obligation to reasonably accommodate disabilities does not require a public housing authority to make an exception for a disabled non-resident to its policy restricting the use of a Section 8 housing voucher by nonresidents because such an exception would fundamentally alter the nature of the Section 8 housing program. *Id.* at 225-31.

The decision does not preclude other accommodation claims. *See* Rehabilitation Act of 1973, 29 U.S.C. §§ 706, 794; 24 C.F.R. Part 8; Fair Housing Act, 42 U.S.C. § 3604(f)(3); 24 C.F.R. Part 100; Minnesota Human Rights Act, Minn. Stat. § 363.03, subds. 2-2a. *See generally* discussion, *infra*, at VI.G.9.

(h) Domestic violence

In *Pittman v. Dakota Cnty. Cmty. Dev. Agency,* No. A07-2063, 2009 WL 112948 (Minn. Ct. App. Jan. 20, 2009), the housing authority initiated termination proceedings against a Section 8 voucher tenant for having an unauthorized occupant. At the informal hearing, the voucher tenant testified that this person had been physically violent toward her on several occasions, and introduced evidence demonstrating that he lived at another address. Despite this, her assistance was terminated. The appellate court reversed the termination because the hearing officer disregarded the tenant's evidence and mitigating circumstances, including the fact that she was the victim of domestic violence perpetrated by the alleged unauthorized occupant.

(7) Landlord notice to the Section 8 Office

See discussion, *supra*, VI.D.11.

b. *Subsidized housing projects*

Answer forms outlining defenses to all of the various subsidized housing programs are available at the Poverty Law website.
http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html#anchor_10

(1) HUD Handbook No. 4350.3 projects

The notice must state that the tenancy is terminated on a specific date, state the reasons for the eviction with sufficient specificity so as to enable the tenant to prepare a defense, advise the tenant that if a judicial for eviction is instituted, the tenant may present a defense, and state that the landlord may seek to enforce the termination only by bringing a judicial action. 24 C.F.R. § 247.4. HUD Handbook 4350.3 also adds the requirement that the notice must advise the tenant that the tenant has ten days in which to discuss the proposed termination of the tenancy with the landlord. *Id*. at ¶ 4-20 (Appendix 143). The provisions apply to subsidized and *market rate units*.

In the Rent Supplement Section 236, Rental Assistance, Section 221(d)(3) BMI, and Section 8 Loan Management Set-Aside Programs, the notice must be served on the tenant both by first class mail and personal service, with service not be effective until both notices have been served. *See Westfalls Housing Ltd. Partnership v. Scheer*, No. C8-93-227 (Minn. Dist. Ct. 5th Dist. Nov. 30, 1993) (Appendix 26) (notice mailed but not personally served). In all other Section 8 Programs, the notice may be served in accordance with state and local law.

The notice must comply with the notice content requirements. In *Retiree Housing of Minneapolis Inc d/b/a Minneapolis Manor v. _____,* No. 27CVHC 15-2141 (Minn. Dist. Ct. 4th Dist. June 5, 2015) (Appendix 713), the tenant filed a motion to dismiss an eviction action for the landlord's failure to comply with the notice requirements of 24 C.F.R. § 247.4(a). The tenant resided in a Federal Section 202 Elderly and Handicapped Housing Program dwelling unit, and termination of the tenant's lease agreement was subject to the notice requirements of 24 C.F.R. § 247.4(a). Section 247.4(a) requires that the lease termination notice shall, in relevant part: "(3) advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense." In this case, the landlord provided a notice of termination of lease to the tenant that did not comply with the rule. Although the notice contained language that was substantially similar to the rule, the notice was missing the phrase "at which time the tenant may present a defense." The landlord argued that the notice was proper because it substantially complied with the requirements of Section 247.4(a). The court disagreed, and held that the notice requirements of section 247.4(a) required "strict" compliance and that "substantial" compliance was not sufficient. The court dismissed the case without prejudice, noting that while tenants are often required to show some sort of harm in order to obtain relief under a motion to dismiss, the facts of this case showed that there would be no meaningful harm to the landlord and therefore even absent a showing of harm to the tenant, dismissal was appropriate.

See Sandy Pine Apartments v. _____, No. 58-CV-14-309 (Minn. Dist. Ct. 10th Dist., Pine County, Aug. 6, 2014) (Appendix 750) (Judge Martin) (co-defendant who no longer lived on the premises dismissed from action; subsidized landlord waived breach by accepting rent from tenant through vendor, distinguishing *Westminster Corp. v. Anderson,* 536 N.W. 2d 340 (Minn. Ct. App. 1995) where payment was from housing authority and not the tenant; subsidized housing notice of termination inaccurately stated amount of rent due, and by including garage and late fees that are not rent, and was not specific on calculation of arrearage and claim of housekeeping violations; plaintiff did not show that notices and visits to defendant's apartment were more than *de minimus* costs; defendant cannot be evicted for rent when plaintiff rejected payments; defendant given 7 days to pay garage fee)*; Carriage House Apts. v. _____,* No. HC 980526522 (Minn. Dist. Ct. 4th Dist. Jul. 13, 2005) (Appendix 638) (expungement granted where HUD subsidized landlord failed to give proper notice); *Chalet v. _____,* No. HC-03026513 (Minn. Dist. Ct. 4th Dist. July 17, 2003) (Appendix 483) (expungement granted where HUD subsidized project landlord agreed that it did not give notice required by HUD Handbook No. 4350.3, citing *Housing and Redev. Auth. of Waconia v. Chandler*, 403 N.W.2d 708, 711 (Minn. Ct. App. 1987); *Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889, 895 (Minn. Ct. App. 1986)); *Normandale Partners v. Humbert,* No. UD-1920519523 (Minn. Dist. Ct. 4th Dist. June 2, 1992) (Appendix 11.I.4) (notice failed to state grounds for termination with enough detail, gave tenant nine rather than ten days to present objections rather than to discuss proposed termination, and failed to advise tenant of right to defend unlawful detainer action); *Owner's Management Co. v. Stern*, No. 67445 (Ohio Ct. App. Jan. 19, 1995) (Appendix 144) (termination was inadequate for not stating dates of and witnesses to alleged lease violations). *See generally* 24 C.F.R. § 247.4; HUD Handbook 4350.3 ¶¶ 4-17 - 4-21 (Appendix 143).

However, in *Winhaven Court Apartments v. Carney*, No. A14-1819, 2015 WL 5089020 (Minn. Ct. App. August 31, 2015)(unpublished), the HUD Subsidized Project tenant had received written warnings for policy violations regarding removing items from the property's recycling bins and depositing cat litter in the trash room, ultimately resulting in a notice of termination for non-compliance with the lease agreement. When the tenant did not vacate the premises, the landlord commenced an eviction action. The tenant moved to dismiss the action because the termination notice did not provide enough specificity. The district court determined that the termination notice was sufficient, the case proceeded to trial, and the district court took the case under advisement. Two weeks later, the district

court granted the landlord's motion to reopen the trial record to include evidence of continued violations by the tenant. The district court ultimately entered judgment in favor of the landlord. The Court of Appeals affirmed, holding that: (1) based on applications of similar language in the context of professional misconduct and criminal matters, the termination notice alleging that the tenant removed items from recycling bins was sufficient enough to enable her to prepare a defense; and (2) the decision to reopen the trial record was not an abuse of discretion because the additional testimony concerned the same type of behavior and was relevant to the decision about whether the eviction was justified.

The length of the notice period depends on the basis for the eviction. 30 days notice is required in terminations based on good cause. *Id*. In material noncompliance evictions, the landlord may not commence the eviction (unlawful detainer) action until expiration of the ten day period. *Ewing Square Associates v. Koerner*, No. UD-2910104802 at 2-6 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1991) (Appendix 15.B) (unlawful detainer action dismissed where it was commenced contemporaneously with issuance of the ten day notice of termination). *See Shamrock Court Apartments v. Stafford*, No. C1-95-3974 (Minn. Dist. Ct. 2d Dist. May 25, 1995) (Appendix 226) (Action dismissed where notice was dated April 6, termination date was April 13, 10 day informal conference period lasted until April 16, but action filed on April 13); *Loring Towers Apartments Limited Partnership v. Redcloud*, No. UD-1921210529 (Minn. Dist. Ct. 4th Dist. Jan 20, 1993) (Appendix 11.I.5); *Loring Towers Limited Partnership v. Seamon,* No. UD-1920810515 (Minn. Dist. Ct. 4th Dist. Aug. 31, 1992) (dismissal for giving only four days notice) (Appendix 11.I.1); *Loring Towers Limited Partnership v. Sheehy,* No. UD-1920810513 (Minn. Dist. Ct. 4th Dist. Sept. 4, 1992) (dismissal for giving only four days notice) (Appendix 11.I.2).

There are no exceptions to the notice requirement. *Sentinel Management Co. v. Kraft,* No. UD-1920806546 at 3 (Minn. Dist. Ct. 4th Dist. Aug. 12, 1992) (Appendix 11.I.3). In *Common Bond Housing v. Beier,* UD-1951204625 (Minn. Dist. Ct. 4th Dist. Feb. 23, 1996) (Appendix 227), the court found no proof of pre-eviction notice. The court distinguished *Eden Park Apartments v. Weston*, 529 N.W.2d 732 (Minn. Ct. App. 1995), which held no notice was required for Section 8 certificates, noting the different regulations and the fact that the notice requirement was in the lease.

The landlord also must comply with the requirement to meet with the tenant on the tenant's request to discuss the proposed eviction, and to discuss it with the tenant in good faith. *Gorsuch Homes, Inc. v. Wooten*, 597 N.E.2d 554 (Ohio Ct. App. 1992).

The complaint in the eviction (unlawful detainer) action may not rely on any grounds which are different from the reasons set forth in the termination letter, except that the landlord is not precluded from the relying on grounds of which the landlord had no knowledge at the time the termination letter was sent. 24 C.F.R. § 247.6; HUD Handbook 4350.3 REV-1, Chapter 8,¶8.13.B.5 at 15.

(2) Moderate rehabilitation projects

The landlord must serve the tenant a written notice of lease termination stating the date the tenancy shall terminate, and the reasons for termination was enough specificity to enable the tenant to prepare a defense, and advise the tenant that if a judicial proceeding is institute, the tenant may present a defense at the proceeding. 24 C.F.R. § 882.511(b)-(c); *Project for Pride in Living v. Kvanli*, No. UD-1930122520 (Minn. Dist. Ct. 4th Dist. Feb. 11, 1993) (Appendix 11.I.6) (landlord's letter asking tenant to re-tender rent payment did not terminate tenancy).

However, the issue has been confused by a recent decision stating that the eviction (unlawful detainer) summons and complaint satisfied the regulatory notice requirement. In *Bakke v. Bolin*, No.

UD-1940321522 (Minn. Dist. Ct. 4th Dist. July 5, 1994) (Appendix 63), the district court judge reversed the decision of the housing court referee and held that a summons and complaint satisfied the regulation, relying on a similar interpretation of the Section 8 certificate program in *Flikeid*. *See* discussion, *supra* at VI.F.10.a. The court distinguished *Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889 (Minn. Ct. App. 1986), since the regulations under the Farmers Home Administration program at issue in *Hoglund-Hall* required a 30-day notice, as opposed to the moderate rehabilitation program requirement of five days.

Counsel should argue that the *Bakke* decision is wrong, and that the landlord must issue a lease termination notice before filing the action. The fact that the regulations state that the termination notice must advice the tenant that "*if* a judicial proceeding for eviction is instituted, the tenant may present a defense in that proceeding," implies that the termination notice is separate from and a precondition of the eviction (unlawful detainer) action. *See* 24 C.F.R. § 882.511(c)(2) (emphasis added).

Some projects in Minneapolis have been using a Section 8 certificate lease, which does not have the notice requirement. If a tenant is in a subsidized project and the lease does not require notice, counsel should check the directory of subsidized projects or call the local housing authority to find out which program the tenant is in. The landlord would be bound to the notice requirements of the program, even if the landlord is using the wrong lease.

(3) Rural Housing and Community Development Service (RHCDS) and Rural Housing Service (RHS), formerly Farmers Home Administration FmHA Projects

For a list of notice defenses, *see* Forms Appendix, Answer No. A-7. *See also Lindstrom Parkview Apts. v,* _____, No. C5-01-546 (Minn. Dist. Ct. June 15, 2001) (Appendix 531) (Judge Swenson) (landlord must comply with program requirements, citing *Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889, 895 (Minn. Ct. App. 1986); landlord's notice failed to comply with regulations requiring violation notice reference to lease terms, right to cure, eviction if no cure, and right to defend eviction in court, and termination notice reference to the conduct upon which eviction was based); *Buckeye Realty Co. v. Elias*, No. CX-91-0697 at 2-5, 7 (Minn. Dist. Ct. 10th Dist. Aug. 6, 1991) (Appendix 15.E) (improper notice); *National Partnership Management Inc. v. Owen,* No. 3-PA-90-709-CIV (Alaska Dist. Ct. 3rd Dist. Nov. 8, 1990) (Appendix 15.E.1) (improper service of notice).

In *Ridgemont Apartments v. Englund*, No. C3-96-68 (Minn. Dist. Ct. 10th Dist. Apr. 1, 1996) (Appendix 191), the landlord of a RHCDS Sect. 515 subsidized housing project sought to terminate the tenant's subsidy and increase the tenant's share of the rent to the market rent for failing to recertify on time. The landlord brought an unlawful detainer action, and the tenant defended the action while bringing an affirmative action as well. The court held that while the landlord gave the tenant several notices, the notice which contained the required information that failure to recertify would result in termination of the subsidy was not given thirty days before the due date, as required by the program handbook. Since the two actions were consolidated, in addition to dismissing the unlawful detainer action for non-payment of the market rent, the court granted additional affirmative relief, including ordering the landlord to recalculate the tenant's share of the rent, immediately reinstate the subsidy if a subsidy slot was available, credit defendant's rent for an amount equal to the subsidy even if a subsidy slot is not available, and notify the tenant of the amount of past rent due, and ordered the tenant to pay that amount within 10 days after notice from the landlord.

In *Horning Properties v. Wang*, No. C3-98-1211 (Minn. Dist. Ct. 10th Dist. Jun. 23, 1998) (Appendix 337) (Meyer, J.), the landlord of a Rural Housing and Community Development Service

Subsidized Housing Project filed an action for nonpayment of rent and breach of lease. The court concluded that there was no lease violation where the tenant tendered but the landlord refused April rent, so this event did not support the eviction notice. The court noted that the landlord did not give the required warning notice, and concluded that the termination notice was improper where given after commencement of the unlawful detainer action but before the hearing. The court found that the tenant legally resided on the property during her incarceration so as to not breach the lease. Finally, the court concluded that the landlord improperly removed her subsidy and increased her rent.

(4) Low Income Housing Tax Credit Projects

In *Bowling Green Manor L.P. v. Kirk*, No. WD 94-125, 1995 WL 386,476, 1995 Ohio Appendix LEXIS 2707 (June 30, 1995) (Appendix 83), the Ohio Court of Appeals held that a low income housing tax credit project landlord could not evict the tenant without first giving notice of good cause for eviction. The court found the requirement by implication in the covenant between the landlord and the state finance agency. The court also concluded that the regulatory relationship between the landlord and the state agency rendered the eviction action by the landlord to be state action, affording due process rights to the tenant. Because of the similarities between the tax credit landlord-tenant relationship and that of other subsidized project landlords and tenants, the court concluded that the tenant protections under 24 C.F.R. § 880.607 for the Section 8 New Construction Program. *See* discussion, *supra*, at VI.F.10.b.(1) (HUD Handbook No. 4350.3 projects). For a list of defenses available to Section 8 New Construction Program tenants, *see* Forms Appendix, Answer No. A-4.

In *Eden Park Apartments, L.P. v. St. John*, No. UD-1980701510 (Minn. Dist. Ct. 4th Dist. Jul. 31, 1998) (Appendix 328) (Crump, J.), the court concluded that since the parties' documents for a low-income tax credit property did not state a good cause for eviction requirement, there was none. However, in *Cimarron Village Townhomes, Ltd. v. Washington ,* No. C3-99-118, 1999 WL 538110 (Minn. Ct. App. July 27, 1999) (unpublished), the court ruled that Section 42 low income tax credit tenancies could not be terminated without cause, citing the clear language of 26 U.S.C. §§ 42(h)(6)(B)(i), 42(h)(6)(E)(ii)(I) as well as the legislative history.

(5) Other subsidized housing programs

Answer forms outlining defenses to all of the various subsidized housing programs are available at the Poverty Law website.
http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html#anchor_10

c. *Public housing*

(1) Notice

For a list of notice defenses, *see* Answer No. A-8.
http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html#anchor_10

The public housing lease must

(4) require the public housing agency to give adequate written notice of termination of the lease which shall not be less than—

(A) a reasonable period of time, but not to exceed 30 days—

(i) if the health or safety of other tenants, public housing agency employees, or persons residing in the immediate vicinity of the premises is threatened; or

(ii) in the event of any drug-related or violent criminal activity or any felony conviction;

(B) 14 days in the case of nonpayment of rent; and

(C) 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.

42 U.S.C. § 1437d(l)(4).

Fourteen days notice is required in a nonpayment of rent case. *See Public Housing Authority v. Swickard,* No. UD-1920812518 (Minn. Dist. Ct. 4th Dist. Sept. 1, 1992) (Appendix 15.G) (rent reminder notice failed to satisfy eviction notice requirement).

A reasonable notice up to 30 days is required if the health or safety of other tenants, public housing agency employees, or persons residing in the immediate vicinity of the premises is threatened, or in the event of any drug-related or violent criminal activity or any felony conviction.

For lease terminations based on other grounds, the 30 day notice provision to allow for a shorter period if provided under state or local law. It is not clear whether this would allow for (1) no alternative, as Minnesota does not have a notice law for breach cases, (2) no notice, as in private breach cases, or (3) the notice required by Minn. Stat. § 504B.135 (formerly 504.06) for periodic tenancies, such as one month notice for a month-to-month tenancy.

In *Minneapolis Public Housing Authority v. Papasodora*, No. UD-1960611515 (Minn. Dist. Ct. 4th Dist. Jul. 17, 1996) (Appendix 213), the court held that a public housing notice to increase rent is equivalent to notice to terminate month-to-month lease and initiate new lease with new rent under Minn. Stat. Section 504.06 (now § 504B.135); the notice mailed February 29 could not be received in February and was untimely for an April 1 rent increase; and a void notice could not be a basis for a future rent increase).

The notice must state specific grounds for termination. *Cuyahoga Metropolitan Housing Authority v. Younger*, No. 65302 (Ohio Ct. App. Apr. 28, 1994) (Appendix 64) (affirmed decision finding termination notice insufficient, where notice contained vague and broad allegations, allegations of possible illegal activities, no notice of dates of alleged incidents, and no notice of individuals involved in alleged incidents. *See Community Development Authority of Madison v. Yoakum*, No. 91-0641-FT, 1992 WL 50167 (Wis. Ct. App. Jan. 16, 1992) (Appendix 321) (unpublished: public housing tenant was entitled to 30 day notice rather than 14 day notice where landlord alleged claims other than nonpayment of rent; notice also was improper in that it did not include notice to right to review documents; trial court erred in granting judgment on grounds not listed in the complaint).

(2) Grievance process

The grievance process includes an informal conference and a formal hearing before the public housing authority may file an eviction (unlawful detainer) action. 24 C.F.R. Part 966. *See Minneapolis Public Housing Authority v. Otto*, No. UD-1970326517 (Minn. Dist. Ct. 4th Dist. May 9, 1997)

(Appendix 279) (Public housing administrative procedure may not constitute sufficient due process opportunity where tenant offered at the informal conference and formal hearings to get rid of his dog which offended neighbors, the Housing Authority proceeded with eviction, and the tenant got rid of the dog); *Millville Housing Authority v. Brown*, No. A-6317-94T3 (N.J. Super. Ct. App. Div. June 19, 1996), CLEARINGHOUSE REVIEW 660 (Oct. 1996) (Appendix 272) (Dismissal where public housing notice failed to state tenant's right to reply and examine documents, even though tenant had the opportunity to do them). *See generally* 42 U.S.C. § 1437d(l)(3); 24 C.F.R. §§ 966.4(l), 966.51-966.57. *See generally Waconia Housing and Redevelopment Authority v. Chandler*, 403 N.W.2d 708 (Minn. Ct. App. 1987) (grievance hearing); *Norton v. Johnson*, No. 93-1263-CIV-T-21A (M.D. Fla. Aug. 17, 1993) (Appendix 282) (notice and informal hearing); *Edgecomb v. Housing Authority of the Town of Vernon*, 824 F. Supp. 312 (D. Conn. 1993) (notice and formal hearing); *Dial v. Star City Public Housing Authority*, 8 Ark. App. 65, 648 S.W.2d 806 (1983) (informal conference); *Buczko v. Lucas Metropolitan Housing Authority*, No. C-78-26 (D.N.D. Ohio Mar. 10, 1978) (Appendix 283) (formal hearing); *Scarpitta v. Glen Cove Housing Authority*, 48 A.D.2d 657, 367 N.Y.S.2d 542 (1975) (formal hearing); *Escalera v. New York City Housing Authority*, 425 F.2d 853 (2d Cir. 1970) (formal hearing); *Goldberg v. Kelly*, 397 U.S. 254 (1970) (due process hearings).

Recently, the Minnesota Court of Appeals has not been receptive to tenant claims of violations of their pre-eviction notice and administrative rights. In *Stuart Co. v. Ramsey,* No. A14–0639, 2014 WL 5800462 (Minn. Ct. App. Nov. 10, 2014) (unpublished), the Court of Appeals affirmed eviction of the public housing tenant for nonpayment of rent, holding that (1) lack of the federally required eviction notice did not deprive the district court of jurisdiction, (2) the pro se tenant before the district court waived the notice defence by not raising it below, and (3) the tenant similarly waived the requirement of material noncompliance by not raising it.

The Court noted

> We note that appellant appeared pro se in district court, and the record reflects that the district court failed assist appellant in advancing her legal theories. And, in fact, the record shows that the district court was quite abrupt with appellant. We urge district courts to be cognizant of a party's pro se status and to be as helpful as possible under the circumstances.

Id. at *2.

See Mankato & Blue Earth County Housing & Redevelopment Authority v. Critzer, No. C2-92-1712 (Minn. Ct. App. Mar. 28, 1995), FINANCE AND COMMERCE 48 (Mar. 31, 1995) (Appendix 101) (unpublished: rejected defective notice claim); *Minneapolis Public Housing Authority v. Holloway*, No. C0-95-391 (Minn. Ct. App. Aug. 15, 1995), FINANCE AND COMMERCE 46 (Aug. 18, 1995) (Appendix 145) (unpublished: rejected defective administrative hearing claim). *But see Olchefski v. Metropolitan Council,* C4-95-2337 (Minn. Ct. App. Apr. 30, 1996), FINANCE AND COMMERCE at 27 (May 3, 1996) (Appendix 228) (reversing and remanding termination of §8 certificate where hearing officer's decision stated no factual or legal basis for termination).

Public Housing Authorities must keep a file of grievance hearing decisions with identifying references deleted, which is available for inspection by public housing tenants. 24 C.F.R. Sec. 966.57(a).

(3) Bypassing the grievance process

Public housing authorities may bypass or expedite the administrative grievance procedure, where

HUD determines that state eviction court provides the minimum elements of due process, in cases involving criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the public housing authority, or any drug related criminal activity on or near the premises. 42 U.S.C. § 1437d(k); 24 C.F.R. § 966.51. *Minneapolis Public Housing Authority v.* _____, No. UD-1970221508 (Minn. Dist. Ct. 4th Dist. Mar. 26, 1997) (Appendix 273a) (Dismissal of second unlawful detainer action where Public Housing Authority based complaint on grounds other than listed in the termination notice; Public Housing Authority improperly bypassed grievance process for case involving petty misdemeanor drug violation which is not "criminal" activity; action dismissed with prejudice so as to not allow the Public Housing Authority to file yet a third case on the same claims); *Housing Authority of Newark v. Raindrop*, 670 A. 2nd 1087, 287 N.J. Super 222 (1996) (Housing Authority gave improper notice to bypass the grievance process where the notice failed to advise tenant she was entitled to a grievance hearing, failed to identify court in which eviction would occur, and failed to advise tenant of HUD's determination that local court system satisfied federal public housing eviction due process requirements); *MPHA v. Scott,* UD-1950623520 (Minn. Dist. Ct. 4th Dist. July 19, 1995) (Appendix 229) (process for by-passing administrative grievance process in cases involving criminal activity and drug related criminal activity does not require criminal prosecution be commenced, but bypass should happen only in serious cases).

Before making any changes in the lease or grievance procedure to allow the housing authority to bypass or expedite the grievance procedure, the housing authority must give thirty (30) days notice to tenants and any resident organization, provide them with an opportunity to comment, and take their comments into consideration before adopting any changes. In Minneapolis, the Minneapolis Public Housing Authority (MPHA) revised its occupancy policies to enact these procedures.

In *Simmons v. Kemp*, 751 F. Supp. 815 (D. Minn. 1990), the court held that bypass was not legal under federal law at that time, because Minnesota court procedures did not provide adequate opportunity for tenants facing eviction to discover documents of public housing authority, so that Secretary could not rely on state court procedures and administrative grievance procedure was required. The court ordered that the HUD determination that the Minnesota unlawful detainer procedure meets the elements of due process set out in the regulations be set aside. *Id*. at 822. While the federal statute and regulation at issue have been changed to deal with the issue in *Simmons*, none of the parties have moved to amend the injunction. *See Minneapolis Public Housing Authority v. Demmings*, No. C5-94-2045, 1995 WL 265061 (Minn. Ct. App. May 9, 1995) (Appendix 159) (Court noted *Simmons* but did not hold on issue since parties did not raise it). In *Yesler Terrace Community Council v. Cisneros*, 37 F.3d 442 (9th Cir. 1994), the court held that a housing authority did not obtain a proper due process determination by HUD that it could bypass the grievance procedure, because HUD did not provide for notice and comment before making the determination. Since then, HUD revised the regulation to remove the notice and comment requirements for HUD. 24 C.F.R. § 966.51.

In *Minneapolis Public Housing Authority v. Lor*, 591 N.W.2d 700 (Minn. 1999) (Appendix 347), the Court noted that "Minnesota's unlawful detainer process has been certified by HUD to meet its due process standards. 61 Fed. Reg. 13276-77 (Mar. 26, 1996)." *Id.* at n.12. *See* United States Department of Housing and Urban Development (HUD), *Notice of HUD Due Process Determinations*, 61 Fed. Reg. 13276-77 (Mar. 26, 1996), PDF at 237-38 (Minnesota - "Forcible entry and unlawful detainer action in district court (or in the housing courts of Hennepin and Ramsey Counties) under Minn. Stat. Ann. §§ 566.01 to .33."). *Id.* at 13277, PDF at 238. The cited statutes were renumbered in 1999. *See* discussion, *supra*, at I.A.1.

The Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276 §575, 112 Stat.

2461, 2634-35 (Oct. 21, 1998) (amending 42 U.S.C. §1437d), expanded the types of public housing lease termination excluded from the grievance process to include terminations based on violent criminal activity on or off the premises and any activity resulting in a felony conviction.

> For any grievance concerning an eviction or termination of tenancy that involves any activity that threatens the health, safety, or right to peaceful enjoyment of the premises of other tenants or employees of the public housing agency or any violent or drug-related criminal activity on or off such premises, or any activity resulting in a felony conviction, the agency may (A) establish an expedited grievance procedure as the Secretary shall provide by rule under section 553 of title 5, or (B) exclude from its grievance procedure any such grievance, in any jurisdiction which requires that prior to eviction, a tenant be given a hearing in court which the Secretary determines provides the basic elements of due process (which the Secretary shall establish by rule under section 553 of title 5). Such elements of due process shall not include a requirement that the tenant be provided an opportunity to examine relevant documents within the possession of the public housing agency. The agency shall provide to the tenant a reasonable opportunity, prior to hearing or trial, to examine any relevant documents, records, or regulations directly related to the eviction or termination.

42 U.S.C. § 1437d(k).

> The regulation is limited to criminal activity.
>
> (2) (i) The term due process determination means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in § 966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:
>
> (A) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises of other residents or employees of the PHA;
>
> (B) Any violent or drug-related criminal activity on or off such premises; or
>
> (C) Any criminal activity that resulted in felony conviction of a household member.

24 C.F.R. § 966.51 (a)(2)(I).

In cases where a public housing authority alleges criminal activity, it is important to determine whether the activity meets the definition of a crime. Possession of a small amount of marijuana, a petty misdemeanor and not a "crime" under state law, is not "criminal activity" and not subject to bypass of the public housing grievance process, *Minneapolis Public Housing Authority v. _____,* No. HC020710513 (Minn. Dist. Ct. 4th Dist. Aug. 2, Sept. 16, 2002) (Appendix 547a), affirmed (Sep. 16, 2002) (Appendix 547b) , or subject to eviction. *Minneapolis Public Housing Authority v. _____,* No. HC-1020207506 (Minn. Dist. Ct. 4th Dist. Mar. 18, 2002) (Appendix 543).

In *Housing and Redevelopment Authority of Duluth, Inc. v. Adams*, No. C7-99-601573 (Minn. Dist. Ct. 6th Dist. Sep. 13, 1999) (Judge Sweetland) (Appendix 395), a court concluded that since a crime is conduct prohibited by statute and for which the actor may be sentenced to imprisonment with or

without a fine under Minn. Stat. 609.02, Subd. 1, municipal ordinance violations are not crimes because ordinances are not state statutes, and statutory petty misdemeanors are not crimes because of the limitation on sentencing. The court dismissed the action where petty misdemeanor drug charges against the tenant were dismissed, and the tenant pled guilty to an amended charge of assault under a municipal ordinance. The court added that there was no serious or repeated violations of a material term of the lease where the arrest took place one mile away from the premises, and the event did not constitute criminal activity.

For more information on the grievance process, *see* 24 C.F.R. Pt. 966; HUD HOUSING PROGRAMS: TENANT'S RIGHTS; Forms Appendix, Form Answer No. A-8 (public housing).

d. *Revocation of tenant's notice to quit*

Most public and subsidized housing programs allow the tenant to terminate the tenancy with a notice to quit. If the tenant voluntarily gave such notice or is coerced into doing so and then withdraws or revokes the notice, the landlord should have to comply with the eviction notice requirements rather than simply rely on the tenant's notice to quit.

In *Dakota County HRA v. Blackwell*, No. C7-98-1763 (Minn. Ct. App. May 4, 1999) (unpublished), the tenant requested an extension of a lease termination date by half a month, to which the landlord agreed. Before the date passed, the tenant rescinded the agreement, and the landlord filed an unlawful detainer action. The trial court held that the tenant did not violate her lease, but awarded the landlord specific performance for her failure to move. On appeal, the Court of Appeals affirmed, concluding that there was consideration for the agreement. The court rejected tenant claims of mistake, unconscionable, and public policy, and held that specific performance was an appropriate remedy. Judge Foley argued in dissent that specific performance rendering the tenant homeless ignored equity. The Minnesota Supreme Court reversed in *Dakota County HRA v. Blackwell*. 602 N.W.2d 243 (Minn. 1999), concluding that the district court abused its discretion in awarding specific performance. The court noted that a party does not have an automatic right to specific performance for breach of contract, and the district court must balance the equities and determine whether the equitable remedy is appropriate. The court added that its decision was limited to the facts presented.

See Hoglund-Hall v. Kleinschmidt, 381 N.W.2d 889, 895 (Minn. Ct. App. 1986) (FmHA project: tenant's notice to quit was not an effective waiver of rights, subsequent letter stating tenants would remain placed burden back on landlord to restart federally regulated eviction process); *Stuart Management Corp. v. _____*, No. C-7-01-00068 (Minn. Dist. Ct. Apr. 12, 2001) (Appendix 580) (HUD subsidized project tenant rescinded notice to vacate, so landlord had to give notice to terminate tenancy, citing *Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889, 895 (Minn. Ct. App. 1986), and distinguishing *Eden Park Apartments v. Weston*, 529 N.W.2d 732 (Minn. Ct. App. 1995); judge review reversal of referee decision); *BRI Associates v. Gangl*, C4-95-845 (Minn. Dist. Ct. 10th Dist. Apr. 24, 1995) (Appendix 88) (landlord's request that tenant sign notice to vacate without first giving lease termination notice evaded purpose of federal lease termination requirement; tenant's oral request to revoke notice was a valid revocation; tenant did not waive her eviction rights); *Public Housing Agency v. Bauer*, No. C1-93-10404 (Minn. Dist. Ct. 2d Dist. Oct. 28, 1993) (Appendix 12.B) (dismissed where public housing tenant's service of notice to quit and subsequent withdrawal did not waive plaintiff's requirement to serve pre-eviction notice).

But see Nouvelle Apartments v. Moore, No. UD-1930302522 (Minn. Dist. Ct. 4th Dist. Mar. 26, 1993) (Appendix 12.C) (writ granted where notice signed by both parties was valid notice to quit on

which plaintiff relied and refused to rescind; plaintiff order to pay defendant $250.00 for failing to register trade name with Secretary of State); *Cecil Newman Corp. v. Eggleston*, No. UD-1930225505 (Minn. Dist. Ct. 4th Dist. Mar, 26, 1993) (Appendix 12.D) (writ granted where notice signed by both parties was valid notice to quit which plaintiff refused to rescind).

11. Contract for deed termination

Minn. Stat. § 559.202 governs creation of contracts for deed, with Minn. Stat. § 559.201 supplying definitions. Minn. Stat. § 559.21 covers termination. Subdivision 2a provides:

> For post 7/31/1985 contract.
>
> If a default occurs in the conditions of a contract for the conveyance of real estate or an interest in real estate executed on or after August 1, 1985, that gives the seller a right to terminate it, the seller may terminate the contract by serving upon the purchaser or the purchaser's personal representatives or assigns, within or outside of the state, a notice specifying the conditions in which default has been made. The notice must state that the contract will terminate 60 days, or a shorter period allowed in subdivision 4, after the service of the notice, unless prior to the termination date the purchaser:
>
> (1) complies with the conditions in default;
>
> (2) makes all payments due and owing to the seller under the contract through the date that payment is made;
>
> (3) pays the costs of service of the notice, including the reasonable costs of service by sheriff, public officer, or private process server; except payment of costs of service is not required unless the seller notifies the purchaser of the actual costs of service by certified mail to the purchaser's last known address at least ten days prior to the date of termination;
>
> (4) except for earnest money contracts, purchase agreements, and exercised options, pays two percent of any amount in default at the time of service, not including the final balloon payment, any taxes, assessments, mortgages, or prior contracts that are assumed by the purchaser; and
>
> (5) if the contract is executed on or after August 1, 1999, pays an amount to apply on attorneys' fees actually expended or incurred, of $250 if the amount in default is less than $1,000, and of $500 if the amount in default is $1,000 or more; or if the contract is executed before August 1, 1999, pays an amount to apply on attorneys' fees actually expended or incurred, of $125 if the amount in default is less than $750, and of $250 if the amount in default is $750 or more; except that no amount for attorneys' fees is required to be paid unless some part of the conditions of default has existed for at least 30 days prior to the date of service of the notice.

Subdivision 3 provides the form of the notice. Subdivisions 1b through 1d provide for termination of earlier contracts for deed.

The vendor must follow the service and notice requirements for termination of the contract. *Enga v. Felland,* 264 Minn. 67, 70-71, 117 N.W.2d 787, 789-90 (1962). Minn. Stat. § 559.21. *See Warren v. _____,* No. 27-CV-HC- 07-5836 (Minn. Dist. Ct. 4th Dist. Jul. 31, 2007) (Appendix 637) (eviction dismissed where plaintiff did not properly cancel purchase agreement, costs and disbursements

awarded); *Azariah v. ____,* No. 27-CV-HC- 07-1143 (Minn. Dist. Ct. 4th Dist. Feb. 28, 2007) (Appendix 631) (eviction dismissed where plaintiff did not properly cancel contract for deed, costs and disbursements awarded); *Revels v. O'Neal*, No. UD-1960723503 (Minn. Dist. Ct. 4th Dist. Sep. 11, 1996) (Appendix 194) (contract for deed termination notice properly served; vendor's mortgagee is not a party which must be served; defenses of unjust enrichment, void and unenforceable contract for deed and fraudulent inducement could not be raised in the unlawful detainer action where vendee brought no action within the statutory sixty day period following notice of termination); *Swartwood v. Clark,* No. UD-1920928505 (Minn. Dist. Ct. 4th Dist. Oct. 15, 1992) (Appendix 16.C) (vendor failed to meet burden of proof regarding alleged service of termination notice); *Edwards v. Sagataw,* No. 31-C2-92-512 (Minn. Dist. Ct. Itasca Cty. Apr. 30, 1992) (Appendix 16.D) (quit claim deed obtained by vendor from vendee while vendee was not in default lacked consideration; allegations of default in payment of taxes by vendee implied continuing application of contract for deed; vendor, cannot evict vendees without foreclosing the contract). *See also* discussion, *supra* at V.N. (collateral estoppel).

Technical errors by the vendor in canceling the contract for deed or by the vendee in attempting to cure the default might not be held against the party making the error. In *Olsen v. Stevens*, No. CX-97-1827, 1998 Minn. App. LEXIS 369 (Minn. Ct. App. Mar. 31, 1998) (Appendix 355) (Unpublished), the defendant in a contract for deed unlawful detainer action claimed the termination notice was improper in that it included more money than was due. The court noted that it must determine whether the contract for deed was properly canceled. The court noted that absent a showing of prejudice, discrepancies in a termination notice will not automatically render it ineffective. The court noted that the defendant did not attempt to tender any amount due under the contract, but had they tendered the amounts they conceded were owed and plaintiff had rejected the tender, the defendant could possibly have claimed prejudicial error. *See Metro Redevelopment, Inc. v. Shaviss*, No. UD-1970404529 (Minn. Dist. Ct. 4th Dist. Jun. 2, 1997) (Appendix 270) (It would be unjust and inappropriate to evict vendee where within the redemption period vendee cured the mortgage default and tendered payment to cure the contract for deed default to vendor's agent who rejected the payment because the payment had not been made to the office designated in the termination notice); *Thompson v. Stevens*, No. C6-96-650, 1996 Minn. App. LEXIS 1382 (Minn. Ct. App. Dec. 10, 1996) (FINANCE AND COMMERCE at 76 (Dec. 13, 1996) (Appendix 299) (Unpublished: In unlawful detainer action based on contract for deed termination, trial court must determine if plaintiff complied with statutory termination procedures; plaintiff was not required to serve the termination notice on defendant's ex-husband, who had assigned his interest to her, even though the assignment contained an error in the legal description, and was not recorded). *See also Jordan v. Peterson*, No. C7-96-1757 (Minn. Ct. App. Mar. 18, 1997, FINANCE AND COMMERCE at 49 (Mar. 21, 1997) (Appendix 263) (Unpublished: Vendor gave proper notice, did not invalidate the notice, and equitable claims were not convincing).

In *Gale v. Winge*, No. C7-98-2279 (Minn. Ct. App. July 6, 1999) (unpublished) the court affirmed a determination as not clearly erroneous that husband continued to use property as his place of abode and substitute service on wife was proper; minor inaccuracies in contract-for-deed legal description do not render the termination notice ineffective; trial court did not abuse its discretion in denying motion to vacate default judgment where tenant did not present a defense on the merits nor a reasonable excuse for failure to act; attorney's testimony at trial regarding payment of money was not on a contested issue, and did not require disqualification; equitable rights were not at issue, but equities were not in the defendants' favor.

A contract for deed vendee may establish waiver of the termination notice on the grounds of acceptance of payments, where the vendee shows that the vendor had full knowledge of the facts, full knowledge of applicable legal rights, and an intention to relinquish these rights. *Knutson v. Seeba*, No.

C7-98-1665 (Minn. Ct. App. Mar. 30, 1999) (Appendix 341) (Unpublished: Vendor's letter to vendee stating that vendor would hold the payments pending receipt of other amounts due indicated no relinquishing of rights).

The vendor must give proper notice to the tenant of the vendee following termination. One month written notice is required for tenants. Minn. Stat. § 504B.285 (formerly § 566.03), subd. 1. *See* discussion, *supra* at VI.F.1.c.

The vendor may waive the right to cancel by acceptance of payments, where the payment is made on one of the defaults listed in the notice. *Odegaard v. Moe*, 264 Minn. 324, 119 N.W.2d 281 (1961) (waiver); *Allen v. Harper*, No. UD-1950831512 (Minn. Dist. Ct. 4th Dist. Oct.__, 1995) (Appendix 146) (waiver); *Thomey v. Stewart*, 391 N.W.2d 533, 535-36 (Minn. Ct. App. 1986) (no waiver where notice listed default on balloon payment, vendee made payments on vendor's mortgage but did not make payments on balloon payment).

For a discussion of what issues can be litigated in an eviction (unlawful detainer) action, *see* discussion, *supra*, at VI.B.

11a. Purchase agreements and exercised options terminations

Minn. Stat. § 559.217 governs cancellation of residential purchase agreements. In *Blomberg v. Anderson*, No. C6-90-943, 1990 Minn. App. LEXIS 1008, 1990 WL 152641 (Minn. App. Oct. 16, 1990), plaintiffs were renters who had an option under the rental agreement to buy the leased premises from the landlord. On January 30, 1990, after renters failed to exercise the option to buy seventeen months earlier, landlord served renters with a 30-day "Notice of Cancellation of Purchase Agreement." Twenty seven days later, tenants notified landlord's agent that tenants would exercise their option and the closing date would occur two days later, which would have been twenty-nine days after the Notice of Cancellation. The closing did not occur as scheduled, and the 30-day redemption period expired. Landlord filed an unlawful detainer action, and, after hearing, the Court granted summary judgment of restitution was entered. The renters argued that the trial court erred in concluding that a 30 day notice to terminate applied to their rental with an option to buy agreement. While purchase agreements and exercised options may be terminated 30 days after service of notice, contracts for deeds may be terminated only on 60 days notice. In affirming the trial court's grant of summary judgment, the Court of Appeal concluded the trial court did not err in ruling that the 30 days notice was proper here:

> Purchase agreements and exercised options may be terminated 30 days after service of notice, whereas contracts for deed may be terminated on 60 days notice. Minn. Stat. § 559.21, subds. 2a, 4(a) (1988). A contract for sale is distinguished from an option in that the purchaser under the contract has not only the right to purchase the property but is obligated to do so. *Wurdemann v. Hjelm*, 257 Minn. 450, 461, 102 N.W.2d 811, 818, cert. denied, 364 U.S. 894, 81 S.Ct. 222 (1960). Both the agreement's language and the party's conduct indicate the August 1987 agreement granted the Andersons the option to purchase the property, but did not require them to do so. Accordingly, the trial court did not err in ruling that 30 days notice was proper to terminate the August 1987 agreement.

Id. at *3-4.

12. Mortgage foreclosure

a. *Mortgagor defendant*

Most appeals challenging mortgage foreclosures in eviction actions have been unsuccessful. The Court of Appeals repeated has rejected claims that plaintiffs lacked standing and were not entitled to summary judgment. *Federal Home Loan Mortgage Corporation v. Mitchell*, 862 N.W.2d 67 (Minn. Ct. App. 2015); *Federal Home Loan Mortg. Corp. v. Nedashkovskiy*, 801 N.W.2d 190 (Minn. Ct. App. 2011); *Malone v. Bland*, No. A15-0146, 2015 WL 4994637 (Minn. Ct. App. August 24, 2015) (unpublished); *Fed. Nat. Mortgage Ass'n v. Harvey,* No. A14-1038, 2015 WL 2185012 (Minn. Ct. App. May 11, 2015) (unpublished); *Bank of New York Mellon v. Reff,* No. A14-0788, 2015 WL 1513978 (Minn. Ct. App. Apr. 6, 2015) (unpublished); *U.S. Bank Nat. Ass'n v. Knoedler*, No. A14-1394, 2015 WL 1514189 (Minn. Ct. App. Apr. 6, 2015), review denied (June 30, 2015) (unpublished); *Fed. Nat. Mortgage Ass'n v. Yang*, No. A14-0832, 2015 WL 732486 (Minn. Ct. App. Feb. 23, 2015) (unpublished); *Bank Of New York Mellon v. Tatro,* No. A14-0142, 2014 WL 4957667 (Minn. App. Oct. 6, 2014) (unpublished); *U.S. Bank National Association v. Twigg,* No. A13-2237, 2014 WL 4289194 (Minn. App. Sept. 2, 2014) (unpublished) (district court conditioned the stay on Twigg posting a $100,000 bond, which did not occur, and summary judgment was entered in favor of US Bank); *Great Southern Bank V. Guzman,* No. A14-0248, 2014 WL 4056254 (Minn. App. Aug. 18, 2014) (unpublished); *Bank of America, N.A v. Smith,* No. A13-2299. 2014 WL 3801306 (Minn. App. Aug. 4, 2014) (unpublished); *Federal National Mortgage Association ("Fannie Mae") v. Robinson,* No. A14-0023, 2014 WL 3802216 (Minn. App. Aug. 4, 2014) (unpublished); *Federal Home Loan Mortgage Corporation v. Briggs,* No. A13-2089, 2014 WL 3397124 (Minn. App. July 14, 2014) (unpublished); *Wilmington Trust Company v. Northwick,* No. A-13-2266, 2014 WL 2441487 (Minn. Ct. App. June 2, 2014) (unpublished); *Wells Fargo, N.A. v. Schulz*, No. A13-0157, 2013 WL 5777915 (Minn. Ct. App. Oct. 28, 2013) (unpublished).

The mortgagee still must comply with laws governing the foreclosure process. In *Ruiz v. 1st Fidelity Loan Servicing, LLC,* 829 N.W.2d 53 (Minn. 2013), Ruiz executed a promissory note payable to Chase Bank ("Chase") and a mortgage deed on a duplex she owned in Minneapolis in order to secure the debt under the note. Between June 2006 and May 2010, the note and mortgage were assigned three separate times. In September 2008, Ruiz defaulted under the terms of the promissory note and the mortgage. In March 2010, 1st Fidelity sent Ruiz a demand letter based on her default of the note and mortgage, which she failed to respond to or cure the default. Subsequently, 1st Fidelity commenced foreclosing by advertisement proceedings on the mortgage. In May 2010, the mortgage was assigned to 1st Fidelity Loan Servicing, LLC. This assignment and the notice of pendency were filed on May 18, 2010. 1st Fidelity purchased Ruiz's property at the foreclosure sale on November 30, 2010. Ruiz filed a complaint alleging, among other things, that 1st Fidelity failed to strictly comply with Minn. Stat. § 580.02(3). The District Court granted 1st Fidelity's motion to dismiss Ruiz's claim for failure to state a claim, and, alternatively, summary judgment. It also determined that a substantial compliance standard applied to the statutory requirements at issue. The Court of Appeals reversed, concluding that a strict compliance standard applies to Minnesota's foreclosure by advertisement process. Therefore, 1st Fidelity's foreclosure of Ruiz's property was void because it failed to strictly comply with the statute. 1st Fidelity appealed to the Minnesota Supreme Court, alleging the Court of Appeals applied the wrong standard. 1st Fidelity contended that Minn. Stat. § 580.02(3) merely requires the recording of all assignments of the mortgage any time before the foreclosure sale. The Supreme Court disagreed and held that the statute unambiguously requires all assignments of the mortgage to be recorded before the mortgagee has the right to engage in foreclosure by advertisement proceedings. Therefore, 1st Fidelity's foreclosure of Ruiz's property was void for failure to strictly comply with Minn. Stat. § 580.02(3).

Eviction defendants were successful or partially successful in a few cases. The mortgagee must

comply with the service and notice requirements for mortgage foreclosure. *Comerica Mortgage Corp. v. Gaddy*, No. UD-1950223514 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1995) (Appendix 195) (mortgager did not prove that service of the notice of foreclosure sale was insufficient). In *WMC Mortgage Corp. v. Harris*, Nos. UD-1981223505 and 1981223503 (Minn. Dist. Ct. 4th Dist. Jan. 14, 1999) (Appendix 373), the court concluded that a defendant in an unlawful detainer action can raise defects in the mortgage foreclosure proceedings as a defense to the eviction if the defect would render the foreclosure void, as opposed to avoidable. The court denied the plaintiff's motion *in limine* to preclude the defendant from raising the defense of failure to serve an occupant under Minn. State. §580.03, since lack of service on the occupant would be fatal to the foreclosure proceeding. In *WMC Mortgage Corp. v. Graham*, No. UD-01990415520 (Minn. Dist. Ct. 4th Dist. Apr. 29, 1999) (Appendix 430), the defendant asserted that the plaintiff mortgage company did not comply with the foreclosure notice service statute. The plaintiff moved for summary judgment, arguing that the sheriff's certificate of sale was *prima facie* evidence of plaintiff's title to the property, and that defendants answer raised a title or equitable matter aside the scope of an unlawful detainer. The court denied plaintiff's motion, concluding that the same rules should apply for contract for deed cancellations and mortgage foreclosures, and that defendants in either case may raise as a defense the plaintiff's failure to comply with statutory requirements for cancellation for foreclose. If the defect renders it void, noting that lack of service is fatal to foreclosure proceedings.

In *Hagle v. The Bank of New York Mellon,* No. A14-0473, 2015 WL 648300 (Minn. Ct. App. Feb. 17, 2015) (unpublished), the defendant foreclosed on the plaintiffs' mortgage and won the eviction action, afterward the plaintiffs filed this action for damages. The district court dismissed some of plaintiffs' claims and entered summary judgment against the plaintiffs on the remaining claims. The Court of Appeals held in part that the district court erred by dismissing the plaintiffs' claim regarding personal property held on the premises following the eviction action, as res judicata did not bar the claim where the court in the eviction action expressly declined to consider the personal property claims.

For a discussion of litigating title issues in eviction actions, *see* discussion, *supra*, at VI.B.

Mortgagees with mortgagors insured by the Federal Housing Administration (FHA) or the United States Department of Housing and Urban Development (HUD) have significant rights not available to persons with uninsured loans. *See* 24 C.F.R. Part 203; HUD Handbook No. 433.02. However, the mortgagee should be able to challenge violations of the HUD Occupied Conveyance Program. Under the program, HUD may permit a foreclosed mortgagor or tenant of the foreclosed mortgagor to remain in the premises and rent from HUD under certain circumstances. The mortgagee must provide notice to the mortgagor and HUD that the mortgagee expects to acquire title to the property and that the occupant of the property might be eligible for the program. Notice must be given between 60 and 90 days prior to the date that the mortgagee expects to acquire title. 24 C.F.R. § 203.675 (1992). *See generally* 24 C.F.R. §§ 203.670-203.681. Since compliance with the program affects the tenancy of the mortgagor or tenant of the mortgagor, rather than title to the property, the parties should be able to litigate compliance with the program in an eviction (unlawful detainer) action. Since the actions of HUD may be an issue in litigating compliance with the program, dismissal for failure to join an indispensable party or continuance to file a third party complaint against HUD may be appropriate. *See generally*, discussion, *supra* at V.C. *See T. Conley, Outline of HUD Mortgage Assignment and Occupied Conveyance Programs* (May 21, 1993) (Appendix 12.E).

a1. *Illegal foreclosure reconveyance*

Defendants have had more success when claiming an illegal foreclosure reconveyance under Minn. Stat. § 504B.121, or asserts a claim of fraud, false pretense, false promise, misrepresentation,

misleading statement, or deceptive practice in conveyance with a foreclosure reconveyance. Minn. Stat. § 325N.18, subd. 6 provides for stay of the eviction action. Some courts have dismissed evictions where the defendant has claimed an illegal foreclosure reconveyance. *Millman v. _____,* No. 27-CV-HC-06-411 (Minn. Dist. Ct. 4th Dist. June 8, 2006) (Appendix 665) (eviction dismissed for lack of Housing Court jurisdiction where defendant homeowner claimed illegal foreclosure reconveyance); *Anderson v. _____,* No. 1060308540 (Minn. Dist. Ct. 4th Dist. May 8, 2006) (Appendix 657) (Judge Karasov) (service was proper where tenant did not prove that recipient of substitute service was not residing on the property; housing court did not have eviction subject matter jurisdiction where defendant home-owner assert foreclosure reconveyance defense under Minn. Stat. Ch. 325N; dismissed and expunged).

a2. *Stays of the eviction action*

Minn. Stat. § 325N.18, subd. 6 requires the court to issue an automatic stay without imposition of a bond if a defendant makes a prima facie showing that the defendant has commenced an illegal foreclosure reconveyance action, raises the defense under Minn. Stat. § 504B.121 of an illegal foreclosure reconveyance, or asserts a claim of fraud, false pretense, false promise, misrepresentation, misleading statement, or deceptive practice in conveyance with a foreclosure reconveyance. The defendant also must show that the defendant owned foreclosed residence, the foreclosure reconveyance, and continued occupancy of the property. The automatic stay expires if the foreclosed homeowner fails to commence a foreclosure reconveyance action within 90 days of issuance of the stay.

(1) Eviction action stays granted

The court hearing the eviction granted stays in *Bank of New York Mellon v. Reff,* No. A14-0788, 2015 WL 1513978 (Minn. Ct. App. Apr. 6, 2015) (unpublished); *Fed. Home Loan Mortgage Corp. v. Pope,* No. A14-1185, 2015 WL 1401625 (Minn. Ct. App. Mar. 30, 2015) (unpublished); *U.S. Bank National Association v. Twigg,* No. A13-2237, 2014 WL 4289194 (Minn. App. Sept. 2, 2014) (unpublished) (district court conditioned the stay on Twigg posting a $100,000 bond, which did not occur, and summary judgment was entered in favor of US Bank); *Wells Fargo, N.A. v. Schulz*, No. A13-0157, 2013 WL 5777915 (Minn. Ct. App. Oct. 28, 2013) (unpublished).

(2) Eviction action stayed denied

The court hearing the eviction denied stays in *Federal Home Loan Mortgage Corporation v. Mitchell*, 862 N.W.2d 67 (Minn. Ct. App. 2015); *Federal Home Loan Mortg. Corp. v. Nedashkovskiy*, 801 N.W.2d 190 (Minn. Ct. App. 2011); *Fed. Nat. Mortgage Ass'n v. Harvey,* No. A14-1038, 2015 WL 2185012 (Minn. Ct. App. May 11, 2015) (unpublished); *Nationstar Mortgage, LLC v. Quale*, No. A14-1227, 2015 WL 853535 (Minn. Ct. App. Mar. 2, 2015) (unpublished); *Bank Of New York Mellon v. Tatro,* No. A14-0142, 2014 WL 4957667 (Minn. App. Oct. 6, 2014) (unpublished); *Great Southern Bank V. Guzman,* No. A14-0248, 2014 WL 4056254 (Minn. App. Aug. 18, 2014) (unpublished).

(3) Denial of eviction stay reversed

In *U.S. Bank N.A. as Legal Title Trustee for Truman 2012 SC Title Trust v. Litterer,* No. A15-0988 (Minn. Ct. App. February 1, 2016) (unpublished), the Court of Appeals reversed the District court's refusal to stay the eviction proceeding pending resolution of a related federal lawsuit. The Court of Appeals held that, in general, a district court does not abuse its discretion by denying such a stay, but given the unique facts of the case, the district court did err because the claims in the first-filed loss-

mitigation action were central to the defense of the eviction action, noting that judicial economy would be served by a stay, the Litterers had pursued all available alternatives for relief, and the equities favored the Litterers. More specifically, the court stated that although eviction actions are summary proceedings to determine only present possessory rights to the property, when counterclaims or defenses are necessary to a fair determination of the eviction action, and those issues are pending in an alternative civil action, the eviction should be stayed. This is especially true when the party seeking the stay is trying to enforce the mortgage and its obligations, instead of trying to rescind it. Additionally, a stay was appropriate because if the Litterers proved a violation of the loss-mitigation statute, Minn. Stat. § 582.043, they would be entitled to set aside the sheriff's sale, and no remaining basis for the eviction action could be found. Thus, imposing a stay of the eviction was in the interest of judicial economy and prevented the unjust enrichment and irreparable harm that could have resulted from enforcement of the eviction judgment.

(4) Stays pending appeal

In *Bank of New York Mellon v. Reff,* No. A14-0788, 2015 WL 1513978 (Minn. Ct. App. Apr. 6, 2015) (unpublished), a stay was granted on condition of the defendants making certain payments until the resolution of a federal action. When defendants did not make the payments, summary judgment was granted for the plaintiffs. The defendants appealed and were ordered to pay a bond to stay the writ of recovery. The Court of Appeals held that the district court had not abused its discretion because the amount required of defendants was equal to the payments required under the note while the federal action was pending.

In *Fed. Home Loan Mortgage Corp. v. Pope,* No. A14-1185, 2015 WL 1401625 (Minn. Ct. App. Mar. 30, 2015) (unpublished), the eviction proceeding was stayed pending the outcome of the defendants' various challenges to the foreclosure process. Upon dismissal of the challenges, the court granted the plaintiff's motion for summary judgment. The defendants appealed, and asked the district court to stay the eviction during the appeal. The district court granted the request, provided the defendant posted bond. The defendant did not comply. The Court of Appeals held that the defendants were not entitled to an unconditional stay because no arguably-related civil action was pending when the conditional stay of enforcement of the eviction judgment was granted.

In *Nationstar Mortgage, LLC v. Quale*, No. A14-1227, 2015 WL 853535 (Minn. Ct. App. Mar. 2, 2015) (unpublished), the defendants filed a notice of appeal and the housing court referee granted a stay of the issuance of the writ of recovery but conditioned it on the defendants posting a lump-sum bond. The Court of Appeals held that the district court did not abuse its discretion by requiring defendants to post a bond to get a stay of execution of the writ of recovery of the premises pending the appeal because the statute specifically required a party appealing eviction to pay a bond if the party remained in possession.

In *Wells Fargo Bank, N.A. v. Badrawi,* No. A13-1417, 2014 WL 1758280 (Minn. Ct. App. May 5, 2014) (unpublished), the defendant who lost an appeal of a mortgage foreclosure eviction failed to establish that he was entitled to return of a $2,000 a month bond payment pursuant to Minn. Stat. § 504B.371(3) posted to obtain a stay of issuance of writ of recovery the pendency of appeal of order granting foreclosure to bank. The Court of Appeals affirmed trial court ruling that $2,000, which was nearly identical to the amount that homeowner had been paying to the bank under the mortgage, was a proper approximation of damages if homeowners failed to vacate at the end of the proceedings.

b. *Tenant of mortgagor as defendant*

As of August 1, 2008, the foreclosing mortgagee must include with the notice of commencement of foreclosure a notice of tenant rights and obligations with language specified by statute. A violation of the statute entitles a tenant at the time of commencement of foreclosure to $500, unless all of these factors are present: the violation was unintentional, was a result of a bona fide error, and reasonable procedures to avoid the error were adopted and maintained. Minn. Stat. § 580.042, 2008 Minn. Laws Ch. 341, Art. 5, §11. While a violation does not give the tenant a cause of action to stop the foreclosure if the mortgagee gives proper notice of commencement of the foreclosure, *id.*, the tenant may have a claim for $500 either in the eviction action or a damages action in conciliation court.

During the foreclosure process, the rights and obligations of the landlord and tenant remain the same: both parties must comply with the lease and landlord and tenant laws. Following expiration of the foreclosure redemption period, the tenancy may continue with the successor owner. *See* discussion, *supra*, at VI.F.1.d.

In *Hammann v. Wells Fargo Bank, N.A.,* Nos. A16-0737 and A16-1161, 2017 Minn. App. Unpub. LEXIS 5 (Minn. Ct. App. Jan. 3, 2017) (unpublished), Hammann entered a one-year residential lease with landlords who later defaulted on their mortgage. The bank initiated a foreclosure by advertisement on the property and bought the property in a foreclosure sale. The bank then mailed a "demand for possession of property" letter to the former owners, Hammann, the "occupants," and to any known or unknown tenant. The bank then filed an eviction action and obtained a writ of recovery of premises. Hammann did not appear in the action and the bank recovered the property.

Months later Hammann sued the bank pro se alleging claims of ouster, unlawful exclusion or removal, and breach-of-landlord covenants arguing that he did not receive a copy of the bank's letter. The district court dismissed the Hammann's claims. Then Hammann moved in the eviction action to intervene and for relief from the eviction judgment. The district court in the eviction action denied his motion to intervene because he failed to serve all of the parties and because the motion was untimely. Later, the district court also denied his motion to review its prior opinion and did not address the merits of his motion for relief from judgment.

The Minnesota Court of Appeals held that: (i) Hammann's claim of ouster failed because the bank made numerous attempts to identify and include all occupants in the eviction action and Hammann chose to wait more than two years to challenge the district court's order and writ of recovery so he could not prove that the bank acted unlawfully or in bad faith; (ii) his claim of unlawful-exclusion failed because the bank had a writ of recovery and order to vacate; and (iii) his claim of breach-of-landlord-covenant failed because Hammann was unable to establish that a lease or license agreement existed between him and the bank. The court also decided that the district court did not err in denying Hammann's motion to intervene in the eviction action or in denying review because the service was ineffective and his motion and notice of review were untimely. Lastly, the court held that Hammann's motion for relief from judgment was improper citing precedent stating that "post-trial orders in unlawful detainer proceedings are non-appealable."

In *Federal Home Loan Mortgage Corporation v. Mitchell*, 862 N.W.2d 67 (Minn. Ct. App. 2015), the defendants' property was properly sold at a foreclosure sale to a bank. After the defendants' failed to redeem, the bank sold its interest to plaintiff-Freddie Mac. After defendants remained in possession of the property after the sale and the expiration of the redemption period, plaintiff brought an eviction action and, once defendants answered, a moved for summary judgment. Defendants moved for a stay of eviction. The district court granted summary judgment to plaintiff, denied defendants' motion for a stay of eviction, and defendants appealed. The Court of Appeals affirmed the district court, holding

that (1) plaintiff had standing because defendants invaded plaintiff's legally protected property interest—evidenced by a sheriff's certificate of sale—by remaining in possession of the property after the redemption period expired; (2) defendants were not tenants under Minn. Stat. § 504B.121 because they did not enter a lease with the owners after the foreclosure and did not have plaintiff's permission to remain in possession of the property; (3) summary judgment was appropriate because challenges to a foreclosure may be litigated in an eviction action only when it is the sole forum available, which was not the case here; and (4) the district court did not abuse its discretion in denying to stay the eviction because the other proceedings were not an essential prerequisite to resolving the eviction action and adequate alternatives were available.

13. Subtenants

See discussion, *supra*, at I.D.5.

14. Landlord or tenant revocation or retraction of a notice to quit

Landlords and tenants should be able to revoke or retract a tenant's notice to quit, where the tenant and landlord did not make an oral or written contract for the tenant to move, and where the other party has not relied on the notice to the landlord's detriment. While most of the litigation on this issue has involved public or subsidized housing, those decisions are equally applicable to private housing. *Central Manor Apartments v. Beckman*, Nos. UD-1980609509, UD-1980513525 (Minn. Dist. Ct. 4th Dist. July 29, 1998) (Appendix 319B) (Tenant effectively retracted tenant's notice to quit prior to acceptance of landlord or any detrimental reliance by landlord). *See King v. Durkee-Atwood, Co.*, 127 Minn. 452, 148 N.W. 297 (1914) (tenant has the right to unilaterally withdraw a notice to quit).

In *Dakota County HRA v. Blackwell*, No. C7-98-1763 (Minn. Ct. App. May 4, 1999) (unpublished), the tenant requested an extension of a lease termination date by half a month, to which the landlord agreed. Before the date passed, the tenant rescinded the agreement, and the landlord filed an unlawful detainer action. The trial court held that the tenant did not violate her lease, but awarded the landlord specific performance for her failure to move. On appeal, the Court of Appeals affirmed, concluding that there was consideration for the agreement. The court rejected tenant claims of mistake, unconscionable, and public policy, and held that specific performance was an appropriate remedy. Judge Foley argued in dissent that specific performance rendering the tenant homeless ignored equity. The Minnesota Supreme Court reversed in *Dakota County HRA v. Blackwell*. 602 N.W.2d 243 (Minn. 1999), concluding that the district court abused its discretion in awarding specific performance. The court noted that a party does not have an automatic right to specific performance for breach of contract, and the district court must balance the equities and determine whether the equitable remedy is appropriate. The court added that its decision was limited to the facts presented.

In *Real Estate Equities, Inc. v. Schmidt*, No. CX-00-297 (Minn. Dist. Ct. 10th Dist. Mar. 14, 2000) (Judge Mossey) (Appendix 415), the tenant was assaulted on the property both before and after she obtained a restraining order, leading her to call the police. The landlord sent a letter stating it would terminate the tenancy based on late payment of rent, damage to the property, and police calls to the unit. The parties then executed an agreement to vacate. The court concluded that the termination letter, and the resulting agreement, violated § 504B.205, rendering the agreement void as contrary to public policy. *See* discussion, *supra*, at VI.F.10.d.

15. Lease renewal

In general, where the tenant has the right to extend the lease by giving proper notice under the lease, the giving of the notice is a condition precedent in lease renewal. If the notice fails to comply with the notice provision, the lease expires and the landlord is entitled to possession.

However, a court of equity may relieve the tenant against loss of the option to extend the lease where there has been excusable and inconsequential tardiness in giving the notice. The court may allow the tenant to renew the lease when the delay has been slight, the loss to the landlord is small, and hardship to the tenant would make it unconscionable to literally enforce the notice provision. *Trollen v. City of Wabasha*, 287 N.W. 2d 645 (Minn. 1979) (Commercial tenant allowed to renew lease where landlord and tenant had history of not enforcing formal obligations under the lease, tenant gave four months notice instead of six months notice, landlord was not prejudiced, and tenant would suffer hardship after investment in his business. *But see Garakani v. Five Lakes Centre, LLC*, No. C7-96-673, 1996 WL 636213 (Minn. Ct. App. Nov. 5, 1996) (Appendix 255) (Unpublished: No modification by conduct of lease renewal option notice where lease contained clear notice and non-waiver clauses and past conduct did not indicate the lease would not be formally enforced).

In *Caley v. Thornquist,* 94 N.W. 1084 (Minn. 1903), Thornquist rented a saloon building from the building's owner, Caley. The original written lease was for a term of one year, with the term expiring on February 1, 1901. The lease contained an option for Thornquist to renew the lease for a period of two years, with the same terms, following the lease's original expiration. Following the expiration of the lease, Thornquist continued to remain in possession of the saloon and continued to pay rent, which Caley accepted without dispute, until February 1902. On February 11, 1902, Caley served notice of his intention to have Thornquist vacate the saloon by April. Thornquist refused to vacate the saloon and continued to pay rent. Caley brought an action for eviction, which was granted by the trial court. On appeal, the Minnesota Supreme Court reversed, holding that Thornquist's continuance of paying rent for a substantial period (14 months) after the option to renew was active was conclusive evidence of his intention to exercise his option to renew the lease for the additional two years. The Court held that Thornquist's actions, and Caley's continued acceptance of rent, created vested rights to the renewal of the lease for the full two-year period contained in the original lease, and therefore Thornquist had a continued right to occupancy of the saloon.

In *Quade v. Fitzloff,* 100 N.W. 660 (Minn. 1904), the landlord, Quade, and the tenant, Fitzloff, entered into a written lease for a one year period that was set to terminate on March 1, 1902. The lease also contained an option to renew four a four year period on the same terms. Fitzloff remained in possession of the property for several months after the expiration of the original lease and continued to make monthly rental payments. The facts underlying the suit are unclear, but it appears as though Fitzloff then vacated the premises and stopped making monthly rent payments. Quade filed suit seeking unpaid rent for the remainder of the four year renewal period. The trial court held, and the Minnesota Supreme Court affirmed, that Fitzloff's holding over for several months after the expiration of the original lease constituted implied acceptance of the option to renew. Therefore, based on the holding in Caley v. Thornquist, 94 N.W. 1084 (Minn. 1903), an implied contract existed between the parties and Fitzloff was liable for rent for the additional four year term.

In *Excelsior Devel. LLC v. Musse,* No. 27-CV-HC-09-20, Second Amended Order (Minn. Dist. Ct. 4th Dist. June 15, 2009) (Appendix 645) (Judge Karasov), the court reversed the referee's decision in a commercial eviction, concluding that (1) the landlord failed to rebut tenant's evidence of exercise of lease renewal option; (2) lease offered by landlord to tenant and signed by tenant but not landlord was binding lease; (3) the copy of alleged termination notice of tenant offered into evidence by landlord but denied by tenant lacked consideration and was invalid; (4) and the tenant given 30 days to vacate one

commercial space under one expired lease but allowed to retain possession of two other spaces under other leases until expiration.

16. Uniform Relocation Act

The Uniform Relocation Act provides for additional notice to tenants where they are to be displaced as a result of receipt of state or federal monies. In *Project for Pride in Living, Inc. v. McCoy*, No. C7-99-4197 (Minn. Dist. Ct. 2nd Dist. May 21, Aug. 31, 1999) (Appendix 413), the owner obtained a loan with the Minnesota Housing Finance Agency for purchase and rehabilitation of the property. The owner then gave a 30 day notice to quit without alleging good cause for the termination. The tenant did not receive any notices for noncompliance with her lease during her tenancy. The court concluded that the Uniform Relocation Act applied since the owner executed a loan involving federal and state monies. 49 C.F.R. § 24 (1997); Minn. stat. §§ 117.51-117.52. The court then concluded that the 30 day notice to quit without cause violated the 90 day notice requirement and the requirement of cause for eviction. 49 C.F.R. §§ 24.203, 24.206. The referee's decision was affirmed on judge review. Order (Aug. 31, 1999).

17. Declaratory judgment action as alternative to eviction defense

In *Phillips v. Pepin Woods MHC, LLC,* No. 25-CV-16-2236 (Minn. Dist. Ct. 1st Dist., Goodhue County, Feb. 28, 2017) (Appendix 806), the manufactured home park gave the tenant, who owns manufactured home and rents the lot, a notice of "nonrenewal" of lease based on theory that lease was month-to-month and therefore tenant was tenant at will. The tenants sued for a declaratory judgment against the notice. The landlord argued that Minn. Stat. § 504B.135 (terminating tenancy at will) superceded § 327C.09, which provides exclusive bases for termination of lease for manufactured home lot. The court granted tenant's motion for summary judgment, ordering that the landlord identified no lawful basis to evict tenant and that the notice to vacate was a legal nullity.

18. Premature action that had not accrued

See discussion, *supra*, at VI.D.19.

19. Residents of nursing homes and housing for seniors and people with disabilities

See discussion, *supra*, at I.D.18, I.D.19, and I.D.20.

G. BREACH OF LEASE DEFENSES

0. Failure to attach to the complaint or provide at the initial hearing a copy of the lease (Hennepin and Ramsey County Housing Court), VI.G.0
1. No right of reentry clause in the lease, VI.G.1
2. Implied modification of the lease or waiver of lease provisions, VI.G.2
3. Plaintiff unilaterally modified the lease, VI.G.3
4. Waiver of breaches by acceptance of rent, VI.G.4
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7. Improper late fees, VI.G.7
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10. Public and government subsidized housing, VI.G.10
11. Manufactured (mobile) home park lot tenancies, VI.G.11
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14. Adhesion contract, VI.G.14
15. Oral leases, VI.G.15
16. Allegations of unlawful activity, VI.G.16
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25. Lack of clear rules or lease provisions, VI.G.25
26. Plaintiff must prove lease violations by a preponderance of the evidence, VI.G.26
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31. Eviction for emergency police calls, VI.G.31
32. Public reports, VI.G.32
33. Uniform Relocation Act, VI.G.33
34. Eviction of one tenant but not the other, VI.G.34
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36. Proof of the lease, VI.G.36
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0. Failure to attach to the complaint or provide at the initial hearing a copy of the lease (Hennepin and Ramsey County Housing Court)

See discussion, *supra*, at VI.D.8.

0a. Lack of a municipal rental dwelling license

In *Wajda v. Schmeichel,* No. A18-0060, 2018 Minn. App. Unpub. LEXIS 981, 2018 WL 6165295 (Minn. Ct. App. Nov. 26, 2018) (unpublished), *rev. den.* (Minn. Feb. 19, 2019), the court reversed the district court decision awarding eviction. The court held that an eviction for breach of lease was improper where the lease is void on public-policy grounds because the landlord had rented the property without a license required by Minneapolis. The court discussed its holding in great detail.

> The lease is void and unenforceable on public policy grounds. A landlord may not seek eviction for breach of a lease if the landlord is unlicensed and commits a criminal act by entering into a lease and renting a dwelling.
>
> In Minneapolis, it is a crime to rent out a dwelling without a license. Under Minneapolis, Minn., Code of Ordinances (MCO) § 244.1810 (2017):
>
> > No person shall allow any dwelling unit to be occupied, or let or offer to let to another any dwelling unit for occupancy, or charge, accept or retain rent for any dwelling unit unless the owner has a valid license, administrative registration, short term rental registration or provisional license under the terms of this article.
>
> Under MCO § 244.1980 (2017):
>
> > A person who allows to be occupied, lets or offers to let to another, any dwelling unit, without a license as required by this article, is guilty of a misdemeanor . . . .
>
> In Minnesota, the general rule is that a contract entered into for business, in violation of a statute that prohibits such business if unlicensed, is void if the statute as a whole indicates that the legislature intended such a contract to be illegal. *Dick Weatherston's Assoc. Mech. Servs., Inc. v. Minn. Mut. Life Ins. Co.*, 100 N.W.2d 819, 824 (Minn. 1960). Whether a contract is void as a matter of law is an issue decided de novo. *Isles Wellness, Inc. v. Progressive N. Ins. Co.*, 725 N.W.2d 90, 92 (Minn. 2006). Although we are dealing with Minneapolis city ordinances and not statutes, we see no reason why the ordinances at issue should be given any less effect. Minneapolis is a home-rule charter city with the power to legislate in regard to municipal affairs and enact ordinances that promote health and safety. *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 306 (Minn. 2017); *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 6 (Minn. 2008); *A.C.E. Equip. Co. v. Erickson*, 152 N.W.2d 739, 741 (Minn. 1967); *see also Lew Bonn Co. v. Herman*, 135 N.W.2d 222, 223-24 (Minn. 1965) (considering whether failure to file plans and specifications as required by city ordinance resulted in contract being void).
>
> "Not every illegal contract must be voided in order to protect public policy," and we must examine the particular contract "to determine whether the illegality has so tainted the transaction that enforcing the contract would be contrary to public policy." *Isles Wellness, Inc.*, 725 N.W.2d at 92-93. Here, we examine "the nature and circumstances of the [lease] in light of the applicable . . . ordinance." *Lew Bonn Co.*, 135 N.W.2d at 225.
>
> The Minneapolis rental-dwelling-license ordinances make no reference to the validity of lease agreements entered into without proper licensing, but they strongly imply that such agreements are void and unenforceable on public-policy grounds. *See* MCO §§ 244.1800-.2020 (2017). As

> stated, MCO § 244.1810 not only prohibits renting a dwelling without a license, but it prohibits even offering a dwelling, and it expressly prohibits "charg[ing], accept[ing] or retain[ing] rent." MCO § 244.1980 criminalizes renting a dwelling without a license. MCO § 244.1970 requires a dwelling occupied without a license to be vacated within a "reasonable time," indicating that any contractual lease term is effectively void. These ordinances are designed to ensure that dwellings meet minimum health and safety standards. *See* MCO § 244.1910 (licensing standards). While respondent seeks only eviction, deeming the lease valid would directly contradict the city ordinances and signals to landlords that they may sidestep the minimum health and safety standards inherent in rental licensure. It is simply illogical to conclude that appellant breached her duty to pay rent when MCO § 244.1810 prohibits respondent from charging or accepting rent. Respondent cannot rely upon the lease to seek eviction.

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See discussion, *supra*, at VI.E.2. (rental license defenses to nonpayment of rent claims).

1. No right of reentry clause in the lease

The landlord may not recover possession of the premises in an eviction (unlawful detainer) action based upon alleged breaches of an oral or written lease, where the lease does not provide for the landlord's right to reenter and retake possession upon breach. *Bauer v. Knoble*, 51 Minn. 358, 359, 53 N.W. 805 (1892); *Salo v. Dodson*, No. CX-96-600886 (Minn. Dist. Ct. 6th Dist. Jul. 2, 1996) (Appendix 231) (summary judgment for tenant where lease did not contain a right of re-entry clause); *Jafer Enterprises Inc. v. Peters,* No. UD-1920701512 (Minn. Dist. Ct. 4th Dist. July 20, 1992) (Appendix 4.F); *Cheney v. Attaway,* No. UD-1910717523 (Minn. Dist. Ct. 4th Dist. July 30, 1991) (Appendix 11.K) (dismissal where oral lease did not contain covenants on behavior or a right of reentry clause); *See Nguyen v. Veit,* No. UD-1910401513 at 4 (Minn. Dist. Ct. 4th Dist. Apr. 15, 1991) (Appendix 14.C); *Edwards v. Swenson*, No. UD-1900730508 at 2 (Minn. Dist. Ct. 4th Dist. Aug. 9, 1990) (Appendix 17.C); *PCF Management v. Goodman*, No. UD-1881222537, Transcript at 3 (Minn. Dist. Ct. 4th Dist. Jan. 4, 1989) (Appendix 17.D).

The requirement of having a right of re-entry clause to commence an unlawful detainer action for breach of lease was confused by the *unpublished* decision in *C & T Properties v. McCallister*. In In *C. & T. Properties v. McCallister*, No. C9-98-940 (Minn. Ct. App. Jan. 12, 1999)(unpublished), the Court of Appeals held that a right of reentry clause was not a precondition for an action for breach of lease, concluding that a phrase in Minn. Stat. § 566.03 (now § 504B.285) essentially overruled *Bauer*. The statute sets forth various grounds for subject matter jurisdiction in eviction actions, and following the section on retaliation, states "nothing contained herein shall limit the right of the lessor pursuant to the provisions of Subd. 1 [basis for subject matter jurisdiction] to terminate a tenancy for a violation of the tenant of a lawful, material provision of a lease or contract." Tenants should argue that there is nothing in the statute that indicated that the legislature intended to overrule *Bauer*. Read in the context of the entire statute, the provision was intended to indicate that the anti-retaliation provision of the statute would not limit the right of the landlord to evict a tenant for a violation of the lease. As an unpublished decision, it is not binding and is only persuasive authority. *See* discussion, *supra*, at I.A.3.

There is no indication that the Legislature intended to reverse *Bauer* in its recodification of landlord-tenant statutes in Chapter 504B. To the contrary, the comments of the drafting committee and testimony before the Legislature indicated that the drafters intended *Bauer* to remain good law. *See* Memorandum of Paul Birnberg (Appendix 406).

Trial courts have continued to follow *Bauer*. In *Andersen v._____,* No. 27-CV-HC-15-198 (Minn. Dist. Ct. 4th Dist. Jan. 28, 2015) (Appendix 786), the court concluded that (1) the landlord was not credible where his attorney repeatedly used leading questions; (2) the landlord has burden of proving provisions of lease and violations of it; landlord did not prove that oral lease included right of reentry and a valid driver's license; (3) a right of reentry provision is required by *Bauer v. Knoble,* distinguishing *C & T Properties v. McCallister;* (4) oral notice did not terminate month-to-month lease; possible future violation does not support present claim for breach of lease; and (5) priority writ statute Minn. Stat. § 504B.361 created a remedy but not a cause of action.

In *Bongard v. Premium Tax Servs., Inc.,* No. 27CVHC 12-6392 207 (Minn. Dist. Ct. 4th Dist. Dec. 5, 2012) (Appendix 695), in a commercial eviction action, the court granted partial summary judgment in favor of the tenant and dismissed the landlord's claims for eviction for breach of lease due to the lack of a right of re-entry clause in the lease, and termination of lease for public nuisance due to the lack of notice from a prosecuting attorney as required by Minn. Stat. § 617.81. The court noted the lease was year-to-year rather than month-to-month requiring a three month notice under Minn, Stat. § 504B.135, but if the effective date was after the action was commenced, the action would not have accrued. Because the lease's starting date remained a disputed fact, the issue was set for termination at trial.

See O'Brian v. _____, No. HC 1010402506 (Minn. Dist. Ct. 4th Dist. Apr. 18, 2001) (Appendix 552) (breach claims dismissed where oral lease contained no right of re-entry clause; notice claim dismissed where landlord failed to attached notice to complaint, and failed to prove notice was given; expungement granted); *Lowe v. Cotton*, No. UD-01990224515 (Minn. Dist. Ct. 4th Dist. Oct. 7, 1999 (Appendix 404) (Breach of lease claim dismissed where there was no written lease, parties recently entered into a written agreement that defendant would not have a pet but the memo did not include a right of reentry; plaintiff granted leave to amend complaint for nonpayment of rent as defendant admitted the claim; landlord agreed to give tenant eight days to redeem); *D & D Real Estate Investment, L.L.P. v. Hughes*, Nos. UD-1990311505 (Minn. Dist. Ct. 4th Dist. Mar. 30, 1999) (Appendix 323A) (Dismissal of breach of lease claim where there was no convincing evidence that the oral lease contained a right of re-entry clause, no convincing evidence as to the dollar amount of damage to a door to determine whether damage was material or *de minimis*, and the landlord failed to prove that the tenant or one of her guests damaged the door where the tenant claimed damage was caused by a burglar; tenant's names expunged from file); *Thomas v. Dobyne*, No. U-1980616536 (Minn. Dist. Ct. 4th Dist. Jul. 8, 1998) (Appendix 370B) (Combined action for breach and rent; breach claims dismissed for lack of a right of re-entry clause, and where landlord failed to prove tenant conduct on the property which amounted to breach of lease; matter rescheduled for trial on rent issues).

2. Implied modification of the lease or waiver of lease provisions

In absence of an express verbal agreement, subsequent acts and conducts of the parties may establish an implied waiver or modification of a lease term. *Northview Villa v. Gresens*, No. C9-90-175 (Minn. Ct. App. July 3, 1990), FINANCE & COMMERCE at B16 (July 6, 1990) (Appendix 17.E), citing *Mitchell v. Rende*, 225 Minn. 145, 148-49, 30 N.W.2d 27, 30 (1947). In *Northview Villa* the tenants lived in a manufactured (mobile) home park for over five years with their cats. Other tenants in the park also had pets. The tenants testified that they discussed a "no pet" rule with the park manager, and said that they would lease the premises only if they could keep their cats. The managers were aware that the tenants had cats, but continued to accept rent from the tenants without asking them to remove their cats, and without seeking to enforce the "no pet" rule for five years. The court concluded that the trial court did not err in finding that this course of conduct established a waiver to the "no pet" rule. *Id*. *See*

Kostakes v. Daly, 246 Minn. 312, 318, 75 N.W.2d 191, __ (1956) (landlord could not enforce non-assignment provision where landlord knew of assignment and investment by assignee of large sum of money in the property but took no action for three months).

In *Kahn v. Greene*, No. UD-1940330506 (Minn. Dist. Ct. 4th Dist. May 5, 1994) (Appendix 65), the court found that the landlord intentionally relinquished the right to enforce "no pet" "over occupancy" provisions of the lease by failing to enforce them in a timely manner over a six month period. *Id.* at 7 (citing *Seavey v. Erickson*, 244 Minn. 232, 69 N.W.2d 889 (1955); *Anderson v. Twin City Rapid Transit Co.*, 250 Minn. 167, 84 N.W.2d 593 (1957); *Northview Villa; Mitchell; Kostakes*). *See McNair v. Doub*, No. UD-1960708524 (Minn. Dist. Ct. 4th Dist. Aug.12, 1996) (Appendix 205) (landlord waived right to evict tenant for possession of pets by accepting rent after knowledge of and acquiescence to possession of a pet); *Northview Villa M.H.P. v. Anderson,* No. C2-90-13460 (Minn. Dist. Ct. 10th Dist. Apr. 24, 1991) (Appendix 17.F) (plaintiff relinquished right to enforce no pet rule by failing to enforce the rule for nearly two years after discovering defendant had pets); S. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT § 5:10 (1980 and Supp. 2008). *See also Chaska Village Townhouses and Lifestyle, Inc. v. Edberg,* No. 91-27365 (Minn. Dist. Ct. 1st Dist. Apr. 1, 1991) (Appendix 11.L) (plaintiff induced defendant to believe that late rental payments would continue to be accepted without consequences.

In *Judge v. Rio Hot Properties, Inc.*, Nos. UD-1981202903, UD-1981005518, and UD-1981104522 (Minn. Dist. Ct. 4th Dist. Dec. 18, 1998), (Appendix 362D), in consolidated unlawful detainer and emergency tenant remedies actions, the court concluded that a notice to quit which was not effective but the parties agreed to litigate was retaliatory where the landlord only wished to rent to other tenants, and the landlords waived a no pet provision and could not rely on it to show a non-retaliatory purpose. *See Garakani v. Five Lakes Centre, LLC*, No. C7-96-673, 1996 WL 636213 (Minn. Ct. App. Nov. 5, 1996) (Appendix 255) (Unpublished: No modification by conduct of lease renewal option notice where lease contained clear notice and non-waiver clauses and past conduct did not indicate the lease would not be formally enforced); *Little v. Katzovitz,* No. UD-1970902903 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1997 (Appendix 268) (Tenants proved that landlord consistently accepted late rent, amending the agreement to allow for late rent payments).

Some leases provide that acceptance of rent following breach of the lease shall not constitute a waiver of subsequent breaches. While such a provision may be enforceable on its face, it is unclear whether such a provision would be enforceable when compared with conduct over a significant period of time that is inconsistent with the provision. Even if there had been such a clause in *Northview Villa*, the conduct in that case might have established a waiver of the non-waiver clause, or supported a conclusion that application of a non-waiver clause in that case would have been unconscionable. *See* discussion, *infra* at VI.G.13-14 (unconscionable lease terms). *See McNair v. Doub*, No. UD-1960708524 (Minn. Dist. Ct. 4th Dist. Aug.12, 1996) (Appendix 205), the court found that proof of retaliation may void a landlord's non-waiver lease provision.

2a. Modification of the lease

In *Knight v. McGinty*, 868 N.W.2d 298 (Minn. Ct. App. 2015), the Court discussed the standard for modifying leases.

> "[A] written contract may be modified after its execution by the acts and conduct of the parties . . . ." *Wormsbecker v. Donovan Constr. Co.,* 247 Minn. 32, 41, 76 N.W.2d 643, 649 (1956). The supreme court has stated that "when a contract is modified by consent of the parties it consists

> thereafter of the new terms and of all of the old ones which were not changed, and . . . a subordinate and separable part of a contract may always be modified by the parties without a cancellation or avoidance of the whole contract." *First Nat'l Bank v. St. Anthony & Dakota Elevator Co.,* 171 Minn. 461, 465, 214 N.W. 288, 289 (1927) (emphasis added); *cf. Merickel v. Erickson Stores Corp.,* 255 Minn. 12, 16, 95 N.W.2d 303, 306 (1959) ("A rescission-or so-called abandonment-by mutual agreement of a single provision of a contract is a modification or an amendment without a cancellation or a voidance of the contract as a whole." (emphasis omitted)).

Id., at 301-02. The tenant had signed a month-to-month lease with a clause prohibiting notice to move out ("no-move-out clause") between November 1st and February 28th or 29th. After renting the property approximately four years, the landlord sent the tenant a new lease with a $15 increase in rent. The tenant did not sign the new lease but increased his monthly rent payments by $10, which the landlord accepted. Two years later, in November 2006, the tenant paid rent and gave notice to vacate and did vacate. The landlord did not re-lease the apartment until after February 2007. The landlord brought claims for three months' rent and other damages in conciliation court, and, following an adverse ruling, removed the case to district court. The district court found that the no-move out clause constituted an automatic renewal and invalidated the lease pursuant to Minn. Stat. § 504B.145. Therefore the parties' arrangement was a standard month-to-month lease with a 30 day notice. The landlord appealed, and the Court of Appeals held that (1) the no-move-out clause did not constitute an automatic renewal because the lease was not two months or more, would not renew for a specified period of two months or more absent notice that the tenant would move out at the specified time, and nothing in the record suggested that it was intended to automatically renew the lease if the tenant failed to give notice of his intent to vacate; and (2) because the rent increased with the consent of both parties, all other terms of the lease remained in effect.

In *Martin v. A'BULAE, LLC,* No. A15-1993, 2016 WL 3659293, (Minn. Ct. App. July 11, 2016) (unpublished), a commercial landlord and tenant entered into a written lease agreement that provided specific amounts for tenant-improvement costs. The tenant later requested construction changes that increased the costs of the improvements and allegedly orally agreed to pay for the increased costs. The landlord sued the tenant for breach of contract, equitable estoppel, promissory estoppel and unjust enrichment, all of which were dismissed for failure to state a claim. The Court of Appeals affirmed the dismissal of all of the claims, concluding (1) it was not reasonable for the landlord to rely on an alleged oral promise when the lease expressly stated that it could only be modified by a written agreement; (2) there was no proof of the alleged oral modification of the lease; (3) an express contract covering the subject matter precludes the application of promissory estoppel; and (4) unjust enrichment does not apply when there is an applicable enforceable contact between the parties.

In *5th Street Ventures, LLC v. Frattallone's Hardware Stores, Inc.,* No. A03-2036, 2004 WL 1878822 (Minn. App. Aug. 24, 2004) (unpublished), the original landlord and tenant entered into a ten-year lease to operate a hardware store, and the tenant wanted to install, among other things, a fence in the front of the store. The landlord sent a letter to the tenant objecting to the chain-link style of the fence, allowing it to be completed, but reserving the right to contribute to improving the aesthetics, if needed. The tenant continuously occupied the fenced-in outdoor space until the new landlord objected to the use of the common areas in violation of the lease and filed the unlawful detainer suit. The tenant argued that the original landlord's letter constituted a written modification to the lease. The district court granted summary judgment in favor of the tenant, and 5th Street Ventures appealed. The Court of Appeals reversed and remanded, holding that questions of fact existed regarding the intent of the alleged lease modification and the new landlord's actual knowledge of the modification, which precluded

summary judgment. The Court of Appeals further stated that the letter may satisfy the statute of frauds and that specific performance may be compelled when there has been part performance. Finally, the Court of Appeals cautioned that if the new landlord had actual knowledge of the unrecorded lease, it cannot later seek protection of the Torrens statute as a good-faith purchaser.

3. Plaintiff unilaterally modified the lease

Landlord may be attempting to enforce a change in the lease made unilaterally by the landlord during the term of the lease. In *Commonwealth Terrace Cooperative Inc. v. Jassim,* No. C6-90-8892 (Minn. Dist. Ct. 2nd Dist. Oct. 3, 1990) (Appendix 13.A), plaintiff unilaterally changed the term of the lease from seven years to five years. The court held that the landlord could not make such a material change in the lease without the consent of the tenants. *Id.* at 9-14, *aff'd.* (Nov. 16, 1990). *See Clark v. Urban Investments*, No. UD-1970821901 (Minn. Dist. Ct. 4th Dist. Sep. 10, 1997) (Appendix TR 145) (Late fees were not based on lease but on later notice to increase late fees; landlord did not prove it was entitled to unilaterally amend lease to increase late fees); *Urban Investments, Inc. v. Thompson*, No. UD-1950626525 (Minn. Dist. Ct. 4th Dist. Aug. 10, 1995) (Appendix 80). The consideration originally given for a lease cannot serve as consideration for new terms subsequently added to the lease. Where no consideration is apparent on the face of the agreement, the party relying on it must prove consideration. *Bartl v. Kenyon*, 549 N.W. 2d 381, 383, (Minn. Ct. App. 1996).

4. Waiver of breaches by acceptance of rent

Generally, a tenant's breach of a rental agreement is waived by the landlord's subsequent acceptance of rent with knowledge of the breach. *Parkin v. Fitzgerald*, 307 Minn. 423, 431, 240 N.W.2d 828, 833 (1976); *Peebles & Co. v. Sherman*, 148 Minn. 282, 283, 181 N.W. 715, 716 (1921); *Zotalis v. Canneles*, 138 Minn. 179, 181, 164 N.W. 802, 807-08 (1917); *Westminster Corp. v. Anderson*, 536 N.W.2d 340 (Minn. Ct. App. 1995); *Priordale Mall Investors v. Farrington*, 411 N.W.2d 582, 584, (Minn. Ct. App. 1987) (hereinafter "*Priordale Mall II*"); *Burgi v. Eckes*, 354 N.W. 2d 514, 517 (Minn. Ct. App. 1984). In *Linden Corp. v. Simard*, 1988 WL 87503, 3-87-1599 (Minn. Ct. App. Feb. 9, 1988), (unpublished), the court analyzed a waiver of notice case, but citing waiver of breach cases. *See* discussion, *supra* at VI.F.4. (Waiver of notice by acceptance of rent).

The landlord's intent is irrelevant. *See Kenny v. Seu Si Lun*, 101 Minn. 253, 256-58, 112 N.W. 220, 221-22 (1907); *Common Bond Housing v. Beier,* UD-1951204625 (Minn. Dist. Ct. 4th Dist. Feb. 23, 1996) (Appendix 227).

The courts have found waiver in many cases. *Chaney v. _____,* No. 27-CV-HC-14-2730 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2014) (Appendix 757) (tenant awarded $250 in costs where landlord where landlord did not register trade name until after the first hearing in the action; expungement granted where landlord failed to register trade name before commencing action, landlord could not demonstrate a material breach of lease, and landlord waived breach by accepting rent with knowledge of breach); *Williams Holdings #4 LLC v. _____*, No. 27-CV-HC-08-9805, Order (Minn. Dist. Ct. 4th Dist. Nov. 25, 2008) (Appendix 625) (landlord claimed rent and breach; breach claim dismissed after landlord accepted rent following filing action; tenant allowed to redeem by paying landlord's filing fee); *Maryland Park Apartments v. _____,* No. CX-02-4044 (Minn. Dist. Ct. 2nd Dist. June 17, 2002) (Appendix 533) (federal law and *Rucker* do not preclude Minnesota statute with greater tenant protection; landlord failed to prove criminal activity occurred at or near tenant's residence, landlord failed to prove that tenant knew or had reason to know of criminal activity, landlord waived breach by accepting rent); *918 22nd Street Investors v. _____*, No. HC 010112553 (Minn. Dist. Ct. 4th Dist. Feb. 6, 2001) (Appendix 460) (waiver of

breach by acceptance of rent; breaches since acceptance not waived but would need to be listed in a new notice under the lease).[14]

The landlord has accepted the rent when the rent was received. *See Gjersten Realty Co. v. Holland Investment Co.*, 148 Minn. 473, 474, 180 N.W. 774, 775 (1921) (action for rent dismissed where landlord's agent received rent and appropriated it to his own use). In *Linden Corp.*, the court stated that while it is questionable whether receipt of a check without cashing it constitutes waiver, receipt of a money order or cash constitutes waiver of notice. Slip. op. at 3-4, citing *Kenny v. Seu Si Lun*, 101 Minn. 253, 257, 112 N.W. 220, 221 (1907); *Priordale Mall Investors v. Farrington*, 411 N.W.2d 582, 584 (Minn. Ct. App. 1987).

Landlords have had some success avoiding the waiver defense by not cashing rent payments and then arguing that they had not accepted rent, or by alleging very serious lease violations which encouraged the court to look for an exception to the waiver doctrine. *Carriagehouse Apartments v. Stewart*, No. UD-1970107501 (May 13, 1997) (Appendix 249) (No waiver of notice or breach where landlord received but did not cash, deposit or return money orders for rent, landlord instructed agents to not accept rent on the tenant's account, and landlord alleged tenant started a fire at the apartment); *Loring Towers Apartments Limited Partnership v. Ferrer*, No. UD-1901226507 (Minn. Dist. Ct. 4th Dist. Jan. 10, 1991) (Appendix 15.A).

Acceptance of a partial payment of rent also may waive a breach of the lease. *Hillside Terrace Apartments v. Strommen*, No. C9-90-739 at 3 (Minn. Dist. Ct. 10th Dist. May 21, 1990) (Appendix 15.C).

There is some confusion between the waiver of breach and waiver of notice cases. In waiver of breach cases, the landlord's intent is irrelevant. In waiver of notice cases, there is disagreement over whether the landlord intent is relevant. *See* discussion, *supra* at VI.F.4. When a judge or referee believes

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[14] *Amsler v. Harris*, and *Harris v. Amsler*, Nos. UD-1990826901 and UD-1990902500 (Minn. Dist. Ct. 4th Dist. Sep. 20, 1999) (Appendix) (landlord waived breach by continuing to accept rent after knowledge); *H.R.S. Management v. Townsend*, No. UD-1930325423 (Minn. Dist. Ct. 4th Dist. Apr. 9, 1993) (Appendix 396) (acceptance of March rent waives breaches of lease, but continued breach in April was material and not waived); *McNair v. Doub*, No. UD-1960708524 (Minn. Dist. Ct. 4th Dist. Aug.12, 1996) (Appendix 205); *Anya v. Rulford*, UD-1960501506 (Minn. Dist. Ct. 4th Dist. May 24, 1996) (Appendix 220); *Common Bond Housing v. Beier,* UD-1951204625 (Minn. Dist. Ct. 4th Dist. Feb. 23, 1996) (Appendix 227); *McCrae v. Buckanaga*, UD-1951207519 (Minn. Dist. Ct. 4th Dist. Feb. 12, 1996) (Appendix 187) (judge review affirming referee's decision dismissing unlawful detainer action for waiver of breach by acceptance of rent).

Earlier decisions include *Plymouth Avenue Townhomes and Apts. v. Slayden*, No. UD-1950627513 (Minn. Dist. Ct. 4th Dist. July 31, 1995) (Appendix 147); *Johnson v. Baumbach*, No. C8-95-600844 (Minn. Dist. Ct. 6th Dist. May 19, 1995) (Appendix 148); *Northern Management, Inc. v. Bade*, C9-94-3915 (Minn. Dist. Ct. 7th Dist. Nov. 25, 1994) (Appendix 86); *Kahn v. Greene*, No. UD-1940330506 (Minn. Dist. Ct. 4th Dist. May 5, 1994) (Appendix 65); *Valley Manor Apts. v. Gullickson*, No. CX-94-10 (Minn. Dist. Ct. 8th Dist. Feb. 3, 1994) (Appendix 56); *DVN Properties v. Gammage*, No. UD-1930525546 (Minn. Dist. Ct. 4th Dist. June 23, 1993) (Appendix 4.C.6); *Carriage House Apartments v. Hoff*, No. UD-1921022511 (Minn. Dist. Ct. 4th Dist. Mar. 1, 1993) (Appendix 15.D.2) (motion to quash writ granted where plaintiff obtained writ on allegation that defendant violated court approved stipulation, but plaintiff accepted rent with knowledge or alleged breach); *Loring Towers Apartments Limited Partnership v. Ferrer*, No. UD-1901226507 at 2 (Minn. Dist. Ct. 4th Dist. Jan. 10, 1991).

that intent is relevant in waiver of notice cases and questions whether intent is relevant in waiver of breach cases, the tenant or tenant's counsel may distinguish the waiver of notice cases as follows. In a waiver of breach case, the landlord has continued to accept the tenant's rent with knowledge of the breach, and has taken no action inconsistent with continuing the tenancy until the landlord later files the eviction (unlawful detainer) action. On the other hand, in the waiver of notice case, by giving notice, the landlord has taken an action inconsistent with continuing to rent to the tenant, making it appropriate to consider what the landlord's intent was by accepting the rent. In the waiver of breach case, since the landlord has not taken such action, the court should not consider the landlord's intent in accepting the rent.

In some cases, such as in subsidized housing or in private housing where the lease requires a termination notice based on breach of the lease, the landlord may not have waived the notice, but may have waived the breach upon which the notice relies. In such cases, waiver of the breach should remove the basis for the notice, rendering the notice void.

a. *In government subsidized housing*

(1) Government subsidy

Before August 1995, tenants had successfully argued that the landlord's acceptance of the government subsidy, or housing assistance payment (HAP), should waive the prior breach.[15] But, in *Westminster Corp. v. Anderson*, 536 N.W.2d 340 (Minn. Ct. App. 1995), the court held that in a breach of lease case, the acceptance of housing assistance payments (HAP) from the Minnesota Housing Finance Agency (MHFA) did not waive the tenant's alleged breach of the lease, holding that HAPs were not rent. However, the court noted that it made no ruling on treatment of the tenant's rent payments, as opposed to the HAP, implying that the subsidized and public housing tenant rent would be treated the same as rent by private tenants for waiver purposes.

(2) Tenant rent

Counsel should argue that where the landlord accepts the *tenant's rent*, regardless of whether the landlord accepted the *HAP*, waiver has occurred, distinguishing the government subsidy discussed in *Westminster Corp.* from the tenant rent from the private housing waiver cases.

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[15]*Northern Management, Inc. v. Bade*, C9-94-3915 (Minn. Dist. Ct. 7th Dist. Nov. 25, 1994) (Appendix 86) (tenant payment of rent and HRA payment of HAP); *Oakwood Court Apartments v. Volk*, No. C6-94-1067 (Minn. Dist. Ct. 10th Dist. Sep. 2, 1994) (Appendix 66) (accepting and depositing rent from tenant and HUD on August 2, waived breach about which landlord knew by August 1); *Etna Woods Apartments v. Ramgran,* No. C8-92-2614 (Minn. Dist. Ct. 2nd Dist. Mar. 25, 1992) (Appendix 15.D) (acceptance of rent and subsidy waived breaches); *Ullstrom v. Parker*, No. UD-1920618541 (Minn. Dist. Ct. July 13, 1992) (Appendix 15.D.3); *Buckeye Realty Co. v. Elias*, No. CX-91-0697 (Minn. Dist. Ct. 10th Dist. Aug. 6, 1991) (Appendix 15.E) (FmHA project: acceptance of rent following notice of termination waived landlord's right to maintain action based on breaches of lease alleged in notice); *Z & S Management Co. v. Thielen*, No. UD-1901207517 at 2 (Minn. Dist. Ct. 4th Dist. Dec. 20, 1990) (Appendix 17.E) (receipt of the tenant's rent and the HAPs waived the alleged breaches of the lease); *Secretary of U.S. Dept. HUD v. Madison*, No. UD-1861104544 (Minn. Dist. Ct., 4th Dist., Nov. 18, 1986) (Appendix 17). *But see Loring Towers Apartments Limited Partnership v. Ferrer*, No. UD-1901226507 at 1-4 (Minn. Dist. Ct. 4th Dist. Jan. 10, 1991) (Appendix 15.A) (landlord who receives a Housing Assistance Payment (HAP) may return it to the government, therefore not accepting the HAP and avoiding the waiver claim).

In *Sandy Pine Apartments v. _____,* No. 58-CV-14-309 (Minn. Dist. Ct. 10th Dist., Pine County, Aug. 6, 2014) (Appendix 750) (Judge Martin), the court ruled for the tenant, concluding that (1) the co-defendant who no longer lived on the premises was dismissed from action; (2) the subsidized landlord waived breach by accepting rent from tenant through a vendor, distinguishing *Westminster Corp. v. Anderson,* 536 N.W. 2d 340 (Minn. Ct. App. 1995) where payment was from housing authority and not the tenant; (3) the subsidized housing notice of termination inaccurately stated amount of rent due, and by including garage and late fees that are not rent, and was not specific on calculation of arrearage and claim of housekeeping violations; (4) the plaintiff did not show that notices and visits to defendant's apartment were more than *de minimus* costs; (5) the defendant cannot be evicted for rent when plaintiff rejected payments; and (6) the defendant was given 7 days to pay garage fee.

In *St. Cloud Housing and Redevelopment Authority v. Slayton*, No. C9-98-1671 (Minn. Dist. Ct. 10th Dist. Nov. 3, 1998) (Appendix 365) (Danforth, J.), the court concluded that the PHA's acceptance of rent from the tenant in a private agency along with the PHA's recertification and renewal of the lease constituted waiver of lease violations. The court rejected the PHA's argument that *Westminster Corporation v. Anderson*, 536 N.W. 2d 340 (Minn. Ct. App. 1995), *Rev. Den.* Oct. 27, 1995, applied to this case. The court distinguished *Westminster Corporation* in that it involved whether housing subsidies from a PHA were rent, holding that said subsidies were not rent and acceptance of them did not constitute waiver, while in this action, the payments were from a private entity, simply making rent payments on behalf of the tenants.

In *Cimarron Village v. Washington,* 659 N.W.2d 811 (Minn. Ct. App. 2003), the court held that evidence of lease violations, including numerous police calls, inadequate supervision of guest, and fraudulent application for parking permit, supported finding that landlord, who received federal income tax credits for providing low-income units, had requisite "good cause" to terminate tenancy, even if violations were not in material noncompliance with lease. The lease provides that a tenancy can be terminated for "police calls to an apartment for noise disturbances, domestic disputes, illegal substances and other non-medical reasons." While tenants who call the police for their own health and safety cannot be evicted under Minn. Stat. § 504B. 205, subd. 2(a)(2), the landlord could evict where a substantial number of police calls originated from other sources. By accepting late rent payments from tenants, landlord, who received federal income tax credits for providing low-income units, waived its right to rely on this violation as grounds for eviction; in order to rely on the late payments as a reason for eviction, landlord would have had to refuse a subsequent late payment.

See Maryland Park Apartments v. _____, No. CX-02-4044 (Minn. Dist. Ct. 2nd Dist. June 17, 2002) (Appendix 533) (federal law and *Rucker* do not preclude Minnesota statute with greater tenant protection; landlord failed to prove criminal activity occurred at or near tenant's residence, landlord failed to prove that tenant knew or had reason to know of criminal activity, landlord waived breach by accepting rent).

In *Housing Authority of Trumann v. Lively*, No. CA-99-543, 1999 WL 1203731 (Ark. App. Dec. 8, 1999), the court affirmed the trial court decision for the public housing tenant where a person selling drugs from the residence was not a resident of the premises, the tenant had no knowledge of the activity, and when she became aware of it, she excluded the person from the property. The court also noted that the housing authority did not commence the action until five months after the criminal activity occurred. *See Woodview Apartments Limited Partnership v. Bryant*, No. C7-98-616 (Minn. Dist. Ct. 10th Dist. Jul. 24, 1998) (Appendix 374) (Danforth, J.: Waiver of breach in subsidized housing by receipt of vendored welfare checks, where the landlord held the checks but stated that he intended to deposit them regardless of the decision of the court).

b. *Exceptions*

(1) Breach of a fundamental lease term

One exception to waiver is where the breach is of a lease provision which is part of the consideration and not merely incidental nor collateral to the character of the occupancy. *Central Union Trust Co. of New York v. Blank*, 168 Minn. 312, 316, 210 N.W. 34, 36 (1926) (nonpayment of taxes where payment was in lieu of additional rent: no waiver); *Priordale Mall II*, 411 N.W.2d at 585 (lease provisions not expressly related to real consideration: waiver); *Common Bond Housing v. Beier,* UD-1951204625 (Minn. Dist. Ct. 4th Dist. Feb. 23, 1996) (Appendix 227).

(2) *MCDA v. Powell*

Some confusion has resulted from *MCDA v. Powell*, 352 N.W.2d 532 (Minn. Ct. App. 1984), where the Court of Appeals held that a non-waiver clause in a public housing lease was valid. The court went on to comment in *dictum* that acceptance of rent does not necessarily manifest the intent to waive notice. The court did not discuss waiver of breach. *Id.* at 534 (emphasis added). Even courts which agree with the *Powell* court's analysis on waiver of notice do not agree that an analysis of intent is necessary in a waiver of breach case. *See Loring Towers Apartments Limited Partnership v. Ferrer*, No. UD-1901226507 at 2 (Minn. Dist. Ct. 4th Dist. Jan. 10, 1991) (Appendix 15.A) ("intention of the landlord in accepting money tendered as rent is not material").

In *Priordale Mall II*, the court distinguished *Powell*, noting that Priordale Mall's lease did not protect it from waiver of past breaches by acceptance of rent, and that it accepted rent knowing of the breaches and the tenant's intention to assert waiver. 411 N.W.2d at 585. The *Linden Corp* Court did not cite *Powell* or discuss intent to waive, and rather cited *Kenny* and *Priordale Mall II*. *Id.* at 3-4.

(3) The lease contains an enforceable nonwaiver clause

A nonwaiver clause can eliminate a waiver defense. *Las Americas, Inc. v. American Indian Neighborhood Development Corp.*, No. A04-505, 2004 WL 2710061 (Minn. Ct. App. Nov. 30, 2004) (unpublished) (affirmed ruling of no waiver of breach where lease contained broad non-waiver clause and landlord's payment of rent received from tenants into court did not constitute waiver); *Common Bond Housing v. Beier,* UD-1951204625 (Minn. Dist. Ct. 4th Dist. Feb. 23, 1996) (Appendix 227); *Loring Towers Apartments Limited Partnership v. Ferrer* at 2 (Appendix 15.A), citing *Priordale Mall Investors, 411 N.W.2d at 585;* Powell, 352 N.W.2d at 534.

However, there are two types of clauses in leases commonly called non-waiver clauses, but only one type may serve as a non-waiver clause for the purposes of the waiver of breach defense. A clause which protects the landlord from waiver of *past* breaches by acceptance of rent may be enforceable. *Priordale Mall Investors*, 411 N.W.2d at 585; *P*owell, 352 N.W.2d at 534; *Smithrud v. McDaniel*, No. UD-195050529 (Minn. Dist. Ct. 4th Dist. May 22, 1995) (Appendix 130) (waiver provision enforced).

However, a clause which states that acceptance of rent following breach of the lease shall not constitute a waiver of a *subsequent* breach does not protect the landlord from waiver of *past* breaches. *Priordale Mall Investors*, 411 N.W.2d at 584-85; *Buckeye Realty Co. v. Elias,* No. CX-91-0697 at 6-7 (Minn. Dist. Ct. 10th Dist. Aug. 6 1991) (Appendix 15.E) (election of remedies clause was not an express non-waiver clause and did not protect landlord from waiver of past breaches by acceptance of rent).

A lease provision stating that acceptance of rent does not waive rental payment obligations is not a non-waiver of breach clause. *Plymouth Avenue Town Houses & Apartments v. Toussaint*, No. UD-1980707535 (Minn. Dist. Ct. 4th Dist. Jul. 27, 1998) (Appendix 358) (dismissal for waiver of breach where lease provision stating that acceptance of rent does not waive rental payment obligations was not a non-waiver of breach clause)

Because a non-waiver clause may be modified by subsequent conduct, the mere presence of a non-waiver clause does not automatically bar a waiver claim. *Pollard v. Southdale Gardens of Edina Condominium Assn.*, 698 N.W.2d 449 (Minn. 2005). *See McNair v. Doub*, No. UD-1960708524 (Minn. Dist. Ct. 4th Dist. Aug.12, 1996) (Appendix 205) (proof of retaliation may void a landlord's non-waiver lease provision). *See generally* Y. Rosmarin, *Stopping Defaults With Late Payments,* Clearinghouse Rev. 154 (May/June 1992) (Appendix 15.H) (discussion of waiver and estoppel theories and challenges to non-waiver clauses).

(4) Ongoing lease violations

If the landlord can prove ongoing lease violations which also are current lease violations, acceptance of rent might not waive the breach claim. *Bossen Terrace v. Price*, No. C5-98-434 and C1-98-480 (Minn. Ct. App. Oct. 6, 1998) (Appendix 312) (Acceptance of rent does not waive an accumulation of violations required to prove repeated violations of the lease); *Rogers v. Stewart*, No. UD-1961029511 (Minn. Dist. Ct. 4th Dist. Jan. 6, 1997) (Appendix 290) (Ongoing damage to apartment; tenant did not prove waiver of breach).

(5) Payment of rent into court

Payment of rent received from the tenant and paid into court might not constitute acceptance of rent and waiver. *Las Americas, Inc. v. American Indian Neighborhood Development Corp.*, No. A05-2004 WL 2710061 (Minn. Ct. App. Nov. 30, 2004) (unpublished) (affirmed ruling of no waiver of breach where lease contained broad non-waiver clause and landlord's payment of rent received from tenants into court did not constitute waiver).

c. *Waiver of a nonwaiver clause*

Because a non-waiver clause may be modified by subsequent conduct, the mere presence of a non-waiver clause does not automatically bar a waiver claim. *Pollard v. Southdale Gardens of Edina Condominium Assn.*, 698 N.W.2d 449 (Minn. 2005). *See McNair v. Doub*, No. UD-1960708524 (Minn. Dist. Ct. 4th Dist. Aug.12, 1996) (Appendix 205) (proof of retaliation may void a landlord's non-waiver lease provision). *See generally* Y. Rosmarin, *Stopping Defaults With Late Payments,* Clearinghouse Rev. 154 (May/June 1992) (Appendix 15.H) (discussion of waiver and estoppel theories and challenges to non-waiver clauses).

5. Waiver of breaches by executing a new lease

If the landlord subsequently agrees to the continuance of the possession of the premises, as in executing a new lease, with knowledge of alleged breaches of the lease, the landlord may be waiving the alleged breaches in the same manner that the landlord waives the affect of a prior notice to quit. In *St. Cloud Housing and Redevelopment Authority v. Slayton*, No. C9-98-1671 (Minn. Dist. Ct. 10th Dist. Nov. 3, 1998) (Appendix 365) (Danforth, J.), the court concluded that the Public Housing Authority accepted the tenant's late recertification, and the PHA's acceptance of rent from the tenant in a private

agency along with the PHA's recertification and renewal of the lease constituted waiver of lease violations. *See Arcade Investment Co. v. Gieriet,* 99 Minn. 277, 279, 109 N.W. 250, 252 (1906); *Common Bond Housing v. Beier,* UD-1951204625 (Minn. Dist. Ct. 4th Dist. Feb. 23, 1996) (Appendix 227) (waiver of breach by renewing the lease). *See generally* discussion, *supra* at VI.F.4-5 (waiver of notice).

6. Waiver of breaches by demanding subsequent rent in an eviction (unlawful detainer) action

This defense has been eliminated in actions alleging both nonpayment of rent and breach of the lease. Minn. Stat. § 504B.285 (formerly § 566.03), subd. 5, added by 1993 Minn. Laws Ch. 165, § 3. *See* discussion, *supra* and *infra* at III., VI.E.19, VI.E.20.c., VI.G.21. However, this theory remains viable in cases where the action alleges nonpayment of rent and holding over after notice to quit. *See* discussion, *supra*, at VI.F.6.

6a. Laches

See discussion, *supra*, at VI.E.43.

7. Improper late fees. See discussion, *supra* at VI.E.10.

8. Discrimination

See Fair Housing Act, 42 U.S.C. § 364 (protected classes include race, color, religion, sex, affectional preference, familial status, disability, and national origin); Minnesota Human Rights Act, Minn. Stat. § 363.03 (federal protected classes plus receipt of public assistance); Minneapolis Civil Rights Ordinance, Mpls. Code Of Ord. § 139.40 (state protected classes).

The discrimination defense can be raised in several contexts:

a. in a nonpayment of rent case, where the landlord has increased the rent or assessed late fees against protected class members differently than against others;

b. in a holding over case, where the landlord issued the termination notice because the tenant is a member of a protected class, or in retaliation against the tenant's efforts to protect the tenant from discrimination. *See* discussion, *supra*, at VI.F.3, 8; and

c. in a breach of lease case, where the landlord is enforcing the lease provision only against members of the protected class, or enforces a lease provision that only applies to members of a protected class.

In *Zeman v. West*, No. UD-1910402521 (Minn. Dist. Ct. 4th Dist. Apr. 30, 1991) (Appendix 16.B), plaintiff required recipients of government benefits to have the government vendor their rent to plaintiff, while not requiring the same of other tenants; defendant did not vendor her rent because she was concerned about repairs. Plaintiff issued a notice to quit allegedly based on not vendoring rent and not paying the entire security deposit. The court held that the lease provision violated Minn. Stat. § 363.03, and plaintiff failed to rebut defendant's *prima facie* case of discrimination). *See Rogers v. Stewart*, No. UD-1961029511 (Minn. Dist. Ct. 4th Dist. Jan. 6, 1997) (Appendix 290) (Requiring public

assistance recipients to vendor rent without substantially similar requirement for non-public assistance recipients constitutes unlawful discrimination and is void); *Amsler v. Wright*, No. UD-1960502510 (Minn. Dist. Ct. 4th Dist. May 30, 1996) (Appendix 186) (lease requirement that tenant/recipient of public assistance have her rent vendored directly to the landlord is a discriminatory practice; landlord ordered not to require public assistance vendoring); *Hegenes Properties v. Reed,* No. UD-4920624902 (Minn. Dist. Ct. 4th Dist. Aug. 7, 1992) (Appendix 16.B.1) (landlord could not evict tenant, a single parent with three children, for allegedly violating lease provision prohibiting an adult from supervising more than two children at the swimming pool; provision discriminated on basis of marital and family status in violation of Minn. Stat. § 363.03, subd. 2, 42 U.S.C. § 3604 *et seq.* and 20 C.F.R. § 100.65).

Tenants and tenants' counsel should carefully consider whether they can adequately prove discrimination in the limited time available to prepare for an eviction (unlawful detainer) trial, since unsuccessful prosecution of the discrimination defense may preclude a subsequent discrimination lawsuit or administrative complaint with the United States Department of Housing and Urban Development, Minnesota Human Rights Department, or Minneapolis Civil Rights Department. *See* discussion, *supra* at V.N. (collateral estoppel). One option would be to remove the action along with the discrimination claim to federal court. *See* Defendant's Memorandum In Opposition to Plaintiff's Motion to Remand, *Bossen Terrace v. Ewing*, No. 4-91-Civ. 824 (D. Minn. Nov. 6, 1991) (discussion of cases; action settled in federal court) (Appendix 28).

9. Reasonable Accommodation of disabilities

In the 1970s and 1980s, the analysis of a landlord's affirmative obligation to reasonably accommodate the disability of the tenant was limited to landlords receiving federal financial assistance. *See* The Rehabilitation Act of 1973, 29 U.S.C. §§ 706, 794; 24 C.F.R. Part 8. However, amendments to the Fair Housing Act extend the obligation to reasonably accommodate disabilities to private landlords. 42 U.S.C. § 3604(f)(3); 24 C.F.R. Part 100. The Minnesota Human Rights Act also makes it unlawful to discriminate in housing on the basis of disability. Minn. Stat. § 363.03, subds. 2-2a. *See* Wayman, *Housing Discrimination Against Persons With Disabilities* (Appendix 302).

The landlord also must not take action against the tenant based on a disability. *Neudecker v.Boisclair Corporation*, 351 F.3d 361 (8th Cir. 2003) (reversed dismissal of tenant's action for harassment based on disability, and ordered that tenant should be allowed to recast a claim under the Privacy Act of 1974, 5 U.S.C. § 552a, as a common-law privacy claim under *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231, 236 (Minn.1998)).

In *Dominium Management Services, Inc. v. C.L.,* No. HC-1021106500 (Minn. Dist. Ct. 4th Dist. Mar. 4, 2003) (Appendix 492), the trial court found that a Section 8 Voucher notice of lease termination required by term lease constituted notice to quit under Minn. Stat. § 504B.285 (formerly § 566.03), Subd. 2; and the defendant complained of conditions, some of which were found by the city inspector and plaintiff as well-founded. The court concluded that the plaintiff did not overcome the presumption of retaliation by claiming failure to allow the plaintiff to enter the apartment, where the tenant complied with her separate agreement over notice for apartment visits. The court also concluded that the plaintiff reasonably accommodated the defendant's disability in the past, but failed to comply with this ongoing obligation when the plaintiff failed to respond to the defendant's proposal of a mental health case management workers serving as a communication intermediary between plaintiff and defendant. The court dismissed that action and awarded the defendant costs and disbursements.

The Court of Appeals affirmed in *Dominium Management Services, Inc. v. C.L.,* No. A03-85,

2003 WL 22890386 (Minn. Ct. App. Dec. 9, 2003) (unpublished). On the retaliation claim, the court focused on the timing of the eviction, concluding that it was "significant that Dominium did not terminate C.L.'s year-to- year lease and file the resulting eviction action until 2002, after C.L. had reported numerous housing violations to the Richfield authorities and after the encounter with the regional property manager." On the reasonable accommodation claim, the court affirmed the trial court's finding that the defendant was disabled, and concluded that the defendant's request for neutral third party involvement would not impose an undue hardship on the plaintiff.

See Vesterstein v. Branley, No. C5-92-600723 (Minn. Dist. Ct. 6th Dist. May 8, 1992) (Appendix 18.G.1) (landlord failed to show that tenant committed material breach of lease by harassing and disturbing neighbors and the landlord where landlord knew of tenant's mental condition when executing the second lease agreement). *But see Minneapolis Public Housing Authority v. Demmings*, No. C5-94-2045 (Minn. Ct. App. May 9, 1995), FINANCE & COMMERCE at 20 (May 12, 1995) (Appendix 159) (unpublished: public housing, possession and sale of illegal drugs; law does not preclude landlord from adopting reasonable rules, such as prohibition of possession of drugs; tenant admitted not using drugs for two years before alleged drug trafficking activity).

Some confusion has resulted from recent Court of Appeals decisions discussing reasonable accommodation. The 2011 unpublished opinion *Kleinman Realty Co. v. Talbot,* No. A10-1132, 2011 WL 1938184, at *3 (Minn. Ct. App. May 23, 2011), *review denied* (Minn. Aug. 16, 2011), the Court concluded that it was "aware of, and Talbot has offered, no authority either recognizing disability-law 'reasonable accommodation' as an affirmative defense to an eviction action or authorizing the district court to enlarge the scope of eviction proceedings to consider that defense." The conclusion is wrong, as both published and unpublished court of appeals decisions have recognized the reasonable accommodation defense. *See* 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, 14-17 (2012), on Westlaw at 35 HAMLR 1.

In *Housing and Redevelopment Authority of Winona v. Fedorko*, C4-94-884 (Minn. Ct. App. Nov. 22, 1994), FINANCE AND COMMERCE 43 (Nov. 25, 1994) (Appendix 91) (unpublished), the court stated that the *McDonnell-Douglas* standard of shifting burdens in regular fair housing claims should be applied to reasonable accommodation claims. The standard does not fit a reasonable accommodation claim very well, since the reasonable accommodation claims asserts that the landlord did not undertake a specific fair housing obligation, while other discrimination claims assert that the landlord engaged in discrimination. On the other hand, in *Nicollet Towers, Inc. v. Georgiff*, C5-94-1364 (Minn. Ct. App. Feb. 7, 1995), FINANCE AND COMMERCE 53 (Feb. 10, 1995) (Appendix 89) (unpublished), the court discussed reasonable accommodation cases, without mention of *McDonnell-Douglas*. *See Cornwell and Taylor, LLP v. Moore*, No. C8-00-1000, 2000 WL 1887528 (Minn. Ct. App. 2000) (unpublished) (affirmed trial court ruling that landlord has the burden to show that no reasonable accommodation will eliminate or acceptably minimize any risk that the tenant poses on other residents; remanded for findings on whether proposed accommodation was reasonable).

The tenant's reasonable accommodation claims was unsuccessful in *Anoka County Community Action Program v. Solmonson*, No. A05-1251, 2006 WL 1320332 (Minn. Ct. App. May 16, 2006) (unpublished) (affirmed trial court decision that tenant failed to prove landlord's failure to reasonably accommodate disability, where landlord granted one request to allow a companion animal on the property, but denied another request to relocate tenant because landlord had no other available appropriate housing that would fit tenant's needs).

A landlord may not have to accommodate a tenant's illegal drug use. *Public Housing Agency of St. Paul v. Ewig,* No. A07-1199, 2008 WL 2106692 (Minn. Ct. App. May 20, 2008) (unpublished).

Examples of a landlord's failure to reasonably accommodate a tenant with disabilities include:

a. *Failure to arrange for chore services to help a tenant prepare for spraying her apartment*

Central Community Housing Trust v. Anderson, No. UD-1901102531 (Minn. Dist. Ct. 4th Dist. Nov. 28, 1990) (Appendix 18.D);

b. *Insisting that the tenant clean up her apartment while she was physically unable to do so*

Schuett v. Anderson, 386 N.W.2d 249, 253 (Minn. Ct. App. 1986);

c. *Failing to forebear from eviction in order to give the tenant an opportunity to pursue a program or treatment that could mitigate further violations of the lease*

City Wide Associates v. Penfield, No. 89-SP-9147-S (Mass. Dist. Ct. Hampden Hous. Ct. Apr. 21, 1989, *aff'd* 409 Mass. 140, 564 N.E.2d 1003 (1991)) (Appendix 18.G); *Dominium Management Services, Inc. v. Farrell*, No. C5-96-5544 (Minn. Dist. Ct. 10th Dist. Mar. 14, 1997) (Appendix 253) (Action dismissed where landlord refused reasonable accommodation of tenant who had threatened others; a tenant is considered "otherwise qualified" in conjunction with reasonable accommodation, rather than being otherwise qualified before reasonable accommodation is attempted; tenant proposed she not return until her doctors stated she could live independently and without being a threat to others; other tenants' fear of mental illness does not justify eviction); *Dover Hill Co. v. Morris*, No. UD-1960705514 (Minn. Dist. Ct. 4th Dist. Jul. 31, 1996) (Appendix 233) (Section 8 Project: landlord did not prove that ten year old son of tenant assaulted another boy by inappropriately pretending to use a knife against himself; no express finding of disability but implication of disability; landlord did not work with tenant to facilitate resolution of any problems; future incidents taken with this event in considering future use of community resources, may constitute good cause for eviction). *But see MPHA v. Rozas*, C0-95-956 (Minn. Ct. App. Jan. 9, 1996), FINANCE AND COMMERCE at 30 (Jan. 12, 1996) (Appendix 232) (unpublished: PHA reasonably accommodated substance abuse by allowing tenant to retain lease during incarceration).

d. *Failing to allow the tenant to pay rent late when the tenant received government benefits late*

e. *Failing to allow the tenant to withdraw a notice to quit if the landlord has not re-rented the apartment*

f. *Failure to make minor modifications in the lease or rules to accommodate the tenant's disability*

A landlord may be required to grant an exception to a no pet policy to accommodate a tenant's mental or physical disability. *Whittier Terrace v. Hampshire*, 26 Mass. App. Ct. 1020, 532 N.E. 2d 712 (1989); *Exelberth v. River Bay Corporation*, No. 02-93-0320-1 (HUD Sept. 8, 1994) (ALJ) (Appendix 329); *Common Bond Housing v. Beier,* UD-1951204625 (Minn. Dist. Ct. 4th Dist. Feb. 23, 1996)

(Appendix 227) (no breach of lease by keeping a cat as an appropriate doctor-prescribed accommodation); *See In re Harvey* (MPHA Sep. 30, 1994) (Appendix 67) (reversal of termination of Section 8 certificate where visually impaired tenant could not easily read housing authority information or be expected to remember verbatim what is read to him several months before).

g. *Proceeding with eviction where the tenant had cured the violation*

Minneapolis Public Housing Authority v. Otto, No. UD-1970326517 (Minn. Dist. Ct. 4th Dist. May 9, 1997) (Appendix 279) (Forfeiture of tenant's public housing lease, considering his disability, indigency, and his willingness to cure any claimed breaches, would be inappropriate).

h. *Refusing to continue reasonable accommodations*

Dominium Management Services, Inc. v. C.L., No. HC-1021106500 (Minn. Dist. Ct. 4th Dist. Mar. 4, 2003) (Appendix 492) (trial court also concluded plaintiff reasonably accommodated defendant's disability in the past, but failed to comply with this ongoing obligation when the plaintiff failed to respond to the defendant's proposal of a mental health case management workers serving as a communication intermediary between plaintiff and defendant), *affirmed*, *Dominium Management Services, Inc. v. C.L.,* No. A03-85, 2003 WL 22890386 (Minn. Ct. App. Dec. 9, 2003) (affirmed the trial court's finding that the defendant was disabled, and concluded that the defendant's request for neutral third party involvement would not impose an undue hardship on the plaintiff).

i. Refusing to work through an intermediary

Dominium Management Services, Inc. v. C.L., No. HC-1021106500 (Minn. Dist. Ct. 4th Dist. Mar. 4, 2003) (Appendix 492) (trial court also concluded plaintiff reasonably accommodated defendant's disability in the past, but failed to comply with this ongoing obligation when the plaintiff failed to respond to the defendant's proposal of a mental health case management workers serving as a communication intermediary between plaintiff and defendant), *affirmed*, *Dominium Management Services, Inc. v. C.L.,* No. A03-85, 2003 WL 22890386 (Minn. Ct. App. Dec. 9, 2003) (affirmed the trial court's finding that the defendant was disabled, and concluded that the defendant's request for neutral third party involvement would not impose an undue hardship on the plaintiff).

j. *Refusing to allow minor ordinance violation*

Larson v. _____, No. HC 030324502 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2004) (Appendix 528) (referee will not reconsider judge's order on waiver; tenant meets definition of disabled; requiring mobility disabled tenant to park vehicle further away than other tenants is not a reasonable accommodation; while parking tenant's vehicle near the home violated an ordinance, most other tenants also violated the unenforced ordinance; tenant's ordinance violations were repeated but not serious; tenant may raise landlord's violation of the covenants of habitability as a cause of tenant violation of the lease, where park owner's park design violated a local ordinance and forces tenant to violate the same ordinance).

Each of the form answers in these materials lists reasonable accommodation defenses applicable to each type of housing. *See* Forms Appendix, Answer Forms.

10. Public housing and government subsidized housing programs

a. *Notice and administrative process,* VI.G.10.a
b. *Good cause for eviction,* VI.G.10.b

(1) Tenant's conduct, VI.G.10.b.1
(2) Repeated lease violations, VI.G.10.b.2
(3) Criminal activity by tenants and third parties, VI.G.10.b.3

(a) Public housing, VI.G.10.b.3.a
(b) Section 8 certificates and vouchers, VI.G.10.b.3.b
(c) HUD subsidized projects, VI.G.10.b.3.c
(d) Rural Housing and Community Development Service (formerly Farmers Home Administration) subsidized housing projects, VI.G.10.b.3.d
(e) Search and seizure, VI.G.10.b.3.e
(f) Other criminal law defenses, VI.G.10.b.3.f

(4) Other actions of third parties, VI.G.10.b.4
(5) Verification requirements, VI.G.10.b.5
(6) Laundry list of allegations, VI.G.10.b.6
(7) Tenant waiver of rights, VI.G.10.b.7
(8) Pets, VI.G.10.b.8

c. *Section 8 Existing Housing Certificate and Voucher Programs*, VI.G.10.c
d. *Government subsidized housing projects,* VI.G.10.d
e. *Public housing,* VI.G.10.e
f. *Low Income Housing Tax Credit properties*, VI.G.10.f
g. *Violence Against Women Act (VAWA),* VI.G.10.g

a. *Notice and administrative process*

Landlords participating in public and government subsidized housing programs must comply with the statutory and regulatory requirements of the program. *RFT & Assoc's. v. Smith,* 419 N.W.2d 109 (Minn. Ct. App. 1988); *Housing and Redevelopment Authority of Waconia v. Chandler,* 403 N.W.2d 708, 711 (Minn. Ct. App. 1987); *Hoglund-Hall v. Kleinschmidt,* 381 N.W.2d 889, 895 (Minn. Ct. App. 1986). All programs (except the Section 8 existing housing certificate and voucher programs) require issuance of a lease termination notice before the landlord may file the action. The complaint may not allege grounds not raised in the notice. *See* discussion, *supra* at VI.F.10. *See generally* F. FUCHS, INTRODUCTION TO HUD-PUBLIC AND SUBSIDIZED HOUSING PROGRAMS; HUD HOUSING PROGRAMS: TENANT'S RIGHTS.

b. *Good cause for eviction*

The trial court must make specific finding on material noncompliance. *Chancellor Manor v. Thibodeaux*, 628 N.W.2d 193 (Minn. Ct. App. 2001) (landlord must prove failure to report income was fraudulent by a preponderance of the evidence).

(1) Tenant's conduct

i

Most of the programs require materials lease violations or good cause for eviction related to the

tenant's conduct. Many Minnesota decisions have discussed and applied these standards.

(a) *Decisions holding for the tenant*

(i) Alterations

Berry v. Lane, Nos. UD-1980629502 and UD-1980603900 (Minn. Dist. Ct. 4th Dist. Jul. 22, 1998) (Appendix 310A) (Landlord did not prove breaches of the lease to warrant termination, where tenant brought pets to the property to deal with mice but removed the pets at the landlord's request, a tenant removed a refrigerator which did not work and replaced it, the tenants and her children caused *de minimis* damage to the property); *Jorstad v. Connor*, No. UD-1951002514 (Minn. Dist. Ct. 4th Dist. Oct. 23, 1995) (Appendix 150) (Section 8 certificate/voucher, no material violation of the lease where tenant moved fixtures; court recommended mediation).

(ii) Cure

Berry v. Lane, Nos. UD-1980629502 and UD-1980603900 (Minn. Dist. Ct. 4th Dist. Jul. 22, 1998) (Appendix 310A) (Landlord did not prove breaches of the lease to warrant termination, where tenant brought pets to the property to deal with mice but removed the pets at the landlord's request, a tenant removed a refrigerator which did not work and replaced it, the tenants and her children caused *de minimis* damage to the property); *Minneapolis Public Housing Authority v. Otto*, No. UD-1970326517 (Minn. Dist. Ct. 4th Dist. May 9, 1997) (Appendix 279) (Public housing: no good cause for eviction where tenant got rid of the dog and denied access to the guests who offended other tenants).

(iii) Damage

Damage to the premises must be more than minimal to be a material breach or material non-compliance with the lease. *Crossroads of Edina v. _____,* No. HC-1011018513 (Minn. Dist. Ct. 4th Dist. Nov. 16, 2001) (Appendix 491) (HUD subsidized project: damage was material non-compliance); *Stein v. _____,* No. HC-1940707539 (Minn. Dist. Ct. 4th Dist. July 21, 1994) (Appendix 578) (Section 8 lease: damage not a material violation); *Friederrichs v. _____,* No. UD-1940608542 (Minn. Dist. Ct. 4th Dist. June 1994) (Appendix 502) (damage was not material).

In *Teamster Retiree Housing of Minneapolis, Inc. v. Goldstein*, No. UD-1960919514 (Minn. Dist. Ct. 4th Dist. Oct. 21, 1996) (Appendix 238), the landlord of a Section 8 New Construction and Section 202 Elderly or Handicapped housing project sought to evict the tenant for various alleged lease violations. The court held that under 24 C. F. R. Sec. 247.3, the landlord could evict the tenant only for *substantial* lease violations or *material minor* violations. The court concluded that the landlord had not met this standard, where the damages caused by the tenant were minor, the tenant agreed to fix them, the landlord could have made repairs and assessed cost to the tenant, some problems were not caused by the tenant, and some storage problems were not hazardous. The court noted that these disputes could and should be resolved by greater cooperation, better communication or mediation, but the tenant should not be evicted for these kinds of disputes. *See Ford v. _____,* No. HC-1020325505 (Minn. Dist. Ct. 4th Dist. Apr. 26, 2002) (Appendix 500) (Section 8 voucher, plaintiff failed to prove that loud cars belonged to tenant's guests, that defendant knew or should have known that guests had firearms, that children hanging around the property were defendant's guests, that trash in the yard was from defendant's apartment, that a basement electrical fire resulted from defendant's conduct, that the notice of intent to condemn resulted from defendant's conduct, and that the smell of marijuana came from defendant's apartment; plaintiff failed to allege drug use with any particularity; action dismissed and defendant

awarded costs and disbursements); *Berry v. Lane*, Nos. UD-1980629502 and UD-1980603900 (Minn. Dist. Ct. 4th Dist. Jul. 22, 1998) (Appendix 310A) (Landlord did not prove breaches of the lease to warrant termination, where tenant brought pets to the property to deal with mice but removed the pets at the landlord's request, a tenant removed a refrigerator which did not work and replaced it, the tenants and her children caused *de minimis* damage to the property); *Northgate Housing Ltd. v. McLeod*, No. S0441-94 CnC (Vt. Sup. Ct. Chitttenden Cty. Jan. 24, 1995) (Appendix 152) (no serious or repeated lease violations where landlord waived or did not prove tenant did not pay deposit five years earlier; allegations of damaging apartment, disturbing tenants, staling mulch, and abandoning lumber were not proven but would not have been sufficient; and fiancee was not an unauthorized resident following landlord's improper denial of his addition to the lease); *Regency Park Apartments v. Gidcumb*, No. 86-X-003 (Kty. Cir. Ct. Warren Cty. Apr. 3, 1986), *affirming* No. 86-C-062 (Kty. Dist. Ct. Warren Cty. Feb. 6, 1986) (Appendix 153) (no material non-compliance with lease where tenant paid rent late but landlord accepted it; and tenant caused $114 in damage, could not pay it within 15 days after receiving bill while receiving low income on AFDC, tenant offered to pay $78 before filing and had all of the money before hearing).

(iv) Deposit

Northgate Housing Ltd. v. McLeod, No. S0441-94 CnC (Vt. Sup. Ct. Chitttenden Cty. Jan. 24, 1995) (Appendix 152) (no serious or repeated lease violations where landlord waived or did not prove tenant did not pay deposit five years earlier; allegations of damaging apartment, disturbing tenants, staling mulch, and abandoning lumber were not proven but would not have been sufficient; and fiancee was not an unauthorized resident following landlord's improper denial of his addition to the lease).

(v) Domestic violence

The Violence Against Women and Department of Justice Reauthorization Act of 2005, commonly called the Violence Against Women Act (VAWA), bars evictions for lease violations which are the result of domestic violence, dating violence or stalking of the tenant or immediate family members. 42 U.S.C. §1437d (l). *See Metro North Owners, LLC v. Thorpe,* _____ N.Y.S.2d _____, 2008 WL 5381477 (N.Y. City Civ .Ct Dec. 25, 2008) (dismissal of eviction claiming nuisance where tenant was victim of domestic violence and entitled to protection under VAWA).

(vi) Failure to prove violation

Ford v. _____*,* No. HC-1020325505 (Minn. Dist. Ct. 4th Dist. Apr. 26, 2002) (Appendix 500) (Section 8 voucher, plaintiff failed to prove that loud cars belonged to tenant's guests, that defendant knew or should have known that guests had firearms, that children hanging around the property were defendant's guests, that trash in the yard was from defendant's apartment, that a basement electrical fire resulted from defendant's conduct, that the notice of intent to condemn resulted from defendant's conduct, and that the smell of marijuana came from defendant's apartment; plaintiff failed to allege drug use with any particularity; action dismissed and defendant awarded costs and disbursements); *Minneapolis Public Housing Authority v. Brown*, No. UD-1960306523 (Minn. Dist. Ct. 4th Dist. May 16, 1996) (Appendix 235) (landlord did not prove that tenant engaged in drug-related criminal activity on or near the premises); *Johnson v. Bostic*, No. 1950508539 (Minn. Dist. Ct. 4th Dist. June 5, 1995) (Appendix 151) (Section 8 certificate/voucher, landlord did not prove tenant did not shovel snow, provision prohibiting young boy and girl from sharing bedroom was invalid, neighbor disturbed by normal noise of small children); *Kray v. Humphrey*, No. UD-1950110500 (Minn. Dist. Ct. 4th Dist. Feb. 8, 1995) (Appendix 132) (landlord did not prove an unauthorized resident and failure to pay back rent,

and tenant proved that part of the rent due resulted from housing authority abatement of rent).

(vii) Housekeeping

Johnson v. Bostic, UD-1951205504 (Minn. Dist. Ct. 4th Dist. Feb. 12, 1996) (Appendix 234) (housekeeping problems and noise from tenant in §8 certificate housing did not amount to good cause); *Buckeye Reality Co., v. Elias*, No. CX-91-0697 (Minn. Dist. Ct. 10th Dist. Aug. 6, 1991) (Appendix 15.E) (minor housekeeping violations and occupancy by unauthorized persons who left the premises after verbal notice from the landlord probably did not constitute material noncompliance with the lease or other good cause); *Hilltop Lane Apartments v. Craddock*, No. C988667 (Minn. Dist. Ct. 5th Dist. Aug. 26, 1988) (Appendix 18.N) (housekeeping).

(viii) ID

Bethune Associates v. Davis, No. C8-95-705 (Minn. Ct. App. Oct. 24, 1995), FINANCE AND COMMERCE 27 (Oct. 27, 1995) (Appendix 149) (unpublished: subsidized project, no material lease violation or repeated violations where tenant did not show identification to security guard upon request, and tenant defended himself when attacked by security guard).

(ix) Invalid lease provision

Johnson v. Bostic, No. 1950508539 (Minn. Dist. Ct. 4th Dist. June 5, 1995) (Appendix 151) (Section 8 certificate/voucher, landlord did not prove tenant did not shovel snow, provision prohibiting young boy and girl from sharing bedroom was invalid, neighbor disturbed by normal noise of small children).

(x) Noise and disturbances

In *Bassett Creek Partners LP v. _____,* No. 27-CV-HC-15-4352 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2015) (Appendix 808), the public housing landlord commenced an eviction action alleging breach of lease by "using threatening and assaultive behavior towards another resident; chasing resident with a knife". The court found the testimony of the tenant more credible than the landlord's witnesses, and demonstrated that the tenant was bringing food to another tenant when she was accosted by another tenant. The court rejected the post-trial submission of fact affidavits by the landlord. The court found that landlord failed to produce any credible evidence to demonstrate by a preponderance of the evidence that tenant materially breached a term of the lease agreement. The court determined tenant was entitled to costs and disbursements.

The landlord sought judge review of the referee's decision in *Bassett Creek Partners LP v. _____,* No. 27-CV-HC-15-4352 (Minn. Dist. Ct. 4th Dist. April 6, 2016) (Appendix 810) (Judge Chou). The court found the referee was in the best position to make those determinations and supported his findings. The court affirmed the referee's rejection of post-trial fact affidavits. The court also rejected the tenant's submission of facts occurring after the referee's decision as outside the scope of review. The judge determined the referee's findings were clearly not erroneous and shall not be set aside. The decision was sealed due to the previous order that the court file and all records herein be expunged.

In *LHB Properties LLC v. _____,* No. 27CVHC 14-582 (Minn. Dist. Ct. 4th Dist. Feb. 28, 2014) (Appendix 726), the district court issued judgment in favor of the Section 8 tenants to remain in possession of the premises, denying the landlord's eviction action. The court found that the landlord

failed to prove material breaches of the lease or of Section 8 to support eviction. The court concluded that to support an eviction, "[a] breach of lease must be material - and not merely de minimis." The court found that witness testimony, while credible, did not establish material breaches, noting that some neighbors had no first-hand knowledge of events, some were unusually sensitive to noise, and some had an "axe to grind" with the tenant.

See Ford v. _____, No. HC-1020325505 (Minn. Dist. Ct. 4th Dist. Apr. 26, 2002) (Appendix 500) (Section 8 voucher, plaintiff failed to prove that loud cars belonged to tenant's guests, that defendant knew or should have known that guests had firearms, that children hanging around the property were defendant's guests, that trash in the yard was from defendant's apartment, that a basement electrical fire resulted from defendant's conduct, that the notice of intent to condemn resulted from defendant's conduct, and that the smell of marijuana came from defendant's apartment; plaintiff failed to allege drug use with any particularity; action dismissed and defendant awarded costs and disbursements); *Johnson v. Bostic*, UD-1951205504 (Minn. Dist. Ct. 4th Dist. Feb. 12, 1996) (Appendix 234) (housekeeping problems and noise from tenant in §8 certificate housing did not amount to good cause); *Jankord v. Thompson*, No. UD-1950606524 (Minn. Dist. Ct. 4th Dist. June 26, 1995) (Appendix 166) (Section 8 certificate/voucher, landlord did not prove that tenant or her family had a history of disturbing neighbors by noise or other activities); *Johnson v. Bostic*, No. 1950508539 (Minn. Dist. Ct. 4th Dist. June 5, 1995) (Appendix 151) (Section 8 certificate/voucher, landlord did not prove tenant did not shovel snow, provision prohibiting young boy and girl from sharing bedroom was invalid, neighbor disturbed by normal noise of small children); *Vesterstein v. Branley,* No. C5-92-600723 (Minn. Dist. Ct. 6th Dist. May 8, 1992) (Appendix 18.G.1) (tenant did not commit material breach of lease by harassing and disturbing neighbors and the landlord where the landlord knew of the tenant's mental condition when executing the second lease agreement); *Hegenes Properties v. Reed,* No. UD-4920624902 (Minn. Dist. Ct. 4th Dist. Aug. 7, 1992) (Appendix 16.B.1) (tenant's disturbance of other tenant on one occasion and violation of city code on one other occasion did not constitute serious or repeated violations of the lease); *Northgate Housing Ltd. v. McLeod*, No. S0441-94 CnC (Vt. Sup. Ct. Chitttenden Cty. Jan. 24, 1995) (Appendix 152) (no serious or repeated lease violations where landlord waived or did not prove tenant did not pay deposit five years earlier; allegations of damaging apartment, disturbing tenants, staling mulch, and abandoning lumber were not proven but would not have been sufficient; and fiancee was not an unauthorized resident following landlord's improper denial of his addition to the lease).

(xi) Late fees

Central Community Housing Trust v. Anderson, No. UD-1900611534 at 3 (Minn. Dist. Ct. 4th Dist. July 6, 1990) (Appendix 18.B) ($20.00 late fee bore no relation to cost of landlord's preparation of form notice and slipping the notice under the tenant's door, triggering the tenant's prompt action in paying the rent).

(xii) Recertification

In *Ansari v. Metropolitan Housing and Redevelopment Authority*, No. A08-2287 (Minn. Ct. App. December 15, 2009) (unpublished), Ansari's Section 8 housing benefits were terminated when he failed to report other subsidy payments that he received allegedly as the manager of another Section 8 property located in Chippewa County. The hearing officer upheld the termination, and the certiorari appeal was filed. Ansari maintained that he did not use the Chippewa County payments for his own benefit, but applied them to improvements at that property. However, the hearing officer found that some of the payments were deposited into Ansari's personal bank account and there was insufficient evidence to prove that all of the payments were used to benefit the property. Moreover, since Ansari owned the

property, even if all payments did improve the property, Ansari ultimately benefited as the owner of the home. The hearing officer also rejected Ansari's argument that the payments were temporary or nonrecurring and found that Ansari violated his ongoing obligation to notify the agency of any increase in income between the recertifications that were filed. The Court of Appeals found that the quasi-judicial determination was supported by substantial evidence and affirmed the termination of benefits. The Court of Appeals also found that Ansari received adequate notice regarding the interests at stake because a detailed explanation of all possible reasons for termination is not required, that the decision was not arbitrary or capricious, and that mitigating circumstances were adequately considered.

See Chancellor Manor v. Thibodeaux, 628 N.W.2d 193 (Minn. Ct. App. 2001) (trial court must make specific finding on material noncompliance; landlord must prove failure to report income was fraudulent by a preponderance of the evidence); *St. Cloud Housing and Redevelopment Authority v. Slayton*, No. C9-98-1671 (Minn. Dist. Ct. 10th Dist. Nov. 3, 1998) (Appendix 365) (Danforth, J.) (Public Housing Authority accepted the tenant's late recertification, PHA did not prove that the tenant's daughter's baby sitting job away from the premises constituted operation of a daycare business on the premises, the repayment agreement between the parties over back rent did not provide for eviction as a consequence for non-payment or late payment, and the PHA's acceptance of rent from the tenant in a private agency along with the PHA's recertification and renewal of the lease constituted waiver of lease violations).

(xiii) Rent

St. Cloud HRA v. Rothchild, No. C7-99-4306 (Minn. Dist. Ct. 7th Dist. Dec. 21, 1999) (Appendix 419) (Public housing authority filed eviction action based on nonpayment of rent and material lease violations by repeated late payment of rent; court held that tenant's statutory right to redeem could not be defeated by a claim of material violation related to rent.; *Horning Properties v. Wang*, No. C3-98-1211 (Minn. Dist. Ct. 10th Dist. Jun. 23, 1998) (Appendix 337) (Meyer, J.) (Rural Housing and Community Development Service Subsidized Housing Project; no lease violation where the tenant tendered but the landlord refused April rent, so this event did not support the eviction notice; tenant legally resided on the property during her incarceration so as to not breach the lease); *Stark Metropolitan Housing Authority v. Ruffin,* No. CA-8751, 1992 W.L. 147443 (Ohio Ct. App. June 15, 1992) (Appendix 11J.1) (tenant not at fault for nonpayment of rent); *Housing Authority of St. Louis County v. Boone*, 747 S.W.2d 311 (Mo. Ct. App. 1988) (public housing, tenant not at fault for nonpayment of rent); *Regency Park Apartments v. Gidcumb*, No. 86-X-003 (Kty. Cir. Ct. Warren Cty. Apr. 3, 1986), *affirming* No. 86-C-062 (Kty. Dist. Ct. Warren Cty. Feb. 6, 1986) (Appendix 153) (no material non-compliance with lease where tenant paid rent late but landlord accepted it; and tenant caused $114 in damage, could not pay it within 15 days after receiving bill while receiving low income on AFDC, tenant offered to pay $78 before filing and had all of the money before hearing); *Maxton Housing Authority v. McClean*, 313 N.C. 277, 328 S.E.2d 290 (1985) (public housing, tenant not at fault for nonpayment of rent).

(xiv) Self-defense

In *Public Housing Agency for the City of St. Paul v. _____*, No. HG-CV-08-4518, Order (Minn. Dist. Ct. 2nd Dist. Jan. 22, 2009) (Appendix 615) (Judge Monahan), the public housing landlord authority filed an eviction action, claiming that the police responded to call from the tenant about serious fight between tenant and guest involving knives, and found small amount of marijuana. The tenant claimed self defense and that she did not know about marijuana. The court concluded possession of a small amount of marijuana is not criminal activity under state law, and that the landlord presented no evidence of criminal conduct, disturbance, or impairment of the physical or social environment, health, safety, or

enjoyment. The landlord also claimed that defense under Minn. Stat. § 504B.171 was preempted by *Rucker* and *Lor.* The court declined to rule on the issue, as it found that the landlord had not proven a breach of lease under federal law. *See Bethune Associates v. Davis*, No. C8-95-705 (Minn. Ct. App. Oct. 24, 1995), FINANCE AND COMMERCE 27 (Oct. 27, 1995) (Appendix 149) (unpublished: subsidized project, no material lease violation or repeated violations where tenant did not show identification to security guard upon request, and tenant defended himself when attacked by security guard).

(xv) Temporary absence

Housing and Redevelopment Authority of Winona v. Fedorko, 1994 WL 654525, C4-94-884 (Minn. Ct. App. Nov. 22, 1994), FINANCE AND COMMERCE 43 (Nov. 25, 1994) (Appendix 91) (unpublished: public housing, while remanded for further findings, implied that eviction was not supported where tenant temporarily moved to a nursing home while litigating state's refusal to approve his personal care attendant); *Horning Properties v. Wang*, No. C3-98-1211 (Minn. Dist. Ct. 10th Dist. Jun. 23, 1998) (Appendix 337) (Meyer, J.) (Rural Housing and Community Development Service Subsidized Housing Project; no lease violation where the tenant tendered but the landlord refused April rent, so this event did not support the eviction notice; tenant legally resided on the property during her incarceration so as to not breach the lease).

(xvi) Termination of tenant's employment

Pheasant Ridge Limited Partnership v. _____, No. CV-07-2894 (Minn. Dist. Ct. 10th Dist. May 21, 2007) (Appendix 614) (Judge Mossey) (eviction dismissed where landlord could not terminate RHS tenancy for good cause without opportunity to cure, and on grounds that tenant was no longer employed by landlord); *Mountainview Place Apartments v. Ford*, No. 94CV1492 (Colo. Cty. Ct. Mar. 24, 1994) (Appendix 179) (Section 8 project tenancy was unaffected by employment agreement; termination of employment was not good cause for eviction); *Mountainview Place Apartments v. Ford*, No. 94CV1492 (Colo. Cty. Ct. Mar. 24, 1994) (Appendix 179) (Section 8 project tenancy was unaffected by employment agreement; termination of employment was not good cause for eviction).

(xvii) Unauthorized resident

Kray v. Humphrey, No. UD-1950110500 (Minn. Dist. Ct. 4th Dist. Feb. 8, 1995) (Appendix 132) (landlord did not prove an unauthorized resident and failure to pay back rent, and tenant proved that part of the rent due resulted from housing authority abatement of rent); *Buckeye Reality Co., v. Elias*, No. CX-91-0697 (Minn. Dist. Ct. 10th Dist. Aug. 6, 1991) (Appendix 15.E) (minor housekeeping violations and occupancy by unauthorized persons who left the premises after verbal notice from the landlord probably did not constitute material noncompliance with the lease or other good cause); *Northgate Housing Ltd. v. McLeod*, No. S0441-94 CnC (Vt. Sup. Ct. Chitttenden Cty. Jan. 24, 1995) (Appendix 152) (no serious or repeated lease violations where landlord waived or did not prove tenant did not pay deposit five years earlier; allegations of damaging apartment, disturbing tenants, staling mulch, and abandoning lumber were not proven but would not have been sufficient; and fiancee was not an unauthorized resident following landlord's improper denial of his addition to the lease). *See Carriagehouse Apartments v. Stewart*, No. UD-1970107501 (May 13, 1997) (Appendix 249) (Subsidized project: good cause for eviction where tenant poured gasoline on clothing, started a fire, and obstructed the response to the fire; no good cause where a tenant allowed an unauthorized resident to live with her).

(xviii) Violation of settlement agreement

In re Application of Johnson, No. 2384 (New York Sup. Ct. Nov. 18, 1999) (Appendix 522) (termination of public housing tenancy denied for tenant's isolated violation of settlement agreement excluding emancipated son from the property, given tenant's record and household).

(b) *Minnesota decisions finding good cause for eviction*

(i) Generally

Minneapolis Public Housing Authority v. McKinley, Nos. UD-1980312507 (Minn. Dist. Ct. 4th Dist. Aug. 21, 1998) (Appendix 348B) (Oleisky, J.) (affirmed the referee's conclusion on causes for eviction).

(ii) Assault and threats

See Hoglund-Hall v. Kleinschmidt, 381 N.W.2d at 891-93 (tenant assaulting and threatening others); *Anoka County Community Action Program v. Solmonson*, No. A05-1251, 2006 WL 1320332 (Minn. Ct. App. May 16, 2006) (unpublished) (affirmed trial court decision finding material violations of aggressive behavior toward other tenants); *Rush Riverview Apartments v. _____,* No. C3-01-0996 (Minn. Dist. Ct. 10th Dist. Aug. 7, 2001) (Appendix 567) (Judge Clifford) (violent conduct and noise constituted material non-compliance in HUD subsidized project; writ stayed for 7 days and until plaintiff complies with the trade name registration statute and pays defendant $250 in costs).

(iii) Damage

Damage to the premises must be more than minimal to be a material breach or material non-compliance with the lease. *Crossroads of Edina v. _____,* No. HC-1011018513 (Minn. Dist. Ct. 4th Dist. Nov. 16, 2001) (Appendix 491) (HUD subsidized project: damage was material non-compliance); *Stein v. _____,* No. HC-1940707539 (Minn. Dist. Ct. 4th Dist. July 21, 1994) (Appendix 578) (Section 8 lease: damage not a material violation); *Friederrichs v. _____,* No. UD-1940608542 (Minn. Dist. Ct. 4th Dist. June 1994) (Appendix 502) (damage was not material).

Carriagehouse Apartments v. Stewart, No. UD-1970107501 (May 13, 1997) (Appendix 249) (Subsidized project: good cause for eviction where tenant poured gasoline on clothing, started a fire, and obstructed the response to the fire; no good cause where a tenant allowed an unauthorized resident to live with her); *Borts Apartments, Inc. v. Muse*, No. UD-1981015524 (Minn. Dist. Ct. 4th Dist. Nov. 12, 1998) (Appendix 379) (Subsidized project eviction granted where tenant permitted guest to stay more than 30 days per year, tenant disturbances required security guard intervention, and there was minor damage to the unit.

(iv) Failure to report income

H & Val J. Rothschild, Inc. v. Sampson, No. CX-95 396 (Minn. Ct. App. Oct. 24, 1995), FINANCE & COMMERCE at 28 (Oct. 27, 1995) (Appendix 157) (unpublished: subsidized project, tenant under reported income and underpaid rent).

(v) Unauthorized resident

MPHA v. Rozas, C0-95-956 (Minn. Ct. App. Jan. 9, 1996), FINANCE AND COMMERCE at 30 (Jan. 12, 1996) (Appendix 232) (unpublished: substance abuse and unauthorized resident); *Borts Apartments,*

Inc. v. Muse, No. UD-1981015524 (Minn. Dist. Ct. 4th Dist. Nov. 12, 1998) (Appendix 379) (Subsidized project eviction granted where tenant permitted guest to stay more than 30 days per year, tenant disturbances required security guard intervention, and there was minor damage to the unit).

(vi) Noise

Rush Riverview Apartments v. _____, No. C3-01-0996 (Minn. Dist. Ct. 10th Dist. Aug. 7, 2001) (Appendix 567) (Judge Clifford) (violent conduct and noise constituted material non-compliance in HUD subsidized project; writ stayed for 7 days and until plaintiff complies with the trade name registration statute and pays defendant $250 in costs).

(vii) Other lease violations

In *Winhaven Court Apartments v. Carney*, No. A14-1819, 2015 WL 5089020 (Minn. Ct. App. August 31, 2015)(unpublished), the HUD Subsidized Project tenant had received written warnings for policy violations regarding removing items from the property's recycling bins and depositing cat litter in the trash room, ultimately resulting in a notice of termination for non-compliance with the lease agreement. When the tenant did not vacate the premises, the landlord commenced an eviction action. The tenant moved to dismiss the action because the termination notice did not provide enough specificity. The district court determined that the termination notice was sufficient, the case proceeded to trial, and the district court took the case under advisement. Two weeks later, the district court granted the landlord's motion to reopen the trial record to include evidence of continued violations by the tenant. The district court ultimately entered judgment in favor of the landlord. The Court of Appeals affirmed, holding that: (1) based on applications of similar language in the context of professional misconduct and criminal matters, the termination notice alleging that the tenant removed items from recycling bins was sufficient enough to enable her to prepare a defense; and (2) the decision to reopen the trial record was not an abuse of discretion because the additional testimony concerned the same type of behavior and was relevant to the decision about whether the eviction was justified.

(2) Repeated lease violations

Landlords often allege a series of unrelated minor lease violations to support eviction. Tenants should argue that the lease violations should be material and not *de minimis*, and that they need to be related to be repeated. In *Teamster Retiree Housing of Minneapolis, Inc. v. Goldstein*, No. UD-1960919514 (Minn. Dist. Ct. 4th Dist. Oct. 21, 1996) (Appendix 238), the landlord of a Section 8 New Construction and Section 202 Elderly or Handicapped housing project sought to evict the tenant for various alleged lease violations. The court held that under 24 C. F. R. Sec. 247.3, the landlord could evict the tenant only for *substantial* lease violations or *material minor* violations. The court concluded that the landlord had not met this standard, where the damages caused by the tenant were minor, the tenant agreed to fix them, the landlord could have made repairs and assessed cost to the tenant, some problems were not caused by the tenant, and some storage problems were not hazardous. The court noted that these disputes could and should be resolved by greater cooperation, better communication or mediation, but the tenant should not be evicted for these kinds of disputes.

In *Waimanalo Village Residence' Corp. v. Young*, 956 P.2d 1285, 1300 (Haw. Ct. App. 1998), the court concluded that material noncompliance "requires a pattern of repeated minor violations of the lease, not isolated incidence." *See North Shore Plaza Associates v. Guida*, 459 N.Y.S.2d 685, 687 (N.Y. Civ. Ct. 1983) (Fight involving tenant's son and neighbor boys in which the son was not at fault, an altercation between the tenant, her boyfriend and the apartment security guard, and cursing by the

boyfriend were neither individual substantial violations nor collectively repeated minor violations of the lease.; *Common Bond Housing v. Beier,* UD-1951204625 (Minn. Dist. Ct. 4th Dist. Feb. 23, 1996) (Appendix 227) (no breach of lease by keeping a cat as an appropriate doctor-prescribed accommodation, and altercation with another tenant was not repeated); *Mid Northern Management, Inc. v. Heinzeroth*, 234 Ill. App. 3rd 240, __, 599 N.E.2d 568, 572-74 (1992).

Repeated late rent might not be good cause, depending on the circumstances. In *Oak Glen of Edina v. Brewington*, 642 N.W.2d 481 (Minn. Ct. App. 2002), the Court reversed the eviction judgment, concluding that (1) late rent is a minor violation in a HUD subsidized project; (2) repeated late payment of rent may constitute a material breach; landlord presented no evidence that late payment affected its rental business; (3) the landlord, by accepting the rent, effectively reaffirmed the lease between parties, noting "principal reason for the waiver rule is to instill a feeling of repose in the tenant;" and (4) a landlord waives breach by late payment of rent by accepting timely rental payment following the last late payment. *See Brooklyn Park Leased Housing Associates III, LP. v. _____,* No. HC 020712528 (Minn. Dist. Ct. 4th Dist. Nov. 7, 2002) (Appendix 633) (eviction dismissed where HUD subsidized project landlord did not prove repeated minor violations where rent payments were inconsistent but fully paid, landlord did not prove tenant recertification violations but landlord violated program rules, landlord failed to prove disturbance based on business record, landlord failed to prove non-cooperation, tenant awarded costs and disbursements). *But see Chancellor Manor v. Gates*, 649 N.W.2d 892 (Minn. Ct. App. Aug. 27, 2002) (In HUD subsidized project, 68 late rent notices and 8 eviction court cases for rent constituted repeated minor violations which had a adverse financial effect on the project, supporting eviction).

(3) Criminal activity by tenants and third parties

See L. McDonough and M. MacCreight, *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REVIEW 55 (May/June 2007) and updated slide show.
http://povertylaw.homestead.com/WaitAMinute.html

(a00) Regulation prohibiting Legal Services Corporation (LSC) recipients from representing tenants in certain drug allegation public housing cases

The Legal Services Corporation (LSC) promulgated a regulation prohibiting recipient representation in eviction cases from public housing where the person has been recently convicted or prosecuted for drug offenses, and the person threatened or now threatens other public housing tenants' or employees' health and safety. The prohibition does not extend to representing (1) other members of the person's household, (2) persons not convicted or prosecuted, (3) persons not posing a threat health and safety of other public housing tenants or employee, or (4) persons in other subsidized housing progrrams. 45 C.F.R. Part 1633 (Appendix 163). *See* L. McDonough and M. MacCreight, *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REVIEW 55 (May/June 2007) and updated slide show.
http://povertylaw.homestead.com/WaitAMinute.html

(a0) Distinguishing between crimes and offenses: marijuana and other petty misdemeanors

(i) Marijuana possession

Possession of a small amount of marijuana is a petty misdemeanor. Minn. Stat. § 152.027, subd. 4. Minn. Stat. § 152.01, subd. 16, defines “small amount” as “42.5 grams or less” of marijuana. A petty misdemeanor is not a “crime” under state law. Minn. Stat. § 609.02, subds. 1, 4a. The weight of marijuana is exclusive of the weight of mature stalks. *State v. Gallus*, 481 N.W.2d 116 (Minn. Ct. App. 1992).

In *Minneapolis Public Housing Authority v. _____,* No. 27-CV-HC-08-10954 (Minn. Dist. Ct. 4th Dist. Sept. 21, 2009) (Appendix 812) (Judge Nordby), the public housing tenant possessed a small amount of marijuana, not on the premises, but about a mile away. The referee found (adopting the proposed findings of the MPHA) that the evidence satisfied the plaintiffs burden, concluding in effect that the MPHA's "zero tolerance" approach was necessary, or at least reasonable, to prevent a serious threat to the health, safety and peaceful enjoyment of the premises.

The MPHA argued that the federal definition of drug-related criminal activity included non-criminal offenses. 42 U.S.C. § 1437d(l)(6) requires that the lease "provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug- related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." (emphasis added). There is no mention in the statute of "illegal activity." However, 24 C.F.R. § 5.100 provides that "Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug." The court originally agreed with the MPHA. The court reversed itself and the referee on reconsideration.

> Draconian policies are often justified by the claim that they treat all persons alike. But this rationalization ignores the less familiar truth that there is no greater inequality than the equal treatment of unequals. See Frankfurter, J., in Dennis v. U.S., 339 U.S. 162, 184 (1950).
>
> I have, on reconsideration, and in light of the further arguments and authorities presented by counsel, re-examined these views, and this has led me to the following revisions of the reasoning and decision in the previous order.
>
> By using the words "criminal" and "illegal" in the same context the drafters have created confusion and a dilemma - a quite unnecessary one, I might add, because this problem could have been easily eliminated by using some consistency and precision of language, or by adding additional clarification. (Legislators should be encouraged to write clearly - hence the "void for vagueness" due process doctrine, most often applicable in the criminal context. See e.g. U.S. v. Santos, 128 S.Ct. 2020 (2008). Clarity relieves courts of the need to guess at legislative intentions.)
>
> In the original order, I concluded that "illegal" was for purposes of this case the equivalent of "criminal," at least in the negative sense that neither of them refers to legal conduct. But I relied principally on a general lexicographic definition of "illegal," and for reasons discussed below I now conclude that was an erroneous and insufficient basis for my determination. It also had the effect of undervaluing the role and authority of the state in a situation such as this; that is, my reasoning gave too little deference to Minnesota's quite explicit and deliberate determination that Mr. Vann's conduct was not "criminal." And the expansive use of "illegal" causes one provision in a statute effectively to nullify another, where there is no indication that this was the legislative intent, and arguably in violation of the principles that A) provisions should be construed where

possible to avoid conflict, see State v. Cottew, 746 N.W.2d 632,639 (Minn. 2008); B) that where provisions cannot be reconciled the more specific should prevail, see State v.Richmond, 730 N.W2d 62 (Minn. Ct. App. 2007); and C) the doctrines of ejusdem generis and D) noscitur a socis, and E) inclusio unius est exclusio alterius.

Although these principles (which I shall not further discuss) do not individually or in combination compel me to read the words "criminal" and "illegal" synonymously in this case, they lend some weight to Defendant's argument that the "non-criminal" nature of his conduct is entitled to more serious consideration than I gave it in the earlier order. In short, I too readily concluded that the legislative use of "illegal" controlled or modified the term "criminal."

The most serious shortcoming in my previous decision, however, considered in conjunction with the principles mentioned above, is this: The legislative history shows that the intention quite reasonably and commendably was that "each case will be judged on its individual merits and will require the wise exercise of humane judgment by the PHA and the eviction court," S. Rep. 101-316, S. Rep. No. 316, 101st Cong., 2d Sess. 1990, 1990 U.S.C.C. A.N. 5763, 5941, 1990 WL 272745, cited by Defendant.

Although my prior order, I hope, at least implicitly recognized this, I did not satisfactorily consider its implications vis a vis, the so-called "zero tolerance" policy involved here. The obvious problem is this: a "zero-tolerance" policy is altogether inconsistent with the important principle of individual judgment of each case, and nullifies it, and removes the ability to hermeltake a "humane" approach to any litigant. My previous reading, and that promoted by Plaintiff, would substitute for that more salutary approach a standard of strict liability, which neither the language of the laws nor the legislative history expresses or implies. This is beyond the power of the Plaintiff to implement or of this court to enforce, in these circumstances.

Together with the state's clear decision to remove many of the harsh consequences of "petty" offenses by explicitly denominating these non-criminal, this leads me to conclude, contrary to my earlier order, that although the findings remain essentially the same, both the Referee and I were in error in ruling in favor of Plaintiff.

Id. at 4-6.

In *Fergus Falls Housing and Redevelopment Authority v. _____,* 56-CV-15-2367 (Minn. Dist. Ct. 7th Dist., Otter Tail County, Sept. 15, 2015) (Appendix 723) (Judge Hanson), the landlord asserted the tenant broke the terms of the rental agreement by failing to disclose criminal history during the Section 8 housing recertification process, and a background investigation revealed drug-related criminal activity on or off the premises. The court granted tenant's motion to dismiss as follows: (1) the tenant failing to disclose that he had received a charge for possession of drug paraphernalia during the recertification process is not a proper basis for the landlord to terminate the lease; and (2) a charge of a petty misdemeanor offense involving possession of drug paraphernalia, which was ultimately dismissed, is not a serious or repeated violations of a material term of the lease.

In *Public Housing Agency of the City of St. Paul v. Edwards,* No. 62-HG-CV-09-1448 (Minn. Dist. Ct. 2nd Dist. Oct. 28, 2009) (Appendix 747), the public housing landlord filed an eviction action for possession of a small amount of marijuana at a public housing unit of another tenant on another property. The court concluded that the possession was a petty misdemeanor and not a crime subject to eviction, noting that the landlord referred to its occupancy policies that the tenant never received and the

landlord did not introduce into evidence. Earlier, in *Public Housing Agency of the City of St. Paul v. Edwards,* No. 62-HG-CV-09-1448 (Minn. Dist. Ct. 2nd Dist. Aug. 17, 2009) (Appendix 748), the court denied the tenant's motion for suppression, concluding that while the search was unconstitutional, the exclusionary rule did not apply to civil cases. On appeal, in *Pub. Hous. Agency v. Edwards,* No. A09-2085, 2010 Minn. App. Unpub. LEXIS 972, 2010 WL 3544770 (Minn. Ct. App. Sep. 14, 2010) (unpublished), affirmed the district court on the issue of eviction but did not rule on the seizure. The court noted it could not rely on occupancy policies never submitted into evidence.

In *Public Housing Agency for the City of St. Paul v.* _____, No. HG-CV-08-4518, Order (Minn. Dist. Ct. 2nd Dist. Jan. 22, 2009) (Appendix 615) (Judge Monahan), the public housing landlord authority filed an eviction action, claiming that the police responded to call from the tenant about serious fight between tenant and guest involving knives, and found a small amount of marijuana. The tenant claimed self defense and that she did not know about marijuana. The court concluded possession of a small amount of marijuana is not criminal activity under state law, and that the landlord presented no evidence of criminal conduct, disturbance, or impairment of the physical or social environment, health, safety, or enjoyment. The landlord also claimed that defense under Minn. Stat. § 504B.171 was preempted by *Rucker* and *Lor.* The court declined to rule on the issue, as it found that the landlord had not proven a breach of lease under federal law. *See Minneapolis Public Housing Authority v.* _____, No. HC 10306313566 (Minn. Dist. Ct. 4th Dist. July 31, 2003) (Appendix 539) (Judge Doty) (public housing eviction denied and expunged; landlord did not prove that police officer properly learned about marijuana where officer entered apartment with consent of tenant to look for trespassed person, and did not prove that marijuana was in plain view; small amount of marijuana was not criminal activity; landlord's knowledge of alleged altercation was from a police report whose authors did not testify, and did not connect tenant to the incident).

Possession is not "criminal activity" and not subject to bypass of the public housing grievance process, *Minneapolis Public Housing Authority v.* _____, No. HC020710513 (Minn. Dist. Ct. 4th Dist. Aug. 2, Sept. 16, 2002) (Appendix 547a), affirmed (Sep. 16, 2002) (Appendix 547b) , or subject to eviction. *Minneapolis Public Housing Authority v.* _____, No. HC-1020207506 (Minn. Dist. Ct. 4th Dist. Mar. 18, 2002) (Appendix 543).

(ii) Medical marijuana use

Medical marijuana use is legal under state law. Minn. Stat. § 152.32. *See* discussion, *infra*, at VI.G.16.a.(1b).

(iii) Possession of drug paraphernalia

Possession of drug paraphernalia is not criminal activity under state law. *See* discussion, *infra*, at VI.G.16.a.(1a).

In *Fergus Falls Housing and Redevelopment Authority v.* _____, 56-CV-15-2367 (Minn. Dist. Ct. 7th Dist., Otter Tail County, Sept. 15, 2015) (Appendix 723) (Judge Hanson), the landlord asserted the tenant broke the terms of the rental agreement by failing to disclose criminal history during the Section 8 housing recertification process, and a background investigation revealed drug-related criminal activity on or off the premises. The court granted tenant's motion to dismiss as follows: (1) the tenant failing to disclose that he had received a charge for possession of drug paraphernalia during the recertification process is not a proper basis for the landlord to terminate the lease; and (2) a charge of a petty misdemeanor offense involving possession of drug paraphernalia, which was ultimately dismissed,

is not a serious or repeated violations of a material term of the lease.

(a) Public housing

(i) Statute, regulations and legislative history

The Cranston-Gonzalez National Affordable Housing Act of 1990 amended the eviction statues for Public Housing programs to require leases which state as follows:

> any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy of the tenancy.

42 U.S.C. § 1437d(*l*)(6). The federal regulation is somewhat different, providing that the lease:

> assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in: (A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or (B) Any drug-related criminal activity on or near such premises. Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit.

24 C.F.R. § 966.4(f)(12). The regulations also provide for housing authority discretion.

> In deciding to evict for criminal activity, the PHA shall have discretion to consider all of the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity. In appropriate cases, the PHA may permit continued occupancy by remaining family members and may impose a condition that family members who engaged in the proscribed activity will not reside in the unit. A PHA may require a family member who has engaged in the illegal use of drugs to present evidence of successful completion of a treatment program as a condition to being allowed to reside in the unit.

24 C.F.R. § 966.4(l)(5).

> The legislative history calls for eviction protection for innocent family members:
>
> Termination of Tenancy in Public Housing: The Committee bill would amend a provision of the U.S. Housing Act that was added by the Anti-Drug Abuse Act of 1988. This provision makes criminal activity grounds for eviction of public housing tenants if that action is appropriate in light of all the facts and circumstances. This language was limited to criminal activity on or near the public housing premises.
>
> This section would make it clear that criminal activity, including drug related criminal activity, can be cause for eviction only if it adversely affects the health, safety, and quiet enjoyment of the premises. The committee anticipates that each case will be judged on its individual merits and will require the wise exercise of humane judgment by the PHA and the eviction court. For

example, eviction would not be the appropriate course if the tenant had no knowledge of the criminal activities of his/her guests or had taken reasonable steps under the circumstances to prevent the activity.

S. Rep. 101-316, S. Rep. No. 316, 101ST Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 5763, 5941, 1990 WL 272745.

(ii) *Lor* and *Rucker*

In *Minneapolis Public Housing Authority v. Lor*, No. UD-1970716525 (Minn. Dist. Ct. 4th Dist. Sep. 10, 1997) (Appendix 278), the trial court concluded that federal legislative history of public housing statutes gave the court discretion to not evict remaining household members who did not have knowledge of excluded household members' illegal activity. On appeal, in *Minneapolis Public Housing Authority v. Lor*, 578 N.W.2d 8 (Minn. Ct. App. 1998), the Court of Appeals affirmed the trial court decision. The Court of Appeals first concluded that since the lease and statute upon which the MPHA relied was not clear as to the appropriate exercise of discretion by the public housing authority and the courts, it would consider the applicable regulations, comments and legislative history. The Court of Appeals determined that the federal statute did not automatically require eviction in all cases, allowing a public housing authority to exercise discretion in determining whether eviction was appropriate. The court reviewed the legislative history and concluded that Congress intended that the courts also would exercise judgment in reviewing these cases. The court added that since the MPHA did not allow Ms. Lor to utilize its administrative grievance procedure, it was especially important that the district court consider all of the circumstances and review the MPHA's decision to evict Ms. Lor and the remaining household members. The court found no error in the district court's ruling that eviction was inappropriate, because the factors considered by the trial court were consistent with the federal regulation setting out factors which a public housing authority may consider. Finally, the court noted that forfeiture is not favored when great injustice is done and the party seeking forfeiture is adequately protected.

However, the Minnesota Supreme Court reversed in *Minneapolis Public Housing Authority v. Lor*, 591 N.W.2d 700 (Minn. 1999) (Appendix 347). The court reviewed the legislative history, and noted that "the court hearing required by HUD allows parties to raise equitable defenses in accordance with each state's existing law." *Id*. at 703 n.13. The court added that the legislative history was vague, and since the regulations did not discuss the role the courts, the PHA and not the courts should consider "external circumstances." *Id.* at 704. The court stated that "the trial court shall determine de novo whether the facts alleged in the complaint are true and whether those facts, under the terms of the lease, support termination of the lease and eviction." *Id.* The court then went on to conclude as a matter of law that the tenant had materially breached the lease, essentially holding her strictly liable for her son's activity. The court reversed and remanded to the trial court for further proceedings in accordance with this opinion. *Id.*

It is not clear whether the decision completely precludes consideration of equitable issues. The court held that in determining whether a material breach occurred, the trial court should review the elements of the lease. The elements of the public housing lease include (1) whether there was criminal activity, (2) a threat caused by the criminal activity to health, safety, or peaceful enjoyment of the premises by other tenants, (3) the location of the criminal activity as relates to security on and enjoyment of the premises, and (4) whether the criminal activity was engaged in by a public housing tenant, member of the tenant's household, or guest or other person *within the tenant's control*. Since the court stated that "the court hearing required by HUD allows parties to raise equitable defenses in accordance

with each state's existing law," if the trial court determines that a material breach occurred, the court still could consider whether relief from forfeiture is appropriate, a remedy that is available in private unlawful detainer actions. *See* discussion, *infra*, VI.G.28.

In the aftermath of *Minneapolis Public Housing Authority v. Lor*, public housing authorities may take the position that the District Court may not consider whether a tenant knew or should have known of criminal activity on the property. However, in Minn. Stat. § 504B.171 (formerly § 504.181) provides for the defense in cases alleging unlawfully allowing controlled substances, allowing prostitution or prostitution-related activity, allowing the unlawful use or possession of firearms, or allowing stolen property or property obtained by robbery on the premises, the common area, or curtilage. *See* discussion, *infra*, VI.G.16 (unlawful activity). For more on curtilage and common areas, *see* discussion, *supra*, at I.D.12.

In *Department of Housing and Urban Development v. Rucker*, 535 U.S. 125, 130 (2002), the United States Supreme Court held that the statute "*requires* lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity." The court rejected that the statute included a tenant knowledge requirement. *Id*. at 130-36. However, the public housing authority *is not required to evict* even when the tenant violat es the lease provision. "The statute does not *require* the eviction of any tenant who violated the lease provision. Instead, it entrusts that decision to the local public housing authorities, who are in the best position to take account of, among other things, the degree to which the housing project suffers from 'rampant drug- related or violent crime,' 'the seriousness of the offending action,' and 'the extent to which the leaseholder has ... taken all reasonable steps to prevent or mitigate the offending action.'" *Id*. at 133-34, *citing* 42 U.S.C. § 11901(2) and 66 Fed. Reg., at 28803.[16]

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[16]In *Charlotte Housing Authority v. Patterson*, 120 N.C. App. 552, ___, 464 S.E.2d 68, 72 (1995), the court held that even though the statute and lease did not mention personal fault, the legislative history of the amendments revealed

> a clearly expressed legislative intent that eviction is appropriate only if the tenant [to be evicted] is personally at fault for the breach of the lease ... [and] makes clear that Congress did not intend the statute to impose a type of strict liability whereby the tenant is responsible for all criminal acts regardless of her knowledge or ability to control them.

Id. at ___, 464 S.E.2d at 72. The court held that eviction of the tenant-head of household was not appropriate for actions of an adult son and household member, where the household head had no knowledge of the act and had no reason to know that her son would commit the act, and the public housing authority consented to adding son to lease following investigation. *Id.*

Charlotte Housing Authority v. Fleming, 473 S.E.2d 373 (N.C. Ct. App. 1996) (public housing: no good cause to evict tenant where tenant's adult son, who did not live with her, was arrested on the grounds of the building and charged with the possession of cocaine and the tenant had not invited him to the grounds and did not invite him into her apartment; tenant's son was not her guest); *Syracuse Housing Authority v. Boule*, 172 Misc. 2d 254, 257-59, 658 N.Y.S.2d 776, 778-80 (N.Y. City Ct. 1996) (following *Patterson*); *Housing Authority of New Orleans v. Green*, 657 S.2d 552, 555-56 (La. Ct. App. 1995) (Ciaccio, J., dissenting). *See* Mock, *Punishing the Innocent: No-Fault Eviction of Public Housing Tenants for the Actions of Third Parties*, 76 TEXAS L. REV. 1495, 1519-20 (May 1998) *Contra*; *Housing Authority of New Orleans v. Green*, 657 S.2d at 554. *See also One Strike*

(iii) Elements of criminal activity eviction

In cases where a public housing authority alleges criminal activity or drug-related criminal activity, it is important to determine whether the activity meets all of the elements of the statute.

1. criminal activity that

    a. threatens
    b. the health, safety, or right to peaceful enjoyment
    c. of the premises
    d. by other tenants (regulation adds employees of the PHA)

2. or any drug-related

    a. criminal activity
    b. on or off such premises (regulation states on or near such premises)
    c. engaged in
    d. by a public housing tenant,
    e. any member of the tenant's household, or any guest or other person
    f under the tenant's control

See L. McDonough and M. MacCreight, *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REVIEW 55 (May/June 2007) and updated slide show.

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and You're Out, at 8 (Appendix 307); Office of Communications, the White House, *Cisneros Briefing on Public Housing Policy* at 4-6, 1996 WL 139523 (Mar. 27, 1996); *Review Finds Flaws in Get-Tough Rules for Public Housing*, USA TODAY, Tuesday, December 9, 1997, at 4A. *See generally* E. Lauer, *Housing and Domestic Abuse Victims: Three Proposals for Reform in Minnesota*, 15 LAW AND INEQUALITY 471 (Spring 1997).

Housing Opportunities Commission of Montgomery County v. Lacey, 322 Md. 56, 585 A.2d 219 (1991) (Appendix 18.I) (public housing tenant was not in constructive possession of illegal drugs found in her adult son's bedroom, and other items found were not paraphernalia intended to be used in conjunction with illegal drugs); *Brown v. Popolizio*, 569 N.Y.S.2d 615, 623 (Appendix Div. 1991); *Chicago Housing Authority v. Rose*, 203 Ill. Appendix 3rd 208, 560 N.E.2d 1131 (1990) (Appendix 18.J) (evidence satisfied tenant's burden of rebutting presumption that tenant knew of presence of guns in public housing apartment; hearsay testimony of officer about statements of confidential informant properly excluded); *Moundsville Housing Authority v. Porter*, 370 S.E.2d 341, 343 (W. Va. 1988) (disruptive assault on tenant by boyfriend was not good cause to evict tenant, where particular disturbance was not a repeat occurrence and was beyond tenant's control, and where tenant took action to avoid another occurrence); *Maxton Housing Authority v. McLean*, 313 N.C. 277, 283, 329 S.E.2d 290, 294 (1985) (ejection of tenant where there is no causal nexus between the eviction and her own conduct "would indeed shock one's sense of fairness"); *Tyson v. N.Y. City Housing Authority* 369, F. Supp. 513, 520-21 (S.D.N.Y. 1984) (alleged conduct of public housing authority in evicting tenants because of crime committed by tenants' emancipated children, if proven, would violate federal regulations); *Spence v. Gormley*, 387 Mass. 258, 439 N.E.2d 741 (1982) (tenant should not be evicted if the special circumstances are present to negate the inference that the tenant could have averted the lease violation). *See* National Housing Law Project, *Security, Crime and Drugs* (1990) (Appendix 20.C).

(a) Criminal activity

The activity must be "criminal." In *Housing and Redevelopment Authority of Duluth, Inc. v. Adams*, No. C7-99-601573 (Minn. Dist. Ct. 6th Dist. Sep. 13, 1999) (Judge Sweetland) (Appendix 395), a court concluded that since a crime is conduct prohibited by statute and for which the actor may be sentenced to imprisonment with or without a fine under Minn. Stat. 609.02, Subd. 1, municipal ordinance violations are not crimes because ordinances are not state statutes, and statutory petty misdemeanors are not crimes because of the limitation on sentencing. The court dismissed the action where petty misdemeanor drug charges against the tenant were dismissed, and the tenant pled guilty to an amended charge of assault under a municipal ordinance. The court added that there was no serious or repeated violations of a material term of the lease where the arrest took place one mile away from the premises, and the event did not constitute criminal activity.

Several marijuana offenses are petty misdemeanors and not criminal activity under state law. *See* discussion, *supra*, at VI.G.10.b.(3)(a0).

(b) Location of criminal activity not drug-related

Some leases did not include regulatory changes from "on or near the premises" to "on or off the premises." *Minneapolis Public Housing Authority v. _____,* No. HC-1001229506 (Minn. Dist. Ct. 4th Dist. Jan. 25, 2001) (Appendix 541) (dismissal where activity occurred off-site, and the lease did not incorporate regulatory change in focus from "on or near" to "on or off" the property); *Maryland Park Apartments v. _____,* No. CX-02-4044 (Minn. Dist. Ct. 2nd Dist. June 17, 2002) (Appendix 533) (federal law and *Rucker* do not preclude Minnesota statute with greater tenant protection; landlord failed to prove criminal activity occurred at or near tenant's residence, landlord failed to prove that tenant knew or had reason to know of criminal activity, landlord waived breach by accepting rent).

Activity off of the property may constitute a threat to tenant. *Minneapolis Public Housing Authority v. _____,* No. HC-1020213524 (Minn. Dist. Ct. 4th Dist. June 11, 2002) (Appendix 540) (eviction of tenant who shoplifted and assaulted a store owner off of the property).

In *Allegheny County Housing Authority v. Branch,* No. LT-15-000037 (Pa. Ct. of Common Pleas July 20, 2015) (Appendix 721), relying *on Housing Authority of the City of Pittsburgh v. Mitchell,* LT-14-000379 (Pa. Ct. of Common Pleas Nov. 12, 2014) (Appendix 720), the court held the tenant may not be evicted from public housing based on the incidents in McKeesport and the related criminal court proceedings. The landlord did not address the tenant's argument that a Section 8 lease has more expansive grounds for eviction and a public housing eviction requires a showing that the criminal activity occurred in the vicinity of defendant's residence.

In *Housing Authority of the City of Pittsburgh v. Mitchell*, LT-14-000379 (Pa. Ct. of Common Pleas Nov. 12, 2014) (Appendix 720), the court granted the tenant's motion for partial summary judgment holding that any claims raised by the landlord based on the criminal activity taking place more than one and one-half miles from the premises are stricken. The court ruled the use of the term "in the immediate vicinity of the premises" limits the responsibilities of the landlord to protecting the neighborhood where the property is located. The court held that the rulings in Powell v. Housing Authority of the City of Pittsburgh, 760 A.2d 473 (Pa. Cmmw. Ct. 2000) with respect to the "immediate

vicinity" requirement continues to be the law of Pennsylvania.

(c) Acts by others

In *Minneapolis Public Housing Authority v. Folger*, No. UD-1971114532 (Minn. Dist. Ct. 4th Dist. Jan. 23, 1998) (Appendix 346A), the tenant's guest consumed drugs and died of an overdose while the tenant was sleeping. The court concluded that the public housing authority did not prove that the tenant violated the lease, as the tenant did not "allow" his guest to use drugs or engage in criminal activity, and the tenant did not violate Minn. Stat. § 504.181 (now § 504B.171) because the tenant did not know or have reason to know of his guest's prohibited activity. The decision was affirmed on judge review (Minn. Dist. Ct. 4th Dist. Apr. 13, 1998) (Appendix 346B) (Oleisky, J.).

In *Housing Authority of Danbury v. Danzy,* No. SP 999063, 1999 Conn. Super LEXIS 973 (Conn. Sup. Ct. April 12, 1999), the court held the landlord has not met its burden of proof to prove a lease violation. The lease provides that the tenant shall be obligated not to provide accommodations for borders or lodgers. The lease also provides that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in any drug-related activity on or near such premises. The court determined that there was no credible evidence that Carlton Martin, who was arrested for drug activity and gave the police the tenant's address as his residence (but was not named on the lease), was a lodger or member of the household after the tenant was allowed to cure her alleged defect. Further, the court found there was no evidence that Mr. Martin was a guest on the day of his arrest or under the tenant's control. Finally, the alleged drug activity did not occur in the tenant's apartment or anywhere near the premises.

(d) Proof of criminal activity

The landlord must prove the activity. In *Public Housing Agency of the City of St. Paul v. Edwards,* No. 62-HG-CV-09-1448 (Minn. Dist. Ct. 2nd Dist. Oct. 28, 2009) (Appendix 747), the public housing landlord filed an eviction action for possession of a small amount of marijuana at a public housing unit of another tenant on another property. The court concluded that the possession was a petty misdemeanor and not a crime subject to eviction, noting that the landlord referred to its occupancy policies that the tenant never received and the landlord did not introduce into evidence. Earlier, in *Public Housing Agency of the City of St. Paul v. Edwards,* No. 62-HG-CV-09-1448 (Minn. Dist. Ct. 2nd Dist. Aug. 17, 2009) (Appendix 748), the court denied the tenant's motion for suppression, concluding that while the search was unconstitutional, the exclusionary rule did not apply to civil cases. On appeal, in *Pub. Hous. Agency v. Edwards,* No. A09-2085, 2010 Minn. App. Unpub. LEXIS 972, 2010 WL 3544770 (Minn. Ct. App. Sep. 14, 2010) (unpublished), affirmed the district court on the issue of eviction but did not rule on the seizure. The court noted it could not rely on occupancy policies never submitted into evidence.

See Minneapolis Public Housing Authority v. _____, No. HC-051101509 (Minn. Dist. Ct. 4th Dist. Jan. 24, 2006) (Appendix 671) (eviction dismissed where landlord did not prove that tenant possessed the illegal drugs Khat in another apartment where others possessed it); *Minneapolis Public Housing Authority v. _____,* No. HC-1051101510 (Minn. Dist. Ct. 4th Dist. Jan. 9, 2006) (Appendix 759) (landlord did not prove use of illegal drug Khat where police only observed defendant eating green substance that defendant claimed was lettuce in another apartment where Khat was found and defendant was not charged with a crime); *Minneapolis Public Housing Authority v. _____*, No. HC 10306313566 (Minn. Dist. Ct. 4th Dist. July 31, 2003) (Appendix 539) (Judge Doty) (public housing eviction denied and expunged; landlord did not prove that police officer properly learned about marijuana where officer

entered apartment with consent of tenant to look for trespassed person, and did not prove that marijuana was in plain view; small amount of marijuana was not criminal activity; landlord's knowledge of alleged altercation was from a police report whose authors did not testify, and did not connect tenant to the incident); *Southgate Mobile Village v. _____,* No. HC-0205315400 (Minn. Dist. Ct. 4th Dist. July 2, 2002) (plaintiff did not prove drugs were on the property) (Appendix 575).

Other decisions holding for the tenant include *Minneapolis Public Housing Authority v. Her*, No. UD-1981016519 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 349) (Action dismissed where Public Housing Authority did not prove that a household member's action, conduct or behavior gave rise to or otherwise enabled a drive by shooting to occur on the premises, the PHA did not prove that disturbances between children of two different households was material, and PHA did not prove that the tenant's child had written intimidating materials in a neighbor's mailbox); *Housing and Redevelopment Authority of Duluth v. Henski*, No. C6-96-601484 (Minn. Dist. Ct. 6th Dist. Sep. 4, 1996), *affirmed* No. C7-96-1872) (Minn. Ct. App. Feb. 11, 1997) (Appendix 261) (Lower court found drugs present but no evidence that tenant knew or participated in drug activity and tenant excluded offender from the property; affirmed by unpublished order not to be cited as precedent); *Minneapolis Public Housing Authority v. Eberhardt*, No. UD-1970204642 (Minn. Dist. Ct. 4th Dist. Mar. 17, 1997) (Appendix 275) (Public housing: landlord did not prove that elderly tenant knew or had reason to know of drug possession by guests where tenant admitted knowledge of guests' drug use but denied knowledge of use or possession in his apartment, there was no evidence that the tenant knew of the guests' drug use or the tenant's familiarity with drugs, and the small amount of drugs found; distinguished *Minneapolis Public Housing Authority v. Greene*; six day notice was unreasonable where there was no evidence of a threat to others' safety); *Minneapolis Public Housing Authority v. Henry*, No. UD-1970122503 (Minn. Dist. Ct. 4th Dist. May 23, 1997) (Appendix 276) (Public housing: affirmed referee decision that elderly tenant did not violate state drug covenant where police found trace amount of drugs and paraphernalia with no evidence of the tenant's involvement or knowledge of drug activity; possession of drug paraphernalia with intent to sell or use it is not drug related *criminal* activity under federal regulations); *Minneapolis Public Housing Authority v. Lafayette*, No. UD-190627501 (Minn. Dist. Ct. 4th Dist. Aug. 7, 1997) (Appendix 277) (Discovery of illegal drugs in common area near where tenant had been did not prove possession of illegal drugs); *Minneapolis Public Housing Authority v. Drumgoole*, No. UD-1970325514 (Minn. Dist. Ct. 4th Dist. Jul. 2, 1997) (Appendix 274) (Public Housing: landlord could not evict tenant for alleged assault at another building operated by landlord which was not in the surrounding neighborhood); *Minneapolis Public Housing Authority v. Brown*, No. UD-1960306523 (Minn. Dist. Ct. 4th Dist. May 16, 1996) (Appendix 235) (landlord did not prove that tenant engaged in drug-related criminal activity on or near the premises); *Housing Authority of Decatur v. Brown*, 180 Ga. App. 483, 349 S.E.2d 501 (1986) (Eviction would be a disproportionate penalty for the activity, considering all of the circumstances, for misdemeanor drug offense).

Decisions holding for the public housing authority include *Minneapolis Public Housing Authority v. Holloway*, No. C0-95-391 (Minn. Ct. App. Aug. 15, 1995), FINANCE AND COMMERCE 46 (Aug. 18, 1995) (Appendix 145) (unpublished: rejects reasonably foreseeability standard; tenant responsible for drive by shooting at party while she was out of town, and argument with boyfriend in which he damage the home); *Minneapolis Public Housing Authority v. Greene*, 463 N.W.2d 588 (Minn. Ct. App. 1990) (drugs on the property); *MPHA v. Rozas*, C0-95-956 (Minn. Ct. App. Jan. 9, 1996), FINANCE AND COMMERCE at 30 (Jan. 12, 1996) (Appendix 232) (unpublished: substance abuse and unauthorized resident); *Minneapolis Public Housing Authority v. Barron*, No. C9-95-454 (Minn. Ct. App. Aug. 22, 1995), FINANCE & COMMERCE at 41 (Aug. 25, 1995) (Appendix 158) (unpublished: public housing, eviction for seizure of drugs; dissent concluded that evidence did not support conclusion that the tenant knew or should have known about drugs); *Minneapolis Public Housing Authority v.*

Demmings, No. C5-94-2045 (Minn. Ct. App. May 9, 1995), FINANCE & COMMERCE at 20 (May 12, 1995) (Appendix 159) (unpublished: public housing, possession and sale of illegal drugs); *MPHA v. Scott,* UD-1950623520 (Minn. Dist. Ct. 4th Dist. Aug. 1, 1995) (Appendix 230) (analyzed conduct specifically under criminal statute and also noted that a crime in and of itself is not good cause); *Minneapolis Public Housing Authority v. Greenlaw*, No. UD-1940413507 (Minn. Dist. Ct. 4th Dist. June 8, 1994); *Minneapolis Public Housing Authority v. Smith*, No. UD-1940304518 (Minn. Dist. Ct. 4th Dist. Mar. 25, 1994).

(iv) Notice

The landlord must provide proper notice to the tenant. *See* discussion, *supra*, at VI.F.10.c. In *Minneapolis Public Housing Authority v. _____,* No. 050920503 (Minn. Dist. Ct. 4th Dist. Oct. 4, 2005) (Appendix 670), the court dismissed the eviction where the landlord's complaint alleged criminal activity without a specific factual basis.

(v) Waiver

Violations may be waived. *Maryland Park Apartments v. _____,* No. CX-02-4044 (Minn. Dist. Ct. 2nd Dist. June 17, 2002) (Appendix 533) (federal law and *Rucker* do not preclude Minnesota statute with greater tenant protection; landlord failed to prove criminal activity occurred at or near tenant's residence, landlord failed to prove that tenant knew or had reason to know of criminal activity, landlord waived breach by accepting rent).

(vi) Isolated incident

Courts have looked at the significance of the activity, and where it is isolated. *Bennington Housing Authority v. _____*, No. 203-6-02 (Vt. Super. Ct. Jan 14, 2003) (Appendix 466) (public housing eviction dismissed; isolated incident of tenant's visiting son shooting an owl protected by the Endanger Species Act; lease gave landlord authority to evict but did not mandate eviction; landlord failed to demonstrate meaningful consideration of tenant's ability to supervise son in future or consequences of eviction on innocent siblings).

(vii) Coordination with criminal defense

Eviction defense should be coordinated with criminal defense. In *Minneapolis Public Housing Authority v. _____,* No. HC 1020213525 (Minn. Dist. Ct. 4th Dist. Mar. 21, 2002) (Appendix 544), the parties agreed to a continuance of 19 days for trial. The landlord then sought another continuance beyond the date of a criminal trial concerning the tenant's son, and when it could not locate a witness. When the court would not grant another continuance, the landlord moved to dismiss without prejudice. The court dismissed the action with prejudice, holding that a dismissal without prejudice would circumvent the statutory limitation on continuances to 6 days.

(viii) Interplay between federal and state statutes

State statutes provide that some marijuana use is not criminal, *see* discussion, *infra*, at VI.G.10.b.3.(a0), and tenants who do not know or have reason to know of drug activity have a defense to eviction. *See* discussion, *supra*, at VI.G.16.

Public housing authorities may argue that the state statutes are preempted by the federal statute

and regulation. Most attempts have been unsuccessful. *See* discussion, *supra*, at I.A.5.

(b) Section 8 certificates and vouchers

While *Minneapolis Public Housing Authority v. Lor*, 591 N.W.2d 700 (Minn. 1999) specifically only applies to public housing, it may be applied to Section 8 certificates and vouchers as well, given the similar statutory and regulatory provisions, as well as the legislative history ignored by the *Lor* court. The Cranston-Gonzalez National Affordable Housing Act of 1990 amended the eviction statues for Section 8 Existing Housing Certificate and Voucher subsidized housing programs to require leases which state as follows:

> any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.

42 U.S.C. § 1437f(d)(1)(B)(iii). The committee report discussed the assumptions underlying the new lease provision requirement for Section 8 Existing Housing Certificate and Voucher housing:

> Termination of tenancy. - The bill includes language to permit evictions from Section 8 Existing Housing for criminal activity, including drug-related criminal activity. It is based on a similar provision contained in the Anti-Drug Abuse Act of 1988 governing public housing leases .... *The Committee assumes that if the tenant had no knowledge of the criminal activity or took reasonable steps to prevent it, then good cause to evict the innocent family members would not exist.*

S. Rep. No. 316, 101st Cong., 2d Sess. 179 (1990), *reprinted in* 1990 U.S.C.C.A.N. 5763, 5889 (Appendix 306) (emphasis added). The regulations provide that

> Any of the following types of criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control shall be cause for termination of tenancy: (1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; (2) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or (3) Any drug-related criminal activity on or near the premises.

24 C.F.R. § 982.310(c).

As with cases public housing authority, where a Section 8 certificate or voucher landlord alleges criminal activity or drug-related criminal activity, it is important to determine whether the activity meets all of the elements of the statute.

1. any criminal activity

    a. that threatens
    b. the health, safety, or right to peaceful enjoyment
    c. of the premises

d. by other tenants,

2. any criminal activity

a. that threatens
b. the health, safety, or right to peaceful enjoyment
c. of their residences
d. by persons residing
e. in the immediate vicinity of the premises,

3. any drug-related

a. criminal activity
b. on or near such premises,

4. engaged in

a. by a tenant of any unit,
b. any member of the tenant's household, or any guest or other person
c. under the tenant's control

See L. McDonough and M. MacCreight, *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REVIEW 55 (May/June 2007) and updated slide show.
http://povertylaw.homestead.com/WaitAMinute.html

See also American Apartment Management Co. v. Phillips, 653 N.E.2d 834 (Ill. Ct. App. 1995) (Section 8 certificate, affirmed dismissal, holding provision under federal regulation governing conduct of "a guest or other person under the tenant's control" was ambiguous, concluding that the guest must be under the tenant's control; tenant did not have knowledge of drug-related criminal activity of one-time guest); *Diversified Realty Group, Inc. v. Davis*, 628 N.E.2d 1081 (Ill. Appendix Ct. 1993) ("materiality" and "good cause" provisions of the federally assisted lease precluded the landlord from evicting the tenant where the facts indicated that the tenant was without any knowledge or fault for her guest's criminal conduct); *Henry v. Wild Pines Apts.*, 359 S.E.2d 237, 238 (Ga. Ct. App. 1987) (reversal of eviction of tenant based upon uninvited and unknown person firing a gun).

The requirements for criminal activity evictions under this program are similar to but a little different from the requirements for public housing criminal activity eviction, so a review of public housing case is helpful. *See* discussion, *supra*, at VI.G.10.b.(3)(a).

(c) HUD subsidized projects

24 C.F.R. § 247.3, which covers most subsidized projects, provides for lease termination for

Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; any criminal activity that threatens the health, or safety of any on-site property management staff responsible for managing the premises; or any drug-related criminal activity on

or near such premises, engaged in by a resident, any member of the resident's household, or any guest or other person under the resident's control shall be grounds for termination of tenancy.

As with other types of subsidized housing, where landlord alleges criminal activity or drug-related criminal activity, it is important to determine whether the activity meets all of the elements of the statute.

1. Any criminal activity that

    a. threatens
    b. the health, safety, or right to peaceful enjoyment
    c. of the premises
    d. by other residents

2. any criminal activity that

    a. threatens
    b. the health, safety, or right to peaceful enjoyment
    c. of their residences
    d. by persons residing
    e. in the immediate vicinity of the premises

3. any criminal activity that

    a. threatens
    b. the health, or safety
    c. of any on-site
    d. property management staff
    e. responsible for managing the premises

4. any drug-related

    a. criminal activity
    b. on or near such premises

5. engaged in

    a. by a resident,
    b. any member of the resident's household, or any guest or other person
    c. under the resident's control

See L. McDonough and M. MacCreight, *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REVIEW 55 (May/June 2007) and updated slide show.
http://povertylaw.homestead.com/WaitAMinute.html

In *Apple Villa South LP v. _____*, No. 19Av-CV-2335 (Minn. Dist. Ct. Sept. 19, 2014) (Appendix 719), the landlord served the tenant in subsidized housing with a termination notice due to an alleged drug incident that occurred on the premises. The tenant failed to vacate the property, so the

landlord brought an eviction notice. The court held the landlord failed to prove good cause for termination of the lease where there was no seizure of any drugs or even the observation of any drugs, and the tenant's testimony was credible and unwavering that she burned sage but did not have any marijuana in the premises.

See Phillips Neighborhood Housing Trust v. Brown, 564 N.W.2d 573 (Minn. Ct. App. 1997) (Affirmed eviction of entire household when one co-tenant violated the lease by engaging in illegal drug activity), affirming *Phillips Neighborhood Housing Trust v. Brown*, No. UD-1960705508 (Minn. Dist. Ct. 4th Dist. Aug. 19, 1996) (Appendix 236) (Section 8 Moderate Rehabilitation Program: landlord proved that one co-tenant possessed drugs without the knowledge of the other co-tenant and family members, but the other co-tenant was responsible for his actions justifying eviction of the entire household); *Hodess v. Bonefont*, 401 Mass. 693, __, 519 N.E.2d 258, 260 (1988) (tenant could not be evicted based upon son's isolated break-in and theft in another unit and storage of stolen items in tenant's apartment absent evidence that tenant could have reasonably foreseen and prevented that conduct); *ABC Management v. Gamble,* No. 83 Ap-788 (Ohio Ct. App. Dec. 15, 1983) (Appendix 68) (reversing eviction based upon property damage caused by non-resident father of tenant's child, and uninvited visitor); *Associated Estates Corp. v. Bartell*, 24 Ohio Appendix 3d 6, __, 492 N.E.2d 841, 847 (1985) (reversing judgment of eviction due to property damage and disturbance caused by uninvited visitors, citing *Gamble*); *Johnson v. Acres*, No. 94-XX-10 (Kty. Cir. Ct. Warren Cty. June 22, 1994) (Appendix 156) (subsidized project, no material noncompliance with lease where tenant did not permit and was unaware of illegal activity, and called police to remedy the situation).

The requirements for criminal activity evictions under these programs are similar to but a little different from the requirements for public housing criminal activity eviction, so a review of public housing case is helpful. *See* discussion, *supra*, at VI.G.10.b.(3)(a).

(d) Rural Housing and Community Development Service (formerly Farmers Home Administration) subsidized housing projects

The regulations for RHCDS programs contains the most protection for tenants facing criminal activity claims. 7 C.F.R. pt. 3560, subpt. D (2006); see in particular *id.* §§ 3560.156(b)(15) (lease provision regarding drug violations), 3560.159(a)(1)(iii) (termination of tenancy for drug violations on the premises), 3560.159(d) (criminal activity); 69 Fed.Reg. 69032 (Nov. 26, 2004) (revision of regulations).

Tenant defenses to eviction from Rural Housing Service–subsidized housing programs include the following:

1. The tenant, household member, guest,or person under the tenant’s control did not admit to and was not convicted for involvement with illegal drugs. *Id.* § 3560.159(a)(1)(iii).

2. The tenant, household member, guest,or someone under the tenant’s control did not conduct illegal drug activity on the premises. *Id*.

3. The tenant took reasonable steps to prevent or control illegal drug activity committed by a nonadult household member; such steps might include that the person is either actively seeking or receiving assistance through a counseling or recovery program, is complying with court orders related to a drug violation, or completed a counseling or recovery program within the time frames specified by the owner. *Id.* § 3560.156(c)(15).

4. The adult person conducting the illegal drug activity vacated the unit within the time frames established by the landlord and did not return to the premises without the landlord's prior consent. *Id.* § 3560.156(b)(15).

Before terminating the lease, the owner must give the tenant written notice of the violation and give the tenant an opportunity to correct the violation. *Id.* § 3560.159(a);

See L. McDonough and M. MacCreight, *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REVIEW 55 (May/June 2007) and updated slide show.
http://povertylaw.homestead.com/WaitAMinute.html

(e) Search and seizure

See discussion, *infra*, at VI.G.16.h.

(f) Other criminal law defenses

See discussion, *infra*, at VI.G.16.i.

(g) Admissibility of plea from criminal action

See discussion, *infra*, at VI.G.16.j.

(h) Crime-free ordinances

Several cities have pass ordinances requiring landlord to use "crime-free" lease addendums and to evict tenants who violate them. *See* City of Plymouth, Crime Free Multi-Housing.
http://www.plymouthmn.gov/departments/public-safety/police-/programs-services/crime-free-multi-housing

Where the ordinances and lease provisions are less protective of tenants than state law or federal law when applies to public and subsidized housing tenants, they might be preempted. *See See* discussion, *supra*, at I.A.4. (Preemption of Ordinances by State Statutes), I.A.5. (Preemption of State Statutes and Local Ordinances by Federal Law).

(4) Other actions of third parties

One issue that is litigated often in evictions is whether good cause exists where the non-criminal actions of third parties, including other household members, guests, and strangers, are at issue. Counsel should argue that tenants should not be evicted for events that the tenant could not reasonably foresee, prevent or control.

Minnesota courts remain divided on when the actions of one household member or guest justify eviction of the remaining household members.

(a) Decisions holding for the tenant include:

(1) Children

Ford v. _____, No. HC-1020325505 (Minn. Dist. Ct. 4th Dist. Apr. 26, 2002) (Appendix 500) (Section 8 voucher, plaintiff failed to prove that loud cars belonged to tenant's guests, that defendant knew or should have known that guests had firearms, that children hanging around the property were defendant's guests, that trash in the yard was from defendant's apartment, that a basement electrical fire resulted from defendant's conduct, that the notice of intent to condemn resulted from defendant's conduct, and that the smell of marijuana came from defendant's apartment; plaintiff failed to allege drug use with any particularity; action dismissed and defendant awarded costs and disbursements); *RFT & Assoc's. v. Smith*, 419 N.W.2d 109 (Minn. Ct. App. 1988) (Section 8 Existing Housing Certificate: no good cause for eviction based on child of tenant playing with fire, where landlord did not show that the lease had been violated, that a police or fire report had been filed, or that property was damaged); *Cardona v. Franco*, 699 N.Y.S.2d 383 (N.Y. App. Div. Dec. 9, 1999) (Public housing tenants breach of settlement agreement where excluded adult son visited while the tenant was away was a *de minimum* violation with respect to an elderly and disabled 30 year resident.; *Minneapolis Public Housing Authority v. Her*, No. UD-1981016519 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 349) (Action dismissed where Public Housing Authority did not prove that a household member's action, conduct or behavior gave rise to or otherwise enabled a drive by shooting to occur on the premises, the PHA did not prove that disturbances between children of two different households was material, and PHA did not prove that the tenant's child had written intimidating materials in a neighbor's mailbox); *Dover Hill Co. v. Morris*, No. UD-1960705514 (Minn. Dist. Ct. 4th Dist. Jul. 31, 1996) (Appendix 233) (Section 8 Project: landlord did not prove that ten year old son of tenant assaulted another boy by inappropriately pretending to use a knife against himself; no express finding of disability but implication of disability; landlord did not work with tenant to facilitate resolution of any problems; future incidents taken with this event in considering future use of community resources, may constitute good cause for eviction; a criminal conviction is not necessary to prove criminal activity); *Anoka County Community Action Program, Inc. v.___*, No. C9-94-12587 (Minn. Dist. Ct. 10th Dist. Dec. 6, 1994) (Appendix 155) (Section 8 certificate, no serious or repeated violations or other good cause where landlord alleged that tenant did not supervise children at all times, tenant's guests parked in the parking lot without inconveniencing other tenants, landlord did not prove that tenant had anything to do with another person's threat to management, and tenant was a victim of a domestic assault by her ex-boyfriend and had every right to call the police);

(2) Guests

Minneapolis Public Housing Authority v. Folger, No. UD-1971114532 (Minn. Dist. Ct. 4th Dist. Jan. 23, 1998) (Appendix 346A) (the tenant's guest consumed drugs and died of an overdose while the tenant was sleeping. The court concluded that the public housing authority did not prove that the tenant violated the lease, as the tenant did not "allow" his guest to use drugs or engage in criminal activity, and the tenant did not violate Minn. Stat. § 504.181 (now § 504B.171) because the tenant did not know or have reason to know of his guest's prohibited activity)(Minn. Dist. Ct. 4th Dist. Apr. 13, 1998) (Appendix 346B) (Oleisky, J.) (affirmed on judge review); *Housing Authority of Trumann v. Lively*, No. CA-99-543, 1999 WL 1203731 (Ark. App. Dec. 8, 1999) (the court affirmed the trial court decision for the public housing tenant where a person selling drugs from the residence was not a resident of the premises, the tenant had no knowledge of the activity, and when she became aware of it, she excluded the person from the property. The court also noted that the housing authority did not commence the action until five months after the criminal activity occurred); *Minneapolis Public Housing Authority v. Eberhardt*, No. UD-1970204642 (Minn. Dist. Ct. 4th Dist. Mar. 17, 1997) (Appendix 275) (Public housing: landlord did not prove that elderly tenant knew or had reason to know of drug possession by guests where tenant admitted knowledge of guests' drug use but denied knowledge of use or possession in his apartment, there was no evidence that the tenant knew of the guests' drug use or the tenant's familiarity with drugs, and the small amount of drugs found; distinguished *Minneapolis Public Housing Authority v. Greene*;

six day notice was unreasonable where there was no evidence of a threat to others' safety); *Uni-B Partnership v. Baker*, No. UD-1950404522 (Minn. Dist. Ct. 4th Dist. May 2, 1995) (Appendix 154) (Section 8 voucher, no serious or repeated violations where daughter's guest caused fire but his action was not foreseeable and daughter responded appropriately); *Teamster Retiree Housing of Minneapolis, Inc. v. Petroske*, No. UD-1960919515 (Minn. Dist. Ct. 4th Dist. Nov. 7, 1996) (Appendix 237) (Section 8 new construction and Section 202 elderly and handicapped housing: single argument between mentally disabled adult son-guest of tenant and adult son-guest of neighboring tenant, and tenant's failure to keep his son off the premises was not a substantial lease violation or repeated minor lease violations affecting livability, health, safety or quiet enjoyment); *Anoka County Community Action Program, Inc. v.___*, No. C9-94-12587 (Minn. Dist. Ct. 10th Dist. Dec. 6, 1994) (Appendix 155) (Section 8 certificate, no serious or repeated violations or other good cause where landlord alleged that tenant did not supervise children at all times, tenant's guests parked in the parking lot without inconveniencing other tenants, landlord did not prove that tenant had anything to do with another person's threat to management, and tenant was a victim of a domestic assault by her ex-boyfriend and had every right to call the police);

(3) Tenant not responsible for incident

Carriage House Apartments v. Boakai, No. UD--1920602507 (Minn. Dist. Ct. 4th Dist. Aug. 27, 1992) (Appendix 18.L) (tenant not responsible for fight and took actions to resolve the problem);

(4) Victim

West Bank Homes v. McGregor, No. UD-18912121520 (Minn. Dist. Ct. 4th Dist. Jan. 22, 1990) (Appendix 18.K) (being a victim of an assault does not constitute good cause, especially in light of the fact that defendant vigorously aided in a prosecution of the assailant); *Secretary of U.S. Dept. HUD v. Madison*, No. UD-1861104544 (Minn. Dist. Ct. 4th Dist. Nov. 18, 1986) (Appendix 17);

(5) Visitors

Minneapolis Public Housing Authority v. Jivens, No. UD-1920720559 (Minn. Dist. Ct. 4th Dist. Sept. 9, 1992) (Appendix 18.M) (public housing, tenant not responsible for illegal drugs on the premises brought by a person who was on the premises without the tenant's knowledge or consent, but with the consent of a guest of the tenant);

(b) Decisions finding good cause for eviction involving third parties include:

Minneapolis Community Development Agency v. Smallwood, 379 N.W.2d 554, 555-56 (Minn. Ct. App. 1985), petition for rev. denied, (Minn. Feb. 19, 1986) (tenant's family members damaging property and threatening others); *Borts Apartments, Inc. v. Muse*, No. UD-1981015524 (Minn. Dist. Ct. 4th Dist. Nov. 12, 1998) (Appendix 379) (Subsidized project eviction granted where tenant permitted guest to stay more than 30 days per year, tenant disturbances required security guard intervention, and there was minor damage to the unit.; *Hwang v. Jones*, No. UD-1960319526 (Minn. Dist. Ct. 4th Dist. Apr. 4. 1996) (Appendix 215) (Section 8 certificate: landlord proved that tenant and family members engaged in a pattern and history of disturbing and nuisance behaviors including excess guests, excess traffic, excess noise, a physical assault, and threats).

(5) Verification requirements

In all subsidized housing and public housing programs, except the Section 236 and 221(d)(3) Programs that do not receive federal assistance under another program, tenants who do not comply with the Social Security Number disclosure and documentation requirements and do not sign consent forms along the housing authority or landlord to verify employee income information may have their housing subsidy assistance terminated or may be evicted. 24 C.F.R. Part 5.

(6) Laundry list of allegations

It is not uncommon for a subsidized housing landlord or public housing authority to allege many events to justify eviction. The tenant should urge the court to look closely at the evidence supporting each allegation to determine whether they support eviction. *Bloomington Associates v. Wade*, No. UD-1990706521 (Minn. Dist. Ct. 4th Dist. Aug. 19, 1999) (Judge Francis Connolly) (Appendix 378) in HUD subsidized project eviction action, court individually analyzed each of the lease violation allegations, concluding that most were the fault and responsibility of other tenants or persons on the property not connected with the tenant; two remaining violations concerning noise and a children's curfew violations were separate minor violations which were not repeated; action dismissed, judgment entered for tenant, and costs and disbursements awarded to tenant).

(7) Tenant waiver of rights

In *Dakota County HRA v. Blackwell*, No. C7-98-1763 (Minn. Ct. App. May 4, 1999) (unpublished), the tenant requested an extension of a lease termination date by half a month, to which the landlord agreed. Before the date passed, the tenant rescinded the agreement, and the landlord filed an unlawful detainer action. The trial court held that the tenant did not violate her lease, but awarded the landlord specific performance for her failure to move. On appeal, the Court of Appeals affirmed, concluding that there was consideration for the agreement. The court rejected tenant claims of mistake, unconscionable, and public policy, and held that specific performance was an appropriate remedy. Judge Foley argued in dissent that specific performance rendering the tenant homeless ignored equity. The Minnesota Supreme Court reversed in *Dakota County HRA v. Blackwell*. 602 N.W.2d 243 (Minn. 1999), concluding that the district court abused its discretion in awarding specific performance. The court noted that a party does not have an automatic right to specific performance for breach of contract, and the district court must balance the equities and determine whether the equitable remedy is appropriate. The court added that its decision was limited to the facts presented.

(8) Pets

Minn. Stat. § 504B.261 (formerly § 504.36) provides:

> In a multiunit residential building, a tenant of a handicapped accessible unit, in which the tenant or the unit receives a subsidy that directly reduces or eliminates the tenant's rent responsibility, must be allowed to have two birds or one spayed or neutered dog or one spayed or neutered cat. A renter under this section may not keep or have visits from an animal that constitutes a threat to the health or safety of other individuals, or causes a noise nuisance or noise disturbance to other renters. The landlord may require the renter to pay an additional damage deposit in an amount reasonable to cover damage likely to be caused by the animal. The deposit is refundable at any time the renter leaves the unit of housing to the extent it exceeds the amount of damage actually caused by the animal.

c. *Section 8 Existing Housing Certificate and Voucher Programs*

The landlord may terminate the tenancy only for serious or repeated violations of the terms and conditions of the lease, violation of federal, state or local law which imposes obligations on the tenant in connection with the occupancy of the building, or other good cause. 24 C.F.R. § 982.310, 60 Fed. Reg. 34,704-05 (July 3, 1995) (replacing 24 C.F.R. § 882.215, 887.213). During the first year of the lease term, the owner may not terminate the tenancy for "other good cause", unless the termination is based on the conduct of the tenants.

Congress extended suspension of the requirement for good cause to terminate the lease at the end of its term, allowing termination without cause at expiration of the lease term. All pre-existing Section 8 leases included the old good cause requirement, and they should bind the landlord until a new lease is used by the parties. *Johnson v. Reed*, No. UD-1961001524 (Minn. Dist. Ct. 4th Dist. Nov. 7, 1996) Appendix 262) (Current endless lease still in effect was not modified by legislative changes; current lease could not be terminated upon 30 day notice without good cause). *See* discussion, *supra*, VI.F.10.

See discussion, *supra*, at VI.F.10. (Notice defenses) and VI.G.10.b. (Good cause for eviction). *See also* answer forms posted at Residential Eviction Defense in Minnesota, and Other Housing Law Materials.
http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html#anchor_10

d. *Government subsidized housing projects*

In most government subsidized housing projects, the landlord may terminate the tenancy only for material noncompliance with the rental agreement, material failure to carry out obligations under any state, landlord and tenant law, or other good cause. 24 C.F.R. Part 247 (1995). Material noncompliance includes (1) one or more substantial violations of the rental agreement, and (2) repeated minor violations which disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises, interfere with the management of the project, or have an adverse financial affect on the project. Nonpayment of rent or any other financial obligation under the lease is a substantial violation of the lease. Failure to timely supply all required information on income and family composition also is a substantial lease violation. Payment of rent after the due date but within a grace period shall constitute a minor violation.

See discussion, *supra*, at VI.F.10. (Notice defenses) and VI.G.10.b. (Good cause for eviction). *See also* answer forms posted at Residential Eviction Defense in Minnesota, and Other Housing Law Materials.
http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html#anchor_10

e. *Public housing*

A public housing authority may terminate the lease only for serious or repeated violations of the material terms of the lease, or for other good cause. 24 C.F.R. Part 966 (1995). Failure to pay rent is a serious violation of a material lease term. However, good cause does not exist if the tenant can show lack of fault. *See Maxton Housing Authority v. McClean*, 313 N.C. 277, 328 S.E.2d 290 (1985); *Housing Authority of St. Louis County v. Boone*, 747 S.W.2d 311 (Mo. Ct. App. 1988). Failure of the tenant to fulfill tenant obligations required by the regulations to be in the lease also is a serious lease violation.

See discussion, *supra*, at VI.F.10. (Notice defenses) and VI.G.10.b. (Good cause for eviction). *See also* answer forms posted at Residential Eviction Defense in Minnesota, and Other Housing Law Materials.

http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html#anchor_10

Public Housing Authorities often use information obtained from the tenant in a case against the tenant. It appears that Public Housing Authorities are covered by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13. The Act applies to state agencies, statewide systems, and political subdivisions, including counties, cities, boards, commissions, authorities created by law, ordinance or charter provision, community action agencies, and nonprofit social service agencies performing services under contract to any political subdivision, statewide system or state agency. Minn. Stat. §§ 13.01-13.02. Generally, data collected on recipients of benefits or services of housing programs is private. Minn. Stat. § 13.31. Other Public Housing Authority data classifications are contained in Minn. Stat. § 13.54.

When an individual is asked to supply private or confidential data concerning the individual, the individual must be informed of the purpose and intended use of the data, whether the individual may refuse or is legally required to supply that data, any known consequence arising from supplying or refusing to supply the data, and the identity of other persons or entities authorized by law to receive the data. Minn. Stat. § 13.04. The tenant should be able to raise as a defense in an eviction action that the Public Housing Authority collected private or confidential information in violation of the statute. Either in requesting dismissal of the action, or exclusion of the information obtained.

f. *Low Income Housing Tax Credit properties*

In *Cimarron Village Townhomes, Ltd. v. Washington ,* No. C3-99-118, 1999 WL 538110 (Minn. Ct. App. July 27, 1999) (unpublished), the court ruled that Section 42 low income tax credit tenancies could not be terminated without cause, citing the clear language of 26 U.S.C. §§ 42(h)(6)(B)(i), 42(h)(6)(E)(ii)(I) as well as the legislative history.

In *Cimarron Village v. Washington,* 659 N.W.2d 811 (Minn. Ct. App. 2003), the court held that evidence of lease violations in a low income housing tax credit property, including numerous police calls, inadequate supervision of guest, and fraudulent application for parking permit, supported finding that landlord, who received federal income tax credits for providing low-income units, had requisite "good cause" to terminate tenancy, even if violations were not in material noncompliance with lease. The lease provided that a tenancy can be terminated for "police calls to an apartment for noise disturbances, domestic disputes, illegal substances and other non-medical reasons." While tenants who call the police for their own health and safety cannot be evicted under Minn. Stat. § 504B. 205, subd. 2(a)(2), the landlord could evict where a substantial number of police calls originated from other sources. By accepting late rent payments from tenants, landlord, who received federal income tax credits for providing low-income units, waived its right to rely on this violation as grounds for eviction; in order to rely on the late payments as a reason for eviction, landlord would have had to refuse a subsequent late payment.

In *Bool Partners Ltd. Partnership v. Lensing,* No. A15-1419, 2016 WL 2946084 (Minn. Ct. App. May 23, 2016) (unpublished), the low income housing tax credit property tenant was late on several payments and faced several eviction proceedings during two, one-year leases. At one point during second year of the lease, the landlord notified all tenants that those who continued to be late with payments would not have their leases renewed. The tenant still failed to make timely lease payments, and the landlord decided not to renew the lease. Later that year, the tenant asked for permission to install hardwood floors in her unit at her own expense because her autistic son and dog were urinating on the carpet. The landlord responded that it would be unwise for her to do so because her lease would not be renewed. The landlord gave confirmation of non-renewal to tenant fourteen days before the landlord

was notified of the tenant's discrimination charge for an alleged failure to accommodate her disabled child. The landlord obtained judgment in an eviction action, and tenant appealed. The Court of Appeals held that the landlord had good cause to terminate the tenancy due to the late payments, and that the landlord had a business reason for the non-renewal, which was not retaliatory. Further, the landlord had made his decision regarding termination of the tenancy before the tenant even mentioned the need to accommodate her child's needs with the hardwood flooring.

See discussion, *supra*, at VI.F.10. (Notice defenses) and VI.G.10.b. (Good cause for eviction). *See also* answer forms posted at Residential Eviction Defense in Minnesota, and Other Housing Law Materials.
http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html#anchor_10

g. *Violence Against Women Act (VAWA)*

The Violence Against Women Act (VAWA) bars evictions for lease violations which are the result of domestic violence, dating violence or stalking of the tenant or immediate family members. 42 U.S.C. §1437d (l). *See* Answers A3-8 for specific defenses.
http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html#anchor_10

In *Harbor View Phase II LP v. _____,* No. 69DU-CV-10-1346 (Minn. Dist. Ct. 6th Dist., St. Louis County, June 1, 2010) (Appendix 751) (Judge Harris), in a subsidized housing eviction for breach and rent, the court dismissed the breach claim where tenant's estranged husband damaged premises totaling $4200 while threatening tenant, allowing the tenant to redeem tenancy by paying rent in 7 days.

11. Manufactured (mobile) home park lot tenancies

A manufactured (mobile) home park is land on which two or more occupied mobile or manufactured homes are located and where facilities are open more than three seasons. Minn. Stat. § 327C.01, 327.14.

a. *Termination of tenancy*

The tenancy may be termination by the landlord only for the reasons specified in Minn. Stat. § 327C.09: (1) nonpayment of rent following ten days written notice; (2) violation of manufactured (mobile) home ordinances, rules and laws, following a reasonable time after written notice of noncompliance; (3) rule violations, after failure to cure following thirty (30) days written notice; (4) endangerment or substantial annoyance after notice; (5) repeated serious violations of the lease or certain laws, following written notice and warning and continued violation; (6) material misstatement in the application, if termination occurs within one year of when the tenant first paid rent; (7) improvement of the park, after ninety days written notice; and (8) park or lot closing, after nine months written notice. Relocation within the lot may be permitted in certain circumstances.

b. *Defenses*

(1) Inadequate notice period

Lea v. Pieper, 345 N.W.2d 267, 271 (Minn. Ct. App. 1984); Minn. Stat. § 327C.09. *But see D. H. Gustafson Co. v. Rasmussen*, No. C2-00-540, 2000 WL 1742111 (Minn. Ct. App. 2000) (unpublished: Minn. Stat. § 504B.171 (formerly § 504.181) on illegal activity applies to manufactured

home park lot rental, and does not require notice under § 327C.09).

In *Oakwood Terrace Estates v. Heins*, No. C6-99-3116 (Minn. Dist. Ct. 3rd Dist. April 5, 2000) (Judge Birnbaum) (Appendix 410) the case was dismissed where eviction notice did not comply with § 327C.09 where it failed to state dates of violations, specific items to be removed, and that future serious violations within the next six months would be treated as cause for eviction; the notice lapsed six months later; a second notice one year after the first violated § 327C.09 in that it failed to state violations were being treated as cause for eviction within six months of a previous notice, it claimed violations different from the previous notice, and failed to provide residents with an opportunity to cure within 30 days; and within 30 days of the second notice, the residents were in compliance with the lease rules and regulations.

(2) Notice did not specify the reasons for termination

Lea v. Pieper, 345 N.W.2d 267, 271 (Minn. Ct. App. 1984); Minn. Stat. § 327C.09. *See Rainbow Terrace, Inc. v. Hutchens*, 557 N.W.2d 618 (Minn. Ct. App. 1997) (Minn. Stat. Ch. 327C applies to manufactured (mobile) home park lot tenancies, regardless of whether the parties have a written lease; acceptance of rent after expiration of a notice to vacate waived the notice; notice to quit was invalid because it did not state the reason for termination, depriving the tenants of an opportunity to remedy the violation); *Miller v. Kreitz*, No. UD-1970103500 (Minn. Dist. Ct. 4th Dist. Feb. 6, 1997) (Appendix 271) (Eviction denied where notice for rule violation which did not give tenant right to cure the problem, landlord waived notice by acceptance of rent, and landlord did not prove tenant's failure to move van constituted an endangerment or annoyance to other residents, and did not prove loud music, bothering other persons, or trouble with the police as suggested by eviction); *Hedlund v. Potter,* No. C3-91-1383 (Minn. Dist. Ct. 10th Dist. Oct. 22, 1991) (App. 19.A) (generalized notice that was not specific as to time, date or nature of lease or rule violation and did not provide required time to remedy the conduct was not sufficient).

In *Haukos-Lund Partnership v. Borjon*, No. C3-98-632 (Minn. Dist. Ct. 1st Dist. Oct. 30, 1998) (Appendix 336) (Perkins, J.), the court entered judgment for the manufactured (mobile) home park lot tenant, where the landlord failed to give notices to the tenant specifying the date, approximate time, and nature of alleged parole violations, the landlord sought to evict the tenant for calling the police to respond to a domestic abuse situation, the tenant cured several alleged lease violations within a reasonable time and manner, there was no evidence that the tenant's day guests were unauthorized occupants, and the tenant's failure to cure a minor lease violation did not support eviction. The court noted that basing an eviction on a minor defect in manufactured (mobile) home skirting was unreasonable, even if the rule itself was reasonable. The court added that "if frequent day visitors are to be considered occupants as plaintiff suggests, this rule may be hinging on unreasonableness due to the fact that it has not been shown that disallowing frequent day guests is designed to promote the convenience, safety, or welfare of the residents."

In *Oakwood Terrace Estates v. Heins*, No. C6-99-3116 (Minn. Dist. Ct. 3rd Dist. April 5, 2000) (Judge Birnbaum) (Appendix 410) the case was dismissed where eviction notice did not comply with § 327C.09 where it failed to state dates of violations, specific items to be removed, and that future serious violations within the next six months would be treated as cause for eviction; the notice lapsed six months later; a second notice one year after the first violated § 327C.09 in that it failed to state violations were being treated as cause for eviction within six months of a previous notice, it claimed violations different from the previous notice, and failed to provide residents with an opportunity to cure within 30 days; and within 30 days of the second notice, the residents were in compliance with the lease rules and

regulations.

(3) The plaintiff has not alleged or proven cause for termination

In *Phillips v. Pepin Woods MHC, LLC,* No. 25-CV-16-2236 (Minn. Dist. Ct. 1st Dist., Goodhue County, Feb. 28, 2017) (Appendix 806), the manufactured home park gave the tenant, who owns manufactured home and rents the lot, a notice of "nonrenewal" of lease based on theory that lease was month-to-month and therefore tenant was tenant at will. The tenants sued for a declaratory judgment against the notice. The landlord argued that Minn. Stat. § 504B.135 (terminating tenancy at will) superceded § 327C.09, which provides exclusive bases for termination of lease for manufactured home lot. The court granted tenant's motion for summary judgment, ordering that the landlord identified no lawful basis to evict tenant and that the notice to vacate was a legal nullity.

(a) Violation of manufactured (mobile) home ordinances, rules and laws, following a reasonable time after written notice of noncompliance

In *Country View Mobile Home Park v. Oliveras,* No. A04-160, 2004 Minn. App. LEXIS 1044, 2004 WL 2049986 (Minn. Ct. App. Sept. 14, 2004) (unpublished), the Court affirmed judgment for the defendant manufactured homeowner in an eviction action by park owner, holding that (1) conviction for possession of child pornography did not violate manufactured home park laws of the lease and did not constitute annoyance and endangerment; (2) trial court did not err in excluding police report containing alleged observations of officers not present at trial; and (3) while trial court erred in invoking 5th Amendment rights for defendant, error was not prejudicial as subjects of furnishing alcohol to minors and possession of marijuana were outside scope of complaint and irrelevant).

In *Hi Vue Park v. Schneider*, No. CX-99-83, 1999 Minn. App. LEXIS 858 (Minn. Ct. App. July 27, 1999) (unpublished) the court affirmed the manufactured (mobile) home eviction judgment for park owner where residents threatening behavior constituted endangerment, substantial annoyance and repeated serious violations; notice which did not include times for alleged violations was proper where it referenced court records discussing the events; notice was proper where residents had sufficient information to know what conduct was unacceptable and what needed to be done to avoid eviction; owners acceptance of rent during the notice period did not waive breaches as there was no showing that the owner intended to waive its right to evict; receipt of rent after the effective date of the notice did not waive the notice where the owner stated in the notice that it would not accept rent and a later letter stated that it refused the rent payment and would return it at the court hearing.

In *Northstar Estates Manufactured Home Community v. Thompson*, No. C3-98-2005 (Minn. Ct. App. April 22, 1999) (unpublished opinion which shall not be cited as precedent) (Appendix) the court concluded that the district court, which was not alerted to application of § 327C.02, erred in its determination of material breach because of rule violations where the court made no findings as to the reasonableness of rules or whether the rules substantially modified a prior agreement, and the residents were not given ten days to comply with the rule by the court; district court reversed.

(b) Rule violations, after failure to cure following thirty (30) days written notice

In *Miller v. Kreitz*, No. UD-1970103500 (Minn. Dist. Ct. 4th Dist. Feb. 6, 1997) (Appendix 271), the eviction denied where notice for rule violation which did not give tenant right to cure the problem,

landlord waived notice by acceptance of rent, and landlord did not prove tenant's failure to move van constituted an endangerment or annoyance to other residents, and did not prove loud music, bothering other persons, or trouble with the police as suggested by eviction.

In *Haukos-Lund Partnership v. Borjon*, No. C3-98-632 (Minn. Dist. Ct. 1st Dist. Oct. 30, 1998) (Appendix 336) (Perkins, J.), the court entered judgment for the manufactured (mobile) home park lot tenant, where the landlord failed to give notices to the tenant specifying the date, approximate time, and nature of alleged parole violations, the landlord sought to evict the tenant for calling the police to respond to a domestic abuse situation, the tenant cured several alleged lease violations within a reasonable time and manner, there was no evidence that the tenant's day guests were unauthorized occupants, and the tenant's failure to cure a minor lease violation did not support eviction. The court noted that basing an eviction on a minor defect in manufactured (mobile) home skirting was unreasonable, even if the rule itself was reasonable. The court added that "if frequent day visitors are to be considered occupants as plaintiff suggests, this rule may be hinging on unreasonableness due to the fact that it has not been shown that disallowing frequent day guests is designed to promote the convenience, safety, or welfare of the residents."

(c) Endangerment or substantial annoyance after notice

In *Steven Scott Management, Inc. v. Scott*, No. CA-98-09527 (Minn. Dist. Ct. 2d Dist. Oct. 28, 1998) (Appendix 367), after one tenant violently assaulted his domestic partner, he pled guilty to a felony, and was sentenced to workhouse incarceration, chemical dependency treatment and anger management counseling. The assailant complied with his sentence and committed no other assaults. The landlord found out about the incident six months later, gave notice for substantial annoyance and endangerment, and commenced an unlawful detainer action to evict both tenants. The court held that the claim against the victim was in response to her call to the police and prohibited by Minn. Stat. § 504.215 (now § 504B.205), the victim did not endanger others by allowing the assailant to remain in the household, it would be unconscionable to evict the assailant where he was sincere in his rehabilitative efforts and had complied with his sentence and had not endangered others in the manufactured (mobile) home park, and the tenants had cured any violation which had occurred. On appeal, in *Steven Scott Management, Inc. v. Scott*, No. C7-98-2024 (Minn. Ct. App. June 8, 1999) (unpublished), the Court of Appeals affirmed the finding that the victim had not violated Minn. Stat. 327C.09 or committed a material violation of the lease, as there was no evidence of any annoyance or danger to other residents. However, the court reversed the trial court as to the assailant, concluding that a finding that he violated the lease and the statute was sufficient to compel issuance of an order against him.

In *Pepin/Summit Partnership v. Mach*, No. 6794 (Goodhue Cty. Ct., 1987) (App. 19), the court approved a jury instruction which defined "substantial annoyance" as endangerment of other persons in the park, causing substantial damage to park property, or substantially annoying other residents. "Thus, substantial annoyance is something more than simply offending or being bothersome to someone. It means that a resident has engaged in conduct which works significant and substantial harm." *Id.*, Jury Instruction No. 1, citing Minn. Stat. § 327C.09, subd. 5; *Osness v. Diamond Estates, Inc.* 615 P.2d 605 (Alaska 1980).

In *Hi Vue Park v. Schneider*, No. CX-99-83, 1999 Minn. App. LEXIS 858 (Minn. Ct. App. July 27, 1999) (unpublished) the court affirmed the manufactured (mobile) home eviction judgment for park owner where residents threatening behavior constituted endangerment, substantial annoyance and repeated serious violations; notice which did not include times for alleged violations was proper where it referenced court records discussing the events; notice was proper where residents had sufficient

information to know what conduct was unacceptable and what needed to be done to avoid eviction; owners acceptance of rent during the notice period did not waive breaches as there was no showing that the owner intended to waive its right to evict; receipt of rent after the effective date of the notice did not waive the notice where the owner stated in the notice that it would not accept rent and a later letter stated that it refused the rent payment and would return it at the court hearing.

(d) Repeated serious violations of the lease or certain laws, following written notice and warning and continued violation

In *Hi Vue Park v. Schneider*, No. CX-99-83, 1999 Minn. App. LEXIS 858 (Minn. Ct. App. July 27, 1999) (unpublished) the court affirmed the manufactured (mobile) home eviction judgment for park owner where residents threatening behavior constituted endangerment, substantial annoyance and repeated serious violations; notice which did not include times for alleged violations was proper where it referenced court records discussing the events; notice was proper where residents had sufficient information to know what conduct was unacceptable and what needed to be done to avoid eviction; owners acceptance of rent during the notice period did not waive breaches as there was no showing that the owner intended to waive its right to evict; receipt of rent after the effective date of the notice did not waive the notice where the owner stated in the notice that it would not accept rent and a later letter stated that it refused the rent payment and would return it at the court hearing.

See Lea v. Pieper, 345 N.W.2d 267 (Minn. Ct. App. 1984).

(e) Material misstatement in the application, if termination occurs within one year of when the tenant first paid rent

In *W. J. Properties, Inc. v. Schneider*, No. C6-01-1023, 2002 WL 206337 (Minn. Ct. App. 2002) (unpublished), the court affirmed an eviction where landlord claimed material misstatement on application, the parties settled for tenant repairs and removal of pets, and the tenant violated of settlement, holding that subsequent statutory notice was not required.

(f) Improvement of the park, after 90 days written notice

(g) Park or lot closing, after nine months written notice. Relocation within the lot may be permitted in certain circumstances

See Minn. Stat. § 327C.095, subd. 1.

(4) Nonpayment of rent defenses

See discussion, *supra* at VI.E.11.

(5) The rule is unreasonable

Minn. Stat. § 327C.10, subd. 3. A reasonable rule is: (a) Designed to: 1.1). Promote resident convenience, safety or welfare, 2.2) promote good appearance and efficient operation of the park, 3.3) protect and preserve the premises, or 4.4) fairly distribute services and facilities, (b) reasonably related to its purpose, (c) not retaliatory nor unjustifiably discriminatory in nature, and (d) sufficiently explicit in prohibition, direction or limitation of conduct to fairly inform the resident of what constitutes compliance. Minn. Stat. § 327C.01, subd. 8. Rules presumed unreasonable includes any rule which: (a)

prohibits the resident from displaying a "for sale" sign, (b) requires an existing or potential resident to purchase goods or services from a particular vendor, (c) requires a resident to use the services of a particular dealer or broker in a park sale, (d) requiring more than one occupant to have an ownership interest in the home, or (e) violates the definition of a reasonable rule. Minn. Stat. § 327C.05, subd. 2, 3. *See Lea*, 345 N.W.2d at 271-72; *North Star Estates Manufactured Home Community v.* _____, No. C1984931 (Minn. Ct. App. Apr. 22, 1999) (Appendix 551) (unpublished order which shall not be cited as precedent: referee found after trial that manufactured home park rule was unreasonable or park waived its application; judge ruled after hearing without testimony that tenant materially breached rules; Court of Appeals reversed and held that no one raised and judge failed to consider whether the tenant received proper notice, and whether the rules were reasonable or had be substantially modified); *Northview Villa M.H.P. v. Henderson,* No. C2-90-13460 (Minn. Dist. Ct. 10th Dist. Apr. 24, 1991) (Appendix 17.F) (plaintiffs no pet rule was a reasonable rule).

In *Haukos-Lund Partnership v. Borjon*, No. C3-98-632 (Minn. Dist. Ct. 1st Dist. Oct. 30, 1998) (Appendix 336) (Perkins, J.), the court entered judgment for the manufactured (mobile) home park lot tenant, where the landlord failed to give notices to the tenant specifying the date, approximate time, and nature of alleged parole violations, the landlord sought to evict the tenant for calling the police to respond to a domestic abuse situation, the tenant cured several alleged lease violations within a reasonable time and manner, there was no evidence that the tenant's day guests were unauthorized occupants, and the tenant's failure to cure a minor lease violation did not support eviction. The court noted that basing an eviction on a minor defect in manufactured (mobile) home skirting was unreasonable, even if the rule itself was reasonable. The court added that "if frequent day visitors are to be considered occupants as plaintiff suggests, this rule may be hinging on unreasonableness due to the fact that it has not been shown that disallowing frequent day guests is designed to promote the convenience, safety, or welfare of the residents."

In *Northstar Estates Manufactured Homes Community v. Davis*, No. CX-98-2339 (Minn. Ct. App. July 13, 1999) (unpublished), the manufactured home park owner amended a rule prohibiting play equipment on individual lots to prohibiting basketball backboards on individual lots. The Court of Appeals affirmed the District Court’s decision for the tenant, noting that an amended rule can be enforced against a tenant who preceded the amendment if the amendment rule is reasonable, and that a reasonable rule cannot be unjustifiably discriminatory in nature. Minn. Stat. § 327C.02, Subd. 2, 327C.01, Subd. 8(c). The court concluded that the District Court could properly conclude that total prohibition of basketball backboards on individual lots was unjustifiably discriminatory as compared with other activities by children.

In *Skyline Village Park Ass'n v. Skyline Village L.P.*, 786 N.W.2d 304 (Minn. Ct. App. 2010), the resident association of a manufactured home park brought action against owner of park, claiming in part that proposed rent increase was unreasonable and unenforceable. The district court entered judgment for the owner's favor. The association appealed and the court affirmed, holding that Minn. Stat. § 327C.02, subd. 2, does not impose a reasonableness requirement on rent increases, *id.* at 306-13 and the Minn. Stat. § 327C.05, subd. 1 the prohibition on the owner engaging in a course of conduct which is unreasonable does not apply to manufactured-home-park-lot rent increases, *id.* at 313-14.

In *All Parks Alliance for Change v. Uniprop Manufactured Housing Communities Income Fund*, 732 N.W.2d 189 (Minn. 2007), All Parks Alliance for Change (APAC), a manufactured home residents advocacy organization, filed suit alleging that park owner's rule illegally restricted leafleting and canvassing in the park. *Id.* at 191-92.

> After a court trial, the district court found that the new rule limiting noncommercial speech unreasonably curtailed APAC's outreach efforts and presented an unreasonable impediment to forming a resident association. The court found that Uniprop's interest in promoting residents' quiet and peaceful use of the community was compelling, but concluded that the new rule was not narrowly drawn to achieve that end. The court further concluded that the new rule was not reasonable "in that it would restrict APAC from being able to directly contact residents during the times in which residents are most likely to be home, i.e. on Saturdays during the day." The court permanently enjoined Uniprop from interfering with APAC's activities during the hours of 11 a.m. to 6 p.m., Monday through Saturday, from September 1 to April 30 of each year. Between May 1 and August 30, the solici-tation period was extended by one hour, to 7 p.m. But the district court upheld the institution of the no-contact list and ordered Uniprop to provide it to APAC on the first day of every other month. Finally, the district court awarded APAC monetary damages in the amount of $590.16 and its attorney's fees, costs, and disbursements.

Id. at 192. The district court also awarded attorney's fees and costs to organization. *Id.*

The owner appealed and the Court of Appeals affirmed. *All Parks Alliance for Change v. Uniprop Manufactured Hous. Cmtys. Income Fund*, No. A05-912, 2006 WL 618932 (Minn. Ct. App. Mar.14, 2006) (unpublished). In doing so, the court court rejected APAC's argument that Minn. Stat. § 327C.13 incorporates First Amendment principles, and that there were other means by which the district court could have protected residents' rights that would have been less restrictive of APAC's ability to solicit residents. *Id.* at *4-5. The court concluded that the statute requires that limitations on noncommercial speech be reasonable, and that the limits imposed by the district court were reasonable. *Id.*

The owner appealed again, and the Minnesota Supreme Court held that the "provisions of chapter 327C mean that the limits on solicitation and other noncommercial speech within Ardmor Park must be reasonable (as defined by section 327C.01, subd. 8) and cannot represent a 'substantial modification' of residents' rental agreements (as defined by section 327C.01, subd. 11)." 732 N.W.2d at 194. The court then concluded that "the district court's limits on noncommercial speech and solicitation within Ardmor Village are reasonable as to time, place and manner under Minn. Stat. § 327C.13." *Id.* at 195.

Justice Page, joined by Justice Anderson, dissented, asserting that the district court's revision of the park rules did not cure the violation. Justice Page concluded that "section 327C.13 extends the application of the First Amendment to manufactured home parks, *id.* at 198, the rule was unreasonable and retaliatory, *id.* at 199, and the rule remained unreasonable even after modification by the district court. *Id.* at 200.

(6) The rule constitutes a substantial modification of the original lease or rules

Minn. Stat. § 327C.02, subd. 2. After a resident initially enters into a rental agreement, a new or modified rule may be enforced against the resident only if the new or amended rule is: (1) Reasonable and (2) not a substantial modification of the original agreement. Substantial modification means a rule which: (1) Significantly diminishes or eliminates any material obligation of the park owner, (2) significantly diminishes or eliminates any material right, privilege, or freedom of action of a resident, or (3) involves a significant new expense for a resident. Minn. Stat. § 327C.01, subd. 11. The court may consider the following additional factors: (1) Any significant changes in circumstances which have occurred since the original rule was adopted, and which necessitated the rule change, and (2) any compensating benefits which the rule change will produce for the residents.

If the court finds for the plaintiff, the court shall order the defendant to comply with the rule within ten (10) days. If the defendant does not comply, the park owner may move the court, on three (3) days written notice to the residents, for a writ of restitution. Minn. Stat. § 327C.02, subd. 2a.

The following do not constitute a substantial modification of the rental agreement: (1) A reasonable rent increase, (2) a rule change necessitated by government action, (3) a rule change requiring all residents to maintain their homes, sheds, and other appurtenances in good repair and safe condition.

This exception applies to property of the tenants and not to property of the landlord. *Lemke v. Van Ness*, 236 N.W.2d 784, 787 (Minn. Ct. App. 1989). In *Lemke* the lease required the landlord to repair damage from ordinary wear and tear. The new rule required the tenants to make such repairs. The court held that the rule was a substantial modification of the lease, and unenforceable. *Id.* at 787. In *Kjellberg's, Inc. v. Smith*, No. C4-87-0931 (Minn. Dist. Ct. 4th Dist. Wright Cty. July 7, 1989) (attached as Appendix 20), the court held that the trailer skirting required by the park owner was a substantial modification of the lease which the tenant had not accepted. The court noted that the rule contained no statement indicating that there was a rational basis for the rule change. *See Hop v. Skyline Village Mobile Home Community*, No. C8-88-491, 1988 WL 64498 (Minn. Ct. App. June 28, 1988) (unpublished) (affirmed trial court's conclusion that the provision of amended rental agreement authorizing attorneys' fees is an unenforceable "substantial modification" of the initial lease); *North Star Estates Manufactured Home Community v.* _____, No. C1984931 (Minn. Ct. App. Apr. 22, 1999) (Appendix 551) (unpublished order which shall not be cited as precedent: referee found after trial that manufactured home park rule was unreasonable or park waived its application; judge ruled after hearing without testimony that tenant materially breached rules; Court of Appeals reversed and held that no one raised and judge failed to consider whether the tenant received proper notice, and whether the rules were reasonable or had be substantially modified). *But see South Valley Investment Company v. Krogstad*, No. C2-01-631, 2001 WL 1117865 (Minn. Ct. App. Sept. 25, 2001) (unpublished) (lease amendment which requires residents to maintain their homes, decks, and sheds to meet "reasonable standards for appearance and general condition," is not a substantial modification and can be enforced against resident).

Changes in utility billing have been held to be substantial modifications to the lease. *See Renish v. Hometown America LLC*, No. A05-2384, 2006 WL 2474090 (Minn. Ct. App. Aug. 29, 2006) (unpublished) (affirmed district court decision that imposing separate utility bills was a substantial modification of the lease and was arbitrary and capricious); *Cavanaugh v. Hometown America LLC*, No. A05-595, 2006 WL 696259 (Minn. Ct. App. Mar. 21, 2006), (*review denied*) (May 24 2006) (unpublished) (affirmed district court judgment for class action tenants claiming violations by installing meters and charging separately for sewer and water); *Schaff v. Chateau Communities, Inc.,* No. A04-1246, 2005 WL 1734031 (Minn. Ct. App. July 26, 2005), *(review denied)* (sept. 28, 2005) (unpublished) (affirmed district court ruling granting class certification and awarding attorneys fees, evidentiary rulings, and jury award in class action for utility charges based on changes in metering and billing); *Schaff v. Chateau Communities, Inc.*, No. 19-CX-03-6402, 2004 WL 1908209 (Minn. Dist. Ct. May 27, 2004) (jury found separate metering for utilities unreasonable and awarded damages; District Court awarded an incentive award, held that separate metering substantially modified class members' leases and was unenforceable, and manufactured park home lot owner violated Minn. Stat. § 327C.14 when it entered lots to install meters, and violated § 327C.04 when it charged rates higher than the city would charge; court awarded attorneys fees under Minn. Stat. §§ 327C.15 and 8.31).

In *Northstar Estates Manufactured Homes Community v. Davis*, No. CX-98-2339 (Minn. Ct. App. July 13, 1999) (unpublished), the manufactured home park owner amended a rule prohibiting play

equipment on individual lots to prohibiting basketball backboards on individual lots. The Court of Appeals affirmed the District Court's decision for the tenant, noting that an amended rule can be enforced against a tenant who preceded the amendment if the amendment rule is reasonable, and that a reasonable rule cannot be unjustifiably discriminatory in nature. Minn. Stat. § 327C.02, Subd. 2, 327C.01, Subd. 8(c). The court concluded that the District Court could properly conclude that total prohibition of basketball backboards on individual lots was unjustifiably discriminatory as compared with other activities by children.

In *All Parks Alliance for Change v. Uniprop Manufactured Housing Communities Income Fund*, 732 N.W.2d 189 (Minn. 2007), All Parks Alliance for Change (APAC), a manufactured home residents advocacy organization, filed suit alleging that park owner's rule illegally restricted leafleting and canvassing in the park. *Id.* at 191-92.

> After a court trial, the district court found that the new rule limiting noncommercial speech unreasonably curtailed APAC's outreach efforts and presented an unreasonable impediment to forming a resident association. The court found that Uniprop's interest in promoting residents' quiet and peaceful use of the community was compelling, but concluded that the new rule was not narrowly drawn to achieve that end. The court further concluded that the new rule was not reasonable "in that it would restrict APAC from being able to directly contact residents during the times in which residents are most likely to be home, i.e. on Saturdays during the day." The court permanently enjoined Uniprop from interfering with APAC's activities during the hours of 11 a.m. to 6 p.m., Monday through Saturday, from September 1 to April 30 of each year. Between May 1 and August 30, the solici-tation period was extended by one hour, to 7 p.m. But the district court upheld the institution of the no-contact list and ordered Uniprop to provide it to APAC on the first day of every other month. Finally, the district court awarded APAC monetary damages in the amount of $590.16 and its attorney's fees, costs, and disbursements.

Id. at 192. The district court also awarded attorney's fees and costs to organization. *Id.*

The owner appealed and the Court of Appeals affirmed. *All Parks Alliance for Change v. Uniprop Manufactured Hous. Cmtys. Income Fund*, No. A05-912, 2006 WL 618932 (Minn. Ct. App. Mar.14, 2006) (unpublished). In doing so, the court court rejected APAC's argument that Minn. Stat. § 327C.13 incorporates First Amendment principles, and that there were other means by which the district court could have protected residents' rights that would have been less restrictive of APAC's ability to solicit residents. *Id.* at *4-5. The court concluded that the statute requires that limitations on noncommercial speech be reasonable, and that the limits imposed by the district court were reasonable. *Id.*

The owner appealed again, and the Minnesota Supreme Court held that the "provisions of chapter 327C mean that the limits on solicitation and other noncommercial speech within Ardmor Park must be reasonable (as defined by section 327C.01, subd. 8) and cannot represent a 'substantial modification' of residents' rental agreements (as defined by section 327C.01, subd. 11)." 732 N.W.2d at 194. The court then concluded that "the district court's limits on noncommercial speech and solicitation within Ardmor Village are reasonable as to time, place and manner under Minn. Stat. § 327C.13." *Id.* at 195.

Justice Page, joined by Justice Anderson, dissented, asserting that the district court's revision of the park rules did not cure the violation. Justice Page concluded that "section 327C.13 extends the application of the First Amendment to manufactured home parks, *id.* at 198, the rule was unreasonable and retaliatory, *id.* at 199, and the rule remained unreasonable even after modification by the district

court. *Id.* at 200.

(7) Improper notice to adopt or amend a rule

The park owner must give sixty (60) days written notice. Minn. Stat. § 327C.02, subd. 2. *See Hedlund v. Davis,* No. C1-91-1687 (minn. Dist. Ct. 10th Dist. Dec. 31, 1991) (Appendix 15.F) (landlord's request for additional fees was improper because there was no notice informing the tenants that such charges could be imposed under the rental agreement).

(8) Retaliation

Tamarack Court, Inc. v. Milliman, No. C2-02-1787, 2003 WL 21911150 (Minn. Ct. App. Aug. 12, 2003) (unpublished) (affirmed holding of no retaliation, where trial court concluded that tenant did not prove retaliation when the presumption of retaliation applied, but also concluded that manufactured home park had a legitimate economic reason for eviction); *Howard Lake Mobile Home Park v. _____,* No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B); *Larson v. Anderson*, No. C9-96-416 (Minn. Dist. Ct. 9th Dist. Oct. 11 and Nov. 8, 1996) (Appendix 264) (Rent abatement of $6,910 over five years failing to repair discharge of raw sewage on the premises in manufactured (mobile) home park; landlord's notice to quit was in retaliation for tenant's complaint to health department). *See* discussion, *supra* at VI.E.9, VI.F.3.

In *All Parks Alliance for Change v. Uniprop Manufactured Housing Communities Income Fund*, 732 N.W.2d 189 (Minn. 2007), All Parks Alliance for Change (APAC), a manufactured home residents advocacy organization, filed suit alleging that park owner's rule illegally restricted leafleting and canvassing in the park. *Id.* at 191-92.

> After a court trial, the district court found that the new rule limiting noncommercial speech unreasonably curtailed APAC's outreach efforts and presented an unreasonable impediment to forming a resident association. The court found that Uniprop's interest in promoting residents' quiet and peaceful use of the community was compelling, but concluded that the new rule was not narrowly drawn to achieve that end. The court further concluded that the new rule was not reasonable "in that it would restrict APAC from being able to directly contact residents during the times in which residents are most likely to be home, i.e. on Saturdays during the day." The court permanently enjoined Uniprop from interfering with APAC's activities during the hours of 11 a.m. to 6 p.m., Monday through Saturday, from September 1 to April 30 of each year. Between May 1 and August 30, the solici-tation period was extended by one hour, to 7 p.m. But the district court upheld the institution of the no-contact list and ordered Uniprop to provide it to APAC on the first day of every other month. Finally, the district court awarded APAC monetary damages in the amount of $590.16 and its attorney's fees, costs, and disbursements.

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327C.13 incorporates First Amendment principles, and that there were other means by which the district court could have protected residents' rights that would have been less restrictive of APAC's ability to solicit residents. *Id.* at *4-5. The court concluded that the statute requires that limitations on noncommercial speech be reasonable, and that the limits imposed by the district court were reasonable. *Id.*

The owner appealed again, and the Minnesota Supreme Court held that the "provisions of chapter 327C mean that the limits on solicitation and other noncommercial speech within Ardmor Park must be reasonable (as defined by section 327C.01, subd. 8) and cannot represent a 'substantial modification' of residents' rental agreements (as defined by section 327C.01, subd. 11)." 732 N.W.2d at 194. The court then concluded that "the district court's limits on noncommercial speech and solicitation within Ardmor Village are reasonable as to time, place and manner under Minn. Stat. § 327C.13." *Id.* at 195.

Justice Page, joined by Justice Anderson, dissented, asserting that the district court's revision of the park rules did not cure the violation. Justice Page concluded that "section 327C.13 extends the application of the First Amendment to manufactured home parks, *id.* at 198, the rule was unreasonable and retaliatory, *id.* at 199, and the rule remained unreasonable even after modification by the district court. *Id.* at 200.

(9) Waiver of notice

Howard Lake Mobile Home Park v. _____, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B). *See North Star Estates Manufactured Home Community v. _____*, No. C1984931 (Minn. Ct. App. Apr. 22, 1999) (Appendix 551) (unpublished order which shall not be cited as precedent: referee found after trial that manufactured home park rule was unreasonable or park waived its application; judge ruled after hearing without testimony that tenant materially breached rules; Court of Appeals reversed and held that no one raised and judge failed to consider whether the tenant received proper notice, and whether the rules were reasonable or had be substantially modified); *Rainbow Terrace, Inc. v. Hutchens*, 557 N.W.2d 618 (Minn. Ct. App. 1997) (Minn. Stat. Ch. 327C applies to manufactured (mobile) home park lot tenancies, regardless of whether the parties have a written lease; acceptance of rent after expiration of a notice to vacate waived the notice; notice to quit was invalid because it did not state the reason for termination, depriving the tenants of an opportunity to remedy the violation); *Miller v. Kreitz*, No. UD-1970103500 (Minn. Dist. Ct. 4th Dist. Feb. 6, 1997) (Appendix 271) (Eviction denied where notice for rule violation which did not give tenant right to cure the problem, landlord waived notice by acceptance of rent, and landlord did not prove tenant's failure to move van constituted an endangerment or annoyance to other residents, and did not prove loud music, bothering other persons, or trouble with the police as suggested by eviction). *See generally* discussion, *supra* at VI.F.4.

(10) Implied modification of the lease

Northview Villa M.H.P. v. Gresens, No. C9-90-175 (Minn. Ct. App. July 3, 1990), in FINANCE & COMMERCE at B15 (July 6, 1990) (Appendix 17.E) (manufactured (mobile) home park "no pet" rule modified where landlord was aware of tenant's pets and accepted rent for five years: rule waived). *See generally* discussion, *supra* at VI.G.2. (implied modification of the lease).

(11) Defendant cured the violation

MINN. STAT. § 327C.09. *See Condodemetraky v. Walker,* No. 90-C-287 (N.H. Super. Ct., Granfton Cty. Nov. 21, 1990) (Appendix 20.A) (park tenant cured minor violations in a reasonable time).

(12) Violation repeated but not serious

In *Haukos-Lund Partnership v. Borjon*, No. C3-98-632 (Minn. Dist. Ct. 1st Dist. Oct. 30, 1998) (Appendix 336) (Perkins, J.), the court entered judgment for the manufactured (mobile) home park lot tenant, where the landlord failed to give notices to the tenant specifying the date, approximate time, and nature of alleged parole violations, the landlord sought to evict the tenant for calling the police to respond to a domestic abuse situation, the tenant cured several alleged lease violations within a reasonable time and manner, there was no evidence that the tenant's day guests were unauthorized occupants, and the tenant's failure to cure a minor lease violation did not support eviction. The court noted that basing an eviction on a minor defect in manufactured (mobile) home skirting was unreasonable, even if the rule itself was reasonable. The court added that "if frequent day visitors are to be considered occupants as plaintiff suggests, this rule may be hinging on unreasonableness due to the fact that it has not been shown that disallowing frequent day guests is designed to promote the convenience, safety, or welfare of the residents." *See Larson v.* _____, No. HC 030324502 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2004) (Appendix 528) (referee will not reconsider judge's order on waiver; tenant meets definition of disabled; requiring mobility disabled tenant to park vehicle further away than other tenants is not a reasonable accommodation; while parking tenant's vehicle near the home violated an ordinance, most other tenants also violated the unenforced ordinance; tenant's ordinance violations were repeated but not serious; tenant may raise landlord's violation of the covenants of habitability as a cause of tenant violation of the lease, where park owner's park design violated a local ordinance and forces tenant to violate the same ordinance.

(13) Violation caused by owner's violation

Larson v. _____, No. HC 030324502 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2004) (Appendix 528) (referee will not reconsider judge's order on waiver; tenant meets definition of disabled; requiring mobility disabled tenant to park vehicle further away than other tenants is not a reasonable accommodation; while parking tenant's vehicle near the home violated an ordinance, most other tenants also violated the unenforced ordinance; tenant's ordinance violations were repeated but not serious; tenant may raise landlord's violation of the covenants of habitability as a cause of tenant violation of the lease, where park owner's park design violated a local ordinance and forces tenant to violate the same ordinance.

(14) Discrimination

In *Northstar Estates Manufactured Homes Community v. Davis*, No. CX-98-2339 (Minn. Ct. App. July 13, 1999) (unpublished), the manufactured home park owner amended a rule prohibiting play equipment on individual lots to prohibiting basketball backboards on individual lots. The Court of Appeals affirmed the District Court's decision for the tenant, noting that an amended rule can be enforced against a tenant who preceded the amendment if the amendment rule is reasonable, and that a reasonable rule cannot be unjustifiably discriminatory in nature. Minn. Stat. § 327C.02, Subd. 2, 327C.01, Subd. 8(c). The court concluded that the District Court could properly conclude that total prohibition of basketball backboards on individual lots was unjustifiably discriminatory as compared

with other activities by children.

(15) Domestic violence

In *Steven Scott Management, Inc. v. Scott*, No. CA-98-09527 (Minn. Dist. Ct. 2d Dist. Oct. 28, 1998) (Appendix 367), after one tenant violently assaulted his domestic partner, he pled guilty to a felony, and was sentenced to workhouse incarceration, chemical dependency treatment and anger management counseling. The assailant complied with his sentence and committed no other assaults. The landlord found out about the incident six months later, gave notice for substantial annoyance and endangerment, and commenced an unlawful detainer action to evict both tenants. The court held that the claim against the victim was in response to her call to the police and prohibited by Minn. Stat. § 504.215 (now § 504B.205), the victim did not endanger others by allowing the assailant to remain in the household, it would be unconscionable to evict the assailant where he was sincere in his rehabilitative efforts and had complied with his sentence and had not endangered others in the manufactured (mobile) home park, and the tenants had cured any violation which had occurred. On appeal, in *Steven Scott Management, Inc. v. Scott*, No. C7-98-2024 (Minn. Ct. App. June 8, 1999) (unpublished), the Court of Appeals affirmed the finding that the victim had not violated Minn. stat. 327C.09 or committed a material violation of the lease, as there was no evidence of any annoyance or danger to other residents. However, the court reversed the trial court as to the assailant, concluding that a finding that he violated the lease and the statute was sufficient to compel issuance of an order against him.

In *Haukos-Lund Partnership v. Borjon*, No. C3-98-632 (Minn. Dist. Ct. 1st Dist. Oct. 30, 1998) (Appendix 336) (Perkins, J.), the court entered judgment for the manufactured (mobile) home park lot tenant, where the landlord failed to give notices to the tenant specifying the date, approximate time, and nature of alleged parole violations, the landlord sought to evict the tenant for calling the police to respond to a domestic abuse situation, the tenant cured several alleged lease violations within a reasonable time and manner, there was no evidence that the tenant's day guests were unauthorized occupants, and the tenant's failure to cure a minor lease violation did not support eviction. The court noted that basing an eviction on a minor defect in manufactured (mobile) home skirting was unreasonable, even if the rule itself was reasonable. The court added that "if frequent day visitors are to be considered occupants as plaintiff suggests, this rule may be hinging on unreasonableness due to the fact that it has not been shown that disallowing frequent day guests is designed to promote the convenience, safety, or welfare of the residents."

(16) In-park sales

Minn. Stat. § 327C.07 regulates in-park sales. *See PFS MHC, LLC v. _____,* No. 02-CV-132286 (Minn. Dist. Ct. 2nd Dist., Anoka County, July 19, 2013) (Judge Fredrickson) (Appendix 798) (judgment for defendant where park owner's rejection of in-park sale of manufactured home was beyond the 14 day statutory period).

12. Illegal lease provisions

Lease provisions which waive or modify the provisions of the following statutes are void and unenforceable:

- Minn. Stat. § 504B.145 (formerly § 504.21) (automatic renewal of leases);
- Minn. Stat. § 504B.147 (notice periods in leases);
- Minn. Stat. § 504B.161 (formerly § 504.18) (covenants of habitability);

- Minn. Stat. § 504B.171 (formerly § 504.181) (covenants not to manufacture, sell or distribute illegal drugs);
- Minn. Stat. § 504B.178 (formerly § 504.20) (security deposits); *Powers v. Garcia*, No. UD-1950905643 (Minn. Dist. Ct. 4th Dist. Sept. 12, 1995) (Appendix 160) (9 month minimum tenancy for return of deposit stricken);
- Minn. Stat. § 504B.204 (formerly § 504.245) (rental of condemned residential premises);
- Minn. Stat. § 504B.205 (formerly § 504.215) (prohibiting penalty on tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct);
- Minn. Stat. § 504B.206 (domestic violence);
- Minn. Stat. § 504B.211 (formerly § 504.183) (notice of landlord entry onto premises);
- Minn. Stat. § 504B.215 (formerly § 504.185) (landlord's nonpayment of utility or essential services; shared meters);
- Minn. Stat. §§ 504B.221 (formerly § 504.26) (unlawful termination of utilities);
- Minn. Stat. § 504B.231 (formerly § 504.255) (unlawful eviction). However, a *commercial* lease may require a commercial to waive damages for a lockout. *Duling Optical Corp. v. First Union Management, Inc.,* No. C5-95-2718 (Minn. Ct. App. Aug. 13, 1996), FINANCE & COMMERCE at 66 (Aug. 16, 1996) (Appendix 181) (unpublished decision).
- Minn. Stat. § 504B.271 (formerly § 504.24) (abandoned property);
- Minn. Stat. § 504B.365 (formerly § 566.17) (execution of eviction (unlawful detainer) writ of restitution: landlord's entry and removal of tenant's property in violation of statute violates § 504B.231 (formerly § 504.255), which cannot be waived);
- Minn. Stat. § 325G.31 (plain language in contracts); *see* Minn. Stat. § 325g.36, subd. 1;
- A lease requirement waiving the tenant's right to the eviction (unlawful detainer) process and the right to redeem the premises is void as a violation of public policy. *614 Co. v. D.H. Overmayer Co.,* 297 Minn. 395, 397-98, 211 N.W. 2d 891,894 (1973); *Duling Optical Corp. v. First Union Management, Inc.,* No. C5-95-2718 (Minn. Ct. App. Aug. 13, 1996), FINANCE & COMMERCE at 66 (Aug. 16, 1996) (Appendix 181) (unpublished decision).
- An agreement to agree in the future is illegal and unenforceable. *Upper Swede Hollow Neighborhoods Association v. Khatib*, No. C1-02-422, 2002 WL 31012235 (Minn. Ct. App. Sep. 10, 2002) (unpublished).
- A violation of consumer laws may make the lease unenforceable. *See Baierl v. McTaggart*, 245 Wis.2d 632, 629 N.W.2d 277 (2001).

13. Unconscionable lease term

A contract is unconscionable where no decent, fair minded person would view the result of its enforcement without being possessed with a profound sense of injustice. *Zontelli and Sons, Inc. v. City of Washwauk*, 353 N.W.2d 600, 604 (Minn. Ct. App. 1984), *rev'd on other grounds*, 373 N.W.2d 744 (Minn. 1985). In other words a contract is unconscionable if it is "such as no man in his sentences and not under delusion would make on the one hand, and no honest and fair man would accept on the other." *In re Estate of Hoffbeck*, 415 N.W.2d 447, 449 (Minn. Ct. App. 1987), quoting *Hume v. United States*, 132 U.S. 406, 411 (1889). Unconscionability is a question of law. *RMJ Sales and Marketing v. Banfi Products Corp.*, 546 F. Supp. 1368, 1375 (D. Minn. 1982).

The party alleging unconscionability must show it had no meaningful choice but to accept the contract term as offered, and that the term is unreasonably favorable to the other party. *Dorso Trailer Sales v. American Body and Trailer*, 372 N.W.2d 412, 415 (Minn. Ct. App. 1985). The trial court should consider the contract terms and the circumstances. *See Pickerign v. Pasco Marketing Inc.*, 303 Minn.

442, 446, 228 N.W.2d 562, 565 (1975); *In re Estate of Hoffbeck*, 415 N.W.2d at 449. An unconscionable lease term is unenforceable. *Id*.

In *Miller v. AZ Flatts,* No. 71-CV-16-653 (Minn. Dist. Ct. 10th Dist., Sherburne County, Jan. 31, 2017) (Appendix 725) (Judge Yunker), the court concluded that the lease provision providing for the loss of parking privileges was unconscionable and unenforceable for the following reasons: the landlords had sole discretion to fine tenants or to deny access; any alleged violation had no relation to parking rules; no written notice was required; and there was no opportunity to contest the alleged violation.

Lease provisions were found to be unconscionable in *Pickerign*, 303 Minn. at 446, 228 N.W.2d at 565 (*dictum*: 30 day notice to service station operator); *Johnson v. Bostic*, No. 1950508539 (Minn. Dist. Ct. 4th Dist. June 5, 1995) (Appendix 151) (provision prohibiting young boy and girl from sharing bedroom was invalid); *Miller v. George*, No. UD-1941223501 (Minn. Dist. Ct. 4th Dist. Jan. 10, 1995) (Appendix 129) ($25.00 late fee for non-payment of $10.00 rent is unconscionable); *Spring Valley Gardens Associates v. Earle*, 112 Misc.2d 786, ___, 447 N.Y.S.2d 629, 630-31 (Rockland Cty. Ct. 1982) ($50.00 late fee for payment of $405.00 rent ten days late held unconscionable); *Weidman v. Tomaselli*, 81 Misc.2d 328, 335, 365 N.Y.S.2d 681, 689-91 (Rockland Cty. Ct. 1975), *aff'd* 84 Misc.2d 782, ___, 368 N.Y.S.2d 276, 277 (Appendix Term. 1975) ($100.00 in attorney's fees for commencement of an eviction action).

A lease was found not to be unconscionable in *In re Estate of Hoffbeck*, 415 N.W.2d at 449 (trial court's determination of unconscionability reversed, where tenant did not contest the fairness of the lease for four years, the issue was not raised until the end of trial, and there was no evidence on circumstances surrounding the signing of the lease or other provisions in the lease).

14. Adhesion contract.

An adhesion contract is drafted unilaterally by a business and forced upon an unwilling and often unknowing public for services that cannot readily be obtained elsewhere. *Schlobohm v. Spa Petite, Inc.* 326 N.W.2d 920, 924 (Minn. 1982). It generally is not bargained for, but is imposed on the public for a necessary service on a "take it or leave it" basis. However, a printed form contract offered on a "take it or leave it" basis alone does not establish an adhesion contract. *Id.*

The party alleging an adhesion contract must show that: a. The parties were greatly disparate in bargaining power, (b) there was no opportunity for negotiation, and (c) the services could not be obtained elsewhere. *Id.* at 924-25.

Two recent decisions of the Minnesota Supreme Court and Court of Appeals involving enforcement of exculpatory clauses indicate the difficulty in determining whether a contract is an adhesion contract. In *Schlobohm*, a health spa member sued the health spa for personal injuries sustained at the spa. A five member majority of the Supreme Court held that an exculpatory clause in the membership contract was not an adhesion contract, on the grounds that (1) the member voluntarily applied for and acceded to the terms of membership, (2) there was no showing that the service was necessary, and (3) there was no showing that the services could not be obtained elsewhere. *Id*. at 925. The court noted that in determining whether a service is public or essential, the courts consider whether the service is regulated by statute. *Id.*

Four Justices dissented. Justice Simonett, writing for the dissenting justices, concluded that the

contract was an adhesion contract, on the grounds that (1) the parties were disparate in bargaining power, (2) the service was a community service, and (3) it appears that the service was not readily available elsewhere. *Id.* at 927.

In *Malecha v. St. Croix Valley Skydiving Club, Inc.*, 392 N.W.2d 727 (Minn. Ct. App. 1986), a skydiving course student sued the skydiving club for personal injuries sustained when his parachute failed to open properly. A two judge majority upheld the exculpatory clause, relying on the grounds asserted by the *Schlobohm* majority. *Id.* at 729-32.

Judge Randall dissented, and citing the dissent in *Schlobohm*, concluded the contract was an adhesion contract. *Id.* at 732-33. Regarding the issue of whether the services could be obtained elsewhere, Judge Randall noted that even if there were other business in the area providing the same services, they easily could use the same provisions to frustrate attempts to negotiate and shop around. *Id.* at 732.

In *Weidman v. Tomaselli*, 81 Misc. 2d 328, 334, 365 N.Y.S.2d 681, 689 (Rockland Cty. Ct.), *aff'd on other grounds*, 84 Misc. 2d 782, 386 N.Y.S.2d 276, 277 (Appendix Term. 1975), the court held that a provision for $00 in attorney's fees for commencement of an eviction action was an adhesion contract. The court found that shelter is a necessity, that the overwhelming need for affordable housing left the tenants with little bargaining power, and that the clause worked to the excessive benefit of the landlord. *Id.* at 332-33, 365 N.Y.S.2d at 687. The court distinguished *Ciofalo v. Vic Tanney Gyms, Inc.*, 10 N.Y.2d 294, 297-98, 220 N.Y.S.2d 962, 965, 177 N.E.2d 925, 926 (1961), which upheld an exculpatory clause in a gymnasium membership contract on the grounds discussed in *Schlobolm* and *Malecha*. 81 Misc. 2d at 331-32, 365 N.Y.S.2d at 687.

15. Oral leases

Generally, an oral lease's only terms are the amount of rent and when it is due. If the tenant complies with those terms, the landlord can terminate it only with proper notice. *Olowu v. Patterson*, No: UD-1950606520 (Minn. Dist. Ct. 4th Dist. July 3, 1995) (Appendix 142).

The landlord cannot evict the tenant for breach of the lease, if no terms have been breached and since the oral lease does not have a right of reentry clause. In *Andersen v._____,* No. 27-CV-HC-15-198 (Minn. Dist. Ct. 4th Dist. Jan. 28, 2015) (Appendix 786), the court concluded that (1) the landlord was not credible where his attorney repeatedly used leading questions; (2) the landlord has burden of proving provisions of lease and violations of it; landlord did not prove that oral lease included right of reentry and a valid driver's license; (3) a right of reentry provision is required by *Bauer v. Knoble,* distinguishing *C & T Properties v. McCallister;* (4) oral notice did not terminate month-to-month lease; possible future violation does not support present claim for breach of lease; and (5) priority writ statute Minn. Stat. § 504B.361 created a remedy but not a cause of action.

In *Butler v. Cohns*, No. C2-96-6599 (Minn. Dist. Ct. 2d Dist. Oct. 22, 1996) (Appendix 218), the referee ruled for the landlord on the claim that the tenants were a threat to the landlord and the landlord's property. On a request for judge review, the court noted that its scope of review was governed by Minn. R. CIV. P. 53.05 (b), and that the court must accept the facts found by the referee unless clearly erroneous, but questions of law are reviewed in *de novo.* The court concluded that whether or not there is an implied covenant in oral leases against threatening behavior, any termination of an oral lease must comply with Minn. Stat. Sec. 504.06 (now § 504B.135): a one month notice to quit for violations of an oral lease, and a fourteen day notice for failure to pay rent.

See O'Brian v. _____, No. HC 1010402506 (Minn. Dist. Ct. 4th Dist. Apr. 18, 2001) (Appendix 552) (breach claims dismissed where oral lease contained no right of re-entry clause; notice claim dismissed where landlord failed to attached notice to complaint, and failed to prove notice was given; expungement granted); *D & D Real Estate Investment, L.L.P. v. Hughes*, Nos. UD-1990311505 (Minn. Dist. Ct. 4th Dist. Mar. 30, 1999) (Appendix 323A) (Dismissal of breach of lease claim where there was no convincing evidence that the oral lease contained a right of re-entry clause, no convincing evidence as to the dollar amount of damage to a door to determine whether damage was material or *de minimis*, and the landlord failed to prove that the tenant or one of her guests damaged the door where the tenant claimed damage was caused by a burglar; tenant's names expunged from file); *Jaffer Enterprises, Inc. v. Peters,* No. UD-1920701512 (Minn. Dist. Ct. 4th Dist. July 20, 1992) (Appendix 4.F); *Edward v. Swenson*, No. UD-1900730508 (Minn. Dist. Ct. 4th Dist. Aug. 9, 1990) (Appendix 17.C); *PCF Management v. Goodman*, No. UD-1881222537, Transcript at 3 (Minn. Dist. Ct. 4th Dist. Jan. 4, 1989) (Appendix 17.D). A written lease not signed by the parties does not govern the tenancy. *Ochoa v. Kenneth*, UD-1950919505 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1995) (Appendix 79).

Orals leases without terms still include provisions implied by law. *See* discussion, *supra*, at VI.E.1. (Habitability), and *infra* at VI.G.16. (Allegation of Illegal Drugs).

See also discussion, *supra* at VI.G.1 (Right of Reentry Clause) and VI.F.1. (Improper Notice to Quit).

16. Allegations of unlawful activity

a. *Covenant of landlords and tenants*, VI.G.16.a.
b. *Seizure,* VI.G.16.b
c. *Public nuisance,* VI.G.16.c
d. *Public and subsidized housing,* VI.G.16.d
e. *Regulation prohibiting Legal Services Corporation recipients from representing tenants in certain drug allegation public housing cases,* VI.G.16.e
f. *Reasonable accommodation of disabilities,* VI.G.16.f
g. *Informants,* VI.G.16.g
h. *Search and seizure of the tenant and tenant's property,* VI.G.16.h
i. *Other criminal law defenses,* VI.G.16.i

a. *Covenant of landlords and tenants.*

When Minn. Stat. § 504B.171 (formerly § 504.181) first was enacted, the tenant covenanted that the tenant will not unlawfully allow controlled substances in the premises, and that common areas will not be used by the tenant or others under the tenant's control to carry out activities that are a violation of controlled substances laws. In 1997 the drug covenant was expanded to cover other types of unlawful activity, and to cover landlords as well as tenants. Minn. Stat. § 504.181 (now § 504B.171). Now, both the tenant and the landlord, as well as the licensor and licensee, covenant that neither will (1) unlawfully allow illegal drugs on the premises, the common area or curtilage, (2) allow prostitution or prostitution related activity to occur in the premises, common area or curtilage, or (3) allow the unlawful use or possession of certain firearms in the premises, common area, or curtilage. The parties also covenant that the common area and curtilage will not be used by them or persons acting under their control to carry out activities in violation of illegal drug laws.

504B.171 COVENANT OF LANDLORD AND TENANT NOT TO ALLOW UNLAWFUL ACTIVITIES.

Subdivision 1. Terms of covenant.

(a) In every lease or license of residential premises, whether in writing or parol, the landlord or licensor and the tenant or licensee covenant that:

(1) neither will:

(i) unlawfully allow controlled substances in those premises or in the common area and curtilage of the premises;

(ii) allow prostitution or prostitution-related activity as defined in section 617.80, subdivision 4, to occur on the premises or in the common area and curtilage of the premises;

(iii) allow the unlawful use or possession of a firearm in violation of section 609.66, subdivision 1a, 609.67, or 624.713, on the premises or in the common area and curtilage of the premises; or

(iv) allow stolen property or property obtained by robbery in those

premises or in the common area and curtilage of the premises; and

(2) the common area and curtilage of the premises will not be used by either the landlord or licensor or the tenant or licensee or others acting under the control of either to manufacture, sell, give away, barter, deliver, exchange, distribute, purchase, or possess a controlled substance in violation of any criminal provision of chapter 152. The covenant is not violated when a person other than the landlord or licensor or the tenant or licensee possesses or allows controlled substances in the premises, common area, or curtilage, unless the landlord or licensor or the tenant or licensee knew or had reason to know of that activity.

(b) In every lease or license of residential premises, whether in writing or parol, the tenant or licensee covenant that the tenant or licensee will not commit an act enumerated under section 504B.206, subdivision 1, paragraph (a), against a tenant or licensee or any authorized occupant.

Subd. 2. Breach voids right to possession. A breach of the covenant created by subdivision 1 voids the tenant's or licensee's right to possession of the residential premises. All other provisions of the lease or license, including but not limited to the obligation to pay rent, remain in effect until the lease is terminated by the terms of the lease or operation of law. If the tenant or licensee breaches the covenant created by subdivision 1, the landlord may bring, or assign to the county or city attorney of the county or city in which the residential premises are located, the right to bring an eviction action against the tenant or licensee. The assignment must be in writing on a form provided by the county or city attorney, and the county or city attorney may determine whether to accept the assignment. If the county or city attorney accepts the assignment of the landlord's right to bring an eviction action:

(1) any court filing fee that would otherwise be required in an eviction action is waived; and

(2) the landlord retains all the rights and duties, including removal of the tenant's or licensee's personal property, following issuance of the writ of recovery of premises and order to vacate and delivery of the writ to the sheriff for execution.

Subd. 3. Waiver not allowed. The parties to a lease or license of residential premises may not waive or modify the covenant imposed by this section.

Minn. Stat. § 504B.171. Cases alleging violations of the illegal drug covenant receive priority in scheduling hearings and issuing and executing the Writ of Restitution. *See* discussion, *supra* and *infra* at V.Q, VI.G.24, VIII.B-C.

The statute applies to manufactured home park lot rental, and does not require notice under § 327C.09. *D. H. Gustafson Co. v. Rasmussen*, No. C2-00-540, 2000 WL 1742111 (Minn. Ct. App. 2000) (unpublished).

For more on curtilage and common areas, *see* discussion, *supra*, at I.D.12.

(1) Proving elements of the violation

The plaintiff must prove the elements of the alleged violation of Minn. Stat. § 504B.171:

Drugs: (1) unlawfully (2) allow (3) controlled substances (4) in those premises or in the common area and curtilage of the premises

Prostitution: (1) allow (2) prostitution or (3) prostitution-related activity (4) as defined in section 617.80, subdivision 4, (5) to occur on the premises or in the common area and curtilage of the premises

> Minn. Stat. § 617.80, subdivision 4: Prostitution; prostitution-related activity. "Prostitution" or "prostitution-related activity" means conduct that would violate sections 609.321 to 609.324.
>
> Minn. Stat. § 609.321 Prostitution and Sex Trafficking; Definitions....
>
> Minn. Stat. § 609.322 Solicitation, Inducement, and Promotion of Prostitution; Sex Trafficking....
>
> Minn. Stat. § 609.3232 Protective Order Authorized; Procedures; Penalties....
>
> Minn. Stat. § 609.324 Patrons; Prostitutes; Housing Individuals Engaged in Prostitution; Penalties....

Firearms: (1) allow (2) the unlawful (3) use or possession (4) of a firearm (5) in violation of section 609.66, subdivision 1a, 609.67, or 624.713, (6) on the premises or in the common area and curtilage of the premises

> Minn. Stat. § 609.66 Dangerous Weapons....
> Subd. 1a.Felony crimes; silencers prohibited; reckless discharge....
>
> Minn. Stat. § 609.67 Machine Guns and Short-barreled Shotguns....
>
> Minn. Stat. § 624.713 Certain Persons Not to Possess Firearms....

Stolen property: (1) allow (2) stolen property or (3) property obtained by robbery (4) in those premises or in the common area and curtilage of the premises

Common area and curtilage of the premises: (1) the common area and curtilage of the premises (2) will not be used (3) by either the landlord (4) or licensor (5) or the tenant (6) or licensee (7) or others acting under the control of either (8) to manufacture, sell, give away, barter, deliver, exchange, distribute, purchase, or possess (9) a controlled substance (10) in violation of any criminal provision of chapter 152. (11) The covenant is not violated when (12) a person other than the landlord or licensor or the tenant or licensee (13) possesses or allows (14) controlled substances (15) in the premises, common area, or curtilage, (16) unless the landlord or licensor or the tenant or licensee (17) knew (18) or had reason to know of that activity. For more on curtilage and common areas, *see* discussion, *supra*, at I.D.12.

In prostitution and firearms violations cases, counsel should carefully review the cross-referenced statutes to determine whether a violation has occurred.

The plaintiff must prove a violation of the covenant by preponderance of the evidence. *See* discussion at V.H.7.

In *Smith Sturm Investment Co d/b/a Winnetka Village Apts. v. _____,* 27CVHC 14-5918 (Minn. Dist. Ct. 4th Dist. Nov. 20, 2014) (Appendix 722), the court held the landlord failed to prove the tenants had either controlled substances (cocaine) or paraphernalia in the property by a preponderance of the evidence where the only evidence before the court is the second or third-hand report of events related by the landlord's agent. The court declined to determine whether a landlord waives its right to bring an eviction action by accepting rent with the knowledge of a controlled substance breach of lease.

In *Apple Villa South LP v. _____,* No. 19Av-CV-2335 (Minn. Dist. Ct. 1st Dist., Dakota County, Sept. 19, 2014) (Appendix 719), the landlord served the tenant in subsidized housing with a termination notice due to an alleged drug incident that occurred on the premises. The tenant failed to vacate the property, so the landlord brought an eviction notice. The court held the landlord failed to prove good cause for termination of the lease where there was no seizure of any drugs or even the observation of any drugs, and the tenant's testimony was credible and unwavering that she burned sage but did not have any marijuana in the premises.

(1a) Drug paraphernalia

Minn. Stat. § 152.092 provides:

152.092 POSSESSION OF DRUG PARAPHERNALIA PROHIBITED.

(a) It is unlawful for any person knowingly or intentionally to use or to possess drug paraphernalia. Any violation of this section is a petty misdemeanor.

(b) A person who violates paragraph (a) and has previously violated paragraph (a) on two or more occasions has committed a crime and may be sentenced to imprisonment for up to 90 days or to payment of a fine up to $1,000, or both.

Minn. Stat. § 152.01 provides:

Subd. 18. Drug paraphernalia.

(a) Except as otherwise provided in paragraph (b), "drug paraphernalia" means all equipment, products, and materials of any kind, except those items used in conjunction with permitted uses of controlled substances under this chapter or the Uniform Controlled Substances Act, which are knowingly or intentionally used primarily in (1) manufacturing a controlled substance, (2) injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, (3) testing the strength, effectiveness, or purity of a controlled substance, or (4) enhancing the effect of a controlled substance.

(b) "Drug paraphernalia" does not include the possession, manufacture, delivery, or sale of hypodermic needles or syringes in accordance with section 151.40, subdivision 2.

A couple of appellate decisions noted drug paraphernalia along with illegal drugs as part of the facts, but the decisions did not rest on the presence of drug paraphernalia. *Nationwide Hous. Corp. v. Skoglund,* 906 N.W.2d 900, 908 (Minn. Ct. App. 2018; *Minneapolis Pub. Hous. Auth. v. Demmings,*

No. C5-94-2045, 1995 Minn. App. LEXIS 612 at *3, 1995 WL 265061 at _____ (Minn. Ct. App. May 9, 1995).

In *Fergus Falls Housing and Redevelopment Authority v. _____,* 56-CV-15-2367 (Minn. Dist. Ct. 7th Dist., Otter Tail County, Sept. 15, 2015) (Appendix 723) (Judge Hanson), the landlord asserted the tenant broke the terms of the rental agreement by failing to disclose criminal history during the Section 8 housing recertification process, and a background investigation revealed drug-related criminal activity on or off the premises. The court granted tenant's motion to dismiss as follows: (1) the tenant failing to disclose that he had received a charge for possession of drug paraphernalia during the recertification process is not a proper basis for the landlord to terminate the lease; and (2) a charge of a petty misdemeanor offense involving possession of drug paraphernalia, which was ultimately dismissed, is not a serious or repeated violations of a material term of the lease.

In *Southgate Mobile Village v. _____,* No. HC-0205315400 (Minn. Dist. Ct. 4th Dist. July 2, 2002) (Appendix 575), the court concluded that possession of drug paraphernalia is not covered by Minn. Stat. § 504B.171 (formerly § 504.181), but may violate a lease provision specifically prohibiting possession, and that the landlord did not prove drugs were on the property.

(1b) Medical marijuana

Minn. Stat. § 152.32 provides in part:

Subd. 2. Criminal and civil protections.

(a) Subject to section 152.23, the following are not violations under this chapter:

(1) use or possession of medical cannabis or medical cannabis products by a patient enrolled in the registry program, or possession by a registered designated caregiver or the parent or legal guardian of a patient if the parent or legal guardian is listed on the registry verification;

(2) possession, dosage determination, or sale of medical cannabis or medical cannabis products by a medical cannabis manufacturer, employees of a manufacturer, a laboratory conducting testing on medical cannabis, or employees of the laboratory; and

(3) possession of medical cannabis or medical cannabis products by any person while carrying out the duties required under sections 152.22 to 152.37.

. . .

Subd. 3. Discrimination prohibited.

(a) No school or landlord may refuse to enroll or lease to and may not otherwise penalize a person solely for the person's status as a patient enrolled in the registry program under sections 152.22 to 152.37, unless failing to do so would violate federal law or regulations or cause the school or landlord to lose a monetary or licensing-related benefit under federal law or regulations.

(2) Lack of knowledge defense

Neither of the *drug* covenants are violated if someone other than one of these parties possesses or allows illegal drugs on the property, unless the party knew or had reason to know of the activity. The Legislature did not extend this part of the statute to the prostitution and firearms covenants. It is unclear whether that was intention or a drafting oversight. However, the fact that each of the covenants uses the word (allow) suggests that the test for liability is whether the party was directly involved or acquiesced in the conduct of others.

In *Ford v. _____,* No. HC-1020325505 (Minn. Dist. Ct. 4th Dist. Apr. 26, 2002) (Appendix 500), the court found that the Section 8 voucher landlord failed to prove that loud cars belonged to tenant's guests, that defendant knew or should have known that guests had firearms, that children hanging around the property were defendant's guests, that trash in the yard was from defendant's apartment, that a basement electrical fire resulted from defendant's conduct, that the notice of intent to condemn resulted from defendant's conduct, that the smell of marijuana came from defendant's apartment and that the plaintiff failed to allege drug use with any particularity.

In *Minneapolis Public Housing Authority v. Folger*, No. UD-1971114532 (Minn. Dist. Ct. 4th Dist. Jan. 23, 1998) (Appendix 346A), the tenant's guest consumed drugs and died of an overdose while the tenant was sleeping. The court concluded that the public housing authority did not prove that the tenant violated the lease, as the tenant did not "allow" his guest to use drugs or engage in criminal activity, and the tenant did not violate Minn. Stat. § 504.181 (now § 504B.171) because the tenant did not know or have reason to know of his guest's prohibited activity. The decision was affirmed on judge review (Minn. Dist. Ct. 4th Dist. Apr. 13, 1998) (Appendix 346B) (Oleisky, J.). In *2717 Blaisdell Co. v. McKenzie*, No. UD-1950104525 (Minn. Dist. Ct. 4th Dist. Feb. 9, 1995) (Appendix 161), the police observed the tenant's unit, noting excess traffic. The police then arranged for a "controlled buy" of cocaine. After a search by the police, the tenant's nonresident brother was cited for possession of two marijuana cigarettes. There was no evidence introduced about the alleged cocaine (no chemical test, no chemist report, no police officer testimony about identification of substance as cocaine or how the officer determined that cocaine was purchased), the value of the substances seized, or the tenant's knowledge of his brother's possession of the marijuana or cash. The court concluded that the landlord had not proven violation of the drug covenant or a lease provision incorporating the seizure statute.

Other decisions holding for the tenant include *Housing and Redevelopment Authority of Duluth v. Henski*, No. C6-96-601484 (Minn. Dist. Ct. 6th Dist. Sep. 4, 1996), *affirmed* No. C7-96-1872) (Minn. Ct. App. Feb. 11, 1997) (Appendix 261) (Lower court found drugs present but no evidence that tenant knew or participated in drug activity and tenant excluded offender from the property; affirmed by unpublished order not to be cited as precedent); *Minneapolis Public Housing Authority v. Henry*, No. UD-1970122503 (Minn. Dist. Ct. 4th Dist. May 23, 1997) (Appendix 276) (Public housing: affirmed referee decision that elderly tenant did not violate state drug covenant where police found trace amount of drugs and paraphernalia with no evidence of the tenant's involvement or knowledge of drug activity; possession of drug paraphernalia with intent to sell or use it is not drug related *criminal* activity under federal regulations); *Minneapolis Public Housing Authority v. Eberhardt*, No. UD-1970204642 (Minn. Dist. Ct. 4th Dist. Mar. 17, 1997) (Appendix 275) (Public housing: landlord did not prove that elderly tenant knew or had reason to know of drug possession by guests where tenant admitted knowledge of guests' drug use but denied knowledge of use or possession in his apartment, there was no evidence that the tenant knew of the guests' drug use or the tenant's familiarity with drugs, and the small amount of drugs found; distinguished *Minneapolis Public Housing Authority v. Greene*; six day notice was unreasonable where there was no evidence of a threat to others' safety); *Minneapolis Public Housing Authority v. Lafayette*, No. UD-190627501 (Minn. Dist. Ct. 4th Dist. Aug. 7, 1997) (Appendix 277) (Discovery of illegal drugs in common area near where tenant had been did not prove possession of

illegal drugs). *See also United States v. 121 Nostrand Avenue*, 760 Supp. 1015 (E.D.N.Y. 1991) (Under federal anti-drug forfeiture statute, court removed adult grandchild who sold drugs from public housing apartment and allowed grandmother and other household members to remain because she lacked knowledge of drug activity).

In *Minneapolis Public Housing Authority v. Greene*, 463 N.W.2d 558, 561-62 (Minn. Ct. App. 1990), the court affirmed the trial court's decision that seizure of cocaine from a public housing unit constituted good cause for termination of the lease. *See Phillips Neighborhood Housing Trust v. Brown*, 564 N.W.2d 573 (Minn. Ct. App. 1997), *rev. den.* (Affirmed eviction of entire household when one co-tenant violated the lease by engaging in illegal drug activity); *Minneapolis Public Housing Authority v. Barron*, No. C9-95-454 (Minn. Ct. App. Aug. 22, 1995), FINANCE & COMMERCE at 41 (Aug. 25, 1995) (Appendix 158) (unpublished: public housing, eviction for seizure of drugs; dissent concluded that evidence did not support conclusion that the tenant knew or should have known about drugs); *Minneapolis Public Housing Authority v. Demmings*, No. C5-94-2045 (Minn. Ct. App. May 9, 1995), FINANCE & COMMERCE at 20 (May 12, 1995) (Appendix 159) (unpublished: public housing, possession and sale of illegal drugs).

(3) Waiver

While the parties to a lease or license of residential premises may not waive or modify the covenant, Minn. Stat. § 504B.171, Subd. 3, the landlord may waive violation of the covenant by acceptance of rent with knowledge of the breach. *Southgate Mobile Village v. _____,* No. HC-0205315400 (Minn. Dist. Ct. 4th Dist. July 2, 2002) (Appendix 575); *Maryland Park Apartments v. _____,* No. CX-02-4044 (Minn. Dist. Ct. 2nd Dist. June 17, 2002) (Appendix 533) (federal law and *Rucker* do not preclude Minnesota statute with greater tenant protection; landlord failed to prove criminal activity occurred at or near tenant's residence, landlord failed to prove that tenant knew or had reason to know of criminal activity, landlord waived breach by accepting rent).

(4) Landlord violations

The tenant can enforce the covenant in a tenant remedies, rent escrow or emergency action. The extension of liability under the covenant to landlords probably does not provide a defense to the tenant that the landlord's violation of the covenant excuses the tenant's violation of the covenant. A landlord's violation of the covenant may give rise to defenses in nonpayment of rent and notice to quit cases. *See* discussion, *supra*, at VI.E.31 and VI.F.3.

b. *Seizure*

Minn. Stat. § 504B.301 (formerly § 566.02) provides that a seizure of contraband or a controlled substance manufactured, distributed or acquired in violation of Ch. 152 and with a retail value of at least $100.00 constitutes unlawful detention by the tenant, unless there is a defense under § 609.5317. Laws Ch. 305, § 2. When contraband or a controlled substance manufactured, distributed or acquired in violation of Ch. 152 and with a retail value of at least $100.00 is seized on residential rental property incident to a lawful search or arrest, the county attorney shall give notice to the landlord and agent authorized to receive service under § 504B.171 (formerly § 504.181) within 30 days after seizure. With 15 days of notice, the landlord must bring an eviction (unlawful detainer) action, or assign to the county attorney the right to bring the action. The assignment is limited to those rights and duties up to and including delivery of the writ of restitution to the sheriff. Upon notice of a second seizure involving the same tenant, the property is subject to forfeiture unless an eviction (unlawful detainer) action has been

commenced or the right to bring the action has been assigned. Minn. Stat. § 609.5317, subd. 1.

It is a defense for a tenant that the tenant had no knowledge or reason to know of the presence of the contraband or controlled substance, or could not prevent it from being brought into the property. § 609.5317, subd. 3. *See Minneapolis Public Housing Authority v. Jivens,* No. UD-1920720559 (Minn. Dist. Ct. 4th Dist. Sept. 9, 1992) (Appendix 18.M). In *Minneapolis Public Housing Authority v. Greene*, the court held that the defenses and notice requirements of the statute were not applicable where the trial court found that the retail value of seized crack cocaine was $200.00, below the $1,000.00 threshold in effect at the time. 463 N.W.2d at 560-61. *See also Minneapolis Public Housing Authority v. Barron*, No. C9-95-454 (Minn. Ct. App. Aug. 22, 1995), FINANCE & COMMERCE at 41 (Aug. 25, 1995) (Appendix 158) (unpublished: public housing, eviction for seizure of drugs; dissent concluded that evidence did not support conclusion that the tenant knew or should have known about drugs).

In *2717 Blaisdell Co. v. McKenzie*, No. UD-1950104525 (Minn. Dist. Ct. 4th Dist. Feb. 9, 1995) (Appendix 161), the police observed the tenant's unit, noting excess traffic. The police then arranged for a "controlled buy" of cocaine. After a search by the police, the tenant's nonresident brother was cited for possession of two marijuana cigarettes. There was no evidence introduced about the alleged cocaine (no chemical test, no chemist report, no police officer testimony about identification of substance as cocaine or how the officer determined that cocaine was purchased), the value of the substances seized, or the tenant's knowledge of his brother's possession of the marijuana or cash. The court concluded that the landlord had not proven violation of the drug covenant or a lease provision incorporating the seizure statute.

The court may not stay issuance of the writ of restitution unless the court makes written findings specifying the extra-ordinary and exigent circumstances that warrant staying the writ for reasonable period, not to exceed seven days.

See generally National Housing Law Project, *Security, Crime and Drugs*, (1990) (Appendix 20.C); HUD HOUSING PROGRAMS: TENANT'S RIGHTS; discussion, *supra* at VI.G.10.

c. *Public nuisance*

Minn. Stat. § 617.81, subd. 2 includes unlawful sale or possession of controlled substances. Under § 617.85, a public nuisance is an additional ground to cancel a lease or acquire restitution of the premises. If the city or county attorney or attorney general seeks abatement of a public nuisance, the landlord may move to cancel the lease or secure restitution of the premises. *See City of St. Paul v. Como Rice Health Club*, No. C7-95-1120 (Minn. Ct. App. Oct. 24, 1995), FINANCE & COMMERCE at 37 (Oct. 27, 1995) (Appendix 162) (landlord did not prove that nuisances were committed in portion of premises under tenant's control).

In *Bongard v. Premium Tax Servs., Inc.,* No. 27CVHC 12-6392 207 (Minn. Dist. Ct. 4th Dist. Dec. 5, 2012) (Appendix 695), in a commercial eviction action, the court granted partial summary judgment in favor of the tenant and dismissed the landlord's claims for eviction for breach of lease due to the lack of a right of re-entry clause in the lease, and termination of lease for public nuisance due to the lack of notice from a prosecuting attorney as required by Minn. Stat. § 617.81. The court noted the lease was year-to-year rather than month-to-month requiring a three month notice under Minn, Stat. § 504B.135, but if the effective date was after the action was commenced, the action would not have accrued. Because the lease's starting date remained a disputed fact, the issue was set for termination at trial.

c1. *Registered sex offenders*

Minn. Stat. § 244.052, Subd. 4a provides:

> (b) If the owner or property manager of a hotel, motel, lodging establishment, or apartment building has an agreement with an agency that arranges or provides shelter for victims of domestic abuse, the owner or property manager may not knowingly rent rooms to both level III offenders and victims of domestic abuse at the same time. If the owner or property manager has an agreement with an agency to provide housing to domestic abuse victims and discovers or is informed that a tenant is a level III offender after signing a lease or otherwise renting to the offender, the owner or property manager may evict the offender.

d. *Public housing and subsidized housing.*

Public and some subsidized housing programs have additional regulations governing drug related criminal activity on or near the premises. For a list of relevant defenses, *see* Forms Appendix, Answers Forms A-8. *See also* discussion, *supra*, at VI.G.10 (Breach of lease: public and subsidized housing).

e. *Regulation prohibiting Legal Services Corporation (LSC) recipients from representing tenants in certain drug allegation public housing cases*

The Legal Services Corporation (LSC) promulgated a regulation prohibiting recipient representation in eviction cases from public housing where the person has been recently convicted or prosecuted for drug offenses, and the person threatened or now threatens other public housing tenants' or employees' health and safety. The prohibition does not extend to representing (1) other members of the person's household, (2) persons not convicted or prosecuted, (3) persons not posing a threat health and safety of other public housing tenants or employee, or (4) persons in other subsidized housing progrrams. 45 C.F.R. Part 1633 (Appendix 163). *See* L. McDonough and M. MacCreight, *Wait a Minute: Slowing Down Criminal Activity Eviction Cases to Find the Truth*, 41 CLEARINGHOUSE REVIEW 55 (May/June 2007) and updated slide show.
http://povertylaw.homestead.com/WaitAMinute.html

f. *Reasonable accommodation of disabilities*

Reasonable accommodation of disabilities also may apply in chemical abuse cases. The defenses vary depending on the type of housing at issue. For a list of defenses, *see* Forms Appendix, Answer Forms. *See generally* discussion, *supra*, at VI.G.9.

g. *Informants*

In *Bossen Terrace v. Miller*, No. CX-982423 (Minn. Ct. App. June 1, 1999) (unpublished), the landlord alleged drug sales to a confidential reliable informant (CRI) based on testimony of police officers. The Court of Appeals affirmed the district court's refusal to order disclosure of the CRI employed by the police officers, concluding that the tenant had not explained precisely what testimony the tenant thought the informant would give and how this testimony would be relevant to the material issue. The court noted that the district court relied on the observations of the police officers, rather than statements made by the CRI. The court concluded that the district court did not err in inferring that the tenant knew or should have known of illegal activity on the property, where the police testified as to the illegal activity, and the tenant claimed sole access and control to her apartment.

h. *Search and seizure of the tenant and tenant's property*

(1) In private eviction actions

In *Nationwide Hous. Corp. v. Skoglund,* 906 N.W.2d 900. 908 (Minn. Ct. App. 2018), the Court held that the exclusionary rule of evidence obtained improperly by the police "does not extend to a civil eviction proceeding brought by a *private landlord*." (emphasis added).

(1a) In public housing and subsidized housing eviction actions

The *Nationwide Hous. Corp.* leaves open the issue of whether the rule applies to public and subsidized housing. The rule should apply to public and subsidized housing since the government would be involved with both the search and the eviction, with the government seeking remedies in the eviction based on search by the government.

In *Public Housing Agency of the City of St. Paul v. Edwards,* No. 62-HG-CV-09-1448 (Minn. Dist. Ct. 2nd Dist. Oct. 28, 2009) (Appendix 747), the public housing landlord filed an eviction action for possession of a small amount of marijuana at a public housing unit of another tenant on another property. The court concluded that the possession was a petty misdemeanor and not a crime subject to eviction, noting that the landlord referred to its occupancy policies that the tenant never received and the landlord did not introduce into evidence. Earlier, in *Public Housing Agency of the City of St. Paul v. Edwards,* No. 62-HG-CV-09-1448 (Minn. Dist. Ct. 2nd Dist. Aug. 17, 2009) (Appendix 748), the court denied the tenant's motion for suppression, concluding that while the search was unconstitutional, the exclusionary rule did not apply to civil cases. On appeal, in *Pub. Hous. Agency v. Edwards,* No. A09-2085, 2010 Minn. App. Unpub. LEXIS 972, 2010 WL 3544770 (Minn. Ct. App. Sep. 14, 2010) (unpublished), affirmed the district court on the issue of eviction but did not rule on the seizure. The court noted it could not rely on occupancy policies never submitted into evidence.

See Minneapolis Public Housing Authority v. _____, No. HC 10306313566 (Minn. Dist. Ct. 4th Dist. July 31, 2003) (Appendix 539) (Judge Doty) (public housing eviction denied and expunged; landlord did not prove that police officer properly learned about marijuana where officer entered apartment with consent of tenant to look for trespassed person, and did not prove that marijuana was in plain view; small amount of marijuana was not criminal activity; landlord's knowledge of alleged altercation was from a police report whose authors did not testify, and did not connect tenant to the incident); *Minneapolis Public Housing Authority v. _____,* No. HC000921508 (Minn. Dist. Ct. 4th Dist. Oct. 20, 2000) (Appendix 542) (the court excluded evidence from a warrantless search of the apartment).

(2) In other civil actions

Consideration of search and seizure issues in public and subsidized housing evictions is supported by decisions in other civil proceedings. In *State Patrol v. State, D.P.S.*, 437 N.W.2d 670, 676-77 (Minn. Ct. App. 1989), the Court of Appeals held that the exclusionary rule applied to a labor arbitration proceedings involving the possible loss of a job. The court noted:

> The primary purpose, if not the sole purpose, of the exclusionary rule is to deter future unlawful police conduct. To give effect to this deterrence function, we cannot allow one government agency to use the fruits of unlawful conduct by another branch of the same agency to obtain an employee's dismissal. Furthermore, the loss of a job is a very severe sanction which warrants special condition. We agree with Judge J. Skelly Wright of the Court of Appeals for the District

> of Columbia, who wrote: "It would seem wholly at odds with our traditions to allow the admission of evidence illegally seized by Government agents in discharge proceedings, which the court has analogized to proceedings that "involve the imposition of criminal sanctions . . . . ""

Id. Citations excluded.

In *Alman v. Anderson*, 263 N.W.2d 651, 652 (Minn. 1978), the Minnesota Supreme Court affirmed as not clearly erroneous the trial court's ruling in a negligence action that blood alcohol tests would be excluded because the driver's consent was not knowingly given. However, the court stated that "We do not pass on the question of the use of blood samples in civil litigation where there has been no consent to the taking of the blood." *Id.*, n.1. In *Tucker v. Pahkala*, 268 N.W.2d 728, 730 (Minn. 1978), the court affirmed the trial court's admission of blood alcohol test results in a negligence action, concluding that the implied-consent statutes cannot be used to exclude material evidence and hinder a just result, where the party objecting to admission of the evidence had commenced the action and put the issue of negligence of the two drivers before the court. The court noted that the case was distinguishable from *Alman* without explanation. In *Matter of Welfare of C. Children*, 348 N.W.2d 94, 98 (Minn. Ct. App. 1984), the Court of Appeals held that "Without expressing any opinion as to the applicability of the exclusionary rule to civil cases, if any error occurred, it was merely harmless because substantial injustice did not occur. This evidence was clearly insignificant and was not even referred to by the trial judge in the findings." *Id.* (Citations omitted). While it is difficult to make firm conclusions based on these cases, it appears that the tenant has the strongest argument for excluding improperly obtained evidence in a public housing eviction, where the government is the landlord, another branch of the government obtained the evidence, and the branches may well have worked together.

(3) Criminal prosecutions concerning tenants

There have been several criminal cases discussing whether a police search of a tenant's apartment or other rented property can be authorized by the landlord.

(a) Garages and storage units

In *State v. Licari*, 659 N.W.2d 243 (Minn. 2003), the court held that (1) the defendant had capacity to challenge search of rented storage unit based rental facility manager's consent; (2) the landlord's contractual right to inspect did not give her actual authority to consent to search; (3) the police officer's mistaken belief that the landlord had authority to consent to search was not reasonable for purposes of apparent authority exception to warrant requirement; (4) the intrusion was not justified under plain-view exception to warrant requirement; and (5) the manager's entry into storage unit at officer's request would have been subject to same constitutional constraints as officer's entry. *See State v. Frey*, No. C3-01-718, 2002 WL 206628 (Minn. Ct. App. Feb. 12, 2002) (unpublished) (warrantless search improper where landlord unlocked apartment door for police and post-entry conduct exceeded the scope of the emergency exception to the warrant requirement). *But see State v. Herzog*, No. C3-01-802, 2002 WL 769215 (Minn. Ct. App. April 30, 2002) (unpublished) (pre-*Licari* decision: it was reasonable for officer to believe caretaker had authority to consent to the search of the garage; consent exception applies and the warrantless entry was permissible).

In *State v. Herzog,* No. C3-01-802, 2002 WL 769215 (Minn. Ct. App. April 30, 2002) (unpublished), the court held in a pre-*Licari* decision that it was reasonable for officer to believe caretaker had authority to consent to the search of the garage; consent exception applies and the warrantless entry was permissible. On remand by the Minnesota Supreme Court for reconsideration in

light of that court's decision in *State v. Licari*, the Court of Appeals concluded that the police did not obtain a valid consent to the warrantless entry into Herzog's rented garage and reversed the district court. *State v. Herzog,* No. C3-01-802, 2002 WL 769215 (Minn. Ct. App. Sept. 9, 2003).

Similarly, in *State v. Grunig,* No. C0-01-1101, 2003 WL 22078556 (Minn. Ct. App. Sept. 9, 2003) (unpublished), the Court held that the state has not shown the caretaker had actual or apparent authority to consent to the warrantless search of the garage rented by the defendant under his apartment lease. The Court noted that the provision in the tenant privacy statute, Minn. Stat. § 504B. 211, allowing for entry by the landlord for a reasonable business purpose did not give the landlord authority to consent to the warrantless search.

In *State v. Carter*, 697 N.W.2d 199 (Minn. 2005), the district court in a criminal prosecution denied the defendant's motion to suppress evidence found in a self-storage unit following a drug-detection dog sniff outside the unit. *Id.* at 202-04. On appeal, the Court of Appeals held that the defendant had no reasonable expectation of privacy in the semi-public area immediately outside the storage unit. *State v. Carter*, 682 N.W.2d 648, 652 (Minn. Ct. App. 2004). On further appeal, the Minnesota Supreme Court reversed and remanded, holding that while a drug-detection dog sniff outside a self-storage unit is not a search within the meaning of the Fourth Amendment to the United States Constitution, it is a search within the meaning of Article I, Section 10 of the Minnesota Constitution. 697 N.W.2d at 209-11. The court added that the governmental interest in using drug-detection dogs in aid of law enforcement is significant, a police officer must have reasonable, articulable suspicion of criminal activity before ordering such a sniff. *Id.* at 211-12. The court concluded that a person's criminal record, his association with a brother who was suspected of criminal activity, and his frequent visits to a self-storage facility do not constitute probable cause to support a warrant to search his self-storage unit. *Id.* at 204-06, 212. Justice Page, joined by Justice Blatz, concurred in the result but argued for the higher standard of probable cause before ordering a sniff, *id.* at 212, while Justice Russell Anderson dissented, arguing that the conviction be affirmed. *Id.* at 212-13.

(b) Curtilage and common areas

In *State v. Milton*, 821 N.W.2d 789 (Minn. 2012), the court discussed the distinction between the curtilage and common areas for the purposes of police searches, as tenants have an expectation of privacy in the former but not the latter. *Id.* at 799.

> The United States Supreme Court has explained that courts determine whether an area constitutes curtilage, "as did the common law, by reference to the factors that determine whether an individual reasonably may expect that an area immediately adjacent to the home will remain private." *Oliver v. United States*, 466 U.S. 170, 180, 104 S.Ct. 1735, 80 L.Ed.2d 214 (1984). Still, what constitutes curtilage often "defies precise definition." *Sorenson*, 441 N.W.2d at 458. Thus, we have sought guidance from the Supreme Court and we have described curtilage in our case law as the court has described it-"the 'area to which extends the intimate activity associated with the sanctity of a man's home and the privacies of life.' " *Id*. at 458 (quoting *Oliver*, 466 U.S. at 180, 104 S.Ct. 1735). Because curtilage is "so immediately and intimately connected to the home," a resident has a reasonable expectation of privacy in the curtilage of his home. *Garza v. State*, 632 N.W.2d 633, 639 (Minn. 2001).
>
> But, a resident of a multifamily residence has a "diminished" expectation of privacy in the common areas surrounding the residence. *See State v. Krech*, 403 N.W.2d 634, 637 (Minn. 1987) (discussing the backyard of a duplex in a suburban neighborhood). More specifically, we have

explained that this "di-minished" expectation of privacy in the common areas of multifamily residences is due to the fact that the common areas are " 'not subject to the exclusive control of one tenant and [are] utilized by tenants generally and the numerous visitors attracted to a multiple-occupancy building.' " *Id*. at 637 (quoting 1 W. LaFave, *Search and Seizure* § 2.3(f) at 414 (1987)); *see also United States v. Brooks*, 645 F.3d 971, 975-76 (8th Cir. 2011) (holding that a stairway leading to a common area of a multifamily residence was not curtilage).

Id. The court concluded that the police officer was in legitimate position to view shell casings on platform of duplex and stairway leading up to defendant's residence. *Id.* at 799-800.

In *U.S. v. Eisler*, 567 F.2d 814 814 (8th Cir. Minn. 1977), the Eighth Circuit United States Court of Appeals held that in a criminal prosecution, the defendant-tenant and defendant-visitor had no expectation of privacy with respect to conversation which they carried on in hallway of their apartment building, even though the building was equipped with a security system, as the system was to provide security to the occupants, not privacy in common hallways. *Id.* at 816-17.

In *U.S. v. McGrane,* 746 F.2d 632 (8th Cir. Mo. 1984), the Eighth Circuit United States Court of Appeals held that in a criminal prosecution, the basement of the apartment building constituted a common area of the building, accessible to all tenants and the landlord, so that the tenant did not have an expectation of privacy extending into the basement and the visual inspection of a storage locker in this area did not violate the fourth amendment. *Id.* at 634-35.

(c) Co-tenants

When one co-tenant consents to the search of a residence, a second co-tenant who was present but did not object to the search cannot later prevail on a claim that the search violated the second co-tenant's right to be secure against unreasonable searches conferred by U.S. Const. amend. IV and Minn. Const. Art. I, § 10. *State v. Por Hue Vue*, 753 N.W.2d 767, 769-70 (Minn. Ct. App. 2008).

(d) Resident’s unit

In *State v. Luhm,* 880 N.W.2d 606 (Minn. Ct. App. May 31, 2016), Luhm was convicted of five felony offenses after drugs and weapons were found in his condominium unit. Police entered a secure, multi-unit condominium building without a warrant, but with the consent of the property management company, and then obtained a warrant to search Luhm's condo after a drug-sniffing dog alerted immediately outside of Luhm's door. Luhm appealed the denial of his motion to suppress the evidence found in his home, and the Court of Appeals upheld the decision. The Court of Appeals found that Luhm did not have a legitimate expectation of privacy in the common areas of the building, at least in part, because they are not subject to the exclusive control of one tenant. The Court of Appeals further held that, in the alternative, the decision below was proper because the property management company consented to the warrantless entry into the building by providing the police with unlimited access to a front-door key, and that the property manager had authority to do so, because it had control over the common areas of the building. Finally, the Court of Appeals held that the area immediately outside the door to the condominium unit is different from a front porch of a home; it is not so intimately tied to the home and living space that it is within the curtilage of the home. Therefore, a warrant is not necessary to search the area immediately outside of a door to a condo unit.

In *State v. Iepson,* No. A14-0963, 2015 WL 1514022 (Minn. Ct. App. Apr. 6, 2015) (unpublished), a gas leak in a building the defendant rented for business purposes necessitated repairs by

a gas company. The gas company was unable to reach the defendant to gain entry into his business unit and contacted the owner of the building and a locksmith to drill open the defendant's business unit. A police officer was requested as was routine. A first door was opened by the landlord and a second door to the defendant's premises was drilled open. Upon entry, the police officer, who did not have a warrant, saw what appeared to be marijuana growing on the premises. The officer left and returned with a search warrant. Marijuana was found on the premises. At trial, the defendant's argument to suppress the evidence was denied by the court, on the rationale that: (i) the search did not constitute a Fourth Amendment search because the police officer was acting to prevent an emergency situation and a warrant was not required; and (ii) even if the Fourth Amendment applied, the "totality" of the exigent circumstances justified a warrantless entry. The defendant was subsequently convicted. On appeal, the appellate court reversed, holding that: (i) the police officer's warrantless entry into the defendant's place of business constituted a search under the Fourth Amendment because unlike the case the trial court relied on to reach its determination, the state had not identified which "reasonable rules and regulations" they were acting under when they entered the defendant's place of business; (ii) there was no "emergency-aid exception" as the state had successfully argued at trial because the factual record did not support a conclusion that there was an immediate need for an officer's assistance for protection of life or property; and (iii) the factors Minnesota courts apply in weighing the "totality of the circumstances" were not present, and thus, the district court erred in justifying the warrantless entry under the exigency exception based on the totality of the circumstances. The court also rejected an argument by the state that the police officer's warrantless entry was lawful because it was instigated and done for private parties because (i) the issue was raised for the first time on appeal; (ii) the state had failed to build a factual record to support the private-action argument and necessitate resolution of the issue in the interest of justice; and (iii) allowing the argument would constitute unfair surprise on the defendant.

In *State v. Craig,* No. A12-2217, 2014 WL 3557885 (Minn. App. July 21, 2014) (rev. den. Sept. 24, 2014) (unpublished), Craig was convicted of possession of controlled substances and firearms. The search warrant was obtained after a dog sniff was conducted outside his apartment door. Craig's motion to suppress the evidence obtained during the search was denied, and Craig appealed. The Court of Appeals affirmed, holding that the dog-sniff was not a search under the Fourth Amendment of the U.S. Constitution because (1) the area immediately outside the apartment is not so intimately associated with the home and the activities therein as to be curtilage of the home; and (2) Craig had no reasonable expectation of privacy in the common hallway outside his apartment door, as it was not subject to the exclusive control of one tenant. The Court of Appeals also held that although the dog-sniff was a search under the Minnesota Constitution, a reasonable, articulable suspicion of illegal activity was present due to information provided by the confidential informant, and therefore it was proper.

i. *Other criminal law defenses*

Eviction defense should be coordinated with criminal defense. In *State v. Lilienthal,* 889 N.W.2d 780 (Minn. Feb. 1, 2017) the appellant met the victim through a mutual friend and, after learning that the victim needed a place to stay, agreed to rent a room in his house to the victim for $100 per week. The victim and the appellant had a disagreement and appellant asked victim to move out. That same day, because victim refused to move out, appellant poured gasoline on the victim and lit the gasoline on fire. The appellant was convicted of first-degree premeditated murder. He appealed arguing, among other things, that the district court erred in denying his request to give a jury instruction on defense of dwelling. The Minnesota Supreme Court found that the district court did not abuse its discretion because the defense of dwelling cannot be asserted against those with "rights to the dwelling" and the victim had a tenancy at will with the appellant which entitled him to written notice of the termination of the tenancy. The Court explained that the appellant's arguments that (i) the victim's tenancy terminated when

the appellant expressed that he did not want the victim to continue to live with him and (ii) the victim had not paid rent in a while both failed because the appellant did not provide a notice in writing to the victim to terminate the tenancy.

In *Minneapolis Public Housing Authority v. _____,* No. HC 1020213525 (Minn. Dist. Ct. 4th Dist. Mar. 21, 2002) (Appendix 544), the parties agreed to a continuance of 19 days for trial. The landlord then sought another continuance beyond the date of a criminal trial concerning the tenant's son, and when it could not locate a witness. When the court would not grant another continuance, the landlord moved to dismiss without prejudice. The court dismissed the action with prejudice, holding that a dismissal without prejudice would circumvent the statutory limitation on continuances to 6 days.

In *State v. Devens*, 852 N.W.2d 255 (Minn. 2014), the court held that in a criminal prosecution, a tenant has a duty to retreat from a common area hallway to the tenant's apartment before acting in self-defense against a non-resident. The court used the privacy statute, Minn. Stat. § 504B.211 to describe the significance of the property interest a tenant has in an apartment, compared to the shared interest the tenant has in a common area hallway, noting that a tenant "could exclude even his landlord [from the apartment] unless the landlord had a reasonable business purpose for entering and made a good faith effort to notify [the tenant] of the entry." *Id.* at 259.

In *Public Housing Agency for the City of St. Paul v. _____*, No. HG-CV-08-4518, Order (Minn. Dist. Ct. 2nd Dist. Jan. 22, 2009) (Appendix 615) (Judge Monahan), the public housing landlord authority filed an eviction action, claiming that the police responded to call from the tenant about serious fight between tenant and guest involving knives, and found a small amount of marijuana. The tenant claimed self defense and that she did not know about marijuana. The court concluded possession of a small amount of marijuana is not criminal activity under state law, and that the landlord presented no evidence of criminal conduct, disturbance, or impairment of the physical or social environment, health, safety, or enjoyment. The landlord also claimed that defense under Minn. Stat. § 504B.171 was preempted by *Rucker* and *Lor.* The court declined to rule on the issue, as it found that the landlord had not proven a breach of lease under federal law.

j. *Admissibility of plea from criminal action*

In *Jane Doe 136 v. Ralph Liebsch*, 872 N.W.2d 875 (Minn. 2015), Liebsch had entered into an *Alford* plea, under *North Carolina v. Alford,* 400 U.S. 25 (1970), which accepted punishment for fifth-degree criminal sexual conduct, while denying the facts establishing guilt and omitting an admission of guilt. Doe then commenced a civil case against Liebsch for sexual battery and sexual abuse based on the same conduct. The District court granted Liebsch's motion in limine to exclude the *Alford* plea because it would be more prejudicial than probative in the case and prohibited use of the *Alford* plea as impeachment evidence for the same reason. The civil jury found in favor of Liebsch and Doe appealed. The Court of Appeals held that the district court did not abuse its discretion in excluding evidence of the *Alford* plea, and the Minnesota Supreme Court affirmed. More specifically, the Supreme Court held that while evidence that a party has entered into a guilty plea is generally admissible in a civil trial involving the same conduct, a district court is not required to admit the guilty plea or an *Alford* plea, and like other evidence (including impeachment evidence), it is subject to the probative vs. prejudicial balancing test.

k. *Crime-free ordinances*

See discussion, *supra*, at VI.G.10.b.3.h.

17. Subtenants and assignees

The assignee is liable to the lessor for all covenants that run with the land. *Kostakes v. Daly*, 246 Minn. 312, 316, 75 N.W.2d 191, 194 (1956). The assignor may reenter and reclaim possession of the premises from the assignee only for breach of covenants of substantial advantage to the assignor. *Id*. at 317-18, 75 N.W.2d at 194-95. *See* discussion, *supra*, at I.D.5.

18. Retaliation

a. Statutory retaliation defenses

While the retaliation protections of Minn. Stat. § 504B.285 (formerly § 566.03) appear to be limited to holding over after notice cases, Minn. Stat. § 504B.441 (formerly § 566.28) provides broader protection for tenants who have complained about violations of the covenants of habitability or violations of the lease. Section 504B.441 (formerly § 566.28) provides that the landlord may not evict the tenant, increase the tenant's obligations, or decrease services to the tenant as a penalty for the tenant's complaint of a "violation." A "violation" is defined as being a violation of a government health, safety, housing, building, fire prevention, or housing maintenance code applicable to the building, a violation of the landlord's statutory covenants to keep the premises in reasonable repair and fit for the use intended by the parties, or a violation of an oral or written agreement, lease or contract for the rental of a dwelling in the building. § 504B.001 (formerly § 566.18).

If the eviction, increase of obligations or decrease of services occurs within 90 days after the filing of the complaint, the landlord will have the burden of proving that the eviction, increase and obligations or decrease in services was *not* intended to be a penalty. After 90 days, the burden of proof shall be on the tenant. § 504B.441 (formerly § 566.28).

In *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019), the Court held that "Minn. Stat. § 504B.441 prohibits retaliation for a residential tenant's complaint of a violation to a government entity, such as a housing inspector, or commencement of a formal legal proceeding. But it does not provide a defense to retaliation based on an expression of dissatisfaction to the landlord."

In earlier cases, it was difficult for a tenant to prevail on a retaliation claim in a breach of lease case. Either the tenant may not be able to prove retaliation if the landlord has good faith claims of breach, or if the burden of proof is shifted to the landlord, the landlord may be able to prove that the allegations of breach overcome the presumption of retaliation. *Anoka County Community Action Program v. Solmonson*, No. A05-1251, 2006 WL 1320332 (Minn. Ct. App. May 16, 2006) (unpublished) (affirmed trial court decision that defendant failed to prove retaliation in breach of lease eviction action); *Smithrud v. McDaniel*, No. UD-195050529 (Minn. Dist. Ct. 4th Dist. May 22, 1995) (Appendix 130) (tenant did not prove retaliation; no discussion of shifting burden to landlord). *But see McNair v. Doub*, No. UD-1960708524 (Minn. Dist. Ct. 4th Dist. Aug.12, 1996) (Appendix 205) (children fighting does not equal unreasonable disturbance of neighbors; landlord waived right to evict tenant for possession of pets by accepting rent after knowledge of and acquiescence to possession of a pet; claim of "thirty-five police calls" was not proven; landlord's claim for eviction was in retaliation to tenant's initiation of rent escrow claim; proof of retaliation may void a landlord's non-waiver lease provision).

However, in *Amsler v. Harris*, and *Harris v. Amsler*, Nos. UD-1990826901 and UD-1990902500 (Minn. Dist. Ct. 4th Dist. Sep. 20, 1999) (Appendix 376) (, the court bifurcated trial on issues of breach

of lease and other matters. The court found that the tenant did not breach material term of lease where provision on occupancy limit was an afterthought to the entire lease, was not in the body of the agreement, and was not initialed by the parties; landlord waived breach by continuing to accept rent after knowledge; and the landlord failed to prove a non-retaliatory purpose for an eviction complaint filed seven days after the tenant filed an emergency lockout petition. The remaining issues were scheduled for trial with payment of withheld rent into court.

The decision in *Cent. Hous. Assocs., LP v. Olson* should make the defense more viable.

b. Ordinances prohibiting retaliation

Some local ordinances include protection against retaliation. Minneapolis Code of Ordinances § 244.80 (Appendix 138) provides a presumption of retaliation where the landlord attempts to terminate the tenancy after the tenant complains to the inspection agency, or the tenant of City sues the landlord over housing conditions. *The presumption has no time limit.* The tenant also may be entitled to rent abatement for retaliation. *See* discussion, *supra*, at VI.E.1.d.(3) (Violation of covenants of habitability).

c. Common law retaliation defense

In *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019), the Court recognized common law defense to landlord evictions in retaliation for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease. The Court noted that the "defense fills a gap that the Legislature left open, perhaps inadvertently." *Id.*, at 409.

See also discussion, *supra* at VI.E.9, VI.F.3 (retaliatory rent increase or services decrease and retaliatory eviction).

19. The breach is not a material breach

In an eviction action alleging breach of lease, the landlord must prove a material breach or substantial failure in performance. *Cut Price Super Markets v. Kingpin Foods, Inc.,* 256 Minn. 339, 351, 98 N.W.2d 257, 266 (1959); *Cloverdale Foods of Minnesota, Inc. v. Pioneer Snacks,* 580 N.W.2d 46, 49 (Minn. Ct. App. 1998). To determine present possessory rights, it is necessary to determine not only the truth of the allegations in the complaint, but also whether the plaintiff demonstrates a "material" breach of the lease agreement. 580 N.W.2d at 49.

In *Skogberg v. Huisman,* No. C7-02-2059, 2003 WL 22014576 (Minn. Ct. App. 2003) (unpublished), the court cited *Cloverdale Foods of Minn., Inc.,* 580 N.W.2d 46 (Minn. Ct. App.1998), noting that a material breach is "[a] substantial breach of contract, usu[ally] excusing the aggrieved party from further performance and affording it the right to sue for damages" which ""goes to the root or essence of the contract" and is "so fundamental to the contract that the failure to perform that obligation defeats an essential purpose of the contract." (citations omitted). *See Lloyd Management, Inc. v. Ajayi*, C-395-2636 (Minn. Ct. App. June 4, 1996), FINANCE AND COMMERCE at 56 (June 7, 1996) (Appendix 241) (unpublished: record supported the findings of material breach of lease); *Valley Manor Apts. v. Gullickson*, No. CX-94-10 (Minn. Dist. Ct. 8th Dist. Feb. 3, 1994) (Appendix 56) (owner must show substantial violations of lease); *Chaney v. _____,* No. 27-CV-HC-14-2730 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2014) (Appendix 757) (tenant awarded $250 in costs where landlord where landlord did not register trade name until after the first hearing in the action; expungement granted where landlord failed to register trade name before commencing action, landlord could not demonstrate a material breach of

lease, and landlord waived breach by accepting rent with knowledge of breach).

a. *Subletting*

See Skogberg v. Huisman, No. C9-01-1131, 2002 WL 417185 (Minn. Ct. App. 2002) (unpublished) (affirmed findings that landlord failed to prove subletting where farmer-tenant farmed with his relative but did not assign control to him, and landlord accepted late payments; reversed finding that alteration was not a breach, but remanded to determine whether breach was material).

b. *Improvements*

In *Skogberg v. Huisman*, No. C7-02-2059, 2003 WL 22014576 (Minn. Ct. App. 2003) (unpublished), the Court affirmed a finding that breach which improved land and did not damage the landlord was not material under a clear error rather than *de novo* review, and the rejected argument that any breach was material.

c. *Parking*

See Larson v. _____, No. HC 030324502 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2004) (Appendix 528) (referee will not reconsider judge's order on waiver; tenant meets definition of disabled; requiring mobility disabled tenant to park vehicle further away than other tenants is not a reasonable accommodation; while parking tenant's vehicle near the home violated an ordinance, most other tenants also violated the unenforced ordinance; tenant's ordinance violations were repeated but not serious; tenant may raise landlord's violation of the covenants of habitability as a cause of tenant violation of the lease, where park owner's park design violated a local ordinance and forces tenant to violate the same ordinance)

d. *Activity not regulated by the lease*

See Gustafson v. _____, No. HC 030220546 (Minn. Dist. Ct. 4th Dist. May 5, 2003) (Appendix 509) (dismissal where claimed activity was not a lease violation).

e. *Damage*

See Olasande v. _____, No. HC 1020906533 (Minn. Dist. Ct. 4th Dist. Oct. 24, 2002) (Appendix 555) (landlord failed to prove that alleged damage, over-occupancy, failure to allow access, and failure to maintain insurance were material breaches to warrant forfeiture; landlord failed to rebut presumption of retaliation where landlord failed to prove that sale of the property required removing the tenant, and the landlord's desire to sell in response to mortgage foreclosure actually was connected to the tenant's enforcement of habitability rights); *D & D Real Estate Investment, L.L.P. v. Hughes*, Nos. UD-1990311505 (Minn. Dist. Ct. 4th Dist. Mar. 30, 1999) (Appendix 323A) (Dismissal of breach of lease claim where there was no convincing evidence that the oral lease contained a right of re-entry clause, no convincing evidence as to the dollar amount of damage to a door to determine whether damage was material or *de minimis*, and the landlord failed to prove that the tenant or one of her guests damaged the door where the tenant claimed damage was caused by a burglar; tenant's names expunged from file); *Sammon v. Mayo*, No. UD-196-0405521 (Minn. Dist. Ct. 4th Dist. Apr. 24, 1996) (Appendix 239) (landlord did not prove that teenager's coloring of apartment wall later cleaned by the tenant, violated leased provisions prohibiting property damage and painting without consent);

Damage to the premises must be more than minimal to be a material breach. *Friederrichs v. _____,* No. UD-1940608542 (Minn. Dist. Ct. 4th Dist. June 1994) (Appendix 502) (damage was not material).

f. *Over-occupancy*

See Olasande v. _____, No. HC 1020906533 (Minn. Dist. Ct. 4th Dist. Oct. 24, 2002) (Appendix 555) (landlord failed to prove that alleged damage, over-occupancy, failure to allow access, and failure to maintain insurance were material breaches to warrant forfeiture; landlord failed to rebut presumption of retaliation where landlord failed to prove that sale of the property required removing the tenant, and the landlord's desire to sell in response to mortgage foreclosure actually was connected to the tenant's enforcement of habitability rights); *Amsler v. Harris*, and *Harris v. Amsler*, Nos. UD-1990826901 and UD-1990902500 (Minn. Dist. Ct. 4th Dist. Sep. 20, 1999) (Appendix 378) (Court bifurcated trial on issues of breach of lease and other matters; tenant did not breach material term of lease where provision on occupancy limit was an afterthought to the entire lease, was not in the body of the agreement, and was not initialed by the parties; landlord waived breach by continuing to accept rent after knowledge; landlord failed to prove a non-retaliatory purpose for an eviction complaint filed seven days after the tenant filed an emergency lockout petition; remaining issues scheduled for trial with payment of withheld rent into court.;

h. *Landlord access to unit*

In *Olson v. _____,* No. 27-CV-HC-13-1834 (Minn. Dist. Ct. 4th Dist. July 13, 2015) (Appendix 700), the landlord filed an eviction complaint alleging tenant failed to pay rent for March and April 2013, and that the tenants materially breached the terms of the rental agreement by failing to pay the water bill since they moved in, refusing entry to the landlord to inspect the property, failing to keep property insurance, failing to provide proof of property insurance and suspected damage to the property. The court held that plaintiff failed to establish material breach of the lease because (1) while tenants failed to pay the water bill, and while this was a breach of the lease, the harm from the breach was not irreparable because damages would suffice and because landlord held $11,000 in security deposits which more than covered any outstanding amount; (2) landlord or his agent were either invited in or allowed in to inspect the premises, so landlord could not establish he was refused access; (3) tenant actually did maintain property insurance, so landlord could not establish tenant breached for failing to maintain insurance; (4) while tenant failed to provide proof of insurance, which was a breach, it was not a material breach and did not give rise to right of eviction; and (5) while landlord may have suspected damage to the property, the evidence suggested there was no such damage. Consequently, the landlord could not establish material breach. The landlord, however, did establish failure to pay rent, and the Court held that unless tenants pay the outstanding rent to redeem the premises, landlord would be entitled to retake possession.

See Olasande v. _____, No. HC 1020906533 (Minn. Dist. Ct. 4th Dist. Oct. 24, 2002) (Appendix 555) (landlord failed to prove that alleged damage, over-occupancy, failure to allow access, and failure to maintain insurance were material breaches to warrant forfeiture; landlord failed to rebut presumption of retaliation where landlord failed to prove that sale of the property required removing the tenant, and the landlord's desire to sell in response to mortgage foreclosure actually was connected to the tenant's enforcement of habitability rights).

i. *Rental insurance*

In *Olson v. _____,* No. 27-CV-HC-13-1834 (Minn. Dist. Ct. 4th Dist. July 13, 2015) (Appendix 700), the landlord filed an eviction complaint alleging tenant failed to pay rent for March and April 2013, and that the tenants materially breached the terms of the rental agreement by failing to pay the water bill since they moved in, refusing entry to the landlord to inspect the property, failing to keep property insurance, failing to provide proof of property insurance and suspected damage to the property. The court held that plaintiff failed to establish material breach of the lease because (1) while tenants failed to pay the water bill, and while this was a breach of the lease, the harm from the breach was not irreparable because damages would suffice and because landlord held $11,000 in security deposits which more than covered any outstanding amount; (2) landlord or his agent were either invited in or allowed in to inspect the premises, so landlord could not establish he was refused access; (3) tenant actually did maintain property insurance, so landlord could not establish tenant breached for failing to maintain insurance; (4) while tenant failed to provide proof of insurance, which was a breach, it was not a material breach and did not give rise to right of eviction; and (5) while landlord may have suspected damage to the property, the evidence suggested there was no such damage. Consequently, the landlord could not establish material breach. The landlord, however, did establish failure to pay rent, and the Court held that unless tenants pay the outstanding rent to redeem the premises, landlord would be entitled to retake possession.

See Olasande v. _____, No. HC 1020906533 (Minn. Dist. Ct. 4th Dist. Oct. 24, 2002) (Appendix 555) (landlord failed to prove that alleged damage, over-occupancy, failure to allow access, and failure to maintain insurance were material breaches to warrant forfeiture; landlord failed to rebut presumption of retaliation where landlord failed to prove that sale of the property required removing the tenant, and the landlord's desire to sell in response to mortgage foreclosure actually was connected to the tenant's enforcement of habitability rights).

j. *Noise*

In *681 Properties LLP v. _____,* No. 27CVHC 16708 (Minn. Dist. Ct. 4th Dist. Feb. 24, 2016) (Appendix 811), the trial was bifurcated and the court heard the breach of lease claim, but not the nonpayment of rent claim. The court determined the landlord failed to prove by a preponderance of the evidence that the tenant materially breached the lease by: (1) acting in a loud, boisterous, unruly or thoughtless manner; (2) loitering while waiting for a ride to work on a snowy day; (3) and that the tenant assaulted the landlord's agent. The court found that video showed that the agents were louder than the tenant, waiting for a ride was not loitering, and that the tenant pushing away the agent's cell phone/camera was not an assault. The court noted that the tenant was very credible, and the landlord's agent at trial nodded and shook her head during witness testimony, in violation of Minn. Trialbook § 10(k). The court ordered the parties to appear at the next hearing date to argue the nonpayment of rent and ordered tenant to deposit future rent with the court, and ordered the landlord's counsel to instruct agents and witnesses on complying with the Minn. Trialbook regarding conduct at trial. Minnesota Civil Trialbook is in Minn. R. Gen. Prac. Part H.

In *LHB Properties LLC v. _____,* No. 27CVHC 14-582 (Minn. Dist. Ct. 4th Dist. Feb. 28, 2014) (Appendix 726), the district court issued judgment in favor of the Section 8 tenants to remain in possession of the premises, denying the landlord's eviction action. The court found that the landlord failed to prove material breaches of the lease or of Section 8 to support eviction. The court concluded that to support an eviction, "[a] breach of lease must be material - and not merely de minimis." The court found that witness testimony, while credible, did not establish material breaches, noting that some neighbors had no first-hand knowledge of events, some were unusually sensitive to noise, and some had an "axe to grind" with the tenant.

See Ridgewood Arches v. Williams, No. UD-1950201501 (Minn. Dist. Ct. 4th Dist. Feb. 22, 1995) (Appendix 164) (landlord did not prove that loud music was not a material violation of the lease);

k. *Loitering*

In *681 Properties LLP v. _____,* No. 27CVHC 16708 (Minn. Dist. Ct. 4th Dist. Feb. 24, 2016) (Appendix 811), the trial was bifurcated and the court heard the breach of lease claim, but not the nonpayment of rent claim. The court determined the landlord failed to prove by a preponderance of the evidence that the tenant materially breached the lease by: (1) acting in a loud, boisterous, unruly or thoughtless manner; (2) loitering while waiting for a ride to work on a snowy day; (3) and that the tenant assaulted the landlord's agent. The court found that video showed that the agents were louder than the tenant, waiting for a ride was not loitering, and that the tenant pushing away the agent's cell phone/camera was not an assault. The court noted that the tenant was very credible, and the landlord's agent at trial nodded and shook her head during witness testimony, in violation of Minn. Trialbook § 10(k). The court ordered the parties to appear at the next hearing date to argue the nonpayment of rent and ordered tenant to deposit future rent with the court, and ordered the landlord's counsel to instruct agents and witnesses on complying with the Minn. Trialbook regarding conduct at trial. Minnesota Civil Trialbook is in Minn. R. Gen. Prac. Part H.

l. *Violence*

In *681 Properties LLP v. _____,* No. 27CVHC 16708 (Minn. Dist. Ct. 4th Dist. Feb. 24, 2016) (Appendix 811), the trial was bifurcated and the court heard the breach of lease claim, but not the nonpayment of rent claim. The court determined the landlord failed to prove by a preponderance of the evidence that the tenant materially breached the lease by: (1) acting in a loud, boisterous, unruly or thoughtless manner; (2) loitering while waiting for a ride to work on a snowy day; (3) and that the tenant assaulted the landlord's agent. The court found that video showed that the agents were louder than the tenant, waiting for a ride was not loitering, and that the tenant pushing away the agent's cell phone/camera was not an assault. The court noted that the tenant was very credible, and the landlord's agent at trial nodded and shook her head during witness testimony, in violation of Minn. Trialbook § 10(k). The court ordered the parties to appear at the next hearing date to argue the nonpayment of rent and ordered tenant to deposit future rent with the court, and ordered the landlord's counsel to instruct agents and witnesses on complying with the Minn. Trialbook regarding conduct at trial. Minnesota Civil Trialbook is in Minn. R. Gen. Prac. Part H.

In *Bassett Creek Partners LP v. _____,* No. 27-CV-HC-15-4352 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2015) (Appendix 808), the public housing landlord commenced an eviction action alleging breach of lease by "using threatening and assaultive behavior towards another resident; chasing resident with a knife". The court found the testimony of the tenant more credible than the landlord's witnesses, and demonstrated that the tenant was bringing food to another tenant when she was accosted by another tenant. The court rejected the post-trial submission of fact affidavits by the landlord. The court found that landlord failed to produce any credible evidence to demonstrate by a preponderance of the evidence that tenant materially breached a term of the lease agreement. The court determined tenant was entitled to costs and disbursements.

m. *Business activity on residential property*

In *Gisslen v. _____,* No. 27-CV-HC-15-3756 (Minn. Dist. Ct. 4th Dist. Oct. 2, 2015) (Appendix 730), the landlord alleged breach of lease and holding over after notice. On the breach claim, the court

found that the tenants had not materially breach the residential use limitation in the lease by operating a business with the knowledge and support of the landlord, the tenants had not materially breach the lease requirement to pay utility bills when there had been not disruptions and the accounts were current, and the land provided no evidence of denial of entry by the tenants. On the notice claim, the landlord provided no information on the notice or a copy of it, and the tenants moved for judgment on the claim. The court entered judgment for the tenants, awarded costs and disbursements, granted expungement, and allowed the tenants to move for attorney's fees under Minn. Stat. § 504B.172.

n. *Utilities*

In *Olson v. _____,* No. 27-CV-HC-13-1834 (Minn. Dist. Ct. 4th Dist. July 13, 2015) (Appendix 700), the landlord filed an eviction complaint alleging tenant failed to pay rent for March and April 2013, and that the tenants materially breached the terms of the rental agreement by failing to pay the water bill since they moved in, refusing entry to the landlord to inspect the property, failing to keep property insurance, failing to provide proof of property insurance and suspected damage to the property. The court held that plaintiff failed to establish material breach of the lease because (1) while tenants failed to pay the water bill, and while this was a breach of the lease, the harm from the breach was not irreparable because damages would suffice and because landlord held $11,000 in security deposits which more than covered any outstanding amount; (2) landlord or his agent were either invited in or allowed in to inspect the premises, so landlord could not establish he was refused access; (3) tenant actually did maintain property insurance, so landlord could not establish tenant breached for failing to maintain insurance; (4) while tenant failed to provide proof of insurance, which was a breach, it was not a material breach and did not give rise to right of eviction; and (5) while landlord may have suspected damage to the property, the evidence suggested there was no such damage. Consequently, the landlord could not establish material breach. The landlord, however, did establish failure to pay rent, and the Court held that unless tenants pay the outstanding rent to redeem the premises, landlord would be entitled to retake possession.

o. *Property maintenance*

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix 708), the landlord Meldahl brought this eviction action to remove the tenants from his property for non-payment of rent and breach of the lease. The district court held that none of Meldahl's asserted breach claims constituted a material breach. Further, Meldahl claimed that the tenants breached the lease by allowing housing inspectors into the house without providing him prior notice. The court denied this claim and found the clause in the lease requiring such notice unconscionable and thus unenforceable.

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. Meldahl argued that the referee erred by (1) finding the tenants had not materially breached the lease; (2) finding the tenants' testimony was credible, while Meldahl's was not; and (3) failing to address the tenants' allegations of improper service. The court affirmed the referee's findings in their entirety that the tenants did not materially breach the lease by failing to mow the lawn, failing to pay the water bill, allowing housing inspectors into the house without Meldahl's prior notice, or failing to pay rent.

p. *Housing inspector visits*

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix

708), the landlord Meldahl brought this eviction action to remove the tenants from his property for non-payment of rent and breach of the lease. The district court held that none of Meldahl's asserted breach claims constituted a material breach. Further, Meldahl claimed that the tenants breached the lease by allowing housing inspectors into the house without providing him prior notice. The court denied this claim and found the clause in the lease requiring such notice unconscionable and thus unenforceable.

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. Meldahl argued that the referee erred by (1) finding the tenants had not materially breached the lease; (2) finding the tenants' testimony was credible, while Meldahl's was not; and (3) failing to address the tenants' allegations of improper service. The court affirmed the referee's findings in their entirety that the tenants did not materially breach the lease by failing to mow the lawn, failing to pay the water bill, allowing housing inspectors into the house without Meldahl's prior notice, or failing to pay rent.

q. *Combined rent and breach cases*

In actions alleging both nonpayment of rent and breach of the lease, the breach must be material. Minn. Stat. § 504B.285 (formerly § 566.03), subd. 5, added by 1993 Minn. Laws Ch. 165, § 3. *See* discussion, *infra*, at VI.G.21. The standard also has support in Minn. Stat. § 500.20 and *Kostakes v. Daly*, 246 Minn. 312, 317, 75 N.W.2d 191, _ (1956) (landlord could not evict tenant for covenant violation unless covenant was of "substantial advantage" to landlord), to argue that the landlord may evict a tenant for breach of lease only if the breach is material.

20. Cure

In a public housing case, the Court of Appeals held that the landlord's right of action is complete upon the tenant's breach of the lease, and subsequent remedial action cannot nullify the violation. *MCDA v. Smallwood*, 379 N.W.2d 554, 556 (Minn. Ct. App. 1985), petition for rev. denied, (Minn. Feb. 19, 1986). The *Smallwood* Court relied upon *First Minnesota Trust Co. v. Lancaster Corp.*, 185 Minn. 121, 131, 240 N.W. 459, 464 (1931), which followed earlier decisions and held that in a nonpayment of rent case, the landlord's right of action is complete upon the default in payment of rent, eliminating the need for a right of reentry clause in the lease.

More recently, in *Schuett Investment Co. v. Anderson*, 386 N.W.2d 249 (Minn. Ct. App. 1986), the court may have indicated some rethinking of *Smallwood*. After summarizing the defendant's cure argument, the court stated that "[the defendant] removed the boxes creating the fire hazard prior to the time of hearing and thus therefore redeemed her tenancy." *Id.* at 252. However, the court decided the case based upon the landlord's failure to accommodate the defendant's disability. *Id.* at 253. *But see Willow Point Partners, LLC v. Willows on the Water, LLC*, No. A03-225, 2003 WL 22998880 (Minn. Ct. App. Dec. 23, 2003) (unpublished) (tenant was in default under the lease and tenant was not entitled to notice and an opportunity to cure; tenant failed to satisfy the settlement agreement when it issued a check with insufficient funds; tenant was not required to pay the full amount due under the lease for future months to redeem the property); *Castaways Marina, Inc. v. Dedrickson,* No. C1-02-1425, 2003 WL 1961861 (Minn. Ct. App. April 29, 2003) (unpublished) (the right to redeem does not apply to an action for breach which does not include a claim for rent).

Allowing for cure of breaches is consistent with judicial abhorrence of forfeiture. *See 614 Co. v. D.H. Overmayer*, 297 Minn. 395, 398, 211 N.W.2d 891, 894 (1973). However, in *Lloyd Management,*

Inc. v. Ajayi, C-395-2636 (Minn. Ct. App. June 4, 1996), FINANCE AND COMMERCE at 56 (June 7, 1996) (Appendix 241) (unpublished), the court held that the landlord need not notify the tenant of lease violations to allow the tenant to correct the problem before lease termination.

The district courts appear willing to allow the tenant to cure the lease violation in some circumstances. *Berry v. Lane*, Nos. UD-1980629502 and UD-1980603900 (Minn. Dist. Ct. 4th Dist. Jul. 22, 1998) (Appendix 310A) (Landlord did not prove breaches of the lease to warrant termination, where tenant brought pets to the property to deal with mice but removed the pets at the landlord's request, a tenant removed a refrigerator which did not work and replaced it, the tenants and her children caused *de minimis* damage to the property); *Minneapolis Public Housing Authority v. Otto*, No. UD-1970326517 (Minn. Dist. Ct. 4th Dist. May 9, 1997) (Appendix 279) (Tenant cured alleged lease violation by getting rid of his dog).

Regardless of whether the tenant has a right to cure a breach, the landlord may not accept cure and later base an eviction (unlawful detainer) action on the breach. For instance, late fees for late payment of rent are liquidated damages, and are intended to serve as a reasonable forecast of damages resulting from the lease violation. *See* discussion, *supra*, VI.E.10 (improper late fees). By electing to accept payment of late fees, the landlord allows the tenant to cure the breach. *See Northwestern State Bank v. Foss*, 293 Minn. 171, __, 197 N.W.2d 662, 665 (1972) (breach of contract damages and rescission are inconsistent remedies because former affirms a contract an latter terminates a contract).

Some lease provisions specifically provide for a period to cure lease violations. The court should enforce these provisions similar to other lease provisions. However, in *Carlson Real Estate Co. v. Soltan*, 549 N.W. 2d 376, 381 (Minn. Ct. App. 1996), the court held that a ten day cure provision in a commercial lease did not apply to the tenant's continuing breach despite appropriate warnings, since application of the cure provision would allow the tenant to continue prohibited conduct indefinitely so long as there were intermittent ten day cure periods.

21. Combined actions for nonpayment of rent and material lease violations

Section 504B.285 (formerly § 566.03), subd. 5 allows the landlord to combine actions for nonpayment of rent and material lease violations. These claims shall be heard as alternative grounds. The hearing is bifurcated to first cover material violations of the lease, and then nonpayment of rent if the landlord does not prevail on the material lease violations claim. The tenant is not required to pay into court outstanding rent, interest or cost to defend against the material lease violation claim. If the court reaches the nonpayment of rent claim, the tenant shall be permitted to present defenses. The tenant shall be given up to seven days to pay any rent and costs determined by the court to be due, either into court or to the landlord. *See Kahn v. Greene*, No. UD-1940330506 (Minn. Dist. Ct. 4th Dist. May 5, 9, and 25, 1994) (appendices 65, 55, and 46).

In *ARU Props., LLC v. Clark,* No. A16-1126, 2017 Minn. App. Unpub. LEXIS 288 (Minn. Ct. App. April 3, 2017) (unpublished), the owner filed an eviction action alleging breach and rent. The referee bifurcated the trial as required by Minn. Stat. § 504B.285, subd. 5. After a trial on the breach claim, the referee entered judgment for tenant. The Court of Appeals affirmed the district court in an unpublished decision, rejecting the tenant's procedural defenses.

In *681 Properties LLP v. _____,* No. 27CVHC 16708 (Minn. Dist. Ct. 4th Dist. Feb. 24, 2016) (Appendix 811), the trial was bifurcated and the court heard the breach of lease claim, but not the nonpayment of rent claim. The court determined the landlord failed to prove by a preponderance of the

evidence that the tenant materially breached the lease by: (1) acting in a loud, boisterous, unruly or thoughtless manner; (2) loitering while waiting for a ride to work on a snowy day; (3) and that the tenant assaulted the landlord's agent. The court found that video showed that the agents were louder than the tenant, waiting for a ride was not loitering, and that the tenant pushing away the agent's cell phone/camera was not an assault. The court noted that the tenant was very credible, and the landlord's agent at trial nodded and shook her head during witness testimony, in violation of Minn. Trialbook § 10(k). The court ordered the parties to appear at the next hearing date to argue the nonpayment of rent and ordered tenant to deposit future rent with the court, and ordered the landlord's counsel to instruct agents and witnesses on complying with the Minn. Trialbook regarding conduct at trial. Minnesota Civil Trialbook is in Minn. R. Gen. Prac. Part H.

In *Olson v. _____,* No. 27-CV-HC-13-1834 (Minn. Dist. Ct. 4th Dist. July 13, 2015) (Appendix 700), the landlord filed an eviction complaint alleging tenant failed to pay rent for March and April 2013, and that the tenants materially breached the terms of the rental agreement by failing to pay the water bill since they moved in, refusing entry to the landlord to inspect the property, failing to keep property insurance, failing to provide proof of property insurance and suspected damage to the property. The court held that plaintiff failed to establish material breach of the lease because (1) while tenants failed to pay the water bill, and while this was a breach of the lease, the harm from the breach was not irreparable because damages would suffice and because landlord held $11,000 in security deposits which more than covered any outstanding amount; (2) landlord or his agent were either invited in or allowed in to inspect the premises, so landlord could not establish he was refused access; (3) tenant actually did maintain property insurance, so landlord could not establish tenant breached for failing to maintain insurance; (4) while tenant failed to provide proof of insurance, which was a breach, it was not a material breach and did not give rise to right of eviction; and (5) while landlord may have suspected damage to the property, the evidence suggested there was no such damage. Consequently, the landlord could not establish material breach. The landlord, however, did establish failure to pay rent, and the Court held that unless tenants pay the outstanding rent to redeem the premises, landlord would be entitled to retake possession.

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix 708), the landlord Meldahl brought this eviction action to remove the tenants from his property for non-payment of rent and breach of the lease. Meldahl claimed that the tenants breached the lease by owing an outstanding water bill, late rent fees, and moving fees. On his nonpayment of rent charge, Meldahl claimed the tenants failed to pay rent for two months. The district court held that none of Meldahl's asserted breach claims constituted a material breach. Further, Meldahl claimed that the tenants breached the lease by allowing housing inspectors into the house without providing him prior notice. The court denied this claim and found the clause in the lease requiring such notice unconscionable and thus unenforceable.

In regards to the non-payment of rent, simply filing an eviction notice is not enough to warrant actual eviction. Instead, Meldahl was required to show by a preponderance of the evidence that (1) there is a lease agreement with a rental amount due; and (2) that the rental amount was not paid pursuant to the agreement. Meldahl failed to meet this burden, as the tenants were able to provide credible evidence that they had, in fact, paid rent. Under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption. The tenants sought the abatement of rent because, they claim, Meldahl breached his covenants of habitability, due to numerous and unresolved problems with the house (e.g., holes in the floor, a malfunctioning toilet, flooding in the basement, etc.). The court entered judgment for the tenants and referenced rent abatement ordered in a

companion emergency tenant remedies action. The court granted the right to remain in possession of the premises, allowable costs, rent abatement, and expungement.

In *Meldahl v. _____*, 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. Meldahl argued that the referee erred by (1) finding the tenants had not materially breached the lease; (2) finding the tenants' testimony was credible, while Meldahl's was not; and (3) failing to address the tenants' allegations of improper service. The court affirmed the referee's findings in their entirety. First, the tenants did not materially breach the lease by failing to mow the lawn, failing to pay the water bill, allowing housing inspectors into the house without Meldahl's prior notice, or failing to pay rent. The referee's findings were not clearly erroneous and the court upheld his conclusions. Furthermore, under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption, and thus the court determined Meldahl cannot base an eviction action on mere allegations. Next, in addressing Meldahl's credibility argument, the court stated that it defers to the referee's credibility determinations and would not reconsider those. And finally, the court addressed the tenants' allegations of improper service, but found that service was proper because tenants failed to prove otherwise by clear and convincing evidence.

Minnesota cases involving combined claims for rent and breach of lease, with the court concluding that the tenant did not materially violate the lease, include: *St. Cloud HRA v. Rothchild*, No. C7-99-4306 (Minn. Dist. Ct. 7th Dist. Dec. 21, 1999) (Appendix 419) (Public housing authority filed eviction action based on nonpayment of rent and material lease violations by repeated late payment of rent; court held that tenant's statutory right to redeem could not be defeated by a claim of material violation related to rent.; *Amsler v. Harris*, and *Harris v. Amsler*, Nos. UD-1990826901 and UD-1990902500 (Minn. Dist. Ct. 4th Dist. Sep. 20, 1999) (Appendix 376) (Court bifurcated trial on issues of breach of lease and other matters; tenant did not breach material term of lease where provision on occupancy limit was an afterthought to the entire lease, was not in the body of the agreement, and was not initialed by the parties; landlord waived breach by continuing to accept rent after knowledge; landlord failed to prove a non-retaliatory purpose for an eviction complaint filed seven days after the tenant filed an emergency lockout petition; remaining issues scheduled for trial with payment of withheld rent into court.; *Jorstad v. Connor*, No. UD-1951002514 (Minn. Dist. Ct. 4th Dist. Oct. 23, 1995) (Appendix 150); *Aker v. Kennedy*, No. UD-1950908541 (Minn. Dist. Ct. 4th Dist. Oct. 19, 1995) (Appendix 165); *Urban Investments, Inc. v. Thompson*, No. UD-1950626525 (Minn. Dist. Ct. 4th Dist. Aug. 10, 1995) (Appendix 80); *Lehikoinen v. Salinas*, No. C3-95-60158 (Minn. Dist. Ct. 6th Dist. July 11, 1995) (Appendix 122); *Olowu v. Patterson*, No: UD-1950606520 (Minn. Dist. Ct. 4th Dist. July 3, 1995) (Appendix 142); *Smithrud v. McDaniel*, No. UD-195050529 (Minn. Dist. Ct. 4th Dist. May 22, 1995) (Appendix 130); *Kray v. Humphrey*, No. UD-1950110500 (Minn. Dist. Ct. 4th Dist. Feb. 8, 1995) (Appendix 132); *Miller v. George*, No. UD-1941223501 (Minn. Dist. Ct. 4th Dist. Jan. 10, 1995) (Appendix 129).

22. Tenant guest and trespass rules

Some landlords have created trespass lists, under which the landlord seeks to exclude from the premises, persons whose names are contained on the list. In a tenancy, it is the tenant who has been given possession which is exclusive even against the landlord, with the only exceptions being the landlord’s right to enter the premises to demand rent or make repairs, or exceptions provided by the lease. *Seabloom v. Krier*, 219 Minn. 362, ___, 18 N.W. 2d 88, 91 (1945).

Under Minn. Stat. § 609.605,

(b) A person is guilty of a misdemeanor if the person intentionally:
...
(3) trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor; [or]

(4) occupies or enters the dwelling or locked or posted building of another, without claim of right or consent of the owner or the consent of one who has the right to give consent, except in an emergency situation;
....

It is the tenant who decides who may visit the tenant. The landlord does not have the right to exclude guests of the tenant without a court order, such as a harassment restraining order under Section 609.748. *See State v. Hoyt*, 304 N.W.2d 884 (Minn. 1981) (conviction for trespass reversed where guest had claim of right to visit nursing home resident after administrator revoked her privilege to enter the premises).

In *State v. Holiday*, 585 N.W. 2d 68 (Minn. Ct. App. 1998), the police gave the defendant a trespass warning form for trespassing on a Public Housing Authority property. The defendant signed the warning which stated that it applied to all property of the Public Housing Authority. Four days later, the defendant was charged with violating the warning by his presence on another public housing authority property. The court concluded that the trespass warning could not apply to all of the public housing authority's property, and could apply only to a specific property. The court noted that the ordinance allows a lawful possessor of the property or the possessor's agent to issue a demand to depart. Since the tenant is the lawful possessor of the property, the police or the housing authority can only serve as agents for the tenant, and since the tenant could not exclude a person from all properties of the public housing authority, neither could the police or the public housing authority as an agent for the tenant. This decision underscores that a guest of a tenant cannot be a trespasser unless the tenant asks the guest to leave and the guest refuses. If a person is on the property and is not a guest of a tenant or the public housing authority, the public housing authority could exclude the person as an agent for all of the tenants. The only legal method for the landlord to exclude a guest of the tenant would be to obtain a restraining order against the guest, such as one available under the harassment statute. *See Teamster Retiree Housing of Minneapolis, Inc. v. Petroske*, No. UD-1960919515 (Minn. Dist. Ct. 4th Dist. Nov. 7, 1996) (Appendix 237) (Section 8 new construction and Section 202 elderly and handicapped housing: single argument between mentally disabled adult son-guest of tenant and adult son-guest of neighboring tenant, and tenant's failure to keep his son off the premises was not a substantial lease violation or repeated minor lease violations affecting livability, health, safety or quiet enjoyment). However, in some cases, the tenant may be responsible for the actions of a guest of the tenant. *See* discussion, *supra*, VI.G.9., 10., 16.

In *State v. Crockson*, 854 N.W.2d 244 (Minn. Ct. App. 2014), the court held that a person staying in the apartment with the permission of the tenant was in lawful possession of the apartment for the purposes of the burglary statutes, Minn. Stat. §§ 609.581-582, and had the authority to invite guests but also order them to leave. *Id.* at 248-49.

23. Nonpayment of utilities and other charges

Claims of nonpayment of utilities, insurance, taxes, or other charges that the tenant has agreed to

pay, are claims for nonpayment of rent entitling the tenant to redeem the premises, rather than claims for breach of lease. *See* discussion, *supra*, VI.E.18. Counsel should consider asserting that landlord claims for damage or other items which the lease provides to tenant payment to the landlord make the claim one for nonpayment of rent.

24. Nuisance or serious endangerment of safety of other residents, their property, or the landlord's property

Along with claims of illegal drugs under Section 504B.171 (formerly § 504.181), claims that the tenant is causing a nuisance or seriously endangering the safety of other residents, their property, or the landlord's property shall receive a priority in the scheduling of hearings and execution of the Writ of Restitution. Minn. Stat. § 504B.321 (formerly § 566.05), 504B.335 (formerly § 566.07), 504B.345 (formerly § 566.09), 504B.361 (formerly § 566.16), 504B.365 (formerly § 566.17), *amended by* 1994 Minn. Laws Ch. 502, §§ 4-9. *See* discussion, *supra*, V.Q. Counsel should argue that if the plaintiff prevails on a claim of breach of lease but does not prove these specific classes of lease violations, the tenant is not barred from a stay of the Writ of Restitution. While it is unclear how the courts will interpret the term nuisance, nuisance is defined by Section 561.01 as follows: "Anything which is injurious to health, or indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance." There are scores of cases listed in the annotations to this statute.

25. Lack of clear rules or lease provisions

Whether a contract is ambiguous is a question of law, and if it is ambiguous, a fact question arises and construction depends upon extrinsic evidence and a writing. *Blattner v. Forster*, 322 N.W.2d 319, 321 (Minn. 1982); *Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 66 (Minn. 1979); *MPHA v. Rozas*, C0-95-956 (Minn. Ct. App. Jan. 9, 1996), FINANCE AND COMMERCE at 30 (Jan. 12, 1996) (Appendix 232) (interpretation of public housing lease). In *Valley Manor Apts. v. Gullickson*, No. CX-94-10 (Minn. Dist. Ct. 8th Dist. Feb. 3, 1994) (Appendix 56), the court concluded that "the lease should clearly state all rules, or incorporate a separate list of rules. This was not shown at trial. Also, it is appropriate that the lease recite the consequences of the rule violations, i.e. eviction."

26. Plaintiff must prove lease violations by a preponderance of the evidence

See discussion at V.H.7.

27. Original written lease terms continue after lease expiration and extend into subsequent month-to-month tenancies

The terms and conditions of the original lease continue into the new tenancy. *RPC Props. v. Olson,* No. A04-2034, 2005, Minn. App. Unpub. LEXIS 121 at *19, 2005 WL 1804474 (Minn. Ct. App. August 2, 2005) (unpublished) (90-day-written-notice provision from lease continued into holdover tenancy).

In *Slafter v. Siddall,* 106 N.W. 308 (Minn. 1906), while Siddall was renting a building from Slafter, the parties negotiated an increase in the monthly rent. In return for the increased rent, Slafter agreed to construct a new "show" window in the front room of the building. The parties entered into a new written lease for a one-year period including those terms. No option of renewal was contained in the written lease. Siddall remained in possession for another year following the expiration of the written

lease. Slafter then filed suit to recover on a promissory note that was executed by Siddall in payment of accrued rent. Siddall counterclaimed seeking damages he claimed occurred to his property due to rain that had leaked in through the new window which Siddall claimed had been defectively constructed by Slafter. The trial court had held that Siddall could only recover damages that had occurred during the initial one-year period that was covered by the written lease. The appellate court reversed, holding that although Siddall became a month-to-month tenant after the expiration of the lease, the other obligations under the lease were still in effect. Therefore, the court held that the trial court had erred by limiting Siddall's recovery of damages to only the time frame covered under the written lease.

In *Gardner v. Board of County Commissioners of Dakota County,* 21 Minn. 33 (1874), Dakota County rented space from Gardner while Dakota County was waiting for a new courthouse to be built. The original lease was for a three year period beginning on January 1, 1863, for an annual rent amount of $600, to be paid quarterly. The lease contained a provision stating that if county buildings were completed prior to the expiration of the lease Dakota County could vacate and terminate the lease with no penalties. The original lease also contained an option for Dakota County to renew for one to three years after its expiration, based on all the same terms and conditions. The lease expired on December 31, 1866, but was continued by agreement until December 31, 1868. Dakota County continued to occupy the space past December 31, 1868. On January 7, 1869, Gardner sent Dakota County a letter stating that the rent needed to be increased to $800 annually. Following the receipt of that letter, negotiations occurred between the parties, but no new agreement was ever finalized. In July 1871, Dakota County gave notice to Gardner that they would be vacating by October 1, 1871, as construction for the new Dakota County courthouse had been completed. Dakota County vacated, and Gardner filed suit seeking rent for the remainder of that year. Despite the fact that no new agreement was reached, the trial court found, and the Minnesota Supreme Court affirmed on appeal, that because Dakota County continued to retain the premises after receiving notice from Gardner that the rent was going to be increased, that Dakota County assented to the increase of rent. The court further held that because Dakota County had assented to the increased rent, that portion of the original written lease was no longer in effect. However, the court held that the remainder of the written lease, including the provision stating that Dakota County could vacate if county buildings were constructed, remained in full force and effect. Therefore, the court held Dakota County had properly terminated the lease and did not owe Gardner rent for the remainder of the year.

But see Urban Investments, Inc. v. Thompson, No. UD-1950626525 (Minn. Dist. Ct. 4th Dist. Aug. 10, 1995) (Appendix 80) (upon expiration of an initial term lease, without any action by the parties to renew the lease, the parties' continuation of the landlord-tenant relationship became month-to-month tenant fee, and not based on the original written lease).

28. Equitable power to provide relief from forfeiture to avoid eviction

Since forfeitures are not favored, lease provisions that result in forfeiture are to be strictly construed, and will not be enforced when great injustice would be done and the party seeking forfeiture is adequately protected. *Naftalin v. John Wood Co.*, 263 Minn. 135, 147, 116 N.W.2d 91, 100 (1962); *Warren v. Driscoll*, 186 Minn. 1, 5, 242 N.W.2d 346, 347 (1932); *1985 Robert Street Associates v. Menard, Inc.*, 403 N.W.2d 900-03 (Minn. Ct. App. 1987) (forfeiture appropriate where tenant materially breached lease over long period of time without excuse); *Housing and Redevelopment Authority of Winona v. Fedorko*, C4-94-884 (Minn. Ct. App. Nov. 22, 1994), FINANCE AND COMMERCE 43 (Nov. 25, 1994) (Appendix 91). *See also 614 Co. v. D. H. Overmayer*, 297 Minn. 395, 398, 211 N.W.2d 891, 894 (1973) (forfeiture not favored); *Minneapolis Public Housing Authority v. Otto*, No. UD-1970326517 (Minn. Dist. Ct. 4th Dist. May 9, 1997) (Appendix 279) (Forfeiture of tenant's public housing lease, considering his disability, indigency, and his willingness to cure any claimed breaches, would be

inappropriate). *But see Phillips Neighborhood Housing Trust v. Brown*, 564 N.W.2d 573 (Minn. Ct. App. 1997) (Affirmed eviction of entire household when one co-tenant violated the lease by engaging in illegal drug activity). Counsel should argue for avoidance of forfeiture where the landlord is adequately protected as an alternative argument to reasonable accommodation and cure. *See* discussion, *supra*, at VI.G.9, 20.

29. Tenant's breach was caused by landlord's breach.

Generally, a party who has breached a contract cannot sue on the basis of the other party's subsequent breach of the contract. *MTS Co. v. Taiga Corp.*, 365 N.W. 2d 321, 327 (Minn. Ct. App. 1985) (list of cases). In *MTS*, the court held that the landlord could not seek a remedy against the subtenant, where the landlord was still breaching the agreement at the time of trial, and the subtenant's breach of the agreement directly resulted from the landlord's initial breach of the agreement. *Id. See Larson v. _____*, No. HC 030324502 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2004) (Appendix 528) (referee will not reconsider judge's order on waiver; tenant meets definition of disabled; requiring mobility disabled tenant to park vehicle further away than other tenants is not a reasonable accommodation; while parking tenant's vehicle near the home violated an ordinance, most other tenants also violated the unenforced ordinance; tenant's ordinance violations were repeated but not serious; tenant may raise landlord's violation of the covenants of habitability as a cause of tenant violation of the lease, where park owner's park design violated a local ordinance and forces tenant to violate the same ordinance).

In *Carlson Real Estate Co. v. Soltan*, 549 N.W. 2d 376, 379-80 (Minn. Ct. App. 1996), the court affirmed an unlawful detainer judgment for the commercial landlord where the landlord's breach was not a direct cause or justification for the tenant's breach.

See discussion, *infra*, at VI.G.38.

30. Lease requirement for notice must be followed.

Unless the lease requires notice before filing the eviction action, no advance notice is required. *Anoka County Community Action Program v. Solmonson*, No. A05-1251, 2006 WL 1320332 (Minn. Ct. App. May 16, 2006) (unpublished) (one month notice not required for month-to-month tenancy in eviction action claiming breach of lease). Some leases require advance notice for breach or rent claims, and the landlord must follow the requirements. *Lawler v. _____*, No. HC 010817525 (Minn. Dist. Ct. 4th Dist. Sep. 6, 2001) (Appendix 529) (notice to quit claim dismissed where landlord failed to prove he delivered notice; breach claim dismissed where landlord did not give three day notice with right to cure as required by lease; remaining claims settled); *Okoye v. Washington*, No. UD-1980909564 (Minn. Dist. Ct. 4th Dist. Oct. 2, 1998) (Appendix 354A) (Lease required 30 day termination notice for breach of lease); *O'Connor v. Miller*, UD-194-0211505 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1994) (Appendix 178) (lease requirement of notices for breach must be followed). *See* Notice Defenses, *supra* at VI.F.

30a. Some local ordinances require notice.

Brooklyn Center requires notice for a tenant in an affordable housing unit that rents for an amount that is affordable to households at or below 80% of area median income as determined by the United States Department of Housing and Urban Development for the Minneapolis-St. Paul-Bloomington, Minnesota-Wisconsin Metropolitan Statistical Area. Brooklyn Center Ordinance 12-201(3) at 5; HUD FY 2023 Income Limits Documentation System.

The landlord must have good cause to terminate or renew the lease. Brooklyn Center Ordinances 12-912D(4)-(5). The landlord also must give proper written notice before filing an eviction action, with a 30 day notice for rent and breach cases and 3 day notice for expedited breach of lease claims, and include details of the factual allegations, how to cure the rent or breach claims, and information on rental and legal assistance. Brooklyn Center Ordinances 12-912D(4).

31. Eviction for emergency police calls

Under Minn. Stat. § 504B.205 (formerly § 504.215), a landlord may not "(1) bar or limit a tenant's right to call for police or emergency assistance in response to domestic abuse or any other conduct; or (2) impose a penalty on a tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct." A tenant may not waive this right, and the landlord may not require the tenant to waive the right. Local ordinances which require eviction or penalize a landlord in response to tenant calls for police or emergency assistance are preempted. A tenant may bring a civil action for violation of the statute for the greater of $250 or actual damages, and reasonable attorney's fees. The Attorney General also can investigate and prosecute violations of the statute. The statute became effective July 1, 1997. It applies to all leases entered into, modified, or renewed on or after that date, but provisions in other leases in conflict with the statute are unenforceable.

While the statute does not refer to unlawful detainer actions, the prohibition against landlord-imposed penalties on tenants for making emergency calls should allow the tenant to defend unlawful detainer actions where the landlord claims a right of eviction because of emergency calls, or where the tenant claims that the landlord's notice to quit is based upon the tenant's emergency calls.

In *Cimarron Village v. Washington,* 659 N.W.2d 811 (Minn. Ct. App. 2003), the court held that evidence of lease violations, including numerous police calls, inadequate supervision of guest, and fraudulent application for parking permit, supported finding that the landlord, who received federal income tax credits for providing low-income units, had requisite "good cause" to terminate tenancy, even if violations were not in material noncompliance with lease. The lease provides that a tenancy can be terminated for "police calls to an apartment for noise disturbances, domestic disputes, illegal substances and other non-medical reasons." While tenants who call the police for their own health and safety cannot be evicted under Minn. Stat. § 504B. 205, subd. 2(a)(2), the landlord could evict where a substantial number of police calls originated from other sources. By accepting late rent payments from the tenants, the landlord, who received federal income tax credits for providing low-income units, waived its right to rely on this violation as grounds for eviction; in order to rely on the late payments as a reason for eviction, landlord would have had to refuse a subsequent late payment.

In *Real Estate Equities, Inc. v. Schmidt*, No. CX-00-297 (Minn. Dist. Ct. 10th Dist. Mar. 14, 2000) (Judge Mossey) (Appendix 415), the tenant was assaulted on the property both before and after she obtained a restraining order, leading her to call the police. The landlord sent a letter stating it would terminate the tenancy based on late payment of rent, damage to the property, and police calls to the unit. The parties then executed an agreement to vacate. The court concluded that the termination letter, and the resulting agreement, violated § 504B.205, rendering the agreement void as contrary to public policy.

In *Steven Scott Management, Inc. v. Scott*, No. CA-98-09527 (Minn. Dist. Ct. 2d Dist. Oct. 28, 1998) (Appendix 367), After one tenant violently assaulted his domestic partner, he pled guilty to a felony, and was sentenced to workhouse incarceration, chemical dependency treatment and anger management counseling. The assailant complied with his sentence and committed no other assaults. The landlord found out about the incident six months later, gave notice for substantial annoyance and

endangerment, and commenced an unlawful detainer action to evict both tenants. The court held that the claim against the victim was in response to her call to the police and prohibited by Minn. Stat. § 504.215 (now § 504B.205), the victim did not endanger others by allowing the assailant to remain in the household, it would be unconscionable to evict the assailant where he was sincere in his rehabilitative efforts and had complied with his sentence and had not endangered others in the manufactured (mobile) home park, and the tenants had cured any violation which had occurred. On appeal, in *Steven Scott Management, Inc. v. Scott*, No. C7-98-2024 (Minn. Ct. App. June 8, 1999) (unpublished), the Court of Appeals affirmed the finding that the victim had not violated Minn. stat. 327C.09 or committed a material violation of the lease, as there was no evidence of any annoyance or danger to other residents. However, the court reversed the trial court as to the assailant, concluding that a finding that he violated the lease and the statute was sufficient to compel issuance of an order against him.

The court found other violations of the statute in *Haukos-Lund Partnership v. Borjon*, No. C3-98-632 (Minn. Dist. Ct. 1st Dist. Oct. 30, 1998) (Appendix 336) (Perkins, J.) (judgment for the manufactured (mobile) home park lot tenant, where the landlord sought to evict the tenant for calling the police to respond to a domestic abuse situation); and *Berry v. Lane*, Nos. UD-1980629502 and UD-1980603900 (Minn. Dist. Ct. 4th Dist. Jul. 22, 1998) (Appendix 310A) (landlord asserted numerous 911 calls to the property but could not prove the reasons for the calls, while the tenant asserted the calls were initiated by her for her children's protection; held that landlord could not limit tenant's rights to call for emergency assistance).

The statute does not block eviction when the landlord is evicting the tenant for conduct which resulted in a police call. *Sandy Hill Apartments v. Kudawoo*, No. 05-2327 (PAM/JSM), 2006 WL 2974305 at *4 (D.Minn. Oct. 16, 2006) (unpublished) (tenant was is the person who assaulted another tenant, and the other tenant called the police because of the conduct); *Bossen Terrace v. Price*, No. C5-98-434 and C1-98-480 (Minn. Ct. App. Oct. 6, 1998) (Appendix 312) (Unpublished: While the landlord may not evict the tenant because police were called to the property, a landlord may evict based on the reason for the call to the police).

See discussion, *infra*, at VI.G.38 (Domestic violence defenses).

32. Public reports

Landlords and tenants often submit public documents to support their cases, such as landlords submitting police reports in breach cases, and tenants submitting inspection reports in habitability cases. While both documents probably comply with the public records exception to the hearsay rule in Minn. R. Evid. 803(8), they still must be authenticated or be self-authenticating under Rules 901 and 902. *State v. Northway*, 588 N.W.2d 180 (Minn. Ct. App. 1999) (affirmed trial court exclusion of federal report which was not authenticated).

Hearsay statements within the report should be excluded unless they meet an exception to the hearsay rule. *Countryview Mobile Home Park v. Oliveras*, No. A04-160, 2004 WL 20049986 (Minn. Ct. App. Sept. 14, 2004) (unpublished) (affirmed from district court ruling sustaining objection to police report containing observations of officers who were not present in court); *Minneapolis Public Housing Authority v.* _____, No. HC 10306313566 (Minn. Dist. Ct. 4th Dist. July 31, 2003) (Appendix 539) (Judge Doty) (landlord's knowledge of alleged altercation was from a police report whose authors did not testify, and did not connect tenant to the incident).

33. Uniform Relocation Act

The Uniform Relocation Act provides for additional notice to tenants where they are to be displaced as a result of receipt of state or federal monies. In *Project for Pride in Living, Inc. v. McCoy*, No. C7-99-4197 (Minn. Dist. Ct. 2nd Dist. May 21, Aug. 31, 1999) (Appendix 413), the owner obtained a loan with the Minnesota Housing Finance Agency for purchase and rehabilitation of the property. The owner then gave a 30 day notice to quit without alleging good cause for the termination. The tenant did not receive any notices for noncompliance with her lease during her tenancy. The court concluded that the Uniform Relocation Act applied since the owner executed a loan involving federal and state monies. 49 C.F.R. § 24 (1997); Minn. stat. §§ 117.51-117.52. The court then concluded that the 30 day notice to quit without cause violated the 90 day notice requirement and the requirement of cause for eviction. 49 C.F.R. §§ 24.203, 24.206. The referee's decision was affirmed on judge review. Order (Aug. 31, 1999).

34. Eviction of one tenant but not the other

The courts have been divided over whether courts have the power to evict one tenant but not the other. In *Steven Scott Management, Inc. v. Scott*, No. C7-98-2024 (Minn. Ct. App. June 8, 1999) (unpublished), the Court of Appeals affirmed the finding that the victim had not violated Minn. Stat. 327C.09 or committed a material violation of the lease, as there was no evidence of any annoyance or danger to other residents. However, the court reversed the trial court as to the assailant, concluding that a finding that he violated the lease and the statute was sufficient to compel issuance of an order against him. *See United States v. 121 Nostrand Avenue*, 760 Supp. 1015 (E.D.N.Y. 1991) (Under federal anti-drug forfeiture statute, court removed adult grandchild who sold drugs from public housing apartment and allowed grandmother and other household members to remain because she lacked knowledge of drug activity); *Akron Metropolitan Housing Authority v. Rice*, No. 88-CV-04013 (Ohio Mun. Ct., Akron, June 22, 1988), 23 CLEARINGHOUSE REV. 322 (1989) (Appendix 309) (Court could enter judgment in eviction against one household member but not the rest of the family, which was innocent).

In *Hanson v. Trom*, No. UD-1950926503 (Minn. Dist. Ct. 4th Dist. Nov. 3, 1995) (Appendix 82), the landlord alleged non-payment of rent against one co-tenant, without naming the other co-tenant. The court held that the landlord failed to name an indispensable party, since the court could not enter final judgment without affecting the interests of the co-tenant.

The argument for eviction of only one tenant was rejected in *Phillips Neighborhood Housing Trust v. Brown*, 564 N.W.2d 573 (Minn. Ct. App. 1997) (affirmed eviction of entire household when one co-tenant violated the lease by engaging in illegal drug activity).

35. Election of remedies

When a landlord accepts payments to compensate for lease violations, such as accepting late fees or payment for damage, the landlord should not be able to eviction for breach of the lease, based on the election of remedies doctrine. *See Northwestern State Bank v. Foss*, 197 N.W. 2d 662 (Minn. 1972).

36. Proof of the lease

Pham v. _____, No. HC 030131517 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2003) (Appendix 560) (dismissal for failure to present lease for breach claim and notice for holdover claim, and for waiver of notice by acceptance of rent).

37. Landlord's violation of covenants of habitability as defense to tenant breach

A tenant may raise landlord's violation of the covenants of habitability as a cause of tenant violation of the lease, where the manufactured (mobile) home park lot owner's park design violated a local ordinance and forces tenant to violate the same ordinance. *Larson v. _____*, No. HC 030324502 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2004) (Appendix 528). *See* discussion, *supra*, at VI.G.29.

38. Domestic violence defenses

a. *Private housing*

The landlord might file an action for breach of lease where the conduct of the abuser offends other tenants, neighbors or the landlord's staff. In 2014, the Minnesota Legislature enacted new rights for tenant who are victims of domestic violence, including an eviction defense where basis of the eviction is that the tenant or authorized occupant in the household has been a victim of domestic abuse, criminal sexual conduct, or stalking, Minn. Stat. §§ 504B.285, Subd. 1 (b); 504B.206, Subd. 1 (a).

Before enactment of the statute, the common law allowed victim to argue that the court should evict the abuser if a household member and allow the victim to remain, or allow the victim to remain if the victim has excluded the abuser from the property on the grounds that forfeiture of the tenancy is not appropriate. In *Steven Scott Management, Inc. v. Scott*, No. CA-98-09527 (Minn. Dist. Ct. 2d Dist. Oct. 28, 1998) (Appendix 367), after one tenant violently assaulted his domestic partner, he pled guilty to a felony, and was sentenced to workhouse incarceration, chemical dependency treatment and anger management counseling. The assailant complied with his sentence and committed no other assaults. The landlord found out about the incident six months later, gave notice for substantial annoyance and endangerment, and commenced an unlawful detainer action to evict both tenants. The court held that the claim against the victim was in response to her call to the police and prohibited by Minn. Stat. § 504.215 (now § 504B.205), the victim did not endanger others by allowing the assailant to remain in the household, it would be unconscionable to evict the assailant where he was sincere in his rehabilitative efforts and had complied with his sentence and had not endangered others in the manufactured (mobile) home park lot and the tenants had cured any violation which had occurred. On appeal, in *Steven Scott Management, Inc. v. Scott*, No. C7-98-2024, 1999 WL 366596 (Minn. Ct. App. June 8, 1999) (unpublished), the Court of Appeals affirmed the finding that the victim had not violated Minn. stat. 327C.09 or committed a material violation of the lease, as there was no evidence of any annoyance or danger to other residents. However, the court reversed the trial court as to the assailant, concluding that a finding that he violated the lease and the statute was sufficient to compel issuance of an order against him. *See Akron Metropolitan Housing Authority v. Rice*, No. 88-CV-04013 (Ohio Mun. Ct., Akron, June 22, 1988), 23 CLEARINGHOUSE REV. 322 (1989) (Appendix 309) (Court could enter judgment in eviction against one household member but not the rest of the family, which was innocent). *See* discussion, *infra*, VI.G.28. (forfeiture). *But see Phillips Neighborhood Housing Trust v. Brown*, 564 N.W.2d 573 (Minn. Ct. App. 1997) (Affirmed eviction of entire household when one co-tenant violated the lease by engaging in illegal drug activity). *See generally* E. Lauer, *Housing and Domestic Abuse Victims: Three Proposals for Reform in Minnesota*, 15 LAW AND INEQUALITY 471 (Spring 1997).

The landlord also cannot penalize the tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct. Minn. Stat. § 504B.205 (formerly § 504.215). *See* discussion, *supra*, at VI.G.31.

b. *Public housing and other subsidized housing programs*

Additional defenses are provided under federal law. They include:

The landlord alleges criminal activity as the basis for my eviction that (1) was directly related to an incident(s) of domestic violence, dating violence, sexual assault or stalking, (2) was done by a member of the tenant's household, guest, or other person under the tenant's control, and (2) the tenant or a person affiliated with the tenant was the victim or threatened victim. This criminal activity cannot be used to evict the tenant. Section 8 Vouchers: 42 U.S.C. § 1437f (o)(20)(D)(v); 42 U.S.C. §1437f (ee); Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11; 24 C.F.R. §§ 5.2001-5.2009, 982.310, 982.551; Public Housing: 42 U.S.C. § 1437d (l)(6); Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11; 24 C.F.R. §§ 5.2001-5.2009, 966.4; HUD Subsidized Projects: 42 U.S.C. § 1437f (o)(20)(D)(v); 24 C.F.R. §§ 5.2001-5.2009, 880.607, 884.216, 886.127, 886.328, 891.630; Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11.

The landlord alleges breaches that are the result of an incidents of domestic violence, dating violence, sexual assault or stalking that cannot be used as (1) serious or repeated violation(s) of the lease, (2) material violation(s) of the lease, or (3) other good cause. Section 8 Vouchers: 42 U.S.C. § 1437f (o)(20); Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11; 24 C.F.R. §§ 5.2001-5.2009, 982.551; Public Housing: 42 U.S.C. §1437d (l); Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11; 24 C.F.R. §§ 5.2001-5.2009, 966.4; HUD Subsidized Projects: 42 U.S.C. § 1437f (o)(20)(D)(v); 24 C.F.R. §§ 5.2001-5.2009, 880.607, 884.216, 886.127, 886.328, 891.630; Violence Against Women Reauthorization Act of 2013, 42 U.S.C. § 14043e-11.

A0. RELIEF FOR PLAINTIFFS: POSSESSION BUT NO JUDGMENT FOR RENT

See discussion, *supra*, at VI.B.5.

A. ORDINARY RELIEF FOR DEFENDANTS

Possible requests for relief include the following:

1. deny restitution to plaintiff and enter judgment for defendant;
2. dismissal or summary judgment;
3. retroactive and/or future rent abatement, *see* discussion, *supra* at VI.E.1;
4. discovery, *see* discussion, *supra* at V.F;
5. continuance, *see* discussion, *supra* at V.E;
6. extension to pay rent, *see* discussion, *supra* at VI.E.20;
7. seven days to move, *see* discussion, *infra* at VIII.B;
8. 60 days to sell a manufactured (mobile) home in a park lot, *see* discussion, *infra* at VIII.B;
9. do not award costs to plaintiff, but award costs to defendant, *see* discussion, *infra*, VIII.E.4;
10. Tenant awards beyond rent claimed credited against future rent; *see* discussion, *supra*, at VI.E.1.i1;
11. sealing court records. *See* discussion, *infra*, VIII.E.5.

See generally Forms Appendix, Form Answers.

B. EXTRAORDINARY RELIEF FOR PLAINTIFFS AND DEFENDANTS

On occasion, courts will order extra ordinary relief against a landlord.

1. waiver of landlord's filing fee in future cases. *Chaska Village Townhouses Lifestyle Inc. v.* Edberg, No. 91-27365 (Minn. Dist. Ct. 1st Dist. Apr. 1, 1991) (Appendix 11.L);

2. striking illegal lease provisions. *Powers v. Garcia*, No. UD-1950905643 (Minn. Dist. Ct. 4th Dist. Sept. 12, 1995) (Appendix 160);

3. ordering the landlord to comply with lease. *Olson v. Brooks*, No. UD-1950209512 (Minn. Dist. Ct. 4th Dist. Mar. 7, 1995) (Appendix 112);

4. ordering the landlord to provide utility bills to the tenant upon which the landlord asserts that the tenant owes money, and giving the tenant time to make arrangement for payment. *Aker v. Kennedy*, No. UD-1950908541 (Minn. Dist. Ct. 4th Dist. Oct. 19, 1995) (Appendix 165);

5. encouraging the landlord and tenant to participate in mediation to resolve outstanding issues between them. *Jorstad v. Connor*, No. UD-1951002514 (Minn. Dist. Ct. 4th Dist. Oct. 23, 1995) (Appendix 150); *Jankord v. Thompson*, No. UD-1950606524 (Minn. Dist. Ct. 4th Dist. June 26, 1995) (Appendix 166);

6. payment of the tenant's attorney's fees. *See* discussion, *infra*, at VIII.E.4.

7. money judgment for the tenant. *Drews v. Ennis*, No. UD-1950512523 (Minn. Dist. Ct. 4th Dist. June 5, 1995) (Appendix 125) (the court ordered the landlord to pay rent abatement in excess of the amount the tenant paid into court within 14 days or a money judgment would be entered for the tenant).

8. payment plan on back rent. *JHCJ Associates v. Bryant*, No. UD-1960606502 (Minn. Dist. Ct. 4th Dist. Jul. 31, 1996) (Appendix 217) (Section 8 certificate: court hesitates to evict Section 8 tenant who has made timely rent payments recently, and will authorize prospective monthly payments on the back rent).

9. ordering landlord to end discriminatory or illegal practices. *Amsler v. Wright*, No. UD-1960502510 (Minn. Dist. Ct. 4th Dist. May 30, 1996) (Appendix 186) (landlord responsible for all utilities services which do not separately and accurately measure the tenant's sole use of utilities; landlord required to pay water bills where specific lease provisions state such, and general lease term permitting landlord to assess water bills from tenants is invalid; landlord ordered not to claim from tenant the costs of this case or rents abated as additional rent or a security deposit deduction; landlord ordered not to require public assistance vendoring; landlord ordered not to collect water bill payments from tenants).

10. ordering parties to cooperate. *Anya v. Rulford*, UD-1960501506 (Minn. Dist. Ct. 4th Dist. May 24, 1996) (Appendix 220) (ordering parties to clarify water service billing arrangements).

11. recalculation of subsidized tenant rent. *Ridgemont Apartments v. Englund*, No. C3-96-68 (Minn. Dist. Ct. 10th Dist. Apr. 1, 1996) (Appendix 191) (since the two actions were consolidated, in addition to dismissing the unlawful detainer action for non-payment of the market rent, the court granted additional affirmative relief, including ordering the landlord to recalculate the tenant's share of the rent, immediately reinstate the subsidy if a subsidy slot was available, credit defendant's rent for an amount equal to the subsidy even if a subsidy slot is not available, and notify the tenant of the amount of past rent due, and ordered the tenant to pay that amount within 10 days after notice from the landlord).

12. Eviction of one tenant but not the other. *See* discussion, *supra*, VI.G.35.

13. Sanctions. *Le v.* _____, No. HC 02-7952 (Minn. Dist. Ct. 4th Dist. May 14, 2002) (Appendix 530) (ordered landlord who filed several actions again defendant and other tenants in violation of federal subsidized housing termination regulations to secure approval of Chief Judge prior to filing any eviction actions). *See* discussion, *supra*, VI.D.22.

Other decisions with interesting remedies include *Mattson v. Harmon*, No. UD-1961203552

(Minn. Dist. Ct. 4th Dist. Jan. 28, 1997) (Appendix 269) (Tenant not responsible for rent subsidy withheld by housing authority which is not due to tenant's conduct; landlord cannot require tenant to pay full rent or evict tenant for failing to pay full rent; landlord bound by housing authority's reinstatement of contract); *Minneapolis Public Housing Authority v.* _____, No. UD-1970221508 (Minn. Dist. Ct. 4th Dist. Mar. 26, 1997) (Appendix 273a) (Dismissal of second unlawful detainer action where Public Housing Authority based complaint on grounds other than listed in determination notice; Public Housing Authority improperly bypassed grievance process for case involving petty misdemeanor drug violation which is not "criminal" activity; action dismissed with prejudice so as to not allow the Public Housing Authority to file yet a third case on the same claims). *See generally* discussion at VI.E.1.j.

C. CONTEMPT OF COURT

Housing Courts are beginning to use contempt remedies, including confinement, to enforce court orders. Contempt is governed by Minn. Stat. Ch. 588, as well as the common law. Confinement as a civil contempt remedy is available where (1) the court has jurisdiction over the subject matter and the party, (2) the party was given a clear definition of the acts to be performed, (3) the party received notice of the acts to be performed and time to comply, (4) the party failed to comply, (5) the opposing party sought enforcement with specific grounds, (6) the party was given an opportunity to show compliance or reasons for failure, (7) the court concludes after a hearing that the party failed to comply and that conditional confinement is reasonably likely to produce compliance fully or in part, (8) the party fails to prove inability to comply and a good faith effort to comply, and (9) the party can effect release by compliance or, in some cases, compliance to the best of the parties ability. *Hopp v. Hopp*, 278 Minn. 170, 156 N.W.2d 212 (1968). The court must appoint an attorney to represent an indigent party facing civil contempt when the court reaches a point in the proceedings that incarceration is a real possibility; and then conduct a trial de novo shall on the issue of contempt. *Cox v. Slama*, 355 N.W.2d 401 (Minn. 1984).

In *Harris v.* _____, No. HC 031022502 (Minn. Dist. Ct. 4th Dist. Dec. 15, 2003, Jan. 9, and Feb. 6, Mar. 3, Mar. 17, 2004) (Appendix 514), the landlord agreed in and eviction settlement adopted by court to pay tenant $500 at move out and $1500 on week later, paid the first payment but did not pay the second. The court ordered the landlord to provide discovery on ability to pay, and after a trial, found the landlord in contempt of court for failing to pay the $1500, and fined the landlord and ordered the landlord to jail, staying the order until the end of the month for the landlord to comply. When the landlord did not comply, the court first issued a bench warrant for his arrest, and then ordered the landlord confined. *See* _____ *v. Floy,* No. HC-010829900 (Minn. Dist. Ct. 4th Dist. Dec. 14, 2001) (Appendix 437) (combined eviction and emergency tenant remedies action: the landlord rented condemned property, the housing inspector ordered the tenant to vacate, the court awarded damages for rental of condemned property by a specific date, and the landlord failed but had the ability to pay: landlord held in contempt and ordered imprisoned unless award is paid); *Judge v. Rio Hot Properties, Inc.*, No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (tenants' motion in consolidated cases to add punitive damages denied where court found no independent tort, but tenant granted leave to proceed with claims for contempt where the landlord had failed to complete repairs for almost one year.

Here are family court contempt forms that could be revised for housing cases. https://www.mncourts.gov/GetForms.aspx?c=12

CHAPTER VIII: POST TRIAL ISSUES

A. REDEMPTION. *See* discussion, *supra* at VI.E.20.

B. WRIT OF RECOVERY OR RESTITUTION.

1. Stay of the writ

If the court or jury finds for the plaintiff, the court shall issue a writ of recovery, formerly called a a writ of restitution. Minn. Stat. § 504B.345 (formerly § 566.09). The court shall stay the writ for a reasonable period not exceeding seven (7) days, where the defendant shows immediate restitution of the premises would work a substantial hardship upon the defendant or the defendant's family. *Id.* Tenants who do not contest the action still may request the stay. However, if the tenant does not appear, it is unlikely that the writ will be stayed for more than twenty-four (24) hours. In cases where the landlord proved violations of the illegal drug covenant, or that the tenant has caused a nuisance or has seriously endangered the safety of other residents, their property, or the landlord's property, the court may not stay issuance of the Writ of Restitution. Minn. Stat. § 504B.345 (formerly § 566.09), *amended by* 1994 Minn. Laws. 502, § 6.

In manufactured (mobile) home park lot tenancies under Minn. Stat. § 327C.11, subd. 4, the court may issue a conditional writ of restitution, which allows the home to remain on the lot for sixty (60) days for an in park sale, orders the resident household to vacate the park within a reasonable period not to exceed seven (7) days, and orders the park owner to notify any secured parties known to the park owner. The resident household must move out of the park, comply with all rules relating to home and lot maintenance, and pay all rent and utility charges owed to the park owner on time. The writ becomes unconditional and absolute by court order, if the resident violates the above obligations and the park owner moves the court for such relief, following three (3) days written notice, or sixty (60) days after issuance of the conditional writ. In *Marshall Plan, Inc. v. Miller*, No._____ (Minn. Dist. Ct. 5th Dist. Aug. 28, 1990) (Appendix 20.E), the court denied a request for a temporary restraining order against a sheriff's sale of a manufactured (mobile) home in a lot park following execution of the writ of restitution. The court concluded that following execution of the writ, the park owner is entitled to enforce the lien against the manufactured (mobile) home and foreclose it by public sale.

In *Potvin v.* _____, No. C2-03-1604 (Minn. Dist. Ct. 9th Dist. Sep. 19, 2003) (Appendix 562), the tenant first rent manufactured home (not in a park) and land under it, then purchased home and rented land, and fell behind on rent but landlord did not deliver title to tenant. the court stayed writ for one week after landlord delivers title to tenant.

The parties may stipulate to a stay of any duration. The writ is issued by the clerk of court. The writ may be stayed pending appeal. *See* discussion, *infra* at X.E.3.

2. Unavailability of writ for nonpayment of future rent

Landlords occasionally include in settlement agreements provisions on future payments of rent. While the landlord may obtain a writ and evict the tenant for failing to make installment payments on back rent, the landlord must file a new action if future rents are not paid.

In *Erin Realty v.* _____, No. HC 030918514 (Minn. Dist. Ct. 4th Dist. Mar. 16, 2004) (Appendix 493), the payments in the settlement agreement beyond the first payment included future rents for eight months as well as alleged past amounts due to the plaintiff. The defendant made all of the payments for five months. The plaintiff obtained a writ of recovery after the defendant made a partial payment in the sixth month, and the defendant moved to quash the writ. The court concluded that

> When the parties to an eviction agree to a schedule of future payments to retire the debt alleged in the complaint, the landlord may obtain a writ of recovery if the tenant fails to

make a payment. The landlord may not obtain a writ of recovery for failure to pay future rents not alleged as due in the complaint, as it would constitute a waiver of the tenant's right to the protections of the eviction process in Minn. Stat. Ch. 504B and the right to raise defenses to the landlord's claim as to nonpayment of future rents.

In the absence of factual findings by the court regarding amounts owing, a writ of recovery based on violation of a settlement agreement for future payments which do not distinguish between future rents and amounts found to be past due will not be enforced. In order to enforce rights under the agreement, the Plaintiff must file a new eviction action.

Id. See Erin Realty v. _____, No. HC 021008524 (Minn. Dist. Ct. 4th Dist. Sep. 17, 2003) (Appendix 494) (motion for writ denied; "tenant cannot permanently waive the right to an unlawful detainer hearing for all future allegations of nonpayment of rent"); *Rupert House Co., Inc. v. Altmann*, 127 Misc.2d 115, 485 N.Y.S.2d 472 (1985) (stipulation which entitles a landlord to evict a residential tenant for nonpayment of amounts of rent exceeding the amount of rent sought in the petition is unconscionable and violates public policy; such a mode of coercing payments of rents not yet due would impede the tenant's ability to assert against the landlord future defenses such as a breach of the warranty of habitability).

In *Uptown Classic Properties v. _____,* No. 1021119509 (Minn. Dist. Ct. 4th Dist. Dec. 12, 2002) (Appendix 684), the court held that the eviction action plaintiff must provide sworn testimony to prove allegations of complaint; the landlord who obtained rental license on November 18 and filed eviction action on November 19 could not seek rent for July through November; and the claim for December rent is not ripe for eviction action filed in November. The court dismissed the eviction action and ruled that the tenant was a prevailing party, granting expungement.

These decisions are consistent with the decision in *Eagan East Ltd. Partnership v. Powers Investigations, Inc.*, 554 N.W. 2d 621 (Minn. Ct. App. 1996). There, the commercial landlord demanded from the commercial tenant a prospective and retroactive rent increase after the square footage used by the tenant was remeasured. When the tenant failed to pay the additional rent, the landlord filed an eviction (formerly unlawful detainer) action. The trial court held that the rent increase clauses in the lease were ambiguous and could not be applied retroactively from the new square footage measurement, but could be applied prospectively. The landlord then announced a new prospective rent increase, and in a subsequent order of the trial court, the court ruled that the landlord was entitled to the rent increase and the tenant was not entitled to attorney's fees under the lease. On appeal, the Court of Appeals held that the trial court's jurisdiction was limited to determining present possessory rights of the parties, and that the trial court exceeded its jurisdiction by ruling on the prospective rent increase and attorney's fee issues.

3. Unavailability of writ of recovery for tax forfeiture without an eviction action

The writ of recovery is mentioned only in Minn. Stat. Chapters 504B (landlord and tenant) and 327C (manufactured home parks) and is available only in eviction actions under Minn. Stat. § 504B.345 and by reference rent escrow action counterclaims for possession under Minn. Stat. § 504B.385. The State of Minnesota Delinquent Tax and Tax Forfeiture Manual does not discuss obtaining a writ of recovery for tax forfeiture but does discuss eviction actions. *Id.* at 75,77. An eviction action would be needed to remove occupants from the property, similar to mortgage foreclosure cases. *See* discussion, *supra*, at VI.B.3.

C. EXECUTION OF THE WRIT

1. Service

The writ may not be enforced against a person who was not a party to the action nor named in the writ. *See* discussion, *supra* at VI.C.

The landlord must bring the writ to the sheriff or police for service on the defendant. Often, the landlord will have to schedule service on a later date. Some sheriffs or police or police require the landlord not only to prepay the sheriff or police for service, but to arrange for a bonded moving company to remove and store the tenant's possessions if they will be stored in a place other than the premises. The sheriff or police will serve the writ on the defendant, any adult member of the defendant's family holding possession of the premises, or any other person in charge of the premise. The sheriff or police will demand that the defendant and the defendant's family vacate the premises and remove their personal property within twenty-four (24) hours. In cases where the landlord prevails on claims of violations of the illegal drug covenant, or that the tenant caused a nuisance or seriously endangered the safety of other residents, their property, or the landlord's property, execution of the Writ of Restitution must receive priority. § 504B.365 (formerly § 566.17), *amended by* 1994 Minn. Laws Ch. 503, § 9.

The sheriff may have immunity from liability where the writ is enforced incorrectly. In *Pahnke v. Anderson Moving and Storage*, 720 N.W.2d 875 (Minn. Ct. App. 2006), the sheriff executed the writ of recovery at the time it was served, rather than waiting 24 hours after service, because the writ required immediate removal. The Court of Appeals affirmed summary judgment against the tenant, concluding that the officers were performing ministerial function, and because they were relying on the terms of the writ. A violation of Minn. Stat. § 504B.365, subd. 1(a), providing 24 hours for the defendant to remove personal property applies to the officer executing the writ of recovery and not the landlord. *Pahnke v. Anderson Moving and Storage*, No. A09-1738, 2010 WL 3853349 at *8 (Minn. Ct. App. Oct. 5, 2010) (unpublished), *rev. den.* (Minn. Dec. 22, 2010).

1a. Priority writs

In cases where the landlord prevails on claims of violations of the illegal drug covenant, or that the tenant caused a nuisance or seriously endangered the safety of other residents, their property, or the landlord's property, execution of the Writ of Restitution must receive priority. § 504B.365 (formerly § 566.17), amended by 1994 Minn. Laws Ch. 503, § 9. *See Andersen v._____,* No. 27-CV-HC-15-198 (Minn. Dist. Ct. 4th Dist. Jan. 28, 2015) (Appendix 786) (landlord was not credible where his attorney repeatedly used leading questions; landlord has burden of proving provisions of lease and violations of it; landlord did not prove that oral lease included right of reentry and a valid driver's license; right of reentry provision is required by *Bauer v. Knoble,* distinguishing *C & T Properties v. McCallister;* oral notice did not terminate month-to-month lease; possible future violation does not support present claim for breach of lease; priority writ statute Minn. Stat. § 504B.361 created a remedy but not a cause of action).

1b. 30-day Deadline for Enforcing the Writ?

The landlord might only have 30 days to enforce the writ. *DePetro v. DePetro*, No. A03-727, 2004 WL 885552 (Minn. Ct. App. April 27, 2004) (unpublished) (noted that housing court would not

reissue writ of recovery which has not been executed within 30 days of original issuance).

The 30-day stems from the form that used to be part of Minn. Stat. § 504B.361. The Minnesota Legislature removed the form from the statute in 2007. Minn. Laws 2007, Chapter 54, Art. 5, §12. Several law enforcement websites require the plaintiff to secure enforcement of the writ in 30 days.
https://www.anokacounty.us/608/Unlawful-Detainer-Evictions
http://www.co.cass.mn.us/services/law_enforcement_and_corrections/civil_process.php#evictions
https://www.co.dakota.mn.us/HomeProperty/Evictions/Pages/default.aspx
https://www.ramseycounty.us/your-government/leadership/sheriffs-office/sheriffs-office-divisions/court-security-services/civil-process-services/evictions-writ-recovery
https://www.scottcountymn.gov/1538/Writ-of-Recovery-Evictions
https://co.stearns.mn.us/LawPublicSafety/SheriffServices/CivilProcess/EvictionAction

2. Removal of the defendant and property

If the defendant does not comply with the demand, the landlord will have to arrange for the sheriff or police to return to the premises and remove the defendant, defendant's family, and their personal property. The landlord may not remove the tenant. *Veard-Brooklyn Center v.* _____, No. HC 1000512508 (Minn. Dist. Ct. 4th Dist. Aug. 23, 2000) (Appendix 590a) (landlord illegally changed locks following posting of writ; tenant awarded treble the value of lost or damaged property and $500 in attorney's fees).

The predecessor to Minn. Stat. § 504B.365, Minn. Stat. § 566.17, was expanded in 1989 to allow for notice to the defendant and to allow for storage on or away from the property. 1989 Minn. Laws Chapter 328 S.F. No. 522, § 7.

a0. *Notice to defendant*

The plaintiff must send written notice to the defendant of the date and approximate time when the sheriff or police is scheduled to execute the writ. The notice must inform the defendants that they and their property will be removed if they do not vacate by the date and time stated in the notice. The notice must be mailed as soon as the plaintiff knows of the date and time for execution. The plaintiff also must attempt in good faith to notify the defendant by telephone. Minn. Stat. § 504B.365, Subd. 3(g).

Because this requirement is contained in Subdivision 3(g) of the statute, it applies to writ executions regardless of whether the plaintiff intends to store property off-site under Subdivision 3(a)-(c) or on-site under Subdivision 3(d)-(f).

a. *Storage of property off of the premises*

There are only two alternatives for removing and storing the tenant's property, under Minn. Stat. § 504B.365 (formerly § 566.17). *See Gardner v. Lambert*, No. A08-0828, 2009 WL 1311664, at *2 (Minn. Ct. App. May 12, 2009) (unpublished) ("the two options set out in section 504B.365 are the exclusive remedies available to the [contract for deed] vendor who chooses to proceed with an eviction action under chapter 504B."). Because "section 504B.365 specifically governs the removal and storage of personal property after eviction, precisely the circumstances here, section 345.75 [governing abandoned tangible personal property that is not subject to any other provision of statute] does not apply." *Id.* at *3.

When property is to be stored in a place other than the premises, the sheriff or police shall remove the property at the plaintiff's expense. Often the sheriff or police will require the plaintiff to use a bonded moving company. The plaintiff shall have a lien upon the personal property only for the reasonable costs and expenses incurred from removing and storing the property. The plaintiff may retain possession of the personal property until payment. If the defendant does not pay such costs and expenses within sixty (60) days after execution of the writ, the plaintiff may enforce the lien by holding a sale under Minn. Stat. §§ 514.18-514.22. Minn. Stat. § 504B.365 (formerly § 566.17). *See Alexander v. Daimlerchrysler Services North America, LLC,* No. A03-351, 2003 WL 22183564 (Minn. Ct. App. Sep. 23, 2003) (unpublished) (affirmed conclusion that plaintiff properly sold defendant's remaining property); *Lang v. Terpstra*, No. UD-1940207512 (Minn. Dist. Ct. 4th Dist. June 12, 1994) (Appendix 70) (notice of sale under Section 504.24 (now § 504B.271) did not amount to election of remedies precluding storage company from enforcing lien under Section 514.18 *et seq*, but notice did not comply with section 514.21 requirement of publication).

b. *Storage of property on the premises*

(1) Inventory

After the sheriff or police enters the premises, the plaintiff may remove the property. In the officer's presence, the plaintiff must prepare, sign and date an inventory, which includes a listing of the items of personal property and description of their condition; the date, signature of the plaintiff or plaintiff's agent, and the name and telephone number of the person authorized to release the property; and the name and badge number of the officer. The officer shall retain a copy of the inventory. The plaintiff must mail a copy of the inventory to an address provided by the defendant, or to the defendant's last known address.

In *Follis v. State Armory Building Commission*, No. A14-2198, 2015 WL 7940309 (Minn. Ct. App. December 7, 2015) (unpublished), following cancellation of a contract for deed and the ensuing eviction, the vendor allowed the vendees access to the premises to remove belongings for 60 days, after which the vendor denied access. The vendor never completed a written inventory of the property. The vendees sued for $3,000,000 in damages and $250,000 in punitive damages. The district court granted partial summary judgment to the vendor, concluding that the vendees presented no evidence of the value of the personal property, and awarded $500 to the vendees under Minn. Stat. § 504B.231 as an unlawful ouster for failing to prepare the inventory.

The Court of Appeals affirmed the partial summary judgment and award, noting:

> A landlord who removes a tenant's property in violation of section 504B.365 is guilty of an unlawful ouster under section 504B.231. Minn. Stat. § 504B.365, subd. 5. Because the SABC did not complete an inventory of the Follises' property required by section 504B.365, subdivision 3(d), the SABC violated section 504B.365 and was therefore guilty of an unlawful ouster under section 504B.231.

Id. at *4.

In *Gardner v. Lambert*, No. A08-0828, 2009 WL 1311664, at *2 (Minn. Ct. App. May 12, 2009) (unpublished), the court concluded that in a post contract for deed cancellation eviction action, because "there is no evidence in the record that respondents prepared the required inventory, nor do respondents argue that they did so, we conclude that the district court's order did not comply with the provisions of

the exclusive remedy provided by statute." The court remanded "for a hearing to determine the reasonable value, as of March 1, 2008, of those items of appellants personal property that (1) were left on the premises and (2) appellants have been unable to recover by the exercise of reasonable diligence. *Id.* at *3.

(2) Removal and storage

The plaintiff is responsible for proper removal, storage and care of the property, and is liable for damages for loss of or injury to the property caused by a failure to exercise care as a reasonably careful person would exercise under the circumstances. Minn. Stat. § 504B.365, Subd. 3(f).

(3) Defendant access to personal property

If the landlord fails to allow the tenant to take possession of the property within 24 hours of the tenant's written demand, exclusive of weekends and holidays, the landlord is liable for punitive damages of the greater of double damages or $1,000 in addition to actual damages and reasonable attorney's fees. The statute states four factors for the court to consider in determining the amount of punitive damages - the nature and value of the property, the effect of deprivation of the property on the tenant, and whether the landlord or landlord's agent unlawfully took possession of the property or acted in bad faith in not allowing the tenant to retake possession. § 504B.271 (formerly § 504.24).

(4) Sale or disposal

Minn. Stat. § 504B.271 (formerly § 504.24), Subd. 1(b) provides that "The landlord may sell or otherwise dispose of the property 28 days after the landlord receives actual notice of the abandonment, or 28 days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs last."

(5) Plaintiff claims v. liens

The landlord has only a claim, and not a lien, for the reasonable removal and storage costs. *Conseco Loan Finance Co. v. Boswell*, 687 N.W.2d 646, (Minn. Ct. App. 2004) (manufactured home park lot owner who stored tenant's manufactured home on the premises retained only a claim for storage costs, and not a lien); *City View v. Brooks*, No. UD-1950907539 (Minn. Dist. Ct. 4th Dist. Nov. 13, 1995) (Appendix 167) (landlord may not hold property to force payment of back rent; landlord ordered to return property).

(6) Notice of sale

The landlord "shall make reasonable efforts to notify the tenant of the sale at least 14 days prior to the sale, by personal service in writing or sending written notification of the sale by first class and certified mail to the tenant's last known address or usual place of abode, if known by the landlord, and by posting notice of the sale in a conspicuous place on the premises at least two weeks prior to the sale. If notification by mail is used, the 14-day period shall be deemed to start on the day the notices are deposited in the United States mail." Minn. Stat. § 504B.271, Subd. 1(d) (formerly § 504.24).

(7) Sale proceeds

"The landlord may apply a reasonable amount of the proceeds of a sale to the removal, care, and

storage costs and expenses or to any claims authorized pursuant to section 504B.178, subdivision 3, paragraphs (a) and (b). Any remaining proceeds of any sale shall be paid to the tenant upon written demand. Minn. Stat. § 504B.271, Subd. 1(c) (formerly § 504.24). The cross-reference is to the security deposit statute provisions on landlord claims, including "amounts reasonably necessary: (1) to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or (2) to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted." Minn. Stat. § 504B.178, Subd. 3(b) (formerly § 504.20).

In *Pentel v. Bakewell*, No. CX-95-1595, 1996 WL 45168 (Minn. Ct. App. Feb. 6, 1996) (Appendix 356), the prevailing unlawful detainer plaintiff executed the writ on October 15, sent notice of sale of the tenants' property on December 4, and sold the tenants' property on December 21. The tenants sent a notice to recover the property on December 26. The court affirmed the district court's conclusions that the plaintiff complied with the statute, noting that the statute allows the landlord to sell the property if it reasonably appears that the tenant abandoned the premises, and the tenants' notice came after the sale.

One court has held that the following a landlord's victory in an unlawful detainer action, not only can the tenant be removed from the property, but that the landlord can be paid costs from the seizure and sale of the tenant's property. In *Fradette v. Mettner*, No. C4-00-56 (Minn. Dist. Ct. 9th Dist. Jan. 26 and Mar. 14, 2000) (Appendix 389), the court based its conclusion on the language of the form writ in Minn. Stat. § 504B.361 (formerly § 566.16), which provides for removal of the defendant from the premises, plaintiff recovery of the premises, and payment of costs to the plaintiff from personal property seized and sold. The court rejected the argument that the more specific language regarding treatment of personal property seized in Minn. Stat. § 504B.365 (formerly § 566.17) required storage of the property with tenant rights to recover the property prior to sale. The court essentially reasoned that the landlord could seize and sell property to recover costs, with remaining property to be held under § 504B.365. However, the court noted that the tenant should be able to raise exemptions from seizure under Minn. Stat. § 550.37.

Tenants facing arguments such as those made by the court should restate the arguments made by the tenant. Section 504B.365 is very specific in the treatment of personal property held in conjunction with execution of the writ. A proper reading of § 504B.365 and § 504B.361 is that once the time period for holding the property has expired and the landlord is entitled to sell it under § 504B.365, only then can the landlord be paid for costs from the sale proceeds under § 504B.361. However, tenants should be advised of the risk that some courts may allow the landlord to sell personal property left on the premises to satisfy a judgment for costs, notwithstanding the protections of § 504B.365.

c. *Property motions and claims*

Minn. Stat. § 504B.365 (formerly § 566.17) authorizes the housing courts in the Fourth and Second Districts (Hennepin and Ramsey Counties) or retain jurisdiction in eviction (unlawful detainer) actions to decide disputes concerning removal of property following execution of the writ of restitution.

Property motions in evictions are not common, so judges and referees have to be educated in case on their authority. There is no time limit for the motion, and the eviction court must hear the motion. "The court hearing the eviction action shall retain jurisdiction in matters relating to removal of personal property under this section." Minn. Stat. § 504B.365, Subd. 4.

The statute also specifically authorizes an award of expenses, punitive damages, and attorney's

fees if the landlord refuses to return a tenant's properties after a proper demand under § 504B.271 (formerly § 504.24). For forms for motions regarding property disposition, *see* Housing Law in Minnesota http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html.

In *Hagle v. The Bank of New York Mellon,* No. A14-0473, 2015 WL 648300 (Minn. Ct. App. Feb. 17, 2015) (unpublished), the defendant foreclosed on the plaintiffs' mortgage and won the eviction action, afterward the plaintiffs filed this action for damages. The district court dismissed some of plaintiffs' claims and entered summary judgment against the plaintiffs on the remaining claims. The Court of Appeals held in part that the district court erred by dismissing the plaintiffs' claim regarding personal property held on the premises following the eviction action, as res judicata did not bar the claim where the court in the eviction action expressly declined to consider the personal property claims.

In *Carlson v. Masters,* No. A14-0714, 2015 WL 404619 (Minn. App. February 2, 2015), Masters was evicted, and his personal property was removed from the premises and stored elsewhere by the landlord as allowed by Minn. Stat. § 504B.365. Masters later filed a motion alleging that he was prevented from retrieving his personal property, and the district court ordered the landlord to immediately return the property and ordered that Masters had until a date certain to fully remove the property or it would be considered abandoned. After that date certain, Masters requested a telephone conference asserting continued inability to access his personal property, and in response, without the landlord being represented or heard on that issue, the district court found that the landlord had acted in bad faith and awarded punitive damages in an amount to be determined at a subsequent hearing. At the hearing, the landlord asked the district court to reconsider the earlier order and presented evidence showing the landlord's attempts to return the property. The district court then found that both parties were responsible for the problems at issue, and that Masters was entitled to return of his property, but not to punitive damages or attorney's fees. Masters appealed, and the Court of Appeals affirmed, stating that the District court has the power to reconsider its previous orders before entry of a final judgment on all claims in the case, and that the findings were supported by the record.

In *Odash v. _____,* No. 24-CV-HC-12-3214 (Minn. Dist. Ct. 4th Dist. Feb. 26, 2013) (Appendix 718) (Judge Meyer), the landlord brought an action against the tenant for unlawful detainer. The parties ultimately reached a settlement, which stated that the tenant would pay the landlord $2,500 on or before July 7, 2012 and vacate the premises on or before that date. The settlement noted that the landlord believed the tenant owed her more than $2,500 in past due rent, late fees, and court costs, but that such claims would need to be pursued separately in conciliation court. The settlement also allowed for a writ of recovery to issue if tenant broke the terms of the agreement. The tenant vacated the premises on the designated date, but a dispute arose regarding items that belong to tenant that remained at landlord's property, specifically a snow plow that remained in landlord's garage. The tenant applied for an in frorma pauper fee waiver, but the housing court referee denied the application, finding that the action was frivolous because a writ of recovery had not issued, and therefore Minn. Stat. § 504B.365 was inapplicable. The district court reversed the decision, holding that there is no requirement for a writ of execution to issue before the issue of storage and disposal requests are triggered in Section 504B.271. The court reversed the denial of the IFP application, reasoning that holding that a writ must be executed to trigger Section 504B.365 would discourage settlements in housing court and force additional writs to be issued and executed. The district court further noted that Section 504B.365, Subd. 4 does not appear to require a writ of execution to have issued for the housing court to retain jurisdiction over stored property; it only requires an eviction action to have been heard.

In *Lang v. Terpstra*, No. UD-1940207512 (Minn. Dist. Ct. 4th Dist. June 12, 1994) (Appendix 70), the court entertained motion concerning disposition of property, granted motion to add storage

company as a necessary party under Minn. R. Civ. P. 19, and enjoined sale of property until landlord gave proper notice under section 514.21. *See also City View v. Brooks*, No. UD-1950907539 (Minn. Dist. Ct. 4th Dist. Nov. 13, 1995) (Appendix 167) (landlord may not hold property to force payment of back rent; landlord ordered to return property; hearing scheduled on tenant's damages claim).

Unless the premises have been abandoned, a plaintiff or plaintiff's agent who enters the premises and removes the defendant's property in violation of the statute is guilty of a misdemeanor for wrongful ouster and is liable to the tenant up to treble damages or $500, which ever is greater, and reasonable attorney's fees. The provisions of the statute may not be waived. Minn. Stat. § 504B.365 (formerly § 566.17).

Where the tenant was wrongfully evicted, the landlord must bear the expenses of removal, storage and return of the tenant's personal property. *See Kowalenko v. Haines*, No. C6-85-1365, Order at 2 (Minn. Ct. App. July 23, 1985) (Appendix 4); *Durigan v. Smith*, No. UD-80515 (Henn. Cty. Mun. Ct. July 25, 1977) (Appendix 3).

Since this process can be expensive for both parties, the parties should consider negotiating for a mutually agreeable date for the tenant's departure. However, it is possible that the sheriff or police would not follow such an agreement, if the plaintiff delivers the writ to the sheriff or police and requests execution. The defendant should file such a written agreement with the clerk of court and the sheriff or police. The defendant should regularly verify the plaintiff's compliance with such an agreement by calling the clerk of court and the sheriff or police, respectively, to find out whether the plaintiff has obtained the writ and arranged for execution.

3. Illegal Lockouts

Unless the premises have been abandoned, a plaintiff or plaintiff's agent who enters the premises without the sheriff and lockouts out the defendant and removes defendant's property in violation of the statute is guilty of a misdemeanor for wrongful ouster and is liable to the tenant up to treble damages or $500, which ever is greater, and reasonable attorney's fees. The provisions of the statute may not be waived. Minn. Stat. § 504B.365 (formerly § 566.17).

A lockout also constitutes a misdemeanor under Minn. Stat. §§ 504B.225 (formerly § 504.25), 609.606. The tenant can call the police, although police responses to lockouts vary considerably.

In *Bass v. Equity Residential Holdings*, LLC., 849 N.W.2d 87 (Minn. Ct. App. 2014), the landlord won an eviction action for nonpayment of rent, but rather than obtain and execute a writ of recovery, the landlord locked out the tenant and put her personal property in a dumpster. The tenant filed a lockout action. The landlord did not appear at the hearing and while the landlord’s attorney called the court to say he also could not attend, the court proceeded with the case since there was no certificate of representation filed. The housing court referee determined that landlord had defaulted, the tenant had been wrongfully locked out and had not abandoned the premises, the landlord acted in bad faith, and the tenant suffered damages. Both parties attended another hearing on damages, and after taking testimony, the referee awarded treble damages of $9,386.97 under Minn. Stat. § 504B.231 and$1,000 as punitive damages under Minn. Stat. § 504B.271, for a total of $10,386.97 to be paid within 60 days following the order. The landlord sought judge review, which affirmed the order. *Id.* at 89-90.

The Court of Appeals affirmed the district court, holding that housing court division of district court had jurisdiction to award damages; evidence was sufficient to support findings re-garding value of

the tenant's destroyed property; the tenant was not required to mitigate damages by diving into dumpsters to retrieve water-damaged possessions; damages for belongings destroyed in rain-soaked dumpster were a direct consequence of ouster and thus were recoverable; evidence was sufficient to support finding that the landlord acted in bad faith; and the tenant could recover both treble damages and punitive damages under the two statutes. *Id.* at 90-93.

The defendant has several options to confront the illegal lockout: (1) file a lockout action, *see* discussion, *infra*, at XII.B.1; file a motion for illegal disposition of personal property, *see* discussion, *supra*, at VIII.C.2.c; or (3) file a motion to vacate the judgment and quash the writ, *see* discussion, *infra*, at VIII.E.2.

4. Contemp for failing to vacate

In *State of Minnesota v. Mehrallian,* No. A14–0032, 2014 WL 7011168 (Minn. Ct. App. Dec. 15, 2014) (unpublished), a harassment restraining order ("HRO") was entered against the defendant, ordering him to stay away from his estranged wife and her home, which they previously shared. The HRO was later amended to allow defendant to be present at the home "unless [she] was on the property, in which case he shall leave." Later, the dissolution decree awarded the marital home to defendant's former wife, but allowed defendant exclusive use and occupancy of the home through the school year, ordering him to vacate no later than July 31, 2013.

After he failed to vacate, defendant's former wife filed an eviction action and court issued a writ of recovery for defendant to vacate the property by August 21. When the former wife heard that defendant was removing her property on August 22, she called the police. She did not serve defendant with the writ of recovery or have the sheriff enforce it.

The state filed a complaint charging defendant with violating the HRO and two counts of contempt of court based on his continued occupation of the home on August 22, 2013. A jury found him guilty of contempt for violating the eviction order, and defendant appealed from his sentence, arguing that neither the divorce decree nor the eviction order "specifically" nullified the amended HRO.

The Court of Appeals affirmed, stating that defendant (1) failed to argue the eviction order was invalid and a collateral attack on the eviction order in the criminal case was improper; (2) the eviction order did not necessarily conflict with the amended HRO where one required he vacate and no longer occupy the home as a resident, the latter allowed him to be present as a visitor unless his estranged wife was there; and (3) despite any alleged confusion, the evidence was sufficient to allow the jury to infer that defendant willfully disobeyed the eviction order.

Finally, the Court held that defendant was required to comply with the eviction order without regard for whether the sheriff executed the writ of recovery.

> In his pro se supplemental brief, Mehralian appears to argue that, despite the eviction order, he was not prohibited from occupying the home on August 22, 2013, because he had not been served with a writ of recovery. The district court addressed this issue with Mehralian at his sentencing hearing; the district court explained that a writ of recovery is issued to the county sheriff, not to the person to be evicted, and is merely a means by which the person entitled to possession may enforce an eviction order. The district court is correct. Mehralian was required by law to comply with the terms of the eviction order without regard for whether the sheriff executed the writ of recovery. *See* Minn. Stat. § 504B.365, subd. 1(a); *Smith v. Park*, 31 Minn.

70, 73, 16 N.W. 490, 492 (1883). Mehralian could have forestalled the eviction and lawfully remained in possession only if he had properly appealed from the eviction judgment and posted a supersedeas bond to cover the costs of an appeal. *See* Minn. Stat. § 504B.371, subds. 1–5. (2012); *Makela v. Peters*, 425 N.W.2d 605, 605–06 (Minn.App.1988). But Mehralian did not properly lodge an appeal with this court and did not post a supersedeas bond. No. A13–1578 (Minn.App. Aug. 29, 2013) (order). Thus, his contention is without merit.

Id. at *4.

D. WAIVER OF THE WRIT OR THE RIGHT TO RESTITUTION

If the landlord accepts payment of rent and/or rent arrearages after receiving judgment for restitution of the premises, the landlord may waive the right to execute the writ. By accepting payment of arrearages, the landlord is allowing the tenant to redeem. While the tenant's right of redemption is limited, *see* discussion, *supra* at VI.E.20, the landlord can agree to redemption beyond such limitations. By accepting rent as it becomes due, the landlord is (1) Waiving the notices to evict, including the complaint and the writ of restitution. *Central Brooklyn Urban Dev. Corp. v. Copeland*, 122 Misc. 2d 726, 729-30, 471 N.Y.S.2d 989, 993 (Civ. Ct., Kings Cty., 1984) (government subsidized housing: payment of government subsidy after issuance of writ waives the writ); discussion, *supra* at VI.F.4 (waiver of notice), or (2) Waiving alleged breaches which served as the basis for the action, *see* discussion, *supra* at VI.G.4 (waiver of breach).

In *Connelly v. Lewis*, No. C8-96-426 (Minn. Dist. Ct. 9th Dist. Aug. 21, 1996) (Appendix 240), the landlord filed an unlawful detainer action for non-payment of rent for May, and obtained a default judgment. The tenants paid rent to the landlord for May, June and July. In August, the landlord sought and obtained a writ of restitution. On the tenant's motion, the court first ordered an emergency stay of enforcement of the writ of restitution, and later vacated the writ and dismissed the case, based on the tenant's argument that the landlord waived the right to restitution by accepting rent for the month in question and for later months, and that the rent transactions created a new tenancy between the parties.

See Real Assets LLC v. _____, No. 27-CV-HC- 13-37 (Minn. Dist. Ct. 4th Dist. June 25, 2013) (Appendix 754) (motion to vacate judgment granted where landlord accepted rent after court issued writ of recovery); *Jarvi v. _____,* No. 27-CV-HC-13-1010 (Minn. Dist. Ct. 4th Dist. April 1, 2013) (Appendix 755) (motion to vacate judgment granted where landlord and tenant settled for payment plan with court approval, tenant did not comply but landlord and tenant negotiated new plan without court approval and tenant made substantial payments, and landlord obtained and enforced writ for violation of new plan); *Grimmer v. Svoboda*, No. UD-1960923520 (Minn. Dist. Ct. 4th Dist. Jan. 6, Jan. 15, and Mar. 14, 1997) (Appendix 257) (Writ stayed where landlord failed to execute stipulated reference, told tenants they could stay longer, and accepted rent beyond the move out date; landlord ordered to execute reference letter and tenant given extra month to move; damages and move out date settled).

The defendant should file a written agreement, receipt of payment, or copy of the check with the clerk of court and the sheriff or police, and notify the clerk and sheriff or police of the defendant's opinion on the effect of receipt of payment.

The part payment of rent statute, Minn. Stat. § 504B.291, subd. 1 (c) states "(c) Prior to or after commencement of an action to recover possession for nonpayment of rent, the parties may agree only in writing that partial payment of rent in arrears which is accepted by the landlord prior to issuance of the

order granting restitution of the premises pursuant to section 504B.345 may be applied to the balance due and does not waive the landlord's action to recover possession of the premises for nonpayment of rent." A partial payment of rent received in violation of the statute after issuance of the writ should waiver the writ. *See* discussion, *supra*, at VI.E.13.

E. MOTIONS AND REQUESTS

0. Request and motion for reconsideration

Pursuant to Minn. R. Gen. Prac. 115.11, a party may request reconsideration by filing a letter no longer than two requesting permission to file a motion for resonideration. Such requests are granted only upon a showing of compelling circumstances.

> Rule 115.11 Motions to Reconsider
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> Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances. Requests to make such a motion, and any responses to such requests, shall be made only by letter to the court of no more than two pages in length, a copy of which must be served on all opposing counsel and self-represented litigants.
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> Advisory Committee Comment - 1997 Amendment
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> ....
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> Rule 115.11 is added to establish an explicit procedure for submitting motions for reconsideration. The rule permits such motions only with permission of the trial court. The request must be by letter, and should be directed to the judge who issued the decision for which reconsideration is sought. The rule is drawn from a similar provision in the Local Rules of the United States District Court for the District of Minnesota. The rule is intended to remove some of the uncertainty that surrounds use of these motions in Minnesota, especially after the Minnesota Court of Appeals decision in Carter v. Anderson, 554 N.W.2d 110 (Minn. Ct. App. 1996). See Eric J. Magnuson, Motions for Reconsideration, 54 Bench & Bar of Minn., July 1997, at 36.
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> Motions for reconsideration play a very limited role in civil practice, and should be approached cautiously and used sparingly. It is not appropriate to prohibit them, however, as they occasionally serve a helpful purpose for the courts. Counsel should understand that although the courts may have the power to reconsider decisions, they rarely will exercise it. They are likely to do so only where intervening legal developments have occurred (e.g., enactment of an applicable statute or issuance of a dispositive court decision) or where the earlier decision is palpably wrong in some respect. Motions for reconsideration are not opportunities for presentation of facts or arguments available when the prior motion was considered. Motions for reconsideration will not be allowed to "expand" or "supplement" the record on appeal. *See, e.g., Sullivan v. Spot Weld, Inc.,* 560 N.W.2d 712 (Minn. App. 1997); *Progressive Cos. Ins. Co. v. Fiedler,* 1997 WL 292332 (Minn. App. 1997) (unpublished). Most importantly, counsel should remember that a motion for reconsideration does not toll any time periods or deadlines, including the time to appeal. *See generally* 3 ERIC J. MAGNUSON & DAVID F. HERR, MINNESOTA PRACTICE: APPELLATE RULES ANNOTATED, section 103.17 (3rd ed. 1996, Supp. 1997).

https://www.revisor.mn.gov/court_rules/gp/id/115/

In *Brendalen v. Sundae,* No. A14-0219, 2014 Minn. App. Unpub. LEXIS 992 (Minn. Ct. App. Sept. 08, 2014) (unpublished), the court held that the denial of reconsideration was not appealable, and denial of reconsideration by letter rather than order was not an error.

In *Minneapolis Public Housing Authority v. _____,* No. 27-CV-HC-08-10954 (Minn. Dist. Ct. 4th Dist. Sept. 21, 2009) (Appendix 812) (Judge Nordby), the public housing tenant possessed a small amount of marijuana, not on the premises, but about a mile away. The referee found (adopting the proposed findings of the MPHA) that the evidence satisfied the plaintiffs burden, concluding in effect that the MPHA's "zero tolerance" approach was necessary, or at least reasonable, to prevent a serious threat to the health, safety and peaceful enjoyment of the premises. The MPHA argued that the federal definition of drug-related criminal activity included non-criminal offenses. 42 U.S.C. § 1437d(l)(6) requires that the lease "provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug- related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." (emphasis added). There is no mention in the statute of "illegal activity." However, 24 C.F.R. § 5.100 provides that "Drug-related criminal activity means the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug." The court originally agreed with the MPHA. The court reversed itself and the referee on reconsideration.

In *Sentinel Management Co. v. Kraft,* No. UD-1920806546 (Minn. Dist. Ct. 4th Dist. Aug. 12, 1992) (Appendix 11.I.3), the government subsidized housing project landlord served the tenant with the summons and complaint and motion for a temporary restraining order, which the landlord obtained the same day as service. The temporary restraining order evicted the tenant pending the hearing in the unlawful detainer action. The tenant moved for reconsideration of the temporary restraining order and for dismissal or summary judgment on the grounds that the landlord had failed to give the federally required eviction notice before commencing the action. The court vacated the temporary restraining order and dismissed the action.

1. Motions in anticipation of appeal

a. *Motion for new trial or amended findings not required for appeal*

It no longer is necessary to bring a motion for new trial or other post trial motion to preserve issues on appeal in an eviction (unlawful detainer) action. *Scroggins v. Solchaga,* 552 N.W.2d 248 (Minn. Ct. App. 1996); *Minneapolis Public Housing Authority v. Greene*, 463 N.W.2d 558, 560 (Minn. Ct. App. 1990), citing *Matter of Jost*, 437 N.W.2d 89, 90 (Minn. Ct. App. 1989), *rev. on other grounds*, 449 N.W.2d 719 (Minn. 1990); *Minneapolis Public Housing Authority v. Holloway*, C0-94-736 (Minn. Ct. App. Nov. 15, 1994), FINANCE AND COMMERCE 36 (Nov. 18, 1994) (Appendix 90) (review not conditioned on post trial motions); *Nicollet Towers, Inc. v. Georgiff*, C5-94-1364 (Minn. Ct. App. Feb. 7, 1995), FINANCE AND COMMERCE 53 (Feb. 10, 1995) (Appendix 89) (review not conditioned on post trial motions).

There is some question whether the court may entertain a motion for a new trial. In *Stock v. Beaulieu*, No. C4-95-989 (Minn. Ct. App. May 9, 1995) (unpublished) (Appendix 170), the court granted a writ of prohibition precluding the district court from enforcing an order granting a new trial. The court concluded that the unlawful detainer statute's creation of a summary proceeding did not

contemplate a new trial, and that the petitioner would not be able to attack the order for a new trial on appeal from the decision in the second trial. The court did not discuss whether the grounds for new trial had merit. The dissent asserted that the statute does not deprive the district court of its authority under Minn. R. Civ. P. 60.02(f) to grant a new trial in the interest of justice.

While counsel may find this decision helpful when the tenant prevails and the landlord moves for new trial, it may be that tenants more often are in the position of moving for new trial or to vacate a default judgment. Counsel should argue that while the *published* decisions of the court have stated that the appellant need not move for a new trial, *Minneapolis Public Housing Authority v. Greene*, 463 N.W.2d 558, 560 (Minn. Ct. App. 1990), and that the appellant may not appeal from the order denying a motion for new trial, *Tonkaway Limited Partnerships v. McLain*, 433 N.W.2d 443, 444 (Minn. Ct. App. 1988), they have not held that the trial court cannot grant a motion for new trial. In *Wong Kong Har Wun Sun Association v. Chin*, No. C8-87-2439 (Minn. Ct. App. Apr. 12, 1988) (Appendix 21) (unpublished), the court held that the trial court abused discretion in refusing to vacate default unlawful detainer judgment due to mistake. *See Pirkola v. Bastie,* No. C1-95-602242 (Minn. Dist. Ct. 6th Dist. Feb. 20, 1996) (Appendix 196) (order for temporary stay and amended order to conform to settlement on the transcript).

If the defendant wishes to consider bringing a motion for a new trial, the defendant must act quickly. The short appeal time makes it difficult to complete a motion for new trial. Before the Court of Appeals clarified that a motion for new trial was not necessary to preserve the record for appeal, tenants were faced with the dilemma of bringing a motion for new trial to preserve the record but possibly missing the time for appeal. In *Tonkaway Limited Partnership v. McLain*, 433 N.W.2d at 443-44, appellant moved for a new trial the day judgment was entered. However, the district court did not deny the motion until after the 10 day period following entry of judgment. The appellant appealed from the order denying the motion. The Court of Appeals held that the appeal was not timely since it was filed more than 10 days after entry of judgment.

In 1998 Minn. R. Civ. App. P. 104.01 was amended to provide for stay the time for appeal upon filing and service of a certain post trial motions.

> Unless otherwise provided by law, if any party serves and files a proper and timely motion of a type specified immediately below, the time for appeal of the order or judgment that is the subject of such motion runs for all parties from the service by any party of notice of filing of the order disposing of the last such motion outstanding. This provision applies to a proper and timely motion:
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> (a) for judgment notwithstanding the verdict under Minn. R. Civ. P. 50.02;
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> (b) to amend or make findings of fact under Minn. R. Civ. P. 52.02, whether or not granting the motion would alter the judgment;
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> (c) to alter or amend the judgment under Minn. R. Civ. P. 52.02;
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> (d) for a new trial under Minn. R. Civ. P. 59;
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> (e) for relief under Minn. R. Civ. P. 60 if the motion is filed within the time frame for a motion for new trial; or

(f) in proceedings not governed by the Rules of Civil Procedure, a proper and timely motion that seeks the same or equivalent relief as those motions listed in (a)-(e).

Minn. R. Civ. App. P. 104.01(2).

It appears that the amendment may overrule *Tonkaway Limited Partnerships v. McLain*, 433 N.W.2d 443, 444 (Minn. Ct. App. 1988), which held that the appellant may not appeal from the order denying a motion for new trial in an unlawful detainer (now called eviction) action. However, the Rule starts by stating "Unless otherwise provided by law," so it is not clear whether *Tonkaway* excepts eviction actions from the Rule.

The post trial motion must be "authorized." *Madson v. Minnesota Mining and Manufacturing Co.*, ____ N.W.2d ____, No. CX-99-1508 (Minn. June 15, 2000); Minn. R. Civ. App. P. 104.01, 1998 Advisory Committee Comment. It is unclear whether and what post trial motions are "authorized" in eviction actions. While a divided court in the unpublished decision in *Stock v. Beaulieu*, No. C4-95-989 (Minn. Ct. App. May 9, 1995) (Appendix 170) held the motion for new trial was not authorized, previous published decisions simply stated that the motion was not necessary to preserve evidentiary issues, and did not hold the motion was unauthorized. *Scroggins v. Solchaga,* 552 N.W.2d 248 (Minn. Ct. App. 1996); *Minneapolis Public Housing Authority v. Greene*, 463 N.W.2d 558, 560 (Minn. Ct. App. 1990). However, the fact that motions for new trial are not necessary in eviction actions might mean that they do not toll the time for appeal. *See* Minn. R. Civ. App. P. 104.01, 1998 Advisory Committee Comment ("'motions for reconsideration' [excluded] because these motions are never required by the rules").

Unfortunately, while the amendment to Rule 104.01 may clarify post trial motion practice in most types of litigation, proper eviction action post trial practice still is unclear. In light of this confusion, and until the court clarify the issue, the appellant should move for new trial before entry of judgment and move to stay entry of judgment pending a decision under Minn. R. Civ. P. 58.02 and 62. *See Pirkola v. Bastie,* No. C1-95-602242 (Minn. Dist. Ct. 6th Dist. Feb. 20, 1996) (Appendix 196) (order for temporary stay and amended order to conform to settlement on the transcript). If entry of judgment was not stayed, appellant should appeal within 10 days of entry, regardless of whether the motion for new trial has been decided. The worst that would happen would be that the Court of Appeals would decide that the appeal was premature. Minn. R. Civ. App. P. 104.01, Subd. 3. The appellant also should contact the Court of Appeals Staff Attorney's Office for guidance on procedure.

b. *Motions on bonds, fees and staying eviction pending appeal*. *See* discussion, *infra* at X.E.

2. Motion to vacate judgments and stay or quash the writ of restitution

Given the rise of tenant screening agencies and the availability of expunging or sealing court records, tenants may be more interested in reopening default cases even after the tenant has moved. While a tenant should be able to litigate the merits involved in a default case within the context of a motion for expungement, some courts facing a high volume of expungement motions might direct tenants in default cases to move to reopen the defaults first. *See* discussion, *infra*, at VIII.E.5 (expungement).

a. *Inherent authority*

The court has authority entertain a motion to vacate a judgment in an eviction (unlawful detainer) action, under two separate sources of authority. The court has inherent power to review its own action. *Itaska County v. Ralph*, 144 Minn. 446, 449, 175 N.W. 899, 900 (1920); *Crosby v. Farmer*, 39 Minn. 305, 309, 40 N.W. 71, 73 (1888). *See Durigan v. Smith*, No. UD-80515 (Henn. Cty. Mun. Ct., July 25, 1977) (Appendix 3).

b. *Minn. R. Civ. P. 60.02*

Minn. R. Civ. P. 60.02 provides the more commonly cited source of authority. It provides:

60.02 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.

On motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final judgment (other than a marriage dissolution decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect;

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03;

(c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) The judgment is void;

(e) The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(f) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time, and for reasons (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A Rule 60.02 motion does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Rule 4.043, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment

c. *Mandatory vacation of judgment: lack of personal jurisdiction*

Where the court lacks personal jurisdiction over the defendant due to inadequate service, a judgment entered by default must be vacated unconditionally. *Lange v. Johnson*, 295 Minn. 320, ___, 240 N.W.2d 205, 208 (1973). No showing of a meritorious defense is necessary. *Hengel v. Hyatt*, 312 Minn. 317, 318, 252 N.W.2d 105, 106, (1977). *See Igherighe v. _____,* No. HC 1011015538 (Minn. Dist. Ct. 4th Dist. Dec. 14, 2001 and May 22, 2002) (Appendix 520) (hearing scheduled on motion to quash writ where Section 8 tenant claimed no service by plaintiff, no notice to housing authority, and

rent had been paid in full or part; expungement and award to tenant of costs and disbursements which can be credit against rent); *Tri Star Developers, LLC v.* _____, No. HC 010109514 (Minn. Dist. Ct. 4th Dist. Oct. 17, 2001) (Appendix 584) (improper service on employee of business who was not an officer and not authorized to accept service; defendant business was incorrectly named; default judgment vacated and action dismissed and expunged); *Minneapolis Public Housing Authority v. Kline*, No. UD-1930712506 (Minn. Dist. Ct. 4th Dist. Aug. 5, 1993) (Appendix 3.B) (motion to quash writ granted where service was on child who did not reside on the premises). *But see Gale v. Winge*, No. C7-98-2279 (Minn. Ct. App. July 6, 1999) (unpublished) (affirmed determination as not clearly erroneous that husband continued to use property as his place of abode and substitute service on wife was proper; minor inaccuracies in contract-for-deed legal description do not render the cancellation notice ineffective; trial court did not abuse its discretion in denying motion to vacate default judgment where tenant did not present a defense on the merits nor a reasonable excuse for failure to act; attorney's testimony at trial regarding payment of money was not on a contested issue, and did not require disqualification; equitable rights were not at issue, but equities were not in the defendants' favor).

The court should not order a bond as a condition of hearing where the movant alleges facts to support a claim that the judgment is void under Minn. R. Civ. P. 60.02(d). *See Village of Zambrota v. Johnson*, 280 Minn. 390, 161 N.W.2d 626 (1968); *Pugsley v. Magerfleisch*, 161 Minn. 246, 201 N.W. 323 (1924).

In *Glenwood Financial LLC v.* _____, No. 27-CV-HC-14-5721 Minn. Dist. Ct. 4th Dist. Nov. 25, 2014) (Appendix 704), the tenants failed to appear at an eviction hearing and a default judgment was entered. The tenants moved to vacate the judgment, reopen the case, and then dismiss the action for service defects. The Court found that the tenants met all four *Finden* factors: (1) the tenants had a reasonable case on the merits, since the plaintiff's affidavit and the affidavits of mailing were missing from the record, and complaint treated a duplex as a single property; (2) the tenants had a reasonable excuse for the default since they had no actual notice of the eviction hearing and there was no basis to establish they should have known of the hearing; (3) the tenants acted with reasonable diligence to reopen the case; and (4) there was no substantial prejudice to the landlord since the landlord has the ability to refile the action and have it adjudicated promptly. The Court granted the motion to reopen, and then dismissed the case without prejudice due to the service defects. The should not have applied a *Finden* analysis discussed below, since the tenant was challenging personal jurisdiction, but it did reopen and dismiss the action.

d. *For other claims, the Finden Factors*

For other claims, the court must consider the factors stated in *Finden v. Klaas*, 268 Minn. 268, 128 N.W.2d 748 (1964). In *Finden*, the Minnesota Supreme Court reversed a trial court denial of a motion to vacate the default judgment and for leave to answer, holding that the trial court should have relieved defendant from default judgment where the defendant had entrusted matter entirely to attorney and relied upon assurances that he was being protected, defendant acted with due diligence in moving to vacate default and asserted meritorious defense and it appeared that plaintiffs would not have suffered substantial prejudice had court vacated default. The court stated that:

> it is a cardinal rule that, in keeping with the spirit of Rule 60.02, in furtherance of justice, and pursuant to a liberal policy conducive to the trial of causes on their merits, the court should relieve a defendant from the consequences of his attorney's neglect in those cases where defendant-

> "* * * (a) is possessed of a reasonable defense on the merits, (b) has a reasonable excuse for his failure or neglect to answer, (c) has acted with due diligence after notice of the entry of judgment, and (d) (shows) that no substantial prejudice will result to the other party."

268 Minn. At 271, 128 N.W.2d at 750 (citations omitted). Courts are "empowered" under the rule to require the defendant "to deposit security" for any judgment the plaintiff may obtain. 128 N.W.2d at 751.

A strong showing on three of the four factors may offset a weak showing on one of the factors. *Armstrong v. Heckman*, 409 N.W.2d 27 (Minn. Ct. App. 1987). A strong showing on only two of the four factors cannot offset a weak showing on the other two factors. *Imperial Premium Finance, Inc. v. GK Cab. Co., Inc.*, 603 N.W.2d 853 (Minn. Ct. App. 2000) (reversed District Court decision vacating default judgment where defendant failed to demonstrate reasonable excuse and no substantial prejudice). *See Wong Kong Har Wun Sun Association v. Chin*, No. C8-87-2439 (Minn. Ct. App. Apr. 12, 1988) (unpublished: trial court abused discretion in refusing to vacate default unlawful detainer judgment due to mistake) (Appendix 21); *Minneapolis Public Housing Authority v. Gorman*, No. UD-1930823517 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1993) (Appendix 71) (decision vacated where defendant's attorney did not appear at hearing, defendant's counsel failed to appear because of inadvertence, mistake, or neglect of counsel and not because of fault of defendant, defendant was prejudiced by lack of counsel, defendant appears to have defense on merits, and plaintiff will not be substantially prejudiced).

A decision from the District of Columbia discussed weighing factors similar to *Finden*. In *Wyle v. Glenncrest,* 143 A.3d 73 (D.C. July 21, 2016), the tenant was sued for nonpayment of rent, appeared at the initial hearing, which was continued, but failed to appear at subsequent hearings. A default judgment was entered against the tenant, and the landlord was granted a judgment for possession. The tenant was evicted and 2 ½ months later filed a motion to vacate the default judgment. The district court summarily denied the Motion to Vacate, and the tenant appealed. The Court of Appeals held that the district court abused its discretion by not making a meaningful inquiry into the five factors that are relevant to determine if relief from default is warranted. More specifically, the trial court must hold an evidentiary hearing, allowing witness testimony and the presentation of documents, when credibility is at issue and to resolve material disputes of fact, especially in landlord-tenant court where tenants are often at a disadvantage. Regarding the five-factors, the Court of Appeals further stated: (1) the objective of the "actual notice" factor is to determine whether the movant willfully neglected the obligation to litigate; (2) whether the movant could have reasonably misunderstood the obligations in a notice is relevant to the "good faith" factor; (3) what constitutes "promptness in seeking relief" depends upon the circumstances of the case, and any impairment to the practical ability of the movant to protect his rights is relevant; (4) while a "prima facie showing of an adequate defense" is all that is needed, when a movant's defense appears not only colorable, but meritorious, a stronger case for relief from default is present; and (5) the ultimate consequence of any "prejudice to the non-moving party" is not at issue, but rather the prejudice in setting aside the default and allowing the movant to defend the action is the relevant consideration. The Court of Appeals concluded that each factor weighed in favor of the tenant, and reversed and remanded in light of its strong preference for obtaining a judgment on the merits.

e. *Timing*

It is unclear just when a defaulting tenant may reopen a judgment after the tenant has moved. Generally, a defendant may not reopen a satisfied default judgment, unless the judgment was satisfied involuntarily. *Lyon Financial Services, Inc. v. Waddill*, 607 N.W.2d 453 (Minn. Ct. App. 2000). It would seem clear that when the landlord obtains a writ and forcibly removes a tenant through the sheriff, the

judgment for possession has been satisfied involuntarily. It is unclear whether the tenant vacating the property before that point would be involuntary satisfaction of the judgment.

f. *Effect on the writ of recovery*

Where an eviction (unlawful detainer) judgment is vacated, if the writ has not been executed, it should be quashed. If the writ has been executed, the court should direct the plaintiff to return possession of the premises and seized personal property to the defendant, and order that the defendant is not liable for the costs of removal, storage, and return of the property. *See Kowalenko v. Haines*, No. C6-85-1365, Order at 2 (Minn. Ct. App. July 23, 1985 (Appendix 4); *Durigan v. Smith*, No. UD-80515 (Henn. Cty. Mun. Ct., July 25, 1977) (Appendix 3).

g. *Appeal*

Denial of a motion to vacate the judgment may not be appealable. *See* discussion, *infra* at X.B. *But see Scroggins v. Solchaga,* 552 N.W.2d 248 (Minn. Ct. App. 1996) (since the judgment was by default and the tenant did not move to reopen the default judgment, the court's review of the default judgment was limited).

h. *Form motion*

For a form motion to vacate judgment, slide show on vacating judgments, and *in forma pauperis* affidavits for waiving any filing fees, form motion, *see* Motions to Vacate Judgments at Housing Law in Minnesota.
http://povertylaw.homestead.com/MotionstoVacateJudgments.html

i. *Cases*

(1) Substantial compliance with settlement agreement

In *Huntington Place v. Scott*, Partial Transcript, No. UD-1980409509 (Minn. Dist. Ct. 4th Dist. Apr. 30, 1998) (Appendix 338), the court ordered the tenant to pay rent that day. The tenant contacted county emergency assistance that day, which agreed to make payment but did not accomplish it that day. The court concluded that the tenant made a good faith effort to redeem, and in fact redeemed, and ordered the judgment and writ vacated. *See Covenant Capital LLC v. _____,* No. 27-CV-HC- 15-4312 (Minn. Dist. Ct. 4th Dist. Dec. 11, 2015) (Appendix 752) (motion to vacate judgment granted where defendant attempted to tender amount to redeem tenancy and plaintiff refused to cooperate, tenant had reasonable excuse for not complying with court's posting order where tenant received order after deadline, tenant acted with reasonable diligence, and landlord did not show prejudice)*; Park Pointe Apartments LLC v. _____*, No. 27-CV-HC-08-3778 (Minn. Dist. Ct. 4th Dist. June 3, 2008) (Appendix 613) (order stated that written guarantee from county for payment of rent would satisfy settlement agreement; tenant obtained guarantee and filed it by deadline; landlord obtained writ claiming it did not receive guarantee on time; court found tenant satisfied agreement and quashed writ); *Lawler v. _____*, No. HC 010817525 (Minn. Dist. Ct. 4th Dist. Sep. 20, 2001) (Appendix 529) (judgment vacated where tenant made good faith effort to pay rent before issuance of writ); *Lang v. _____*, No. HC 1000107518 (Minn. Dist. Ct. 4th Dist. June 15, 2000) (Appendix 527) (tenant made good faith effort to pay rent into court, where tenant paid part into court, obtained a letter of guarantee from State for balance, and State paid); *Patterson v. Heinecke*, No. C3-00-600301 (Minn. Dist. Ct. 6th Dist. Mar. 24, 2000) (Judge Oswald) (Appendix 412) (Writ vacated where the parties settled for payment of back rent but plaintiff

refused to cooperate; plaintiff ordered to immediately cooperate with defendant to provide forms necessary to obtain rental assistance from the Salvation Army. "This Court is not going to act as Plaintiff's rent collection agency nor is it going to allow Plaintiff's own refusal to cooperate to frustrate the prior settlement of the parties); *MPHA v. Harding*, No. ____ (Minn. Dist. Ct. 4th Dist. Mar. 3, 1995) (Appendix 168) (writ vacated where tenant's failure to pay rent ordered by court was excusable neglect); *MPHA v. Watkins*, No. UD-1941229503 (Minn. Dist. Ct. 4th Dist. Jan. 31, 1995) (Appendix 169) (writ vacated where tenant's failure to pay rent ordered by court was excusable neglect).

In *Minneapolis Public Housing Authority v. _____,* No. 27-CV-HC- 14-4842 (Minn. Dist. Ct. 4th Dist. Dec. 5, 2014) (Appendix 753), the court granted the motion to vacate judgment where the landlord claimed violation of settlement agreement to not violate the lease was supported by affidavit of another tenant and not landlord's staff, and the tenant should have opportunity to contest violation.

(2) Eviction grounds outside scope of complaint

In *Public Housing Agency of City of St. Paul v. Simpkins*, No. C7-97-2137 (Minn. Dist. Ct. 2d Dist. Jan. 30, 1998) (Appendix 359) (Faricy, J.), the public housing authority gave the tenant a 14 day non-payment of rent notice for $25.00. The tenant then paid the rent and a late fee. However, the PHA applied the payments to alleged arrearage for previous months, and filed an unlawful detainer action claiming non-payment of the February rent. The referee allowed the PHA to orally amend its claim, and ordered the tenant to pay $209 and court costs within seven days or move. The tenant moved and later obtained bank verification of deposit of the tenant's payment. The tenant moved to vacate the judgment, which was first denied by another referee, and then granted on judge review. The court concluded the first referee erred by going beyond the pleadings and ordering the tenant to pay more than had been pled, and the second referee erred in denying the motion to vacate. The court noted that it would be unjust to evict another tenant who moved into the unit vacated by the tenant, so the court ordered the PHA to place the tenant's name immediately at the top of the waiting list for the next available vacancy without requiring her to address claims for past due rents.

(3) Tenant confusion

In *Central Brookland Urban Dev. Corp. v. Copeland*, 122 Misc. 2d 726, 730, 471 N.Y.S.2d 989, 993 (Civ. Ct., Kings Cty., 1984), the court granted a motion to vacate a default judgment, where the tenant appeared for the hearing but left when she believed she had obtained a continuance to obtain legal representation. The court noted the confusion suffered by *pro se* defendants at large eviction hearing calendar calls.

(4) Landlord violation of settlement agreement

See Grimmer v. Svoboda, No. UD-1960923520 (Minn. Dist. Ct. 4th Dist. Jan. 6, Jan. 15, and Mar. 14, 1997) (Appendix 257) (Writ stayed where landlord failed to execute stipulated reference, told tenants they could stay longer, and accepted rent beyond the move out date; landlord ordered to execute reference letter and tenant given extra month to move; damages and move out date settled); *Kedrowski v. Doe*, No.-UD 1950801514 (Minn. Dist. Ct. 4th Dist. Nov. 17, 1995) (Appendix 189) (default judgment vacated where landlord violated settlement agreement by obtaining the default judgment; good memorandum by tenant’s counsel on fraud, misconduct and mistake).

(5) Improper enforcement of writ

See Zgodava v. Rodriquez, No. UD-1961210524 (Minn. Dist. Ct. 4th Dist. Jan. 7, 1997) (Appendix 305) (Lockout after writ of restitution issued but not served; tenant sought return of personal property; landlord ordered to allow tenant to retake possession of personal property).

(6) Landlord waiver of tenant violation of settlement agreement

See Carriage House Apartments v. Hoff, No. UD-1921022511 (Minn. Dist. Ct. 4th Dist. Mar. 1, 1993) (Appendix 15.D.2) (the motion to quash writ was granted where plaintiff obtained the writ on the allegation that defendant violated court approved stipulation, but plaintiff accepted rent with knowledge of alleged breach).

(7) Improper plaintiff

See Filas v. _____, No. HC 040115532 (Minn. Dist. Ct. 4th Dist. Feb. 18, and Mar. 10, 2004) (Appendix 497) (motion to quash writ granted and eviction dismissed where "Plaintiffs were not the real parties in interest when the complaint was filed because they had executed a contract for deed, now cancelled, with another vendee", later expunged).

(8) Improper notice to Section 8 Office

See Igherighe v. _____, No. HC 1011015538 (Minn. Dist. Ct. 4th Dist. Dec. 14, 2001 and May 22, 2002) (Appendix 520) (hearing scheduled on motion to quash writ where Section 8 tenant claimed no service by plaintiff, no notice to housing authority, and rent had been paid in full or part; expungement and award to tenant of costs and disbursements which can be credit against rent).

(9) Rent had been paid

See Pham v. _____, No. HC 102061505 (Minn. Dist. Ct. 4th Dist. July 10, 2002) (Appendix 561) (motion to vacate default judgment granted where tenant was late for hearing because of disability, and tenant provided Section 8 documentation of payments during months at issue).

(10) Unavailability of writ for nonpayment of future rent

See discussion, *supra*, at VIII.B.2.

(11) Mistake

See Wong Kong Har Wun Sun Association v. Chin, No. C8-87-2439 (Minn. Ct. App. Apr. 12, 1988) (unpublished: trial court abused discretion in refusing to vacate default unlawful detainer judgment due to mistake) (Appendix 21); *Minneapolis Public Housing Authority v. Gorman*, No. UD-1930823517 (Minn. Dist. Ct. 4th Dist. Oct. 20, 1993) (Appendix 71) (decision vacated where defendant's attorney did not appear at hearing, defendant's counsel failed to appear because of inadvertence, mistake, or neglect of counsel and not because of fault of defendant, defendant was prejudiced by lack of counsel, defendant appears to have defense on merits, and plaintiff will not be substantially prejudiced).

(12) Landlord failed to cooperate with tenant

See Covenant Capital LLC v. _____, No. 27-CV-HC- 15-4312 (Minn. Dist. Ct. 4th Dist. Dec. 11,

2015) (Appendix 752) (motion to vacate judgment granted where defendant attempted to tender amount to redeem tenancy and plaintiff refused to cooperate, tenant had reasonable excuse for not complying with court's posting order where tenant received order after deadline, tenant acted with reasonable diligence, and landlord did not show prejudice).

(13) Service defects

In *Glenwood Financial LLC v. _____,* No. 27-CV-HC-14-5721 Minn. Dist. Ct. 4th Dist. Nov. 25, 2014) (Appendix 704), the tenants failed to appear at an eviction hearing and a default judgment was entered. The tenants moved to vacate the judgment, reopen the case, and then dismiss the action for service defects. The Court found that the tenants met all four Finden factors: (1) the tenants had a reasonable case on the merits, since the plaintiff's affidavit and the affidavits of mailing were missing from the record, and complaint treated a duplex as a single property; (2) the tenants had a reasonable excuse for the default since they had no actual notice of the eviction hearing and there was no basis to establish they should have known of the hearing; (3) the tenants acted with reasonable diligence to reopen the case; and (4) there was no substantial prejudice to the landlord since the landlord has the ability to refile the action and have it adjudicated promptly. The Court granted the motion to reopen, and then dismissed the case without prejudice due to the service defects. The should not have applied a *Finden* analysis since the tenant was challenging personal jurisdiction, but it did reopen and dismiss the action.

(14) Waiver of the writ by acceptance of rent

See discussion, *supra*, at VIII.D.

3. Motion for return of personal property. *See* discussion, *supra* at VIII.C.

4. Motion for costs and attorney's fees

a. *Attorney's fees*

(0) Jurisdiction

The appellate courts have ruled inconsistently on whether attorney's fees may be awarded in eviction (unlawful detainer) actions. In *Duling Optical Corp. v. First Union Management, Inc.,* No. C5-95-2718 (Minn. Ct. App. Aug. 13, 1996), FINANCE & COMMERCE at 66 (Aug. 16, 1996) (Appendix 181) (unpublished decision), the Court of Appeals affirmed the District Court's conclusion in a separate damages action that it lacked jurisdiction to award attorney's fees for separate unlawful detainer actions, since the issue of attorney's fees should have been decided in the unlawful detainer actions.

However, in *Eagan East Ltd. Partnership v. Powers Investigations, Inc.*, 554 N.W. 2d 621 (Minn. Ct. App. 1996), the trial court ruled that the tenant was not entitled to attorney's fees under the lease. On appeal, the Court of Appeals held that the trial court's jurisdiction was limited to determining present possessory rights of the parties, and that the trial court exceeded its jurisdiction by ruling attorney's fee issues. *See Times Square Shopping Ctr., LLP v. Tobacco City, Inc.,* No. C7-00-484, 2000 Minn. App. LEXIS 1045, 2000 WL 1468220 (Minn. Ct. App. October 3, 2000) (unpublished) (because a trial court hearing an unlawful detainer action lacked subject-matter jurisdiction to rule on attorney's fees arising from the action, the proper procedure to collect attorney's fees due under a lease was to file

an independent action for those fees; the trial court hearing a complaint for attorney's fees arising from an unlawful detainer action was the proper forum to determine attorney's fees due both from the trial court determination and the appeal).

More recently, the appellate courts have not questioned district court jurisdiction to award attorney's fees in eviction actions. *ACC OP (University Commons) LLC v. Rodriguez,* 906 N.W.2d 509 (Minn. Ct. App. 2017) (denial of award to landlord affirmed but jurisdiction not questioned); *LHB Properties, LLC v. E.Y.,* No. A14-1305, 2015 WL 1960896 (Minn. Ct. App. May 4, 2015) (unpublished) (affirmed award to tenant); *Equity Residential Holdings, LLC, v. Koenig,* No. A15-0001, 2015 WL 5312074 (Minn. Ct. App. Sept. 14, 2015) (unpublished) (award denied to tenant but jurisdiction not questioned).

(1) Landlord claims

(a) Nonpayment of rent cases

Attorney's fees are limited by statute to $5.00 when the tenant redeems the tenancy. *See* discussion, *supra*, at VI.E.20.

In *ACC OP (University Commons) LLC v. Rodriguez,* 906 N.W.2d 509 (Minn. Ct. App. 2017), the landlord filed the first eviction action for rent and the tenant redeemed. The landlord applied the bulk of the payment to the landlord's attorney's fees and filed a second eviction action for rent. The district court concluded that the landlord was limited to recovering $5 in attorney's fees, as permitted by statute, and that the tenant was not in arrears at the time the landlord initiated the eviction action. The Court of Appeals affirmed, holding that the landlord could not evict the tenant for failure to pay attorney's fees in excess of five dollars arising out of a previous eviction action against respondent for nonpayment of rent. The Court noted that

> permitting landlords to evict tenants for nonpayment of attorney fees incurred in a previous eviction action would plunge tenants into a potentially endless eviction loop in which timely rent payments could still lead to eviction proceedings, which would in turn generate additional attorney fees. This result would also conflict with the judiciary's longstanding "abhorrence of forfeitures."

Id. at 512. The Court added that it not address whether a landlord could pursue its attorney's fees claim in a separate proceeding. *Id*. at 511-12.

(b) Cases other than nonpayment of rent

There must be authority for the landlord's attorney's claim. There are no claims for landlord attorney's fees for evictions in Minn. Stat. Ch. 504B.

Minn. Stat. § 504B.165 provides for attorney's fees for landlords and tenants, but it is limited to an action for willful and malicious destruction of leased residential rental property, and not an eviction action. Similarly, Minn. Stat. § 504B.173 provides for attorney's fees to the landlord where a prospective tenant who provides materially false information on the application or omits material information, but it does not apply to eviction actions.

Attorney's fees are not costs or disbursements under Minn. Stat. Ch. 549. *Rogers v. Stewart*, No.

UD-1961029511 (Minn. Dist. Ct. 4th Dist. Jan. 6, 1997) (Appendix 290). *See* discussion, *infra*, at VIII.E.4.b.

The most common source is the lease. The courts review the lease for the scope of the attorney's fee claim. In *Kamboo Mkt., LLC v. Sherman Assocs.,* No. A10-1810 2011 Minn. App. Unpub. LEXIS 622 (Minn. Ct. App. June 27, 2011) (unpublished), the Court concluded that the district court did not err by limiting its award of attorney's fees and costs to those incurred by landlord in its eviction action and not to a related civil action based on the lease language.

Potential defenses include unconscionable lease term, *see* discussion, *supra*, at VI.G.13, adhesion contract, *see* discussion, *supra*, at VI.G.14, and unenforceable penalty. *Weidman v. Tomaselli,* 81 Misc.2d 328, 365 N.Y.S.2d 681; aff'd, 84 Misc.2d 782, 386 N.Y.S.2d 276 (App. Term, 9th & 10th Jud. Dists. 1975) (lease awarding landlord legal fees regardless of the outcome of the case ruled to be unenforceable as a penalty; on appeal ruled unconscionable).

If the tenant prevails when the lease provides for attorney's fees to the landlord, the tenant has a claim for attorney's fees. *See* discussion, *infra*, at VIII.E.4.a.(2).

(2) Tenant claims

(a) Attorney's fees under Minn. Stat. § 504B.172

Minn. Stat. § 504B.172 provides:

> If a residential lease specifies an action, circumstances, or an extent to which a landlord, directly, or through additional rent, may recover attorney fees in an action between the landlord and tenant, the tenant is entitled to attorney fees if the tenant prevails in the same type of action, under the same circumstances, and to the same extent as specified in the lease for the landlord.
>
> EFFECTIVE DATE. This section is effective for leases entered into on or after August 1, 2011, and for leases renewed on or after August 1, 2012.

Minn. Laws Ch. 315, § 3, H.F. No. 2668.

(i) Effective date

The effective date of the statute was (1) for leases entered into on or after August 1, 2011, and (2) for leases renewed on or after August 1, 2012. It does not apply to leases entered into before August 1, 2011, that were not renewed on or after that August 1, 2012.

Some landlord have argued that leases that predate August , 2011 and use the term "extended" rather than "renewed" are not covered by statutes that use the latter. It is true that there is a legal distinction between an extension and a renewal of a lease, but the language of the lease is not itself dispositive. The test is "[i]f any contractual term for the additional period must be negotiated or determined, the statue of frauds requires a new lease, and the new period is a renewal. If the lease is continued by the party holding the option merely on timely notice or some other condition, no new lease is required, and the option is an extension. *Med-Care Assocs., Inc. v. Noot*, 329 N.W.2d 549 (Minn. 1983) (citations omitted).

If the lease retains for the landlord the ability to raise the rent, it would be a "contractual term for the additional period" yet to be "negotiated or determined" at the time of the expiration of the original written lease, the lease was renewed each month regardless of whether the contract language called it 'extension' or a renewal. *See Winger Assocs., Inc. v. Acky-Mennetonka Ltd. P'ship*, 2001 WL 1607659 (Minn. Ct. App. Dec. 18, 2001) (unpublished) (calling a lease a renewal rather than an extension when rental price was the only term of the contract not determined at the time of renewal).

Even if a lease was extended or renewed, the resulting month-to-month tenancy renews rather than extends on a monthly basis. As each month passes, each of the parties has the option to terminate it with proper notice. More importantly, the landlord retains the right to increase the rent or change terms of the tenancy with proper notice. *See FJK Assocs. v. Karkoski*, 725 A.2d 991 (Conn. App. Ct. 1999) ("In the case of a rental on a month-to-month basis the tenancy is not regarded as a continuous one. The tenancy for each month is one separate from that of every other month. The renewal of a month-to-month tenancy requires the payment of rent by the tenant and the acceptance of payment by the landlord or 'other circumstances showing an agreement to continue the lease.'" (citations omitted)).

Regardless of whether the continued month-to-month tenancy is an extension and not a renewal, the courts and the legislature have used the terms interchangeably. *Med-Care Assocs., Inc.*, 329 N.W.2d at 552 ("We have used the term 'renewal' to refer to both extensions and renewals and conclude that the legislature used the term in the same manner. Thus, we hold that the legislature intended to include extensions through the use of the term 'renewal'. . .").

(ii) Basis for attorney's fees claims

Minn. Stat. § 504B.172 contains several elements:

> (1) If a residential lease specifies an action, circumstances, or an extent to which a landlord, directly, or through additional rent, may recover attorney fees in an action between the landlord and tenant;
> (2) the tenant is entitled to attorney fees;
> (3) if the tenant prevails in the same type of action;
> (4) under the same circumstances; and
> (5) to the same extent as specified in the lease for the landlord.

(iii) Free legal services eligible for attorney's fees awards

In *LHB Properties LLC v. _____,* No. 27-CV-HC-14-582 (Minn. Dist. Ct. 4th Dist. May 20, 2014) (Appendix 727), the district court granted the tenants' motion for attorney's fees under Minn. Gen. R. Prac. 119.01-119.04, Minn. Stat. § 504B.172, and the lease. Previously, the tenants prevailed in the landlord's eviction action in which a legal services organization represented the tenants pro bono. In the hearing on the tenants' request for attorneys' fees, the landlord noted that the lease limited the landlord's attorney's fees to "actual attorneys' fees," and argued that the tenants could not recover attorney's fees under Minn. Stat. § 504B.172 because they were represented pro bono. The court disagreed, concluding that if it were to adopt the landlord's argument, then landlords could circumvent Minn. Stat. § 504B.172, which would undercut the plain intent of the statute.

On appeal, in *LHB Properties, LLC v. E.Y.,* No. A14-1305, 2015 WL 1960896 (Minn. Ct. App. May 4, 2015) (unpublished), the landlord challenged the award, arguing, that because the lease permitted the landlord to recover "actual attorneys' fees," the tenants could not recover because they did not pay

for their legal aid attorney. The court affirmed the decision of the trial court, holding, that (1) actual meant "existing in fact," and whether the fees were actually paid or still owed were irrelevant to the question of whether the fees existed in fact; and (2) the lease contained two other provisions allowing the landlord to recover attorney fees under the lease and those provisions omitted the word "actual."

(iv) Standard for prevailing

Minn. Stat. § 504B.172 provides that "the tenant is *entitled* to attorney fees if the tenant *prevails* in the *same type of action,* under the *same circumstances,* and to the *same extent as specified in the lease for the landlord.*" (emphasis added).

The statute is unique among other Minnesota statutes related to awarding attorneys' fees because it looks to the lease for the parameters of the landlord's claim for attorneys' fees to determine the tenant's claim. A common approach in state statutes concerning attorneys' fees is to award them to the prevailing party without reference to contracts. See e.g. Minn. Stat. §§ 10A.19 (Campaign Finance), 13.085 (Government Data: substantially prevailed), 13D.05 (Open Meeting), 60A.031 (General Insurance Powers), 80F.17 (Motor Vehicle Fuel Franchises), 82A.18 (Membership Camping Practices), 103D.545 (Watershed Districts), 103E.095 (Drainage), 115A.30 (Waste Management), 115B.13 (Environmental Response), 116J.994 (Employment and Economic Development), 149A.10 (Mortuary Science), 181.938 (Employment), 216B.164 (Public Utilities), 238.18 (Cable Communications), 256B.50 (Medical Assistance), 259.58 (Adoption), 260C.619 (Juvenile Safety), 299A.80 (Department of Public Safety), 299K.10 (Hazardous Chemicals), 308B.475 (Cooperative Associations), 325C.04 (Uniform Trade Secrets), 325D.44 (Restraint of Trade), 325F.665 and 325F.791 (Consumer Protection), 325M.07 (Internet Privacy), 327.742 (Innkeepers), 327C.095 (Manufactured Home Parks), 333.29 (Assumed Names), 336.5-111 (Universal Commercial Code), 363A.29 (Human Rights), 469.1771 (Economic Development), 504B.165 (Tenant Destruction of Property), 514.945 (Liens), 515A.3-115 (Condominiums), 515B.4-116 (Common Interest Ownership), 518D.312 (Child Custody), 548.04 (Replevin), 554.04 (Free Speech), 572B.25 (Arbitration), 611A.87 (Crime Victims), 617.96 (Public Nuisance), 626.556 (Maltreatment of Minors).

Many leases provide an attorneys' fees claim to the landlord for any legal action against the tenant, regardless of whether landlord prevails. Since the statute provides that "the tenant is entitled to attorneys' fees if the tenant prevails in the same type of action, under the same circumstances, and to the same extent as specified in the lease for the landlord" and the lease provides attorneys' fees to the landlord regardless of outcome, the tenant should be entitled to attorneys' fees for prevailing to any degree. Any other interpretation would defeat the purpose of the statute: to provide a mirror-image right to attorneys' fees for the tenant.

An unpublished Court of Appeals decision disregarded the statute's qualifying provisions regarding prevailing with reference to the scope of attorney's fee availability in the lease. In *Equity Residential Holdings, LLC, v. Koenig,* No. A15-0001, 2015 WL 5312074 (Minn. Ct. App. Sept. 14, 2015) (unpublished) the Court ignored the lease provisions that allows for attorney's fees to the landlord regardless of whether it prevailed, and applied an analysis of prevailing under costs and disbursements statutes. The Court concluded that dismissal without prejudice of an eviction action did not constitute prevailing. As an unpublished decision, it is not precedential. *See* discussion, *supra*, at I.A.3.

Tenants who prevail on the merits of the action are entitled to attorney's fees. In *LHB Properties, LLC v. E.Y.,* No. A14-1305, 2015 WL 1960896 (Minn. Ct. App. May 4, 2015) (unpublished), the Court affirmed an award of attorney's fees where the district court entered judgment for the tenant following a

breach of lease trial. In *Gisslen v. _____,* No. 27-CV-HC-15-3756 (Minn. Dist. Ct. 4th Dist. Feb. 3, 2016) (Appendix 729), the district court awarded the tenant who prevailed in a breach of lease eviction attorneys' fees.

(b) Other statutory authority for attorney's fees

The following statutes provide for attorney's fees: (1) Minn. Stat. § 504B.204 (condemned residential rental property), *see* discussion, *infra*, at XII.B.3.f.; (2) Minn. Stat. §§ 504B.365 and 504B.271 (refusal to return the property after proper demand following eviction), *see* discussion, *supra*, at VIII.C.2.; (3) Minn. Stat. § 504B.205 (landlord violation of police and emergency assistance statute), *see* discussion, *supra*, at VI.G.31.; (4) Minn. Stat. § 504B.221 (unlawful termination of utilities), *see* discussion, *supra*, at VI.E.18.; and (5) Minn. Stat. § 504B.231 (unlawful ouster), *see* discussion, *infra*, at XII.B.1.

(c) Attorney's fees as sanctions on landlord's conduct

Fees were awarded in the following cases: *Nygren v. Nix*, No. C1-96-42 (Minn. Dist. Ct. 9th Dist. Jan. 25, 1996) (Appendix 199) (if the plaintiffs refiled the action, they must pay defendant's counsel attorney's fees as a condition to refile the action); *LeDoux v. Zanosko*, No. CX-95-1001 (Minn. Dist. Ct. 9th Dist. Oct. 16, 1995) (Appendix 124) (fees awarded after landlord terminated tenant's propane heating supply and filed unlawful detainer action); *L. Earl Bakke, Inc. v. O'Donnell*, No. UD-1941201517 (Minn. Dist. Ct. 4th Dist. Feb. 9, 1995) (Appendix 139) (fees awarded where landlord or landlord's attorney failed to appear at hearing, failing to return tenant's attorney's phone calls, filing an action for nonpayment of rent when tenant had offered payment of rent and landlord refused, mischaracterizing essential facts, and failing to dismiss the meritless action); *Lewis Properties v. Pruitt*, UD-1950315516 (Minn. Dist. Ct. 4th Dist. Sept. 22, 1995) (Appendix 92) (fees awarded where landlord unnecessarily prolonged litigation and acted frivolously when after agreeing to make repairs at an earlier hearing, the landlord did not make repairs resulting in condemnation, filed a separate unlawful detainer action which the court dismissed for failure to prove ownership change, and failed to provide notice of new ownership to the tenant or information required by the disclosure statute, § 504.22 (now § 504B.181)); *Minneapolis Public Housing Authority v. Gorman*, No. UD-1930823517 (Minn. Dist. Ct. 4th Dist. Nov. 10, 1993) (Appendix 72) (the court awarded the defendant's counsel costs of $61 and attorney's fees of $905, where the plaintiff voluntarily dismissed the action only two days before trial, after defendant's counsel had taken substantial efforts to prepare for trial).

In *Fisher v. Williams*, No. UD-19110703501 (Minn. Dist. Ct. 4th Dist. Aug. 21, 1991) (Appendix 20.D), the court denied defendant's motion for attorney's fees under Minn. Stat. § 549.21. The court concluded that while it could not condone the plaintiffs prosecution of the unlawful detainer action, the court could not conclude that the plaintiff acted in bad faith.

There are times when tenants face a series of eviction actions which are frivolous. Effective September 1, 1999, the Minnesota Supreme Court adopted Rule 9 of the General Rules of Practice for the District Courts. Under Rule 9, the court, upon notice and hearing, may require a frivolous litigant to furnish security, or the court can impose preconditions on a frivolous litigant's filing of any new claims and motions.

(d) Attorney's fees in consolidated actions

Consolidation of the unlawful detainer action with a tenant initiated case, such as a rent escrow,

tenant remedies, lockout, or emergency tenant remedies action, would give rise to attorney's fees. *Smith v. Brinkman* and *Brinkman v. Smith*, Nos. HC-1000124900 and HC-1000202517 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2000) (Appendix 418) (Consolidated eviction and rent escrow actions: landlord failed to prove statutory notice to quit, notice to increase rent given November 1 was not effective to increase rent December 1, presumption of retaliation applied to a rent increase notice with the landlord failing to prove a non-retaliatory purpose, habitability rent abatement of $800 over four months (38%) tenant awarded $300 in civil penalties for landlord visits without notice in which he was rude toward the tenant and her daughter, landlord ordered to make repairs with tenant's authorized to make repairs and submit bills for court approval, landlord restrained from harassing tenant and household members with landlord allowed to enter only to make repairs with written 24-hours notice, tenants awarded costs, disbursements and attorney's fees.

(e) Collection through credited rent

The court may allows tenants to collect awarded attorney's fees through deduction from rent and payment to counsel. *Edwards v. Zulfe Enterprise*, No. UD-1970310901 (Minn. Dist. Ct. 4th Dist. June 3, 1997) (Appendix TR148a) (Award of $500 in attorney's fees and $24 in costs; if landlord does not pay award in 20 days, tenant may deduct the award from rent and pay it to counsel). This is similar to collecting other awards through rent credits, like rent abatement. *See* discussion, *supra*, at VI.E.1.g.(5a).

(3) Calculation of attorney's fees

The factors for calculating attorney's fees are set out in *In re L-Tryptophan Cases,* 518 N.W.2d 616, 622 (Minn. Ct. App. 1994).

> (1) the length of time each firm spent on the case; (2) the proportion of funds invested by each firm; (3) the quality of representation; (4) the result of each firm's efforts; (5) the reason the client changed firms; (6) the viability of the claim at transfer; (7) the amount of recovery realized; and (8) any pre-existing partnership agreements.

Tenants represented for free by legal services and pro bono programs are eligible for attorney's fee awards. *See* discussion, *supra*, at VIII.E.4.a.(2)(a)(iii).

In *Gisslen v. _____,* No. 27-CV-HC-15-3756 (Minn. Dist. Ct. 4th Dist. Feb. 3, 2016) (Appendix 729), the district court awarded the tenant who prevailed in a breach of lease eviction attorneys' fees in the amount of $15,160.00 under Minn. Stat. § 504B.172 and the lease agreement after applying the twelve-factor test in *In re L-Tryptophan Cases* for calculating attorneys' fees, noting that the hourly rates of Dorsey & Whitney, LLP, were reasonable and duplications were removed.

In *Equity Residential Holdings, LLC v. _____,* 27-CV-HC-13-3359 (Minn. Dist. Ct. 4th Dist. Sep. 23, 2014) (Appendix 818), the court applied the *In re L-Tryptophan Cases* analysis to determine that the amount of statutory fee request was appropriate, concluding that pro bono legal services are not excluded, hourly rates of Dorsey & Whitney, LLP, were reasonable, duplications were removed, and the $5 limit on attorney's fees for tenant rent redemptions did not apply to a breach of lease action not involving redemption. The order was reversed on the issue of whether there was a prevailing party in *Equity Residential Holdings, LLC v. _____,* 27-CV-HC-13-3359 (Minn. Dist. Ct. 4th Dist. Dec. 18, 2014) (Appendix 819) (Judge Caligiuri), affirmed *Equity Residential Holdings, LLC, v. Koenig,* No. A15-0001, 2015 WL 5312074 (Minn. Ct. App. Sept. 14, 2015) (unpublished). As an unpublished decision, the Court of Appeals decision is not precedential. *See* discussion, *supra*, at I.A.3.

In *LHB Properties LLC v. _____,* No. 27-CV-HC-14-582 (Minn. Dist. Ct. 4th Dist. May 20, 2014) (Appendix 727), the district court granted the tenants' motion for attorney's fees, concluding that pro bono legal services are not excluded, hourly rates of Mid-Minnesota Legal Aid were reasonable, and duplications were removed. The Court of Appeals affirmed the decision in *LHB Properties, LLC v. E.Y.,* No. A14-1305, 2015 WL 1960896 (Minn. Ct. App. May 4, 2015) (unpublished).

In *3457 Central Avenue North East Tenants' Association v. 3457 Central Avenue North East, LLC, ClearCreek Properties, Ltd., and Lance Redfield,* 27-CV-HC-17-1330 (Minn. Dist. Ct. 4th Dist. Dec. 22, 2017) (Appendix 821), in a tenant remedies action, the court awarded attorney's fees beyond the limit of $500 for tenant remedies actions in Minn. Stat. § 504B.425 because the lease provided for attorney's fees to the landlord, thus making them available to the tenant under Minn. Stat. § 504B.172. The court previously entered judgment for the tenant on its habitability claims. The court reduced fees requested by the tenant based on the experience of the attorneys and to avoid duplication of co-counsel time.

In *McPipe v. _____,* No. 27-CV-HC-14-4302 (Minn. Dist. Ct. 4th Dist. Feb. 3, 2015) (Appendix 740) (Judge Bratvold), the eviction defendant tenant filled a notice of request and request for judge review alleging that the referee erred in (1) finding that the defendant did not pay rent for two months when defendant deposited rents into court pending determination of defendant's defense; (2) determining that the plaintiff landlord prevailed on proving non-payment of a month's rent; (3) entering judgment for possession in favor of the plaintiff; (4) awarding the plaintiff taxation of costs; (5) requiring the defendant to pay costs of filing and statutory attorney fee; and (6) failing to make any determination with respect to rent abatement for one of the months.

The court found that the plaintiff's companion challenge to the referee's decision was untimely. On the tenant's claim, the court stated that the referee erred because "[a] tenant who deposits rent into court pending a determination of a habitability defense has fulfilled her ongoing rent obligations" and found that (1) plaintiff failed to prove his nonpayment of rent claim; (2) defendant prevailed on her habitability defense; (3) defendant was entitled to rent abatement for two months due to plaintiff's violation of the statutory covenants of habitability; (4) judgment was to be entered in favor of defendant; (5) defendant was to be awarded taxation of costs; (6) defendant was entitled to costs and statutory $5 attorneys' fee; (7) plaintiff was entitled to receive part of the amount of rent deposited with the court for three months (minus the rent abatement, which was to be paid to defendant); and (8) defendant was to remain in possession of the premises.

It is unclear what basis the court applied for the $5 in attorney's fees. The court cited Minn. Stat. § 549.02, Subd. 1, which provides for $200 in costs and $5.05 for the cost of filing a satisfaction of the judgment, but does not provide for attorney's fees. It is possible the court was awarding fees under Minn. Stat. § 504B.291, Subd. 1, which limits attorney's fees for the landlord to $5 when a tenant redeems the tenancy.

(4) Appeal of attorney's fee awards

Appeals of attorney's fee awards must be from an entry of judgment. *LHB Properties, LLC v. E.Y.,* No. A14-0957 (Minn. Ct. App. July 16, 2014) (unpublished) (Appendix 820) (dismissal of appeal filed before entry of judgment as premature).

Appeals before determination of the amount of fees are premature. In *Equity Residential*

Holdings, LLC v. _____, No. A14-0162 (Minn. Ct. App. April 9, 2014) (Appendix 817), the Court of Appeals held that an appeal of attorney's fee award premature where district court had not determined amount and entered judgment, citing *T A. Schifsky & Sons, Inc. v. Bahr Constr., LLC,* 773 N.W.2d 783, 789-90 (Minn. 2009) (holding that there is no appeal from an order awarding attorney's fees and instead the proper appeal lies from the judgment entered on the order), and *Spaeth v. City of Plymouth,* 344 N.W.2d 815, 825 (Minn. 1984) (holding that the order concerning the claim for attorney's fees was not final and appealable until the district court set the amount of the award).

Awards were upheld in *LHB Properties, LLC v. E.Y.,* No. A14-1305, 2015 WL 1960896 (Minn. Ct. App. May 4, 2015) (unpublished)

Award limitations were upheld in *Kamboo Mkt., LLC v. Sherman Assocs.,* No. A10-1810 2011 Minn. App. Unpub. LEXIS 622 (Minn. Ct. App. June 27, 2011) (unpublished)

Denials of awards were upheld in *ACC OP (University Commons) LLC v. Rodriguez,* 906 N.W.2d 509 (Minn. Ct. App. 2017); and *Equity Residential Holdings, LLC, v. Koenig,* No. A15-0001, 2015 WL 5312074 (Minn. Ct. App. Sept. 14, 2015) (unpublished) (award denied to tenant).

b. *Costs and disbursements*

(1) $200 in costs

Minn. Stat. § 549.02, subd. 1 provides that in actions commenced in the district court, costs *shall* be allowed to the defendant upon (1) discontinuance, (2) or dismissal or (3) when judgment is rendered in the defendant's favor on the merits, in the amount of $200. "According to its plain language, a district court must allow the defendant $200 in costs upon dismissal of the case." *HNA Properties v. Moore*, 848 N.W.2d 238, 241 (Minn. Ct. App. 2014). The analysis is whether the defendant meets one of the conditions of the statute, and not whether the defendant prevailed on the merits. *Id.*

The courts regularly award costs to tenants who meet the conditions of the statute. *Dominium Management Services, Inc. v. C.L.,* No. HC-1021106500 (Minn. Dist. Ct. 4th Dist. Mar. 4, 2003) (Appendix 492) (court dismissed that action and awarded the defendant costs and disbursements), affirmed, *Dominium Management Services, Inc. v. C.L.,* No. A03-85, 2003 WL 22890386 (Minn. Ct. App. Dec. 9, 2003); *Ford v. _____,* No. HC-1020325505 (Minn. Dist. Ct. 4th Dist. Apr. 26, 2002) (Appendix 500) (action dismissed and defendant awarded costs and disbursements); *Igherighe v. _____,* No. HC-1011001519 (Minn. Dist. Ct. 4th Dist. Oct. 10, 2001 and Feb. 19, 2002) (Appendix 519) (costs awarded); *Walters v. _____*, No. HC 10101004526 (Minn. Dist. Ct. 4th Dist. Oct. 26, 2001) (Appendix 593) (tenant entitled to costs and disbursements from successful Court of Appeal case); *Franklin v. Rae*, No. HC-1000121503 (Minn. Dist. Ct. 4th Dist. March 9, 2000) (Appendix 392) (Judge Albrecht: $243 in costs and disbursements awarded.; *Hurt v. Johnston*, No. HC-000103513 (Minn. Dist. Ct. 4th Dist. Feb. 9, 2000) (Appendix 398) (Tenant awarded $200 in costs and $69 in disbursements as a prevailing party; memorandum of Paul Birnberg attached); *Franklin v. Rae*, No. HC-000103512 (Minn. Dist. Ct. 4th Dist. Feb. 9, 2000) (Appendix 392) ($200 in costs and $43 in disbursements awarded to tenant as prevailing party); *Franklin v. Johnston*, No. HC-000103511 (Minn. Dist. Ct. 4th Dist. Jan. 18, 2000) (Appendix 391) (Same holding as *Hurt v. Johnston*).[17]

[17] *But see Rydrych v. Comer*, No. UD-01961125504 (Minn. Dist. Ct. 4th Dist. Dec. 6, 1996) (Appendix 291) (Tenant's request for $200 in costs under § 549.02 denied based on § 566.09 (now § 504B.345), which actually

If the court finds for the defendant at any stage in the action, costs must be awarded to the defendant. *Franklin v. _____,* No. HC-001219503 (Minn. Dist. Ct. 4th Dist. Mar. 29, 2001) (Appendix 501) (costs awarded to defendant after plaintiff discontinued (but did not dismiss) the action as being mistakenly filed).

(a) Service defenses

Costs are available for dismissal for lack of personal jurisdiction. *Nieszner v. St. Paul School District No. 625*, 643 N.W.2d 645 (Minn. Ct. App. 2002).

(b) Precondition defenses

The court have awarded costs for successful precondition defenses. *Smith v. _____,* No. 27-CV-HC-06-4423 (Minn. Dist. Ct. 4th Dist. Sep. 27, 2006) (Appendix 664) (dismissal for violation of Minn. Stat. § 504B.181; costs awarded); *Ali v. _____,* No. 600223537 (Minn. Dist. Ct. 4th Dist. May 16, 2006) (Appendix 667) (referee dismissed eviction where landlord disclosed to tenant only a post office box and not a street address; judge reversed referee denial of statutory costs, holding award of costs in mandatory; tenant may credit award of costs against rent with notice to landlord); *Ali v. _____,* No. 060310538 (Minn. Dist. Ct. 4th Dist. Mar. 24, 2006) (Appendix 666) (eviction dismissed for improper pleading and partial payment of rent; costs awarded).

(c) Rent claims and defenses

The court have awarded costs when the landlord is unsuccessful on rent claims and when tenants have been successful un rent defenses. *Penrod Lane LLC v. Doe,* No. 27-CV-HC-16-6268 (Minn. Dist. Ct. 4th Dist. Mar. 1, 2017) (Appendix 742) (tenant prevailed on habitability defense entitled to statutory costs); *Lewandoski v. _____,* No. 27-CV-HC-15-3209 (Minn. Dist. Ct. 4th Dist. Aug. 6, 2015) (Appendix 783) (dismissal at close of plaintiff's case where landlord testified about lease, $18,000 in unspecified rent, and termination notice but provided no exhibits and tenant testified she paid rent and utilities and received no notice; expungement granted; costs awarded); *Busse v. _____,* No. 27-CV-HC-14-5955 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2014) (Appendix 784) (landlord filed premature eviction action for rent; costs awarded); *Butler v. _____,* No. 27-CV-HC-07-4409 (Minn. Dist. Ct. 4th Dist. Jul. 27, 2007) (Appendix 630) (eviction dismissed and expunged where landlord did not prove partial payment of deposit, tenant proved habitability violations, tenant awarded costs); *Connelly v. Schiff*, No. HC-1000417515 (Minn. Dist. Ct. 4th Dist. May 23, 2000) (Appendix 386) (dismissal without prejudice where landlord failed to secure rental license; tenant awarded $200 costs under § 549.02 and $40 in disbursements under § 549.04 for witness fees; expungement granted; plaintiff's motion to vacate and reopen treated as untimely motion for judge review under Minn. R. Gen. Prac. 611 when filed 11 days after oral announcement of decision); *Smith v. Brinkman* and *Brinkman v. Smith*, Nos. HC-1000124900 and HC-1000202517 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2000) (Appendix 418) (Consolidated eviction and rent escrow actions: landlord failed to prove statutory notice to quit, notice to increase rent given November 1 was not effective to increase rent December 1, presumption of retaliation applied to a rent increase notice with the landlord failing to prove a non-retaliatory purpose, habitability rent

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authorizes taxation of costs). In *Soderberg Apartment Specialists v. Mathis*, No. UD-1980421538 (Minn. Dist. Ct. 4th Dist. Jul. 17, 1998) (Appendix 363), the court awarded disbursements of $77.00 and costs of $100.00 to the tenant. The court did not award $200.00 in mandatory costs under Minn. Stat. §549.02, concluding that an unlawful detainer action was an equitable action, in which an award of cost is discretionary under §549.07.

abatement of $800 over four months (38%) tenant awarded $300 in civil penalties for landlord visits without notice in which he was rude toward the tenant and her daughter, landlord ordered to make repairs with tenant's authorized to make repairs and submit bills for court approval, landlord restrained from harassing tenant and household members with landlord allowed to enter only to make repairs with written 24-hours notice, tenants awarded costs, disbursements and attorney's fees); *Green v. Formanek*, and *Formanek v. Green*, No. 1991001905 and 4991004400 (Minn. Dist. Ct. 4th Dist. Oct. 27, Nov. 8, 1999) (Judge Bruce Peterson) (Appendix 393) (Consolidated rent escrow and eviction actions: dismissal of eviction action where landlord's notice was not wholly without retaliatory motive; tenant awarded retroactive and prospective rent abatement, and costs and disbursements upon application and affidavit); *Okoiye v. Washington*, No. UD-1990708534 (Minn. Ct. Dist. July 22, 1999) (Appendix 425) (dismissal for failure to file affidavit of service; expungement motion granted; tenant awarded costs); *Larson v. Anderson*, No. C9-96-416 (Minn. Dist. Ct. 9th Dist. Oct. 11 and Nov. 8, 1996) (Appendix 264) (Rent abatement of $6,910 over five years failing to repair discharge of raw sewage on the premises; landlord's notice to quit was in retaliation for tenant's complaint to health department; costs, disbursements and witness fees awarded to prevailing tenant, but attorney's fees denied).

In *Equity Residential Holdings LLC v. Doe,* No. 27-CV-HC-15-5665 (Minn. Dist. Ct. 4th Dist. Mar. 4, 2016) (Appendix 737), the landlord plaintiffs filed an eviction action claiming that defendant owed monthly rent and failed to pay some rent two other months. The tenant defendant raised a violation of statutory covenant of habitability as a defense, requested retroactive rent abatement from the moving date, and deposited the amount with the court as security. The court stated that there was no evidence in the record that the defendant brought the bed bugs, roaches and mice into the property but found that the defendant did not initially fully comply with the landlord's demands to assist with the pest control treatments because of a language barrier and because of the practical difficulties in complying with such treatment. The court explained that the defendant's defense was limited to the rent claimed due and owing by the landlord and that to litigate retroactive rent abatement outside of the eviction action the tenant would have to bring a collateral action. The court determined that the landlord's violations of the statutory covenants of habitability reduced the defendant's use and enjoyment of the property by 50% and awarded rent abatement for those months in which tenant asserted her habitability defense and withheld her rent. The court entered judgment for the defendant to remain in possession of the premises and also ordered future rent abatement per month until further order of the court, stating that the plaintiff was allowed to bring a motion for an evidentiary hearing to have full rent reinstated once the pest issue had been fully controlled. Since the defendant was successful in reducing monthly rent by a significant percentage but still owed some rent, the court erroneously failed to award statutory costs and fees.

However, in *Penrod Lane LLC v. Doe,* No. 27-CV-HC-16-6268 (Minn. Dist. Ct. 4th Dist. Mar. 1, 2017) (Appendix 742), the landlord filed eviction action against tenants alleging nonpayment of rent. The tenant filed an answer denying the rent allegations and raising an affirmative defense of breach of statutory covenants of habitability because of multiple windows missing windowpanes, the second floor entrance being unusable due to repair issues, leaks and plumbing issues (such that tenants had to use a plastic tub to wash dishes) and lead hazards at the premises in need of abatement. The tenant presented evidence that her one-year-old child was diagnosed with an elevated blood lead level. The court noted that the landlord's CEO enrolled in a lead safe work course but stated that no work had been done to correct the issues and that merely signing up to participate is not the same as actually abating a significant lead hazard. The court noted that the landlord was placed on notice and held that it failed to maintain the premises in compliance with the applicable health and safety laws of the state. For those reasons, the court concluded that the condition of the premises violated the statutory covenants of habitability. The court awarded full retroactive rent abatement from December 2016 through February 2017 given the completely impaired use and enjoyment of the premises and awarded prospective rent

abatement (until landlord completes all outstanding repairs and completes lead abatement as directed by the city). But the court denied rent abatement for the period of July 2015-November 2016 noting that tenants could seek such further relief through a separate action. The court ordered tenants to remain in possession of the premises and found that tenants were the prevailing party and were, as such, entitled to statutory costs but no attorney's fees were awarded because the lease did not provide for attorney's fees. As for the tenants' expungement request, the court reserved tenants' motion stating the court will need to monitor this case regarding the reinstatement of rent but the court decided to amend the title of the case to remove tenants' names.

In *Bunn v. Oman*, Nos. UD-1980803902 and UD-1980805513 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 314) (Judge Arthur), the tenant prevailed in consolidated rent escrow and unlawful detainer actions, but the referee denied the motion for disbursement. On judge review, the court ordered that the tenants, having prevailed in the actions and having incurred reasonable disbursements, were entitled to judgment for the disbursements.

(d) Holding over claims and defenses

Costs are available when tenants succeed with holding over defenses. *Lewandoski v. _____,* No. 27-CV-HC-15-3209 (Minn. Dist. Ct. 4th Dist. Aug. 6, 2015) (Appendix 783) (dismissal at close of plaintiff's case where landlord testified about lease, $18,000 in unspecified rent, and termination notice but provided no exhibits and tenant testified she paid rent and utilities and received no notice; expungement granted; costs awarded); *Ricks v. _____,* No. 27-CV-HC-14-6380 (Minn. Dist. Ct. 4th Dist. Dec. 18, 2014) (Appendix 797) (tenant prevailed on improper notice defense; judgment and costs for tenant).

(e) Mortgage foreclosure and contract for deed cancellations

The courts have awarded costs to successful defendants in home ownership evictions. *Warren v. _____,* No. 27-CV-HC- 07-5836 (Minn. Dist. Ct. 4th Dist. Jul. 31, 2007) (Appendix 637) (eviction dismissed where plaintiff did not properly cancel purchase agreement, costs and disbursements awarded); *Azariah v. _____,* No. 27-CV-HC- 07-1143 (Minn. Dist. Ct. 4th Dist. Feb. 28, 2007) (Appendix 631) (eviction dismissed where plaintiff did not properly cancel contract for deed, costs and disbursements awarded).

(f) Breach claims and defenses

Costs are available when landlords do not succeed in breach evictions. *Butler v. _____,* No. 27-CV-HC-07-4409 (Minn. Dist. Ct. 4th Dist. Jul. 27, 2007) (Appendix 630) (eviction dismissed and expunged where landlord did not prove partial payment of deposit, tenant proved habitability violations, tenant awarded costs).

(g) Public housing and other subsidized housing programs

The court have awarded costs to successful public and subsidized housing tenants. *Bushido Management, Inc. v. _____,* No. 27-CV-HC-06-2489 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 634) (referee decision reversed and eviction dismissed and expunged where Section 8 voucher landlord failed to notify housing authority of eviction; tenant awarded costs); *Caberallo LLC v. _____,* No. HC 030324503 (Minn. Dist. Ct. 4th Dist. Apr. 14, 2003) (Appendix 635) (eviction dismissed and expunged where Section 8 voucher landlord failed to notify housing authority of eviction, tenant

awarded costs); *Brooklyn Park Leased Housing Associates III, LP. v. _____,* No. HC 020712528 (Minn. Dist. Ct. 4th Dist. Nov. 7, 2002) (Appendix 633) (eviction dismissed where HUD subsidized project landlord did not prove repeated minor violations where rent payments were inconsistent but fully paid, landlord did not prove tenant recertification violations but landlord violated program rules, landlord failed to prove disturbance based on business record, landlord failed to prove non-cooperation, tenant awarded costs and disbursements).

(h) Manufactured home parks

Costs are available in manufactured home park evictions. *Tower Terrace Park v. _____*, No. HC-040519527 (Minn. Dist. Ct. 4th Dist. July 14, 2004) (Appendix 623) (expungement granted and costs and disbursements awarded where mobile home park dismissed eviction action and failed to give statutory 10 day notice for rent before filing action).

(i) Judge review of referee denial of costs

Courts have reversed erroneous referee denial of costs to successful defendants. In *Ali v. _____,* No. 600223537 (Minn. Dist. Ct. 4th Dist. May 16, 2006) (Appendix 667) the referee dismissed the eviction action where the landlord disclosed to the tenant only a post office box and not a street address, but denied costs to the tenant. The judge reversed the referee denial of statutory costs, holding award of costs in mandatory, and allowed the tenant to credit the award of costs against rent with notice to the landlord).

In *Bunn v. Oman*, Nos. UD-1980803902 and UD-1980805513 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 314) (Arthur, J.), the tenant prevailed in consolidated rent escrow and unlawful detainer actions, but the referee denied the motion for disbursement. On judge review, the court ordered that the tenants, having prevailed in the actions and having incurred reasonable disbursements, were entitled to judgment for the disbursements.

(j) Cost awards to prevailing plaintiffs

The flip side of the issue is that landlord are beginning to request costs as well. In *Fradette v. Mettner*, No. C4-00-56 (Minn. Dist. Ct. 9th Dist. Jan. 26 and Mar. 14, 2000)(Appendix 389), the court awarded the plaintiff $402 in costs and disbursements, including $200 in statutory costs under Minn. Stat. §§ 549.02 and 549.04.

(2) $5.50 for the cost of filing a satisfaction of the judgment

Minn. Stat. § 549.02, Subd. 1 also provides: "To the prevailing party: $5.50 for the cost of filing a satisfaction of the judgment." The decision in *HNA Properties* also addressed whether a party is a prevailing party for the purposes of this portion of the statute. The court noted there was "a lack of clarity on the issue of whether a party who obtains a dismissal for procedural reasons is a prevailing party." *HNA Properties v. Moore*, 848 N.W.2d 238, 242 (Minn. Ct. App. 2014) (citing *Nieszner v. St. Paul Sch. Dist.*, 643 N.W.2d 645, 649–50 (Minn. Ct. App. 2002); *Gross v. Running*, 403 N.W.2d 243, 248 (Minn. Ct. App. 1987); *Reichert v. Union Fid. Life Ins. Co.*, 360 N.W.2d 664, 668 (Minn. Ct. App. 1985)). The court concluded that "a prevailing party must be more than 'successful to some degree,' and instead must "prevail[ ] on the merits in the underlying action." *Id.* (citing *Borchert*, 581 N.W.2d at 840; *Elsenpeter v. St. Michael Mall, Inc.*, 794 N.W.2d 667, 673 (Minn. Ct. App. 2011)).

The Court in *HNA Properties* reviewed the facts. The district court dismissed the eviction action based on the plaintiff's violation of Minn. R. Gen. Prac. 603. *Id*. at 240. Specifically, the plaintiff failed to attach a power of authority to the complaint at the time of filing. The court noted that the district court did not evaluate the evidence or the parties' substantive arguments. The court thus concluded that the defendant was not the prevailing party and the district court did not abuse its discretion by finding that the defendant was not entitled to $5.50 in prevailing-party costs. *Id.*

While the *HNA Properties* decision uses broad language, it did not overrule *Nieszner v. St. Paul Sch. Dist.*, 643 N.W.2d 645, 649-50 (Minn. App. 2002) and *Reichert v. Union Fid. Life Ins. Co.*, 360 N.W.2d 664, 668 (Minn. App.1985), both of which affirmed district court decisions concluding that defendants who obtained dismissals were prevailing parties. There may be cases where the defendant prevails short of a decision on the merits and still obtains $5.50 for the cost of filing a satisfaction of the judgment. However, entitlement to $200 in statutory costs is not dependant on prevailing as discussed in *HNA Properties*. *See* discussion, *supra*, at VIII.E.4.b.i.

In *Equity Residential Holdings, LLC, v. Koenig,* No. A15-0001, 2015 WL 5312074 (Minn. Ct. App. Sept. 14, 2015) (unpublished) the Court concluded that voluntary dismissal of an eviction action on the date of trial without prejudice did not constitute prevailing.

(3) Disbursements

Minn. Stat. § 549.04 provides:

549.04. Disbursements; taxation and allowance

Subdivision 1. Generally. In every action in a district court, the prevailing party, including any public employee who prevails in an action for wrongfully denied or withheld employment benefits or rights, shall be allowed reasonable disbursements paid or incurred, including fees and mileage paid for service of process by the sheriff or by a private person.

Subd. 2. Limitation. Notwithstanding subdivision 1, where the state agency is named or intervenes as a party to enforce the agency's rights under section 256B.056, the agency shall not be liable for disbursements to any prevailing defendant.

The courts regularly have awarded disbursements to prevailing eviction defendants, when requested. *Hermel v. _____,* No. 27-CV-HC-17-493 (Minn. Dist. Ct. 4th Dist. Feb. 17, 2017) (Appendix 734); *Bloomington Associates LP v. _____,* No. 27-CV-HC-16-5638 (Minn. Dist. Ct. 4th Dist. Feb. 13, 2017) (Appendix 739); *Bassett Creek Partners LP v. _____,* No. 27-CV-HC-15-4352 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2015) (Appendix 808), affirmed *Bassett Creek Partners LP v. _____,* No. 27-CV-HC-15-4352 (Minn. Dist. Ct. 4th Dist. April 6, 2016) (Appendix 810) (Judge Chou); *Gisslen v. _____,* No. 27-CV-HC-15-3756 (Minn. Dist. Ct. 4th Dist. Oct. 2, 2015) (Appendix 730); *Warren v. _____,* No. 27-CV-HC- 07-5836 (Minn. Dist. Ct. 4th Dist. Jul. 31, 2007) (Appendix 637); *Azariah v. _____,* No. 27-CV-HC- 07-1143 (Minn. Dist. Ct. 4th Dist. Feb. 28, 2007) (Appendix 631); *Brooklyn Park Leased Housing Associates III, LP. v. _____,* No. HC 020712528 (Minn. Dist. Ct. 4th Dist. Nov. 7, 2002) (Appendix 633); *Ford v. _____,* No. HC-1020325505 (Minn. Dist. Ct. 4th Dist. Apr. 26, 2002) (Appendix 500); *SJM Properties, Inc. v. _____,* No. HC 020402501 (Minn. Dist. Ct. 4th Dist. Apr. 11, 2002, Feb. 12, 2003) (Appendix 570); *Clobes v. _____,* No. HC 010301510 (Minn. Dist. Ct. 4th Dist. Mar. 15, 2001) (Appendix 487); *Cregg v. _____,* No. HC 1001006502 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2000) (Appendix 488); *Hutton v. _____,* No. HC 1000606517 (Minn. Dist. Ct. 4th Dist. Jul. 7, 2000

(Appendix 656); *Connelly v. Schiff*, No. HC-1000417515 (Minn. Dist. Ct. 4th Dist. May 23, 2000) (Appendix 386); *Smith v. Brinkman* and *Brinkman v. Smith*, Nos. HC-1000124900 and HC-1000202517 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2000) (Appendix 418); *Green v. Formanek*, and *Formanek v. Green*, No. 1991001905 and 4991004400 (Minn. Dist. Ct. 4th Dist. Oct. 27, Nov. 8, 1999) (Judge Bruce Peterson) (Appendix 393); *Bloomington Associates v. Wade*, No. UD-1990706521 (Minn. Dist. Ct. 4th Dist. Aug. 19, 1999) (Judge Francis Connolly) (Appendix 378).

(4) Award of costs and disbursements credited against rent

The court may allow the tenant to credit an award of costs and disbursements against rent. *Svendsen v.* _____, No. HC 1031006570 (Minn. Dist. Ct. 4th Dist. Dec. 3, 2003) (Appendix 582c) (award of $200 in costs which could be credited against rent where action dismissed for accepting partial payment in rent); *SJM Properties, Inc. v.* _____, No. HC 020402501 (Minn. Dist. Ct. 4th Dist. Apr. 11, 2002, Feb. 12, 2003) (Appendix 570) (dismissal; costs and disbursements awarded, which may be credited against rent; expungement granted later); *Igherighe v.* _____, No. HC-101101538 (Minn. Dist. Ct. 4th Dist. Feb. 19, 2002) (Appendix 519) (costs and disbursement awarded and credit against rent and expungement ordered where dismissal based on settlement, where tenant raised many defenses).
S

5. Motion to Seal or Expunge Court Records

NOTE: Expungement laws were substantially amended in 2023 and 2024. Until this manual is updated, *see* Expungement of Eviction Court Records and Expungement Form Exp-1; 2023 Housing Laws; and 2024 Housing Laws.

Subsection Menu:

c. *Judge review of referee denial of expungement* - VIII.E.5.c

d. *Notice to tenant screening agencies* - VIII.E.5.d.

e. *In the future: automatic purging of older eviction files* - VIII.E.5.e.

Subsection Text:

In some circumstances, the court may considering sealing or expunging the eviction (unlawful detainer) court records. The benefit for the tenant is keeping court records out of the reach of tenant screening agencies, since many landlords will not rent to rents who have even one case on their record, regardless of the outcome. *See* Affidavit of Sharlyn LaPlace, *Lumpkin v. Lewis*, No. 96-10295 (Minn. Dist. Ct. 4th Dist. July 12, 1996) (Appendix 184).

a00. *Expungement distinguished with amending caption*

Expungement of the eviction court file eliminates the electronic record of the action on the court's website, and leads to elimination of the records held by private tenant screening agencies that are sold to landlords. Amending the caption does remove the party's name from the court's website, but does not necessarily lead to elimination of the records held by private tenant screening agencies.

In *Penrod Lane LLC v. Doe,* No. 27-CV-HC-16-6268 (Minn. Dist. Ct. 4th Dist. Mar. 1, 2017) (Appendix 742), the landlord filed eviction action against tenants alleging nonpayment of rent. The tenant filed an answer denying the rent allegations and raising an affirmative defense of breach of statutory covenants of habitability because of multiple windows missing windowpanes, the second floor entrance being unusable due to repair issues, leaks and plumbing issues (such that tenants had to use a plastic tub to wash dishes) and lead hazards at the premises in need of abatement. The tenant presented evidence that her one-year-old child was diagnosed with an elevated blood lead level. The court noted that the landlord's CEO enrolled in a lead safe work course but stated that no work had been done to correct the issues and that merely signing up to participate is not the same as actually abating a significant lead hazard. The court noted that the landlord was placed on notice and held that it failed to maintain the premises in compliance with the applicable health and safety laws of the state. For those reasons, the court concluded that the condition of the premises violated the statutory covenants of habitability. The court awarded full retroactive rent abatement from December 2016 through February 2017 given the completely impaired use and enjoyment of the premises and awarded prospective rent abatement (until landlord completes all outstanding repairs and completes lead abatement as directed by the city). But the court denied rent abatement for the period of July 2015-November 2016 noting that tenants could seek such further relief through a separate action. The court ordered tenants to remain in possession of the premises and found that tenants were the prevailing party and were, as such, entitled to statutory costs but no attorney's fees were awarded because the lease did not provide for attorney's fees. As for the tenants' expungement request, the court reserved tenants' motion stating the court will need to monitor this case regarding the reinstatement of rent but the court decided to amend the title of the case to remove tenants' names.

In *Equity Residential Holdings LLC v. Doe,* No. 27-CV-HC-15-5665 (Minn. Dist. Ct. 4th Dist. June 30, 2016) (Appendix 738), the tenant defendant requested to have her name removed from the caption of the case (but did not ask for expungement). Court granted the motion allowing the case caption to be amended, noting the importance of the remedy given the prevalence of tenant screen

reports.

In *Sumpter v. _____,* No. 27-CV-HC-12-6974 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2012) (Appendix 690), the court dismissed the eviction without prejudice, holding that (1) the individual landlord could be represented by another person with a power of authority, (2) the landlord failed to disclose his name an address in the oral lease or otherwise 30 days prior to bringing the eviction action as required by Minn. Stat. § 504B.181; (3) the landlord's 12 day written notice did not terminate the tenancy at will, (4) the landlord did not filed an affidavit of service, (5) the landlord cannot state the tenants were not in the state when she admitted she viewed them at home when she attempted service, (5) names of defendants who did not live on the property would be removed from the caption.

a0. *Expungement motion forms*

The court's expungement motion form does not include common law expungement. http://mncourts.gov/GetForms.aspx?c=23&p=83

The Poverty Law and Housing Law Minnesota website contains motion forms that include all of the bases for expungement, including common law, for the Fourth District in Hennepin County and the rest of the state, as well as other expungement forms, slides shows on expungement and hypothetical cases.
http://povertylaw.homestead.com/ExpungementofEvictionCourtRecords.html

a. *At common law under inherent authority*

Until the passage of an expungement statute, Minn. Stat. § 484.014 in 1999, the issue was one of common law, based on the court's inherent power to control court functions. Since expungement was unusual in civil cases, tenants often reserved this issue for special cases, such as when the tenant had no unlawful detainer cases on record and the landlord's cases was frivolous or retaliatory. *Player v. _____,* UD-1960306541 (Minn. Dist. Ct. 4th Dist. Apr. 3 & May 2, 1996) (Appendix 192) (in Emergency Tenant's Remedies and Lock-out Action, at compliance hearing, court ordered that the dismissed companion unlawful detainer action records be sealed). *See generally State v. C.A.*, 304 N.W.2d 353 (Minn. 1981); *State v. Schultz*, 676 N.W.2d 337 (Minn. Ct. App. 2004), *State v. T.M.B.*, 590 N.W.2d 809 (Minn. Ct. App. 1999) (courts may exercise their inherent authority to issue expungement orders affecting court records; judiciary may not order expungement of criminal records maintained by executive branch agencies absent evidence of an injustice resulting from an abuse of discretion in the performance of an executive function). In *Rio Hot Properties, Inc. v. _____,* No. UD-1981102522 (Minn. Ct. Dist. 4th Dist. Nov. 19, 1998) (Appendix 362C), the court concluded that the issue of expungement should be reserved to when closure is imminent.

In 2014, the Minnesota Legislature amended Minn. Stat. § 504B.345, Subd. 1(c)(2), to provide that "the court may expunge the records relating to the action under the provisions of section 484.014 or under the court's inherent authority at the time judgment is entered or after that time upon motion of the defendant." The amended statute was the first legislative recognition and approval of the continued use of common law inherent authority as a basis for expungement.

In *At Home Apts., LLC v. D. B.,* No. A18-0512, 2019 Minn. App. Unpub. LEXIS 47 at *10-11, 2019 WL 178509 at *4 (Minn. Ct. App. Jan. 14, 2019) (Unpublished), the district court denied the tenant's expungement motion, discussing statutory expungement, but not addressing the tenant's alternative basis under the court's common law inherent authority. The Court of Appeals remanded for

the district court to provide a written record of its findings and conclusions on whether it has inherent authority to expunge the records of the eviction action and, if it does, whether the facts support expungement.

A *non-exclusive* list of factors were stated by Judge Connolly in his concurring opinion in

> (1) whether any back-rent is owed, how much is owed, and if there is a payment plan in place—although I do not believe that an expungement should be automatically denied solely because any rent owing has not been paid; (2) a petitioner's eviction history; (3) the cause for the nonpayment of rent—whether it was due to economic hardship or a mere willful refusal; (4) the length of time since the petitioner's last eviction; (5) whether the eviction was for a material breach of the lease other than nonpayment of rent (e.g., conducting illegal activity on the leased premises); (6) the number of evictions with the same landlord as opposed to different landlords; and (7) the term of the lease. *See State v. H.A.,* 716 N.W.2d 360, 364 (Minn. App. 2006) (describing analogous factors for criminal-record expungements).

Id.

(1) Action should not have been filed

The courts expunged or sealed unlawful detainer files where the court determined that the case should not have been filed. Sometimes expungement is jointly requested. *Richfield Housing Association v.* _____, Nos. UD-4990219410 (Minn. Dist. Ct. 4th Dist. Mar. 4, 1999) (Appendix 361) (Oleisky, J.: joint request for dismissal and expungement granted where landlord erroneously filed action for rent); *Geneva Village, L.P. v.* _____, No. C3-98-3358 (Minn. Dist. Ct. 10th Dist. Jul. 22, 1998) (Appendix 333) (Cass, J.: expungement ordered where parties agreed that filing action was unjust and would prevent tenants from finding decent, safe housing in the future); *Phillips Neighborhood Housing Trust, c/o Perennial Properties, Inc., v.* _____, No. UD-1960705508 (Minn. Dist. Ct. 4th Dist. Mar. 2, 1998) (Appendix 357) (expungement of name of tenant on joint motion of parties where the landlord prevailed in action for breach of lease by the co-tenant, there was no question that the tenant seeking expungement was not at fault for the breach); *Eden Park Apartments Limited Partnership v.* _____, No. UD-01980114506 (Minn. Dist. Ct. 4th Dist. Feb. 17, 1998) (Appendix 327) (Granted parties' joint request for dismissal and expungement where Section 8 office failed to notify landlord of recalculation of tenant's subsidy); *LaSalle Group, Ltd._ v.* _____, No. UD-1970326507 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1997) (Appendix 267) (Joint request for expungement); *Larson v.* _____, No. UD-1970805527 (Minn. Dist. Ct. 4th Dist. Sep. 30, 1997) (Appendix 266).

Other times only the defendant moved for expungement. *D & D Real Estate Investment, L.L.P. v.* _____, Nos. UD-1990311505 (Minn. Dist. Ct. 4th Dist. Mar. 30, 1999) (Appendix 323A) (Dismissal of breach of lease claim where there was no convincing evidence that the oral lease contained a right of re-entry clause, no convincing evidence as to the dollar amount of damage to a door to determine whether damage was material or *de minimis*, and the landlord failed to prove that the tenant or one of her guests damaged the door where the tenant claimed damage was caused by a burglar; tenant's names expunged from file); *Hughes v.* _____, Nos. 1990208901 and UD-1990205510 (Minn. Dist. Ct. 4th Dist. Feb. 25, 1999) (Appendix 323B) (Scherer J.: rejected landlord's argument that notice to quit was not retaliatory because tenant's emergency tenant remedies actions were dismissed for non-appearance, where landlord was aware of tenant's actions in reporting disrepair and initiating court actions; notice to quit and unlawful detainer action were filed in bath faith; unlawful detainer file expunged); *Okoiye v.* _____, No. UD-01981015513 (Minn. Dist. Ct. 4th Dist. Oct. 29, 1998) (Appendix 354B) (the court dismissed a

second unlawful detainer action raising issues which had been litigated in the first one; the court also ordered that the landlord may not file another unlawful detainer action against the tenant without court approval, and ordered that the file be expunged); *Central Manor Apartments v. _____,* Nos. UD-1980609509, UD-1980513525 (Minn. Dist. Ct. 4th Dist. July 29, 1998) (Appendix 319B) ("The ends of justice would be best served by expunging" a second unlawful detainer action where landlord could have sought relief by motion in first unlawful detainer action); *Lamb v. _____,* No. C2-98-3304 (Minn. Dist. Ct. 10th Dist. Jul. 9, 1998) (Appendix 343) (expungement if rent paid); *Morris v. _____,* No. UD-1980406518 (Minn. Dist. Ct. 4th Dist. Jun. 18, 1998) (Appendix 352B) (dismissed Section 8 certificate unlawful detainer action for failing to serve a copy of the summons and complaint on the public housing authority, expunged name of minor as there was no reason to name him as a defendant).

(2) Defendant not at fault

Some tenants have been successful avoiding the restrictions of the expungement statute by citing *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981). *JP Morgan Case Bank v. _____*, No. HC-040115527 (Minn. Dist. Ct. 4th Dist. April 30, 2004) (Appendix 605) (common law expungement granted where homeowner defendant in mortgage foreclosure sold redemption right to third party on understanding that it would redeem, third party did not timely redeem, bank filed eviction but continued case to allow third party to redeem, and third party redeemed and rented to defendant who remained in possession of property); *Bigos Management, Inc. v. _____*, No. HC-030423531 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 469) (while tenant breached lease by failing to pay rent, subtenant of tenant did not; expungement granted for subtenants citing *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981)). *See also Bigos Management, Inc. v. _____*, No. HC-030423532 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 470); *Bigos Management, Inc. v. _____*, No. HC-030423533 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 471); *Bigos Management, Inc. v. _____*, No. HC-030423536 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 472); *Bigos Management, Inc. v. _____*, No. HC-030423537 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 473); *Bigos Management, Inc. v. _____*, No. HC-030423539 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 474); *Bigos Management, Inc. v. _____*, No. HC-030423540 (Minn. Dist. Ct. 4th Dist. July 11, 2003) (Appendix 475).

(3) Unique circumstances outside the defendant's control

The courts have based expungement on the court's common law authority where unique circumstances outside the tenant's control led to the eviction, and where neither the landlord nor the tenant were at fault. *See St. Louis Park Place, LLC v. _____,* No. HC-1031015540 (Minn. Dist. Ct. 4th Dist. Nov. 12, 2004) (Appendix _____) (judge reversed referee denial of expungement where tenants failed to pay rent on time when they were traveling back and forth to their home town to attend the funerals of friends killed in a school shooting, and tenants later paid rent and remained tenants); *Brooklyn Park Housing Associates, LLP v. _____*, No. HC-040218503 (Minn. Dist. Ct. 4th Dist. Oct. 14, 2004) (Appendix _____) (judge reversed referee denial of expungement where tenant failed to pay rent on time when tenant took leave from work to care for her child who was recuperating from brain surgery, and tenant later paid rent and reminded a tenant).

(4) Good faith dispute

In *54th and Penn LLC v. _____,* No. 27-CV-HC-09-6845 (Minn. Dist. Ct. 4th Dist. May 19, 2010) (Appendix 716), the tenant defendants sought expungement of the eviction after the parties reached an agreement to end the tenancy. The referee originally denied the request for expungement, determining that the defendants had not demonstrated a statutory basis for an expungement. The district

court judge reversed the decision and remanded the case to the referee to determine if the expungement should be granted not on a statutory basis, but instead under the court's inherent authority. Upon remand the referee granted the motion for expungement under the "inherent authority" of the court, noting the following relevant facts: (1) it was the only eviction case against the defendants, (2) there were good faith disputes between the parties, and (3) the public does not have a great public interest to the file and disputes between the parties.

(5) Agreement of the parties

In *Minneapolis Public Housing Authority v. _____,* No. 27-CV-HC-09-3053 (Minn. Dist. Ct. 4th Dist. July 22, 2010) (Appendix 717) (Judge Moreno), the tenant sought review of a denial of expungement by the referee. Without conceding the bases for statutory expungement, the landlord withdrew its objection to the request for expungement. Therefore, by agreement of the parties and under the court's inherent authority, the court granted the tenant's motion for expungement. *See* Minneapolis *Public Housing Authority v. _____,* No. 27-CV-HC-09-3053 (Minn. Dist. Ct. 4th Dist. July 22, 2010) (Appendix 760) (inherent authority expungement granted where parties agreed that expungement would be fair and just).

(4) File retention schedule

The Minnesota District Court Record Retention Schedule recommends file destruction by case type. Section 12e of the table discusses rent escrow and evictions, still called unlawful detainer actions.

RECORD TITLE, CONTENT AND USAGE	RETENTION PERIOD	DESTRUCTION GUIDELINES
Unlawful Detainer and Rent Escrow		
No money judgment ordered	1 year	Destroy 1 year after file is closed
No money judgment ordered	FY + 3 years	If financial activity is associated destroy FY + 3 yr after final disposition
Money judgment ordered	12 years	12 years if there are no outstanding debts

Id. at 9.
http://www.mncourts.gov/mncourtsgov/media/scao_library/MN-District-Court-Record-Retention-Schedule.pdf

In *Meldahl v. _____*, 27-CV-HC-13-1612 (Minn. Dist. Ct. 4th Dist. Feb. 28, 2018) (Appendix 822), the court granted expungement of a five year old eviction file, concluding:

> Expungement of this case will yield a benefit to Tenant commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing and enforcing the order because case files which are more than one year old with no money judgment, or over

10 years old even with a money judgment, the District Court Record Retention Schedule allows for destruction of all paper and electronic files without notice to the parties. This case falls within the parameters that would qualify it for summary destruction.

Similarly, in *Eddie Boyd dba Leebs Prop. v. _____,* 27-CV-HC-16–3002 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2018) (Appendix 823), the court granted expungement of a two year old eviction file, concluding:

> Expungement of this case will yield a benefit to Tenant commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing and enforcing the order because for case files which are more than one year old with no money judgment, or over 10 years old even with a money judgment, the District Court Record Retention Schedule allows for destruction of all paper and electronic files without notice to the parties. This case falls within the parameters that would qualify it for summary destruction. Further, Defendant has fully paid the Plaintiffs and does not owe Plaintiff any money.

a1. *Timing of expungement motion*

In 2014 the Minnesota Legislature amended Minn. Stat. § 504B.345, Subd. 1(c)(2), to provide that "the court may expunge the records relating to the action under the provisions of section 484.014 or under the court's inherent authority at the time judgment is entered or after that time upon motion of the defendant."

Tenants should ask for expungement as part of the request for relief in an eviction action. The court either will consider it at the time it determines the outcome of the case, or may require the tenant to bring a separate motion on the monthly calendar. *See Hamid v. _____*, 27-CV-HC-08-5349 (Minn. Dist. Ct. 4th Dist. July 8, 2008) (Appendix 604) (nonpayment of rent eviction action dismissed and expunged where landlord has no rental license); *Sun Trust Mortgage Inc. v. _____*, No. 27-CV-HC-08-5044, Order (Minn. Dist. Ct. 4th Dist. June 25, 2008) (Appendix 622) (eviction filed by owner dismissed and expunged where property was under control of administrator in another action); *Smith v. _____*, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 620) (referee ordered landlord did not need a rental license and terminated lease; judge reversed, concluding landlord without license did not have standing to file eviction, landlord constructively evicted tenant by obtaining restraining order against tenant in bad faith entitling tenant to $500 in damages and $500 in attorney's fees, and ordering expungement); *MJD Enterprises, Inc. v. _____*, No. HC-1040406523 (Minn. Dist. Ct. 4th Dist. May 18, 2004) (Appendix 612) (eviction dismissed and expunged and costs awarded where property manager served defendant and filed false affidavit stating that another person served defendant; it was irrelevant that manager called herself an "independent contractor" when she handled all matters related to rental).

b. *Expungement statute*

NOTE: Expungement laws were substantially amended in 2023 and 2024. Until this manual is updated, *see* Expungement of Eviction Court Records and Expungement Form Exp-1; 2023 Housing Laws; and 2024 Housing Laws.

In 1999, the Legislature enacted Minn. Stat. § 484.014. It defines "expungement" as the removal of evidence of the court file's existence from the publicly accessible records; "eviction case" as an action brought under sections 504B.281 to 504B.371; and "court file" as the court file created when an eviction

case is filed with the court. The statute provides for discretionary expungement: "The court may order expungement of an eviction case court file only upon motion of a defendant and decision by the court, if the court finds that the plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case, that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record."

As of August 1, 2008, the court must expunge the file in an eviction action filed by the foreclosing mortgagee or contract for deed canceling vendor if the court finds that the defendant vacated before commencement of the eviction action, or a tenant defendant did not receive a proper lease termination notice under Minn. Stat. § 504B.285. Minn. Stat. § 484.014, subd. 3, 2008 Minn. Laws Ch. 174. *See* discussion, *supra*, at VI.F.1.c.

In the Fourth District (Hennepin County) the Housing Court has scheduled a monthly calendar for expungement motions. Scheduling orders often require tenants to serve the motion on all parties at least ten days before the hearing, and to file affidavits of service by 3:00 p.m. three days before the hearing.

Occasionally court personnel may be reluctant to expunge a court file where there is a settlement agreement setting out actions or events that will occur in the future. The tenant should ask the court to order that expungement occur immediately. This is especially important during a period in which the tenant is seeking new housing. *Viking Properties of MN LLC v. _____,* Nos. UD-1990714563 and UD-1990709901 (Minn. Dist. Ct. 4th Dist. Aug. 11, 1999) (Judge Rosenbaum) (Appendix 421) (Action to be expunged immediately upon filing of order where unlawful detainer action was erroneously filed due to mistake or confusion; settlement providing that tenant would move in one and one-half months, tenant would not pay rent for two months and landlord would retain deposit plus interest, landlord would provide neutral reference, landlord would make repairs as ordered by the housing inspector, landlord would give 24 hours written notice of intention to make repairs, tenant would accommodate repair persons, landlord could contact tenant's community liaison except all repair notices would be between the parties, the agreement did not waive other rights related to nuisance, illegal or criminal conduct, privacy, or discrimination, tenant would not pursue claims for rent abatement, landlord would not pursue claims for past rent, deposit, late fees, court costs, or court fees, the parties did not admit liability).

Some court administrators have questioned whether expungement applies to public access computer records as well as hard files. The statute defines "expungement" as the removal of evidence of the court file's existence from the publicly accessible records, which should include electronic records as well as paper records. *Minneapolis Public Housing Authority v. _____,* No. HC-000121514 (Minn. Dist. Ct. 4th Dist. May 12, 2000) (Appendix 408), (expungement granted where landlord and tenant agreed that a co-tenant, and not the tenant, was the culpable party for lease violations; tenant's name, but not co-tenant's name, removed from caption and computerized records).

Some courts have concluded that expungement is not appropriate if there is further court activity on the case. In _____ *v. Monanya*, N. HC 1991022901 (Minn. Dist. Ct. 4th Dist. Sep. 26, 2001) (Appendix 444) , the court lifted an expungement order in a combined emergency tenant remedies action and rent escrow action when the tenant sought to collect on the court's award.

In *Cash v. Czock*, No. C4-01-2140, 2002 WL 980078 (Minn. Ct, App. 2002) (unpublished), the court affirmed the order for expungement, based on the parties settlement, and the district court's denial of the *pro se* tenants request to include with expungement the claim of illegal lockout.

Tenants may request that a case that is not expunged be correctly categorized. *Smith v. _____*, No. HC 1000703500 (Minn. Dist. Ct. 4th Dist. Jan. 30, 2002) (Appendix 573) (summary changed from nonpayment of rent and breach of lease to holding over after notice).

(0) Eviction lacking sufficient merit

Most decisions have focused on the basis of the landlord's action and proof for it. In *Wong v. _____*, No. 27-CV-HC-09-1714 (Minn. Dist. Ct. 4th Dist. Dec. 21, 2009) (Appendix(743) (Judge Reding), the landlord filed an unlawful detainer action seeking eviction of the defendants for non-payment of rent. The referee held that the tenants owed rent for the period from January 2009 until April, 2009 and ordered them to pay into the court the rent for the months of February and March, pending the trial, which they did. The tenants, one of which has physical disabilities, asserted habitability issues with the home. The referee found that the inspector inspected the property and found eight items in need of repair and found that tenants suffered a loss of security due to ability to access the sliding glass door resulting in a sex offender obtaining access to the residence, loose stairway railing, and loose and uneven carpet and awarded tenants some rent abatement. The referee also found that that since both parties prevailed in part of their claims neither party was awarded costs. The tenants then filed an expungement motion, which was denied. They then filed a judge review request. The court remanded the issue to the referee for specific findings.

The referee then issued an order denying the motion to expunge stating that tenant had failed to deposit into court all rent due and the court had to order tenant to pay landlord and concluded that "this court cannot find under these facts that plaintiff's case was without basis in fact or law. Landlord was owed rent money from [t]enant and needed a court order in order to get paid the rent the court found that [t]enant owed."

The tenant sought judge review again. The court granted the defendant's motion to expunge stating that the referee erred in not considering that the habitability defense does not require advance written notice of complaints and adding that the defendants were not precluded from expungement, since they were successful in asserting their defense. The court also explained that the expungement statute does not require that plaintiff's case be wholly without merit, but that it be sufficiently without merit to justify expungement.

(1) Plaintiff's default

Devonshire v. _____, No. HC 051220530 (Minn. Dist. Ct. 4th Dist. Jan. 13, 2006) (Appendix 642) (eviction dismissed and expunged for improper plaintiff and default by plaintiff); *Christopherson Properties v. _____*, No. HC 031205518 (Minn. Dist. Ct. 4th Dist. Feb. 24, 2004) (Appendix 485) (expungement where "Plaintiff defaulted at first appearance, thereby failing to establish a legal or factual basis for the complaint"); *Huffman v. _____,* No. HC 00021522 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2000) (Appendix 517) (plaintiff did not appear or prosecute action, no evidence that service was perfected).

(2) Service defenses

(a) Improper service

Harris v. _____, No. HC 031014526, 031006514 (Minn. Dist. Ct. 4th Dist. Jan. 16, 2004) (Appendix 513) (expungement and two awards of costs for two cases involving improper service); *Reid*

v. _____, No. 0203155000, (Minn. Dist. Ct. 4th Dist. Feb. 12, 2003) (Appendix 565) (expungement for defective complaint and improper service); *Stevens Community Assoc. v.* _____, No. HC 010003507 (Minn. Dist. Ct. 4th Dist. Oct. 12, and Dec. 13, 2000) (Appendix 579) (dismissal where affidavit of service claimed service before action was filed; expungement granted later); *Bratton v.* _____, No. 8C-000222514 (Minn. Dist. Ct. 4th Dist. Apr. 12, 2000) (Appendix 380) (parties agreed there was short service but executed move out agreement, case expunged due to short service); *Judge v. Rio Hot Properties, Inc.*, No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (unlawful detainer action dismissed for service less than seven days before the hearing; expungement granted on two unlawful detainer actions where one involved improper service and the other involved a plaintiff not entitled to possession of the premises; tenants proved landlord breach of covenants of habitability, while landlord failed to prove tenant negligence or commission in damage, or that tenants unreasonably denied access to the landlord; rent abatement to increase if repairs are not completed; tenants' motion in consolidated cases to add punitive damages denied where court found no independent tort, but tenant granted leave to proceed with claims for contempt where the landlord had failed to complete repairs for almost one year).

(b) No proof of service

Smith v. _____, No. HC 031124400 (Minn. Dist. Ct. 4th Dist. Dec. 4, 2003) (Appendix 572) (expungement for no proof of service); *Huffman v.* _____, No. HC 00021522 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2000) (Appendix 517) (plaintiff did not appear or prosecute action, no evidence that service was perfected); *Greene v.* _____, No. 1000821516 (Minn. Dist. Ct. 4th Dist. Nov. 14, 2000) (Appendix 506) (no proper affidavit of service, tenant moved before action was filed, action settled); *Okoiye v.* _____, No. UD-1990708534 (Minn. Ct. Dist. July 22, 1999) (Appendix 425) (dismissal for failure to file affidavit of service; expungement motion granted; tenant awarded costs).

(c) Service by plaintiff or employees

MJD Enterprises, Inc. v. _____, No. HC-1040406523 (Minn. Dist. Ct. 4th Dist. May 18, 2004) (Appendix 612) (eviction dismissed and expunged and costs awarded where property manager served defendant and filed false affidavit stating that another person served defendant; it was irrelevant that manager called herself an "independent contractor" when she handled all matters related to rental); *Sidal Realty Company, LLP v.* _____, No. HC 030114401 (Minn. Dist. Ct. 4th Dist. Feb. 12, Feb. 24, and Apr. 7, 2003) (Appendix 569) (dismissal for service by employee of plaintiff; expungement denied by referee and on consideration, reversed by Judge Arthur).

(d) Lack of jurisdiction

Gustafson v. _____, No.0208030516 (Minn. Dist. Ct. 4th Dist. Feb. 12, 2003) (Appendix 508) (expungement granted for lack of jurisdiction); *Norby v.* _____, No. HC 010502504 (Minn. Dist. Ct. 4th Dist. June 12, 2001) (Appendix 550) (lack of jurisdiction).

(e) Improper mail and posting

In *The Freund Haus, LLC v.* _____, No. 27-CV-HC-1-6609 (Minn. Dist. Ct. 4th Dist. July 22, 2014) (Judge Chou) (Appendix 733), the tenant defendant requested expungement from eviction on her record. The referee denied her motion for expungement with prejudice. The defendant sought reversal of the referee's order. The court found that the eviction was moot at the time of its filing and the court lacked jurisdiction over the case because the plaintiff had actual and constructive notice that the

defendant had moved out of the apartment since the defendant (1) knew the defendant was physically assaulted by another tenant of the property; (2) heard from the defendant's father that his daughter could no longer live at the premise; (3) refused to accept the return of the keys by the defendant's father; and (4) was notified via e-mail, his preferred method of communication, that defendant had moved. The court also held that even if the case was not moot, jurisdiction was never properly conferred to the court to hear the case due to defective service because service by mail and by posting is appropriate only if the defendant cannot be found in the country. In this case, not only plaintiff could have found defendant very easily in the country but plaintiff also made the mistake to mail the summons prior to his second attempt at personal service. As a result, the court ordered the expungement stating that it was clearly in the interests of justice which were not outweighed by the public's interest in knowing about the record.

Igherighe v. _____, No. HC 020208501 (Minn. Dist. Ct. 4th Dist. Feb. 20, 2002) (Appendix 521) (improper mail and posting service where plaintiff filed no affidavit of posting, and affidavit of not finding defendant was ambiguous of whether service was attempted in the evening; dismissed and expunged).

(f) Improper substitute service

Tri Star Developers, LLC v. _____, No. HC 010109514 (Minn. Dist. Ct. 4th Dist. Oct. 17, 2001) (Appendix 584) (improper service on employee of business who was not an officer and not authorized to accept service; defendant business was incorrectly named; default judgment vacated and action dismissed and expunged).

(3) Precondition defenses

(a) Insufficient pleading

Minneapolis Public Housing Authority v. _____*,* No. HC-050920503 (Minn. Dist. Ct. 4th Dist. Feb. 9, 2006) (Appendix 674) (expungement granted where eviction was dismissed for an insufficient complaint and parties agreed to expungement)*; Crofton v.* _____, No. HC 031120528 (Minn. Dist. Ct. 4th Dist. Mar. 16, 2004) (Appendix 490) (expungement where complaint lacked specificity on breach, and landlord failed to attach lease or bring it to first appearance); *Reid v.* _____, No. 0203155000, (Minn. Dist. Ct. 4th Dist. Feb. 12, 2003) (Appendix 565) (expungement for defective complaint and improper service); *Igherighe v.* _____*,* No. HC-1011001519 (Minn. Dist. Ct. 4th Dist. Oct. 10, 2001 and Feb. 19, 2002) (Appendix 519) (costs awarded and file expunged where action was dismissed where plaintiff landlord of Section 8 Voucher tenant failed to served Section 8 office, plaintiff disclosed only a post office box and not a street address to tenant, plaintiff pled rent due from Section 8 and not the tenant, and plaintiff named a non-tenant as a defendant).

(b) Failure to attach lease or notice

Tambornino v. _____*,* No. 27-CV-HC- 12-5520 (Minn. Dist. Ct. 4th Dist. May 14, 2013) (Judge Kaman) (Appendix 799) (expungement granted and referee decision reversed where plaintiff failed to attach lease to complaint or provide it to defendant at first hearing; tenant was not required to request lease at first hearing); *Crofton v.* _____, No. HC 031120528 (Minn. Dist. Ct. 4th Dist. Mar. 16, 2004) (Appendix 490) (expungement where complaint lacked specificity on breach, and landlord failed to attach lease or bring it to first appearance); *O'Brian v.* _____*,* No. HC 1010402506 (Minn. Dist. Ct. 4th Dist. Apr. 18, 2001) (Appendix 552) (breach claims dismissed where oral lease contained no right of re-entry clause; notice claim dismissed where landlord failed to attached notice to complaint, and failed

to prove notice was given; expungement granted).

(c) Plaintiff not entitled to possession

Sun Trust Mortgage Inc. v. _____, No. 27-CV-HC-08-5044, Order (Minn. Dist. Ct. 4th Dist. June 25, 2008) (Appendix 622) (eviction filed by owner dismissed and expunged where property was under control of administrator in another action); *Devonshire v. _____,* No. HC 051220530 (Minn. Dist. Ct. 4th Dist. Jan. 13, 2006) (Appendix 642) (eviction dismissed and expunged for improper plaintiff and default by plaintiff)*; Filas v. _____*, No. HC 040115532 (Minn. Dist. Ct. 4th Dist. Feb. 18, and Mar. 10, 2004) (Appendix 497) (motion to quash writ granted and eviction dismissed where "Plaintiffs were not the real parties in interest when the complaint was filed because they had executed a contract for deed, now cancelled, with another vendee", later expunged); *Judge v. Rio Hot Properties, Inc.*, No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (Appendix 401) (unlawful detainer action dismissed for service less than seven days before the hearing; expungement granted on two unlawful detainer actions where one involved improper service and the other involved a plaintiff not entitled to possession of the premises; tenants proved landlord breach of covenants of habitability, while landlord failed to prove tenant negligence or commission in damage, or that tenants unreasonably denied access to the landlord; rent abatement to increase if repairs are not completed; tenants' motion in consolidated cases to add punitive damages denied where court found no independent tort, but tenant granted leave to proceed with claims for contempt where the landlord had failed to complete repairs for almost one year).

(d) Case is moot

In *The Freund Haus, LLC v. _____,* No. 27-CV-HC-1-6609 (Minn. Dist. Ct. 4th Dist. July 22, 2014) (Judge Chou) (Appendix 733), the tenant defendant requested expungement from eviction on her record. The referee denied her motion for expungement with prejudice. The defendant sought reversal of the referee's order. The court found that the eviction was moot at the time of its filing and the court lacked jurisdiction over the case because the plaintiff had actual and constructive notice that the defendant had moved out of the apartment since the defendant (1) knew the defendant was physically assaulted by another tenant of the property; (2) heard from the defendant's father that his daughter could no longer live at the premise; (3) refused to accept the return of the keys by the defendant's father; and (4) was notified via e-mail, his preferred method of communication, that defendant had moved. The court also held that even if the case was not moot, jurisdiction was never properly conferred to the court to hear the case due to defective service because service by mail and by posting is appropriate only if the defendant cannot be found in the country. In this case, not only plaintiff could have found defendant very easily in the country but plaintiff also made the mistake to mail the summons prior to his second attempt at personal service. As a result, the court ordered the expungement stating that it was clearly in the interests of justice which were not outweighed by the public's interest in knowing about the record.

See also Chase Home Finance, LLC v. _____, No .62HGCV09-403, Stipulation and Order (Minn. Dist. Ct. 2nd Dist. April 7, 2009) (Appendix 602) (expungement granted on stipulation that tenant vacated property before eviction action filed); *Mortgage Electronic Registration Systems Inc. v. _____*, 27-CV-HC-08-4118 (Minn. Dist. Ct. 4th Dist. May 29, 2008) (Appendix 628) (expungement granted where parties agreed that defendant did not have possessory interest in property when action was filed); *Labarre v. _____,* No. HC051031512 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2006) (Appendix 660) (expungement granted where parties agreed that landlord did not have a rental license and that tenant vacated the property)*; 3601 13th Ave. S. Corp. v. _____*, No. HC-031230519 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2004) (Appendix 596) (expungement granted where it appeared rent was paid before action was filed); *Ukatu v. _____*, No. HC 0307614501 (Minn. Dist. Ct. 4th Dist. July 30, 2003) (Appendix 586)

(dismissal for no license at time of filing, even though landlord later obtained license; eviction case is moot when tenants have vacated; expungement granted); *Greene v. _____,* No. 1000821516 (Minn. Dist. Ct. 4th Dist. Nov. 14, 2000) (Appendix 506) (no proper affidavit of service, tenant moved before action was filed, action settled); *Momanyi v. _____,* No. HC991221527 (Minn. Dist. Ct. 4th Dist. Dec. 29, 1999) (Appendix 669) (expungement granted where parties agreed that tenant did not occupy property where eviction was filed, and parties agreed to expungement)*; Banker's Trust Company of California v. _____,* No UD 198128509 (Minn. Dist. Ct. 4th Dist. July 1, 1999) (Appendix 465) (error to add name of defendant who had earlier moved).

(e) Foreign limited liability company had no state certificate of authority

Uptown Classic Properties JV1, LLC v. _____, No. HC 1030123529 (Minn. Dist. Ct. 4th Dist. Apr. 9, 2003) (Appendix 588) (dismissal and expungement where foreign limited liability company had no state certificate of authority under Minn. Stat. § 322B.94).

(f) Failure to notify Section 8 Office

Bushido Management, Inc. v. _____, No. 27-CV-HC-06-2489 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 634) (referee decision reversed and eviction dismissed and expunged where Section 8 voucher landlord failed to notify housing authority of eviction, tenant awarded costs)*; Caberallo LLC v. _____,* No. HC 030324503 (Minn. Dist. Ct. 4th Dist. Apr. 14, 2003) (Appendix 635) (eviction dismissed and expunged where Section 8 voucher landlord failed to notify housing authority of eviction, tenant awarded costs)*; SJM Properties, Inc. v. _____,* No. HC 020402501 (Minn. Dist. Ct. 4th Dist. Apr. 11, 2002, Feb. 12, 2003) (Appendix 570) (dismissal where Rental Assistance for Family Stabilization (RAFS) Program landlord failed to serve the Section 8 office; different notice periods for landlord and tenant might be proper; costs and disbursements awarded, which may be credited against rent; expungement granted later); *Igherighe v. _____,* No. HC-1011001519 (Minn. Dist. Ct. 4th Dist. Oct. 10, 2001 and Feb. 19, 2002) (Appendix 519) (costs awarded and file expunged where action was dismissed where plaintiff landlord of Section 8 Voucher tenant failed to served Section 8 office, plaintiff disclosed only a post office box and not a street address to tenant, plaintiff pled rent due from Section 8 and not the tenant, and plaintiff named a non-tenant as a defendant); *McCampbell v. _____,* No. HC 000601500 (Minn. Dist. Ct. 4th Dist. July 14, 2000) (Appendix 535) (expungement granted since Section 8 landlord's failure to serve the housing authority was a jurisdictional defect, depriving the court of jurisdiction); *Williams v. _____,* No. HC-1991117529 (Minn. Dist. Ct. 4th Dist. Dec. 7, 1999) (Appendix 428) (Dismissal for failure to give notice to public housing authority under 24 C.F.R. § 982.310 (e)(2)(ii); defendants' names expunged).

(g) Failure to disclose address

Hoskins v. _____, No. HC 051116548 (Minn. Dist. Ct. 4th Dist. Apr. 13, 2006) (Appendix 653) (expungement granted for violation of Minn. Stat. § 504B.181); *Igherighe v. _____,* No. HC-1011001519 (Minn. Dist. Ct. 4th Dist. Oct. 10, 2001 and Feb. 19, 2002) (Appendix 519) (costs awarded and file expunged where action was dismissed where plaintiff landlord of Section 8 Voucher tenant failed to served Section 8 office, plaintiff disclosed only a post office box and not a street address to tenant, plaintiff pled rent due from Section 8 and not the tenant, and plaintiff named a non-tenant as a defendant); *Stein v. _____,* No. HC 000804513 (Minn. Dist. Ct. 4th Dist. Nov. 8, 2000) (Appendix 577) (violation of landlord address disclosure statute, Minn. Stat. § 504B.181 (formerly § 504.22); *Gregerson v. _____*, No. HC 000908577 (Minn. Dist. Ct. 4th Dist. Dec. 13, 2000) (Appendix 507)

(expungement granted for noncompliance with address disclosure statute, Minn. Stat. § 504B.181 (formerly § 504.22).

(h) Premature filing

In *Uptown Classic Properties v. _____,* No. 1021119509 (Minn. Dist. Ct. 4th Dist. Dec. 12, 2002) (Appendix 684), the court held that the eviction action plaintiff must provide sworn testimony to prove allegations of complaint; the landlord who obtained rental license on November 18 and filed eviction action on November 19 could not seek rent for July through November; and the claim for December rent is not ripe for eviction action filed in November. The court dismissed the eviction action and ruled that the tenant was a prevailing party, granting expungement. *See McCampbell v. _____*, No. HC 000814500 (Minn. Dist. Ct. 4th Dist. Nov. 8, 2000) (Appendix 536) (expungement granted where case filed prematurely).

(i) Accord and satisfaction

In *Rosetree Properties LLP v. _____,* No. 62-HG-CV-16-1712 (Minn. Dist. Ct. 2nd Dist. Sept. 21, 2016) (Appendix 728), the district court issued an order expunging the landlord's eviction action after finding that the allegations in the complaint were untrue. The court found that the accord and satisfaction doctrine barred the eviction action because the landlord previously had settled the matter and was paid in full.

(j) Failure to register trade name

In *Chaney v. _____,* No. 27-CV-HC-14-2730 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2014) (Appendix 757), the court granted expungement where the landlord failed to register trade name before commencing action, the landlord could not demonstrate a material breach of lease, and the landlord waived breach by accepting rent with knowledge of breach).

(4) Rent defenses

(a) Dispute over amount of rent

Lewandoski v. _____, No. 27-CV-HC-15-3209 (Minn. Dist. Ct. 4th Dist. Aug. 6, 2015) (Appendix 783) (dismissal at close of plaintiff's case where landlord testified about lease, $18,000 in unspecified rent, and termination notice but provided no exhibits and tenant testified she paid rent and utilities and received no notice; expungement granted; costs awarded); *Busse v. _____,* No. 27-CV-HC-14-5955 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2014) (Appendix 784) (judgment for tenant where lease stated rent was due 28th of month but did not state amount of rent and landlord filed action on the 6th; expungement granted; costs awarded); *Brooklyn Center Leased Housing v. _____,* No. HC 031216540 (Minn. Dist. Ct. 4th Dist. Mar. 10, 2004) (Appendix 481) (expungement granted where landlord's accounting records resulted in confusion of amount of rent due); *Brooklyn Center Leased Housing v. _____,* No. HC 030819518 (Minn. Dist. Ct. 4th Dist. Sep. 16, 2003, and Mar. 10, 2004) (Appendix 480) (ambiguities in lease concerning the deposit, rent and pro-rated rent and lack of documentation construed against landlord, no late fees if not contained in lease, redemption; later expunged); *Anderson v. _____,* No. HC 020611540 (Minn. Dist. Ct. 4th Dist. Aug. 16, 2002) (Appendix 464) (action had basis but not a substantial basis where there was confusion over the amount of rent due, and defendant had right to vindicate rights over the exact amount of rent due); *Drown v. _____,* No. C7-99-2863 (Minn. Dist. Ct. 7th Dist. Feb. 7, 2000) (Judge Boland) (Appendix 388)

(Expungement granted where tenant said the landlord commenced the action so she could qualify for emergency assistance and the record of the action prevented her and her disabled daughter from qualifying for subsidized housing, and the landlord claimed that the tenant trashed the home).

(b) No license to rent

Windorpski v. _____, No. 27-CV-HC-11-3453 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2012) (Judge Howard) (Appendix 778) (referee decision reversed and expungement granted where landlord had no rental license and gave written notice to terminate oral lease on May 3 to be effective May 31); *Hamid v. _____*, 27-CV-HC-08-5349 (Minn. Dist. Ct. 4th Dist. July 8, 2008) (Appendix 604) (nonpayment of rent eviction action dismissed and expunged where landlord has no rental license); *Taylor v. _____*, No. HC 031202508 (Minn. Dist. Ct. 4th Dist. Mar. 10, 2004) (Appendix 582b) (expungement where case brought without rental license, and facts of case are available in probate court records); *Smith v. _____*, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 620) (referee ordered landlord did not need a rental license and terminated lease; judge reversed, concluding landlord without license did not have standing to file eviction, landlord constructively evicted tenant by obtaining restraining order against tenant in bad faith entitling tenant to $500 in damages and $500 in attorney's fees, and ordering expungement); *Ukatu v. _____*, No. HC 0307614501 (Minn. Dist. Ct. 4th Dist. July 30, 2003) (Appendix 586) (dismissal for no license at time of filing, even though landlord later obtained license; eviction case is moot when tenants have vacated; expungement granted); *Schudi v. _____,* No. 021112506 (Minn. Dist. Ct. 4th Dist. Feb. 12, 2003) (Appendix 568) (expungement for lack of rental license); *Tri Star Developers, LLC v. _____*, No. HC 1011002522 (Minn. Dist. Ct. 4th Dist. Oct. 16, 2001) (Appendix 585) ("renting without a rental license requires dismissal;" securing license after filing the action does not purge the defect in filing without one; expungement granted).

In *Uptown Classic Properties v. _____,* No. 1021119509 (Minn. Dist. Ct. 4th Dist. Dec. 12, 2002) (Appendix 684), the court held that the eviction action plaintiff must provide sworn testimony to prove allegations of complaint; the landlord who obtained rental license on November 18 and filed eviction action on November 19 could not seek rent for July through November; and the claim for December rent is not ripe for eviction action filed in November. The court dismissed the eviction action and ruled that the tenant was a prevailing party, granting expungement.

(c) Landlord waived prompt payment of rent

Gardner Investments, Inc. v. _____, No. HC 040102502 (Minn. Dist. Ct. 4th Dist. Jan. 15, and Mar. 10, 2004) (Appendix 504) (dismissal where landlord waived prompt payment of rent; later expunged).

(d) Landlord waived claim by accepting part payment of rent

Sumner Field Partners 2, L.P. v. _____, No. 27-CV-HC-12-7838 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2013) (Appendix 702) (expungement granted for partial payment of rent before action commenced and full payment of rent before service of complaint)*; Svendsen v. _____*, No. HC 1031006510 (Minn. Dist. Ct. 4th Dist. Dec. 3, 2003) (Appendix 582b) (expungement where tenant paid her share of rent under Section 8 lease and landlord accepted part payment of rent); *Valley Investment & Management, Inc. v. _____,* No. HC 000927525 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2000) (Appendix 589b) (dismissal of nonpayment of rent action since plaintiff accepted part payment of rent without a written agreement retaining the right to evict for the balance, under Minn. Stat. § 504B.291 (formerly 504.02)).

(e) Improper late fees

Brooklyn Center Leased Housing v. _____, No. HC 030819518 (Minn. Dist. Ct. 4th Dist. Sep. 16, 2003, and Mar. 10, 2004) (Appendix 480) (ambiguities in lease concerning the deposit, rent and pro-rated rent and lack of documentation construed against landlord, no late fees if not contained in lease, redemption; later expunged).

(f) Violation of covenants of habitability

In *Wong v. _____,* No. 27-CV-HC-09-1714 (Minn. Dist. Ct. 4th Dist. Dec. 21, 2009) (Appendix(743) (Judge Reding), the landlord filed an unlawful detainer action seeking eviction of the defendants for non-payment of rent. The referee held that the tenants owed rent for the period from January 2009 until April, 2009 and ordered them to pay into the court the rent for the months of February and March, pending the trial, which they did. The tenants, one of which has physical disabilities, asserted habitability issues with the home. The referee found that the inspector inspected the property and found eight items in need of repair and found that tenants suffered a loss of security due to ability to access the sliding glass door resulting in a sex offender obtaining access to the residence, loose stairway railing, and loose and uneven carpet and awarded tenants some rent abatement. The referee also found that that since both parties prevailed in part of their claims neither party was awarded costs. The tenants then filed an expungement motion, which was denied. They then filed a judge review request. The court remanded the issue to the referee for specific findings.

The referee then issued an order denying the motion to expunge stating that tenant had failed to deposit into court all rent due and the court had to order tenant to pay landlord and concluded that "this court cannot find under these facts that plaintiff's case was without basis in fact or law. Landlord was owed rent money from [t]enant and needed a court order in order to get paid the rent the court found that [t]enant owed."

The tenant sought judge review again. The court granted the defendant's motion to expunge stating that the referee erred in not considering that the habitability defense does not require advance written notice of complaints and adding that the defendants were not precluded from expungement, since they were successful in asserting their defense. The court also explained that the expungement statute does not require that plaintiff's case be wholly without merit, but that it be sufficiently without merit to justify expungement.

Mar-Jil Corp. v. _____, No. HC 1020802508 (Minn. Dist. Ct. 4th Dist. Oct. 28, 2002) (Appendix 532) (habitability defense to nonpayment of rent claim; parties settled and plaintiff agree to do repairs); _____ *v.* _____, No. _____ (Minn. Dist. Ct. 4th Dist. Jan. 22, 2001) (Judge Alexander) (Appendix 433) (tenant raised habitability defense and court abated rent; expungement granted); *Snoddy v. _____,* No. HC 1010905500 (Minn. Dist. Ct. 4th Dist. Dec. 27, 2001) (Appendix 574) (habitability defense to nonpayment of rent claim; settlement deferred rent until repairs were completing, implying that complaint was insufficient); *Huffman v. _____,* No. HC 1991119518 (Minn. Dist. Ct. 4th Dist. Nov. 8, 2000) (Appendix 518) (settlement of nonpayment of rent case abating the rent, implying no basis for rent claim; landlord violated agreement to repair); *Harding v. _____,* No. HC 1000815508 (Minn. Dist. Ct. 4th Dist. Nov. 13, 2000) (Appendix 511) (parties agreed that plaintiff filed nonpayment of rent action in error because of outstanding habitability problems); *Brinkman v. _____,* No. HC-1000202517 (Minn. Dist. Ct. 4th Dist. May 10 and Mar. 9, 2000) (Appendix 418), (expungement granted where tenant prevailed on claims of improper and retaliatory notices, habitability, and privacy violations, and harassment); *Judge v. Rio Hot Properties, Inc.*, No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7,

1999) (Appendix 401) (unlawful detainer action dismissed for service less than seven days before the hearing; expungement granted on two unlawful detainer actions where one involved improper service and the other involved a plaintiff not entitled to possession of the premises; tenants proved landlord breach of covenants of habitability, while landlord failed to prove tenant negligence or commission in damage, or that tenants unreasonably denied access to the landlord; rent abatement to increase if repairs are not completed; tenants' motion in consolidated cases to add punitive damages denied where court found no independent tort, but tenant granted leave to proceed with claims for contempt where the landlord had failed to complete repairs for almost one year).

(g) Premature rent claim

Busse v. _____, No. 27-CV-HC-14-5955 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2014) (Appendix 784) (judgment for tenant where lease stated rent was due 28th of month but did not state amount of rent and landlord filed action on the 6th; expungement granted; costs awarded)*; Clark v. _____,* No. HC 1001005513 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2000) (Appendix 486) (plaintiff filed nonpayment of rent case before rent was past due, tenant redeemed).

(h) Improper subsidized housing claims

Real World Development LLC v. _____, 27-CV-HC-07-8713 (Minn. Dist. Ct. 4th Dist. May 8, 2008) (Appendix 616) (expungement granted where eviction complaint was for Section 8 portion of rent); *Okeakpu v. _____*, No. HC 1020603511 (Minn. Dist. Ct. 4th Dist. July 2, 2002) (Appendix 554) (Judge Sagstuen) (landlord failed to rebut presumption of retaliation for tenant's refusal to pay illegal side payments on top of the Section 8 rent where his claim that when he purchased the property he thought the tenant's rent was higher was not credible; expungement granted); *Beyene v. _____,* No. HC 1000818518 (Minn. Dist. Ct. 4th Dist. Nov. 10, 2000) (Appendix 468) (plaintiff claimed nonpayment of rent, but all of the rent was vendored to plaintiff through the Rental Assistance for Family Stabilization (RAFS) Program.

(i) Privacy violations

Brinkman v. _____, No. HC-1000202517 (Minn. Dist. Ct. 4th Dist. May 10 and Mar. 9, 2000) (Appendix 418), (expungement granted where tenant prevailed on claims of improper and retaliatory notices, habitability, and privacy violations, and harassment).

(j) Constructive eviction

Smith v. _____, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 620) (referee ordered landlord did not need a rental license and terminated lease; judge reversed, concluding landlord without license did not have standing to file eviction, landlord constructively evicted tenant by obtaining restraining order against tenant in bad faith entitling tenant to $500 in damages and $500 in attorney's fees, and ordering expungement).

(k) Rent already paid before commencement of action by service of complaint

Sumner Field Partners 2, L.P. v. _____, No. 27-CV-HC-12-7838 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2013) (Appendix 702) (expungement granted for partial payment of rent before action commenced and full payment of rent before service of complaint)*; Minneapolis Public Housing Authority v. ____,*

No. 27-CV-HC-09-5431 (Minn. Dist. Ct. 4th Dist. Nov. 25, 2009) (Appendix 701) (dismissed and expunged for accepting full rent before commencement of action by service of summons and complaint); *3601 13th Ave. S. Corp. v.* _____, No. HC-031230519 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2004) (Appendix 596) (expungement granted where it appeared rent was paid before action was filed).

(5) Notice defenses

(a) Retaliation

McCampbell v. _____, No. HC 031002506 (Minn. Dist. Ct. 4th Dist. Nov. 5, 2003, Jan. 22, 2004) (Appendix 537) (successful eviction defense gave rise to presumption of retaliation for subsequent notice to vacate; landlord's evidence of prior tenant claims again the landlord did not prove claims were in bad faith; expungement granted later on judge review, reversing referee denial of expungement); *Project for Pride in Living, Inc. v.* _____, No. HC 1021121502 (Minn. Dist. Ct. 4th Dist. Dec. 10, 2002, April 7, 2003) (Appendix 564) (landlord's desire to end residential use of building "cannot be used as a pretext to ignore the covenants of habitability; later expunged on judge review by stipulation, reversing referee denial of expungement); *Okeakpu v.* _____, No. HC 1020603511 (Minn. Dist. Ct. 4th Dist. July 2, 2002) (Appendix 554) (Judge Sagstuen) (landlord failed to rebut presumption of retaliation for tenant's refusal to pay illegal side payments on top of the Section 8 rent where his claim that when he purchased the property he thought the tenant's rent was higher was not credible; expungement granted); *Payne v.* _____, No. HC 1010801519 (Minn. Dist. Ct. 4th Dist. Aug. 23, 2001) (Appendix 558) (presumption of retaliation applied even though tenant call for housing department inspection after notice was given, but had complained to landlord before notice was given; landlord failed to rebut presumption where rent payment history and clogged toilet problems paled in comparison to seriousness of habitability problems; expungement granted); *Boone v.* _____, No. HC 1010417504 (Minn. Dist. Ct. 4th Dist. June 4, 2001) (Appendix 477) (Judge B. Peterson) (landlord failed to rebut presumption of retaliation where he listed the property for sale with his own company but did not show the property, and he failed to prove tenant violated the lease; expungement granted); *Howard Lake Mobile Home Park v.* _____, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B); *Lowe v.* _____, HC000107530 (Minn. Dist. Ct. 4th Dist. Apr. 12, 2000)(Appendix 405) (expungement granted where defendant had a strong case of retaliation, even though there was no trial due to the parties' settlement; *Reis v.* _____, No. H991102507 (Minn. Dist. Ct. 4th Dist. Apr. 13, 2000) (Appendix 417), (just because a tenant prevails may not be sufficient to expunge, however expungement is appropriate where a notice to quit was retaliatory and plaintiff's credibility was questioned); *Brinkman v. Smith*, No. HC-1000202517 (Minn. Dist. Ct. 4th Dist. May 10 and Mar. 9, 2000) (Appendix 418), (expungement granted where tenant prevailed on claims of improper and retaliatory notices, habitability, and privacy violations, and harassment).

(b) Improper notice

Windorpski v. _____, No. 27-CV-HC-11-3453 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2012) (Judge Howard) (Appendix 778) (referee decision reversed and expungement granted where landlord had no rental license and gave written notice to terminate oral lease on May 3 to be effective May 31); *McCampbell v.* _____, No. HC 030804511 (Minn. Dist. Ct. 4th Dist. Aug. 12, Oct. 8, 2003) (Appendix 536A) (dismissal for untimely notice to vacate; expungement later granted); *Brinkman v. Smith*, No. HC-

1000202517 (Minn. Dist. Ct. 4th Dist. May 10 and Mar. 9, 2000) (Appendix 418), (expungement granted where tenant prevailed on claims of improper and retaliatory notices, habitability, and privacy violations, and harassment); *Osuji v. _____,* No. HC-1991118524 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999) (Appendix 411) (Expungement granted where tenant prevailed on motion to dismiss action where landlord failed to provide notice and opportunity to cure required by the lease.; *Coker v. _____,* No. HC-1991001520 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999) (Appendix 384) (Expungement granted where plaintiff alleged false facts in complaint about delivery of notice to vacate, and timely notice had not been given).

(c) Improper subsidized housing notice

Chalet v. _____, No. HC-03026513 (Minn. Dist. Ct. 4th Dist. July 17, 2003) (Appendix 483) (expungement granted where HUD subsidized project landlord agreed that it did not give notice required by HUD Handbook No. 4350.3, citing *Housing and Redev. Auth. of Waconia v. Chandler*, 403 N.W.2d 708, 711 (Minn. Ct. App. 1987); *Hoglund-Hall v. Kleinschmidt*, 381 N.W.2d 889, 895 (Minn. Ct. App. 1986)).

(d) Waiver of notice

Howard Lake Mobile Home Park v. _____, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B).

(e) Premature notice claim

Clobes v. _____, No. HC 010301510 (Minn. Dist. Ct. 4th Dist. Mar. 15, 2001) (Appendix 487) (action dismissed as premature where notice set vacate date as March 3 and landlord filed action March 1; costs and disbursements awarded).

(f) Mortgage foreclosures

As of August 1, 2008, the court must expunge the file in an eviction action filed by the foreclosing mortgagee or contract for deed canceling vendor if the court finds that the defendant vacated before commencement of the eviction action, or a tenant defendant did not receive a proper lease termination notice under Minn. Stat. § 504B.285. Minn. Stat. § 484.014, subd. 3, 2008 Minn. Laws Ch. 174. *See* discussion, *supra*, at VI.F.1.c.

(g) Manufactured home parks

Tower Terrace Park v. _____, No. HC-040206526 (Minn. Dist. Ct. 4th Dist. July 14, 2004) (Appendix 624) (expungement of tenant names but not file where mobile home park eviction was dismissed for failure to show cause for eviction, and other tenants have interest in knowing about case); *Tower Terrace Park v. _____*, No. HC-040519527 (Minn. Dist. Ct. 4th Dist. July 14, 2004) (Appendix 623) (expungement granted and costs and disbursements awarded where mobile home park dismissed eviction action and failed to give statutory 10 day notice for rent before filing action).

(6) Breach defenses

(a) Illegal activity violation not proven

Minneapolis Public Housing Authority v. _____, No. 1951117536 (Minn. Dist. Ct. 4th Dist. Feb. 24, and Mar. 28, 2003) (Appendix 546) (referee denied expungement where tenant settled and move and raised in expungement motion defenses under illegal activity statute; reversed by Judge Arthur, holding that "adverse effect of even a 'settled' case outweighs the public interest").

(b) No right of reentry clause

O'Brian v. _____, No. HC 1010402506 (Minn. Dist. Ct. 4th Dist. Apr. 18, 2001) (Appendix 552) (breach claims dismissed where oral lease contained no right of re-entry clause; notice claim dismissed where landlord failed to attached notice to complaint, and failed to prove notice was given; expungement granted).

(c) Manufactured home parks

Howard Lake Mobile Home Park v. _____, No. C1-01-2272 (Minn. Dist. Ct. 10th Dist. Nov. 19, 2001) (Appendix 516) (waiver of notice to terminate manufactured home lot rental by receiving, retaining, and intending to negotiate rent check; plaintiff notice was in retaliation for defendant's complaints to police and resident association; plaintiff's claims did not meet the various statutory grounds for eviction; expungement not awarded as case was under Minn. Stat. Ch. 327C and not Ch. 504B).

(d) Unenforceable lease violation

Gray v. _____, No. HC 000612506 (Minn. Dist. Ct. 4th Dist. July 14, 2000) (Appendix 505) (expungement granted where landlord dismissed action for breach of lease on claim that tenant signed document without landlord's permission).

(e) Tenant did not violate lease

Minneapolis Public Housing Authority v. _____, No. HC-000121514 (Minn. Dist. Ct. 4th Dist. May 12, 2000) (Appendix 408), (expungement granted where landlord and tenant agreed that a co-tenant, and not the tenant, was the culpable party for lease violations; tenant's name, but not co-tenant's name, removed from caption and computerized records).

(7) Stipulation

Heintzman v. _____, No. C7-99-1772 (Minn. Dist. Ct. 10th Dist. Dec. 29, 1999) (Appendix 394) (Based upon stipulation for dismissal, dismissal of action with prejudice and expungement.

(8) Mortgage foreclosures and cancelled contract for deeds

As of August 1, 2008, the court must expunge the file in an eviction action filed by the foreclosing mortgagee or contract for deed canceling vendor if the court finds that the defendant vacated before commencement of the eviction action, or a tenant defendant did not receive a proper lease termination notice under Minn. Stat. § 504B.285. Minn. Stat. § 484.014, subd. 3, 2008 Minn. Laws Ch.

174. *See* discussion, *supra*, at VI.F.1.c.

c. *Judge review of referee denial of expungement*

Tenants have had success challenging expungement denials on judge review.

(1) Statutory expungement

NOTE: Expungement laws were substantially amended in 2023 and 2024. Until this manual is updated, *see* Expungement of Eviction Court Records and Expungement Form Exp-1; 2023 Housing Laws; and 2024 Housing Laws.

(a) Settled cases

Minneapolis Public Housing Authority v. _____, No. 1951117536 (Minn. Dist. Ct. 4th Dist. Feb. 24, and Mar. 28, 2003) (Appendix 546) (referee denied expungement where tenant settled and moved and raised in expungement motion defenses under illegal activity statute; reversed by Judge Arthur, holding that "adverse effect of even a 'settled' case outweighs the public interest").

(b) Service defenses

Sidal Realty Company, LLP v. _____, No. HC 030114401 (Minn. Dist. Ct. 4th Dist. Feb. 12, Feb. 24, and Apr. 7, 2003) (Appendix 569) (dismissal for service by employee of plaintiff; expungement denied by referee and on consideration, reversed by Judge Arthur).

(c) Precondition defenses

(i) Failure to attach lease or notice

Tambornino v. _____, No. 27-CV-HC- 12-5520 (Minn. Dist. Ct. 4th Dist. May 14, 2013) (Judge Kaman) (Appendix 799) (expungement granted and referee decision reversed where plaintiff failed to attach lease to complaint or provide it to defendant at first hearing; tenant was not required to request lease at first hearing);

(ii) Section 8 vouchers

Bushido Management, Inc. v. _____, No. 27-CV-HC-06-2489 (Minn. Dist. Ct. 4th Dist. Aug. 24, 2006) (Appendix 634) (referee decision reversed and eviction dismissed and expunged where Section 8 voucher landlord failed to notify housing authority of eviction, tenant awarded costs).

(d) Nonpayment of rent cases

(i) Lack of rental license

In *Smith v.* _____, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 678) (Judge Lange), the court granted reversal of the referee decision for eviction, holding that Minneapolis landlord cannot collect rent without a license, lack of license requires dismissal, the landlord constructively locked out the tenant by obtaining restraining order in bad faith, and the tenant

did not provide sufficient evidence of privacy violations. The court dismissed and expunged, and awarded the tenant $500 for constructive lockout, along with $500 in attorney's fees. *See Windorpski v. _____,* No. 27-CV-HC-11-3453 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2012) (Judge Howard) (Appendix 778) (referee decision reversed and expungement granted where landlord had no rental license and gave written notice to terminate oral lease on May 3 to be effective May 31); *Mlekoday v. _____,* No. 27-CV-HC-09-2436 (Minn. Dist. Ct. 4th Dist. May 25, 2010) (Judge Bransford) (Appendix 779) (referee reversed and expungement granted where landlord lacked rental license and gave written notices to terminate month-to-month tenancy of only 14 and 22 days).

(ii) Habitability

In *Wong v. _____,* No. 27-CV-HC-09-1714 (Minn. Dist. Ct. 4th Dist. Dec. 21, 2009) (Appendix(743) (Judge Reding), the landlord filed an unlawful detainer action seeking eviction of the defendants for non-payment of rent. The referee held that the tenants owed rent for the period from January 2009 until April, 2009 and ordered them to pay into the court the rent for the months of February and March, pending the trial, which they did. The tenants, one of which has physical disabilities, asserted habitability issues with the home. The referee found that the inspector inspected the property and found eight items in need of repair and found that tenants suffered a loss of security due to ability to access the sliding glass door resulting in a sex offender obtaining access to the residence, loose stairway railing, and loose and uneven carpet and awarded tenants some rent abatement. The referee also found that that since both parties prevailed in part of their claims neither party was awarded costs. The tenants then filed an expungement motion, which was denied. They then filed a judge review request. The court remanded the issue to the referee for specific findings.

The referee then issued an order denying the motion to expunge stating that tenant had failed to deposit into court all rent due and the court had to order tenant to pay landlord and concluded that "this court cannot find under these facts that plaintiff's case was without basis in fact or law. Landlord was owed rent money from [t]enant and needed a court order in order to get paid the rent the court found that [t]enant owed."

The tenant sought judge review again. The court granted the defendant's motion to expunge stating that the referee erred in not considering that the habitability defense does not require advance written notice of complaints and adding that the defendants were not precluded from expungement, since they were successful in asserting their defense. The court also explained that the expungement statute does not require that plaintiff's case be wholly without merit, but that it be sufficiently without merit to justify expungement.

See Frenz v. _____, No. 27-CV-HC- 051207509 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2007) (Appendix 647) (Judge Zimmerman) (referee decision reversed and expungement granted where tenants had a good faith defense to rent based on insect infestation).

(e) Holding over cases

(i) Improper notice

Windorpski v. _____, No. 27-CV-HC-11-3453 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2012) (Judge Howard) (Appendix 778) (referee decision reversed and expungement granted where landlord had no rental license and gave written notice to terminate oral lease on May 3 to be effective May 31).

(ii) Retaliation

McCampbell v. _____, No. HC 031002506 (Minn. Dist. Ct. 4th Dist. Nov. 5, 2003, Jan. 22, 2004) (Appendix 537) (successful eviction defense gave rise to presumption of retaliation for subsequent notice to vacate; landlord's evidence of prior tenant claims again the landlord did not prove claims were in bad faith; expungement granted later on judge review, reversing referee denial of expungement); *Project for Pride in Living, Inc. v. _____*, No. HC 1021121502 (Minn. Dist. Ct. 4th Dist. Dec. 10, 2002, April 7, 2003) (Appendix 564) (landlord's desire to end residential use of building "cannot be used as a pretext to ignore the covenants of habitability; later expunged on judge review by stipulation, reversing referee denial of expungement); *Aadland v. _____,* No. H-1991101516 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999 and Feb. 25, 2000) (Appendix 375) (In unlawful detainer action for holding over after notice, landlord proved a non-retaliatory purpose for the notice, but tenant proved waiver of notice; motion for judge review denied without comment; on judge review of referee's denial, judge reversed and granted expungement because landlord's claim was waived by acceptance of rent).

(iii) Waiver of notice

Aadland v. _____, No. H-1991101516 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999 and Feb. 25, 2000) (Appendix 375) (In unlawful detainer action for holding over after notice, landlord proved a non-retaliatory purpose for the notice, but tenant proved waiver of notice; motion for judge review denied without comment; on judge review of referee's denial, judge reversed and granted expungement because landlord's claim was waived by acceptance of rent).

(f) Breach of lease cases

Minneapolis Public Housing Authority v. _____, No. 1951117536 (Minn. Dist. Ct. 4th Dist. Feb. 24, and Mar. 28, 2003) (Appendix 546) (referee denied expungement where tenant settled and moved and raised in expungement motion defenses under illegal activity statute; reversed by Judge Arthur, holding that "adverse effect of even a 'settled' case outweighs the public interest"); *Zion Originated Outreach Ministries v. _____,* No. HC-1980909514 (Minn. Dist. Ct. 4th Dist. Apr. 10, 2000) (Judge L. Arthur) (Appendix 431) (referee denial of expungement reversed, and expungement granted where defendant was not involved in lease violation, was made a party solely to confer jurisdiction of the lease to the court, and is unable to find housing in today's market).

(2) Common law inherent authority expungement

In *Oman v. _____,* Nos. UD-1980805513 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 314) (Arthur, J.), the referee denied the prevailing tenant's motion for expungement, concluding that "the public's right to know outweighs any benefits the tenants may derive from expungement, and informed citizenry is essential to our democracy." The referee did not apply the balancing test of *State v. C.A.*, 304 N.W. 2d 253 (Minn. 1981) and *State v. P.A.D.*, 436 N.W. 2d 808 (Minn. Ct. App. 1989). On judge review, the court vacated the referee's expungement ruling, and ordered that the District Court Administrator take all reasonable steps to remove the tenant's name permanently from computerized court records related to the case.

Common law inherent authority expungement denials reversed on judge review include *St. Louis Park Place, LLC v. _____,* No. HC-1031015540 (Minn. Dist. Ct. 4th Dist. Nov. 12, 2004) (Appendix _____) (judge reversed referee denial of expungement where tenants failed to pay rent on time when they were traveling back and forth to their home town to attend the funerals of friends killed in a school

shooting, and tenants later paid rent and remained tenants); *Brooklyn Park Housing Associates, LLP v. _____*, No. HC-040218503 (Minn. Dist. Ct. 4th Dist. Oct. 14, 2004) (Appendix _____) (judge reversed referee denial of expungement where tenant failed to pay rent on time when tenant took leave from work to care for her child who was recuperating from brain surgery, and tenant later paid rent and reminded a tenant).

(3) Referee denial of judge review

Aadland v. _____, No. H-1991101516 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999 and Feb. 25, 2000) (Appendix 375) (In unlawful detainer action for holding over after notice, landlord proved a non-retaliatory purpose for the notice, but tenant proved waiver of notice; motion for judge review denied without comment; on judge review of referee's denial, judge reversed and granted expungement because landlord's claim was waived by acceptance of rent).

(4) Settlement on judge review

Project for Pride in Living, Inc. v. _____, No. HC 1021121502 (Minn. Dist. Ct. 4th Dist. Dec. 10, 2002, April 7, 2003) (Appendix 564) (landlord's desire to end residential use of building "cannot be used as a pretext to ignore the covenants of habitability; later expunged on judge review by stipulation, reversing referee denial of expungement).

d. *Notice to tenant screening agencies*

Upon issuance of an expungement order, the court will remove the file from http://pa.courts.state.mn.us/default.aspx, its publicly assessable data base.

The tenant then needs to send a copy of the order to all of the tenant screening agencies (TSA), which are regulated by statute. Minn. Stat. § 504B.235 provides the definitions.

> 504B.235 DEFINITIONS.
> Subdivision 1. Applicability.
>
> The definitions in this section apply to sections 504B.235 to 504B.245.
>
> Subd. 2. Proper identification.
>
> "Proper identification" means information generally considered sufficient to identify a person, including a Minnesota driver's license, a Minnesota identification card, other forms of identification provided by a unit of government, a notarized statement of identity with a specimen signature of the person, or other reasonable form of identification.
>
> Subd. 3. Residential tenant report.
>
> "Residential tenant report" means a written, oral, or other communication by a residential tenant screening service that includes information concerning an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, and that is collected, used, or expected to be used for the purpose of making decisions relating to residential tenancies or residential tenancy applications.

Subd. 4. Residential tenant screening service.

"Residential tenant screening service" means a person or business regularly engaged in the practice of gathering, storing, or disseminating information about tenants or assembling tenant reports for monetary fees, dues, or on a cooperative nonprofit basis.

Minn. Stat. § 504B.241 regulates reports. Under Subdivision 4, it a TSA knows that a court file has been expunged, the tenant screening service shall delete any reference to that file in any data maintained or disseminated by the screening service. The old Minnesota Housing Clinic website, a companion to the Poverty Law website, contains form expungement letters to TSAs. http://povertylaw.homestead.com/ExpungementofEvictionCourtRecords.html

504B.241 RESIDENTIAL TENANT REPORTS; DISCLOSURE AND CORRECTIONS.

Subdivision 1. Disclosures required.

(a) Upon request and proper identification, a residential tenant screening service must disclose the following information to an individual:

(1) the nature and substance of all information in its files on the individual at the time of the request; and

(2) the sources of the information.

(b) A residential tenant screening service must make the disclosures to an individual without charge if information in a residential tenant report has been used within the past 30 days to deny the rental or increase the security deposit or rent of a residential housing unit to the individual. If the residential tenant report has not been used to deny the rental or increase the rent or security deposit of a residential housing unit within the past 30 days, the residential tenant screening service may impose a reasonable charge for making the disclosure required under this section. The residential tenant screening service must notify the residential tenant of the amount of the charge before furnishing the information. The charge may not exceed the amount that the residential tenant screening service would impose on each designated recipient of a residential tenant report, except that no charge may be made for notifying persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

(c) Files maintained on a residential tenant must be disclosed promptly as established in paragraphs (1) to (4).

(1) A residential tenant file must be disclosed in person, during normal business hours, at the location where the residential tenant screening service maintains its files, if the residential tenant appears in person and furnishes proper identification at that time.

(2) A residential tenant file must be disclosed by mail, if the residential tenant makes a written request with proper identification for a copy of the information contained in the residential tenant report and requests that the information be sent to a specified address. A disclosure made under this paragraph shall be deposited in the United States mail, postage prepaid, within five business days after the written request for disclosure is received by the residential tenant screening service. A residential tenant screening service complying with a request for disclosure under this

paragraph shall not be liable for disclosures to third parties caused by mishandling mail, provided that the residential tenant file information is mailed to the address specified by the residential tenant in the request.

(3) A summary of the information in a residential tenant file must be disclosed by telephone, if the residential tenant has made a written request with proper identification for telephone disclosure.

(4) Information in a residential tenant's file required to be disclosed in writing under this subdivision may be disclosed in any other form including electronic means if authorized by the residential tenant and available from the residential tenant screening service.

Subd. 2. Corrections.

If the completeness or accuracy of an item of information contained in an individual's file is disputed by the individual, the residential tenant screening service must reinvestigate and record the current status of the information. If the information is found to be inaccurate or can no longer be verified, the residential tenant screening service must delete the information from the individual's file and residential tenant report. At the request of the individual, the residential tenant screening service must give notification of the deletions to persons who have received the residential tenant report within the past six months.

Subd. 3. Explanations.

The residential tenant screening service must permit an individual to explain any eviction report or any disputed item not resolved by reinvestigation in a residential tenant report. The explanation must be included in the residential tenant report. The residential tenant screening service may limit the explanation to no more than 100 words.

Subd. 4. Court file information.

If a residential tenant screening service includes information from a court file on an individual in a residential tenant report, the report must provide the full name and date of birth of the individual in any case where the court file includes the individual's full name and date of birth, and the outcome of the court proceeding must be accurately recorded in the residential tenant report including the specific basis of the court's decision, when available. If a tenant screening service knows that a court file has been expunged, the tenant screening service shall delete any reference to that file in any data maintained or disseminated by the screening service. Whenever the court supplies information from a court file on an individual, in whatever form, the court shall include the full name and date of birth of the individual, if that is indicated on the court file or summary, and information on the outcome of the court proceeding, including the specific basis of the court's decision, coded as provided in subdivision 5 for the type of action, when it becomes available. The residential tenant screening service is not liable under section 504B.245 if the residential tenant screening service reports complete and accurate information as provided by the court.

Subd. 5. Eviction action coding.

The court shall indicate on the court file or any summary of a court file the specific basis of the

court's decision in an eviction action according to codes developed by the court that, at a minimum, indicates if the basis of the court's decision is nonpayment of rent, a violation of the covenants under section 504B.161 or 504B.171, other breach of a lease agreement, or a counterclaim for possession of the premises under section 504B.385.

Minn. Stat. § 504B.245 provides for remedies.

504B.245 TENANT REPORT; REMEDIES.

The remedies provided in section 8.31 apply to a violation of section 504B.241. A residential tenant screening service or landlord in compliance with the provisions of the Fair Credit Reporting Act, United States Code, title 15, section 1681, et seq., is considered to be in compliance with section 504B.241.

8.31 ADDITIONAL DUTIES OF ATTORNEY GENERAL.

. . . .

Subd. 3a. Private remedies. In addition to the remedies otherwise provided by law, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may, as appropriate, enter a consent judgment or decree without the finding of illegality. In any action brought by the attorney general pursuant to this section, the court may award any of the remedies allowable under this subdivision.

. . . .

e. *In the future: automatic purging of older eviction files*

The Minnesota Supreme Court now requires the purchasers of bulk court data, including tenant screening agencies, to (1) use technology that provides for installation of new data downloads and destruction of prior downloads (thus purging expunged court files without needing individual tenant requests), and (2) demonstrate compliance upon the request of the courts. Minnesota Rules of Public Access to Records of the Judicial Branch 8, Subd. 3, Advisory Committee Comment - 2016. http://www.mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/Court%20Rules/pub_access_rules.pdf

The Minnesota District Court Record Retention Schedule recommends file destruction by case type. Section 11 of the table discusses rent escrow and evictions, still called unlawful detainer actions, recommending for file destruction in one year for most cases. http://www.mncourts.gov/mncourtsgov/media/scao_library/MN-District-Court-Record-Retention-Schedule.pdf

The courts also are developing a method for destroying records in the case management system based on the hard copy file retention schedule. When this program is effective, older eviction files that are destroyed will disappear from the court data base. With the above requirement for bulk purchasers of court data to replace old data with updated data from the court, older eviction files will fall out of the tenant screening agency reports.

A0A. REQUEST FOR RECONSIDERATION

A request for reconsideration is another option to respond to an adverse decision by a referee. *See* discussion, *supra*, at VIII.E.0.

A0. STATUTES AND RULES

Judge review of the referee's decision is governed by Minn. Stat. § 484.013, Subd. 6 and Minn. Gen. R. Prac. 611 in Hennepin and Ramsey Counties, and by Minn. Stat. § 484.70, Subd. 7(d) elsewhere.

1. Hennepin and Ramsey Counties, Fourth and Second Judicial Districts

484.013 HOUSING CALENDAR CONSOLIDATION PROGRAM.

Subdivision 1. Establishment.

(a) A program is established in the Second and Fourth Judicial Districts to consolidate the hearing and determination of matters related to residential rental housing and to ensure continuity and consistency in the disposition of cases.

(b) Outside the Second and Fourth Judicial Districts, a district court may establish the program described in paragraph (a) in counties that it specifies in the district.

....

Subd. 2. Jurisdiction.

The housing calendar program may consolidate the hearing and determination of all proceedings under chapter 504B; criminal and civil proceedings related to violations of any state, county or city health, safety, housing, building, fire prevention or housing maintenance code; escrow of rent proceedings; and actions for rent abatement. A proceeding under sections 504B.281 to 504B.371 may not be delayed because of the consolidation of matters under the housing calendar program.

The program must provide for the consolidation of landlord-tenant damage actions and actions for rent at the request of either party. A court may not consolidate claims unless the plaintiff has met the applicable jurisdictional and procedural requirements for each cause of action. A request for consolidation of claims by the plaintiff does not require mandatory joinder of defendant's claims, and a defendant is not barred from raising those claims at another time or forum.

Subd. 3. Referee.

The chief judge of district court may appoint a referee for the housing calendar program. The referee must be learned in the law. The referee must be compensated according to the same scale used for other referees in the district court. Section 484.70, subdivision 6, does not apply to the housing calendar program.

Subd. 4. Referee duties.

The duties and powers of the referee in the housing calendar program are as follows:

(1) to hear and report all matters within the jurisdiction of the housing calendar program and as may be directed to the referee by the chief judge; and

(2) to recommend findings of fact, conclusions of law, temporary and interim orders, and final orders for judgment.

All recommended orders and findings of the referee are subject to confirmation by a judge.

Subd. 5. Transmittal of court file.

Upon the conclusion of the hearing in each case, the referee shall transmit to the district court judge, the court file together with the referee's recommended findings and orders in writing. The recommended findings and orders of the referee become the findings and orders of the court when confirmed by the district court judge. The order of the court is proof of the confirmation.

Subd. 6. Confirmation of referee orders.

Review of a recommended order or finding of the referee by a district court judge may be had by notice served and filed within ten days of effective notice of the recommended order or finding. The notice of review must specify the grounds for the review and the specific provisions of the recommended findings or orders disputed, and the district court judge, upon receipt of the notice of review, shall set a time and place for the review hearing.

Subd. 7. Procedures.

The chief judge of the district must establish procedures for the implementation of the program, including designation of a location for the hearings. The chief judge may also appoint other staff as necessary for the program.

Rule 611. Review of Referee’s Decision

(a) Notice.

In all cases except conciliation court actions, a party not in default may seek review by a judge of a decision or sentence recommended by the referee by serving and filing a notice of review on the form prescribed by the court administrator. The notice must be served and filed within 10 days after an oral announcement in court by the referee of the recommended order or, if there is no announcement of the order in court, within 13 days after service by electronic means or mail of the adopted written order. Service by mail of the written order shall be deemed complete and effective upon the mailing of a copy of the order to the last known address of the petitioner. Service of the notice of review shall be in accordance with Rule 14 of these rules.

A judge's review of a decision recommended by the referee shall be based upon the record established before the referee. Upon the request of any party, a hearing shall be scheduled before the reviewing judge.

(b) Stays.

In civil cases, filing and service of a notice of review does not stay entry of judgment nor vacate a judgment if already entered unless the petitioner requests and the referee orders a bond, payment(s) in lieu of a bond, or waiver of bond and payment(s). The decision to set or waive a bond or payment(s) in lieu of bond shall be based upon Minn. R. Civ. App. P. 108.02. A hearing on a bond or payment(s) in lieu of bond shall be scheduled before the referee, and the referee's order shall remain in effect unless a judge modifies or vacates the order.

In criminal cases, the execution of judgment or sentence shall be stayed pending review by the judge.

(c) Transcripts.

The petitioner must obtain a transcript from the referee's court reporter. The petitioner must make satisfactory arrangements for payment with the court reporter or arrange for payment in forma pauperis.

Any transcript request by the petitioner must be made within one day, excluding weekend days and legal holidays, of the date the notice of review is filed. The transcript must be provided within 7 days after its purchase by the petitioner.

For good cause the reviewing judge may extend any of the time periods described in this Rule 611(c).

2. Other Counties and Districts

Elsewhere, review of referee decisions are similarly regulated by Minn. Stat. § 484.70, Subd. 7.

484.70 REFEREE POSITIONS, RULES.

Subdivision 1. Appointment.

The chief judge of the judicial district may appoint one or more suitable persons to act as referees. Referees shall hold office at the pleasure of the judges of the district court and shall be learned in the law, except that persons holding the office of referee on January 1, 1983, may continue to serve under the terms and conditions of their appointment. All referees are subject to the administrative authority and assignment power of the chief judge of the district as provided in section 484.69, subdivision 3, and are not limited to assignment to family, probate, juvenile or special term court.

Subd. 2. [Repealed, 1981 c 272 s 7]

Subd. 3. [Repealed, 1981 c 272 s 7]

Subd. 4. [Repealed, 1981 c 272 s 7]

Subd. 5. [Repealed, 1981 c 272 s 7]

Subd. 6. Objection to referee.

No referee may hear a contested trial, hearing, motion or petition if a party or attorney for a party objects in writing to the assignment of a referee to hear the matter. The court shall by rule, specify the time within which an objection must be filed.

Subd. 7. Referee duties.

The duties and powers of referees shall be as follows:

(a) Hear and report all matters assigned by the chief judge.

(b) Recommend findings of fact, conclusions of law, temporary and interim orders, and final orders for judgment.

All recommended orders and findings of a referee shall be subject to confirmation by a judge.

(c) Upon the conclusion of the hearing in each case, the referee shall transmit to a judge the court file together with recommended findings and orders in writing. The recommended findings and orders of a referee become the findings and orders of the court when confirmed by a judge. The order of the court shall be proof of such confirmation, and also of the fact that the matter was duly referred to the referees.

(d) Review of any recommended order or finding of a referee by a judge may be by notice served and filed within ten days of effective notice of the recommended order or finding. The notice of review shall specify the grounds for review and the specific provisions of the recommended findings or orders disputed, and the court, upon receipt of a notice of review, shall set a time and place for a review hearing.

(e) All orders and findings recommended by a referee become an effective order when countersigned by a judge and remain effective during the pendency of a review, including a remand to the referee, unless a judge:

(1) expressly stays the effect of the order;

(2) changes the order during the pendency of the review; or

(3) changes or vacates the order upon completion of the review.

(f) Notwithstanding paragraphs (d) and (e), referee orders and decrees in probate or civil commitment court proceedings, if appealed, must be appealed directly to the court of appeals, in the same manner as judicial orders and decrees.

A. TIME FOR REQUEST FOR REVIEW

The deadline for requesting review is varies around the state:

- Hennepin and Ramsey Counties (Fourth and Second Judicial Districts): "10 days after an oral announcement in court by the referee of the recommended order or, if there is no announcement of

the order in court, within 13 days after service by electronic means or mail of the adopted written order." Minn. Gen. R. Prac. 611.

- Elsewhere in the state: "ten days of effective notice of the recommended order or finding." Minn. Stat. § 484.70, Subd. 7(d),

The courts have dismissed requests not filed by the deadline required at the time. *See Veard-Brooklyn Center v.* _____, No. HC 1000512508 (Minn. Dist. Ct. 4th Dist. Sep. 20, 2000) (Appendix 590b) (denial of judge review where landlord filed by fax but did not pay the fax transmission fee); *Connelly v. Schiff*, No. HC-1000417515 (Minn. Dist. Ct. 4th Dist. May 23, 2000) (Appendix 386) (dismissal without prejudice where landlord failed to secure rental license; tenant awarded $200 costs under § 549.02 and $40 in disbursements under § 549.04 for witness fees; expungement granted; plaintiff's motion to vacate and reopen treated as untimely motion for judge review under Minn. R. Gen. Prac. 611 when filed 11 days after oral announcement of decision).

In *Hampton v. Ballantyne,* No. A16-00039 (Minn. Ct. App. February 23, 2016) (Appendix 696) (unpublished), a judgment of recovery was entered in an eviction action on November 18, 2015 pursuant to a housing court referee's confirmed order. Hampton filed a notice requesting judicial review two days later, but failed to serve the notice, believing it would be served via the e-filing system. Ballantyne twice alerted the court that the notice had not been properly served by Hampton, and on December 14, 2015, the referee's confirmed order was filed, dismissing the notice of review. The Court of Appeals questioned whether the appeal, which was mailed on December 23, 2015, was timely-filed within 15 days of the judgment, and the parties submitted informal memoranda. The Court of Appeals stated that certain post-decision motions extend the time for appeal, such as a motion for a new trial, which is similar to the district court's review of a referee's eviction ruling. However, an untimely-filed post-decision motion does not toll the appeal period. The Court of Appeals ultimately held that in view of the December 14, 2015 dismissal of the notice of judicial review, the appeal period expired on December 3, 2015, fifteen days after the judgment entry (on November 18, 2015), and the appeal was dismissed as untimely.

In *McPipe v.* _____, No. 27-CV-HC-14-4302 (Minn. Dist. Ct. 4th Dist. Feb. 3, 2015) (Appendix 740) (Judge Bratvold), the eviction defendant tenant filled a notice of request and request for judge review alleging that the referee erred in (1) finding that the defendant did not pay rent for two months when defendant deposited rents into court pending determination of defendant's defense; (2) determining that the plaintiff landlord prevailed on proving non-payment of a month's rent; (3) entering judgment for possession in favor of the plaintiff; (4) awarding the plaintiff taxation of costs; (5) requiring the defendant to pay costs of filing and statutory attorney fee; and (6) failing to make any determination with respect to rent abatement for one of the months.

The court found that the plaintiff's companion challenge to the referee's decision was untimely. On the tenant's claim, the court stated that the referee erred because "[a] tenant who deposits rent into court pending a determination of a habitability defense has fulfilled her ongoing rent obligations" and found that (1) plaintiff failed to prove his nonpayment of rent claim; (2) defendant prevailed on her habitability defense; (3) defendant was entitled to rent abatement for two months due to plaintiff's violation of the statutory covenants of habitability; (4) judgment was to be entered in favor of defendant; (5) defendant was to be awarded taxation of costs; (6) defendant was entitled to costs and statutory $5 attorneys' fee; (7) plaintiff was entitled to receive part of the amount of rent deposited with the court for three months (minus the rent abatement, which was to be paid to defendant); and (8) defendant was to remain in possession of the premises.

B. STAY OF REFEREE DECISION PENDING JUDGE REVIEW

1. Bond, payments in lieu of a bond, or waiver of a bond or payments

The notice of review does not stay entry of judgment nor vacate a judgment if already entered, unless the petitioner requests and the referee orders a bond, payments in lieu of a bond, or waiver of a bond or payments, based upon Minn. R. Civ. App. P. 108, subds. 1, 5.

Landlords sometimes argue at judge review that the tenant should have to pay into court rent which was withheld, in dispute, or not accepted by the landlord to avoid waiver, in order to have the right to judge review. Housing Court Rule 611(b) refers to Minn. R. Civ. App. P. 108 on the issue of whether to set or waive a bond or payment in lieu of bond during judge review. Rule 108.01, Subd. 5, refers to "the value of the use and occupation of the property from the time of the appeal until the delivery of possession of the property if the judgment is affirmed. . . ."

The tenant is obligated only to pay rent which would come due during the appeal, rather than rent that was allegedly due before the appeal. *TNT Real Estate Investments, LLC v. _____*, No. 27CVHC 09-1523, Order Granting Stay (Minn. Dist. Ct. 4th Dist. Mar. 17, 2009) (Appendix 627) (Judge Zimmerman) (referee order conditioned stay of eviction during judge review on defendant paying rent in dispute; judge reserved referee order and stayed eviction on condition tenant pay current rent into court); *Minneapolis Public Housing Authority v. _____*, No. 27-CV-HC-08-10954 (Minn. Dist. Ct. 4th Dist. Jan. 22, 2009) (Appendix 611) (Judge DuFresne) (referee order conditioned stay of eviction during judge review on defendant paying rent already paid to landlord, and costs, sheriff and court fees; judge reserved referee order and stayed eviction on condition tenant pay rent as it comes due into court); *Minneapolis Public Housing Authority v. _____*, No. 27-CV-HC-06-2887 (Minn. Dist. Ct. 4th Dist. Aug. 25, 2006) (Appendix 610) (Judge Blaeser) (order reversing referee setting rent to be paid into court, tenant ordered to pay only rent as it comes due during judge review); *Caberallo, L.L.C v. _____,* No. HC-051207529 (Minn. Dist. Ct. 4th Dist. Dec. 23, 2005) (Appendix 601) (order reversing referee setting rent to be paid into court) (tenant ordered to pay only rent as it comes due during judge review, and not disputed rent); *Thompson v. Gates*, No. UD-197011509 (Minn. Dist. Ct. 4th Dist. Feb. 28, 1997) (Appendix 298) (On judge review tenant ordered to pay rent as it comes due into court, rather than alleged past due rent); *Phillips Neighborhood Housing Trust v. Brown*, No. UD-1960705508, transcript of proceedings at 4-6 (Minn. Dist. Ct. 4th Dist. Nov. 26, 1996) (Appendix 286a) (Denial of landlord's motion for pre-judge review rents not accepted by the landlord; tenant ordered to pay rent into court as it comes due).

The current practice in Hennepin County on a request for judge review is for the referee to review the request for judge review and proposed order *ex parte*, and sign an order scheduling the hearing on the special term calendar and setting an amount to be paid into court by the appealing party, if necessary.

2. Judge review of referee decisions setting bond for judge review

The tenant may seek emergency judge review of the referee's scheduling order to challenge the amount the referee orders the tenant to pay into court. *Excelsior Devel. LLC v. Musse,* No. A09-1116 (Minn. Ct. App. Jul. 29, 2009) (Appendix 646) (reversed district court order that commercial tenant pay back rent into court to stay the district court order); *Mlekoday v. _____,* No. 27-CV-HC-09-2436 (Minn. Dist. Ct. 4th Dist. Apr. 13, 2009) (Appendix 668) (Judge Leung) (reversal of referee decision on emergency request of order that tenant pay disputed rent into court to obtain judicial review of referee's

decision; tenant ordered to pay into court only current rent); *TNT Real Estate Investments, LLC v. _____*, No. 27CVHC 09-1523, Order Granting Stay (Minn. Dist. Ct. 4th Dist. Mar. 17, 2009) (Judge Zimmerman) (referee order conditioned stay of eviction during judge review on defendant paying rent in dispute; judge reserved referee order and stayed eviction on condition tenant pay current rent into court); *Minneapolis Public Housing Authority v. _____*, No. 27-CV-HC-08-10954 (Minn. Dist. Ct. 4th Dist. Jan. 22, 2009) (Appendix 611) (Judge DuFresne) (referee order conditioned stay of eviction during judge review on defendant paying rent already paid to landlord, and costs, sheriff and court fees; judge reserved referee order and stayed eviction on condition tenant pay rent as it comes due into court); *Minneapolis Public Housing Authority v. _____*, No. 27-CV-HC-06-2887 (Minn. Dist. Ct. 4th Dist. Aug. 25, 2006) (Appendix 610) (Judge Blaeser) (order reversing referee setting rent to be paid into court, tenant ordered to pay only rent as it comes due during judge review); *Peters v. _____,* No. HC060306506 (Minn. Dist. Ct. 4th Dist. Mar. 17, 2006) (Appendix 681) (judge stayed referee decision requiring tenant to pay rent into court pending review of referee's decision); *Caberallo LLC v. _____,* No. HC-051207529 (Minn. Dist. Ct. 4th Dist. Dec. 23, 2005) (Appendix 601) (Judge Zimmerman) (on request for emergency judge review, tenant ordered to pay ongoing rent into court but not required to pay disputed past rent into court); *Thompson v. Gates*, No. UD-197011509 (Minn. Dist. Ct. 4th Dist. Feb. 28, 1997) (Appendix 298) (On judge review tenant ordered to pay rent as it comes due into court, rather than alleged past due rent).

In *PPL Louisiana Court L.P. v. _____,* No. 27-CV-HC-12-787 (Minn. Dist. Ct. 4th Dist. Mar. 12, 2012) (Appendix 746) (Judge Blaeser), the court granted the tenant defendant's request to modify the referee's requirement to pay the full lease amount to the court monthly pending further review. The defendant showed he was in subsidized housing and the majority of the rent was paid by the housing authority. The court ordered the defendant to only pay his portion of the rent to the court without further obligation to show that the housing authority made payment of the remainder.

In *Minneapolis Public Housing Authority v. _____,* No. 27-CV-HC-12-221 (Minn. Dist. Ct. 4th Dist. Feb. 10, 2012) (Appendix 714) (Judge Daly), the tenant challenged an order in his eviction proceeding requiring the tenant to pay rent plus $527.50 for the landlord's costs, disbursements, and filing fee into the Court to stay the eviction order pending judge review. The tenant argued that the referee erred by conditioning review and stay of the eviction order on payment beyond rent which would come due during the appeal, citing Minn. R. Gen. Prac. 611(b), Minn. R. Civ. App. P. 108, and Minn. Stat. § 504B.371. The district court agreed, and reversed the order to the extent it required the tenant to pay the $527.50 in costs pending judicial review, but required the tenant to continue to pay the monthly rent amount. In so doing, the court explained that although there may be certain cases where a housing court referee could order a payment of costs as part of a request for review, in this case such a condition could prejudice the tenant, who was proceeding in forma pauperis, and who could face eviction before the conclusion of the review process if such a payment of costs was required prior to review.

In *ARU Props., LLC v. Clark,* No. A16-1126, 2017 Minn. App. Unpub. LEXIS 288 (Minn. Ct. App. April 3, 2017) (unpublished), the owner filed an eviction action alleging breach and rent. The referee bifurcated the trial as required by Minn. Stat. § 504B.285, subd. 5. The referee denied the tenant's motion for dismissal for disclosing only a commercial mailbox service. The tenant asserted that the landlord did not have rental license under the Plymouth City Code, but the evidence admitted at trial indicates that the property was licensed for the relevant period that tenant resided there. The tenant also asserted at trial that the owner had not registered its trade name but the referee ruled that the tenant could not raise the issue at trial. The tenant also argued that the tenancy terminated three years before the landlord filed the eviction action, precluding the action, but the referee did not rule on the claim.

After a trial on the breach claim, the referee entered judgment for tenant. The referee then ordered tenant to pay into court $8,400 in past-due rent and all future rent as it came due as security for the trial on the rent claim. The tenant failed to pay and the referee entered judgment for owner and authorized issuance of a writ of recovery. The tenant filed a notice of review and the district court ordered tenant to pay into court $8,400 in past-due rent and all future rent amounts to stay the judgment pending the review. The tenant then appealed and the district court set the appeal bond at $30,219.76, which the Court of Appeals reduced to $21,300 on review. The tenant did not pay the appeal bond and the owner received the writ of recovery. The Court of Appeals affirmed the district court in an unpublished decision. As *ARU Props., LLC* is unpublished, it is not precedential. *See* discussion at I.A.3.

C. TRANSCRIPTS OF REFEREE HEARINGS FOR JUDGE REVIEW

Minn. Gen. R. Prac. 611(c) provides:

> (c) Transcripts. The petitioner must obtain a transcript from the referee's court reporter. The petitioner must make satisfactory arrangements for payment with the court reporter or arrange for payment in forma pauperis. Any transcript request by the petitioner must be made within one day of the date the notice of review is filed. The transcript must be provided within five business days after its purchase by the petitioner.
>
> For good cause the reviewing judge may extend any of the time periods described in this Rule 611(c).

In *Sela Invs. Ltd., LLP v. H.E.*, _____ N.W.2d. _____, 2018 Minn. App. LEXIS 149, No. A17-1178 (Minn. Ct. App. 2018), the district court denied review of expungement orders for failure to request transcripts of the referee hearings. The Court of Appeals held that a party requesting review of a countersigned housing court order is not in default within the meaning of Minn. Gen. R. Prac. 611(a) for failure to obtain a transcript within the time period prescribed in Rule 611 (c). The Court remanding the case to proceed with a hearing on the judge review request.

> The Court noted that failing to request a transcript might further limit the scope of review.
>
> We hasten to add, however, that rule 611(a) makes clear that the judge's review "shall be based upon the record established before the referee." A reviewing judge may determine that the scope of the review is limited to issues that can be determined by reference to the available record. *Cf. Duluth Herald & News Tribune v. Plymouth Optical Co.,* 286 Minn. 495, 498, 176 N.W.2d 552, 555 (1970) (refusing to dismiss appeal for failure to obtain a transcript, but limiting review to conclusions of law); *In re Marriage of Bender,* 671 N.W.2d 602, 605 (Minn. App. 2003) ("While the lack of a transcript does not automatically require dismissal of an entire appeal, lack of a transcript does limit the scope of appellate review to whether the district court's conclusions of law are supported by its findings of fact."). A party seeking district court review thus decides not to obtain a transcript at the party's own peril because the scope of review may be limited, particularly when the issues are not well established by written filings. Also, while the reviewing court may give the party additional time to obtain a transcript, it is not required to do so. *See* Minn. R. Gen. Prac. 611(c) ("For good cause the reviewing judge may extend any of the time periods described in this Rule 611 (c)).").

Id. at ____, 2018 Minn. App. LEXIS 149 at *13-14.

In Fourth District for Hennepin County, the Records Center website has details and forms for requesting transcripts.

Website
http://www.mncourts.gov/Find-Courts/Hennepin/Records-Center-Hennepin.aspx

Form
http://www.mncourts.gov/mncourtsgov/media/fourth_district/documents/forms/Transcript_Request_Form.pdf

D. STANDARD OF REVIEW

The judge review shall be based upon the record established before the referee. In *Butler v. Cohns*, No. C2-96-6599 (Minn. Dist. Ct. 2d Dist. Oct. 22, 1996) (Appendix 218), on a request for judge review, the court noted that its scope of review was governed by Minn. R. Civ. P. 53.05 (b), and that the court must accept the facts found by the referee unless clearly erroneous, but questions of law are reviewed in *de novo. See McCrae v. Buckanaga*, UD-1951207519 (Minn. Dist. Ct. 4th Dist. Feb. 12, 1996) (Appendix 187) (affirming referee's decision concluding that the landlord failed to show good cause why the referee's decision was contrary to law and against the weight of the evidence). The standard of review is whether evidence sustains the findings and the findings support the conclusions. The reviewing court will not set aside findings unless clearly erroneous, and gives due regard to referee's opportunity to judge witness credibility. *Carr v. Jerry Schlink, Associated Enterprises of Minneapolis*, No. UD-1980601900 (Minn. Dist. Ct. 4th Dist. Apr. 1, 1999) (Appendix 318) (Clearly erroneous standard for review of findings of fact); *Minneapolis Public Housing Authority v. Henry*, No. UD-1970122503 (Minn. Dist. Ct. 4th Dist. May 23, 1997) (Appendix 276).

In *Bassett Creek Partners LP v. _____,* No. 27-CV-HC-15-4352 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2015) (Appendix 808), the public housing landlord commenced an eviction action alleging breach of lease by "using threatening and assaultive behavior towards another resident; chasing resident with a knife". The court found the testimony of the tenant more credible than the landlord's witnesses, and demonstrated that the tenant was bringing food to another tenant when she was accosted by another tenant. The court rejected the post-trial submission of fact affidavits by the landlord. The court found that landlord failed to produce any credible evidence to demonstrate by a preponderance of the evidence that tenant materially breached a term of the lease agreement. The court determined tenant was entitled to costs and disbursements.

The landlord sought judge review of the referee's decision in *Bassett Creek Partners LP v. _____,* No. 27-CV-HC-15-4352 (Minn. Dist. Ct. 4th Dist. April 6, 2016) (Appendix 810) (Judge Chou). The court found the referee was in the best position to make those determinations and supported his findings. The court affirmed the referee's rejection of post-trial fact affidavits. The court also rejected the tenant's submission of facts occurring after the referee's decision as outside the scope of review. The judge determined the referee's findings were clearly not erroneous and shall not be set aside. The decision was sealed due to the previous order that the court file and all records herein be expunged.

In *Sela Invs. Ltd., LLP v. H.E.*, _____ N.W.2d. _____, 2018 Minn. App. LEXIS 149, No. A17-1178 (Minn. Ct. App. 2018), the district court denied review of expungement orders for failure to request transcripts of the referee hearings. The Court of Appeals held that a party requesting review of a countersigned housing court order is not in default within the meaning of Minn. Gen. R. Prac. 611(a) for failure to obtain a transcript within the time period prescribed in Rule 611 (c). The Court remanding the

case to proceed with a hearing on the judge review request.

> The Court noted that failing to request a transcript might further limit the scope of review.
>
> We hasten to add, however, that rule 611(a) makes clear that the judge's review "shall be based upon the record established before the referee." A reviewing judge may determine that the scope of the review is limited to issues that can be determined by reference to the available record. *Cf. Duluth Herald & News Tribune v. Plymouth Optical Co.,* 286 Minn. 495, 498, 176 N.W.2d 552, 555 (1970) (refusing to dismiss appeal for failure to obtain a transcript, but limiting review to conclusions of law); *In re Marriage of Bender,* 671 N.W.2d 602, 605 (Minn. App. 2003) ("While the lack of a transcript does not automatically require dismissal of an entire appeal, lack of a transcript does limit the scope of appellate review to whether the district court's conclusions of law are supported by its findings of fact."). A party seeking district court review thus decides not to obtain a transcript at the party's own peril because the scope of review may be limited, particularly when the issues are not well established by written filings. Also, while the reviewing court may give the party additional time to obtain a transcript, it is not required to do so. *See* Minn. R. Gen. Pract. 611(c) ("For good cause the reviewing judge may extend any of the time periods described in this Rule 611 (c)).").

Id. at ____, 2018 Minn. App. LEXIS 149 at *13-14.

E. CASES

1. Service defenses

a. Service by agent

See Meldahl and SJM Prop. v. _____, No. 1050923509, Order on Referee Review at 28 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered dismissal for improper service by maintenance person who was agent for landlord; agent was not authorized by principal; corporation represented by president; breach of lease claim in eviction case claimed breach of lease and nonpayment of rent; plaintiff failed to give notice to public housing authority; lease term requiring payment of $50 service call fee was illegal and unenforceable; tenant need not give written notice to the landlord of violations of covenants of habitability, regardless of provisions in the written lease; retroactive and prospective rent abatement beyond amounts abated by Section 8 voucher office to continue until Section 8 voucher office concludes repairs have been completed).

b. Unauthorized agent

See Meldahl and SJM Prop. v. _____, No. 1050923509, Order on Referee Review at 28 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered dismissal for improper service by maintenance person who was agent for landlord; agent was not authorized by principal; corporation represented by president; breach of lease claim in eviction case claimed breach of lease and nonpayment of rent; plaintiff failed to give notice to public housing authority; lease term requiring payment of $50 service call fee was illegal and unenforceable; tenant need not give written notice to the landlord of violations of covenants of habitability, regardless of provisions in the written lease; retroactive and prospective rent abatement beyond amounts abated by Section 8 voucher office to continue until Section 8 voucher office concludes repairs have been

completed).

2. Precondition defenses

a. Landlord address disclosure

In *Sakala v. _____*, No. 27-CV-HC-08-6156 (Minn. Dist. Ct. 4th Dist. Sep. 9, 2008) (Appendix 619), the eviction was based on claims of rent and breach. The plaintiff had attorney representation and the tenant appear *pro se*. In ruling for the landlord, the housing court referee ignored evidence of violations of the landlord address disclosure statute, and found breaches of the lease based on hearsay, and a pet violation raised by the referee and not even pled by the plaintiff. *See* Defendant's Transcript Citations in Support of Request for Judge Review (Aug. 28, 2008). On judge review, the court reversed the referee order for eviction, and dismissed the eviction action due to the landlord's failure to post address until two weeks after filing eviction action.

b. Section 8 voucher notice to PHA

See Peters v. _____, No. No. 27-CV-HC-060306506 (Minn. Dist. Ct. 4th Dist. Apr. 10, 2006) (Appendix 680) (Judge Wernick) (reversal of referee decision denying motion to dismiss eviction; failure of Section 8 Voucher landlord to serve housing authority with complaint is a jurisdiction defect requiring dismissal; Minn. R. Gen. Prac. 608 only requires tenant to deposit withheld rent if habitability is raised although enjoining eviction under Minn. R. Civ. P. 65.03(a) authorizes court to order deposit of rent); *Meldahl and SJM Prop. v. _____*, No. 1050923509, Order on Referee Review at 28 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered dismissal for improper service by maintenance person who was agent for landlord; agent was not authorized by principal; corporation represented by president; breach of lease claim in eviction case claimed breach of lease and nonpayment of rent; plaintiff failed to give notice to public housing authority; lease term requiring payment of $50 service call fee was illegal and unenforceable; tenant need not give written notice to the landlord of violations of covenants of habitability, regardless of provisions in the written lease; retroactive and prospective rent abatement beyond amounts abated by Section 8 voucher office to continue until Section 8 voucher office concludes repairs have been completed).

c. Corporation represented by agent

See Meldahl and SJM Prop. v. _____, No. 1050923509, Order on Referee Review at 28 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered dismissal for improper service by maintenance person who was agent for landlord; agent was not authorized by principal; corporation represented by president; breach of lease claim in eviction case claimed breach of lease and nonpayment of rent; plaintiff failed to give notice to public housing authority; lease term requiring payment of $50 service call fee was illegal and unenforceable; tenant need not give written notice to the landlord of violations of covenants of habitability, regardless of provisions in the written lease; retroactive and prospective rent abatement beyond amounts abated by Section 8 voucher office to continue until Section 8 voucher office concludes repairs have been completed).

3. Nonpayment of rent claims

a. Habitability

In *McPipe v. _____,* No. 27-CV-HC-14-4302 (Minn. Dist. Ct. 4th Dist. Feb. 3, 2015) (Appendix 740) (Judge Bratvold), the eviction defendant tenant filled a notice of request and request for judge review alleging that the referee erred in (1) finding that the defendant did not pay rent for two months when defendant deposited rents into court pending determination of defendant's defense; (2) determining that the plaintiff landlord prevailed on proving non-payment of a month's rent; (3) entering judgment for possession in favor of the plaintiff; (4) awarding the plaintiff taxation of costs; (5) requiring the defendant to pay costs of filing and statutory attorney fee; and (6) failing to make any determination with respect to rent abatement for one of the months.

The court found that the plaintiff's companion challenge to the referee's decision was untimely. On the tenant's claim, the court stated that the referee erred because "[a] tenant who deposits rent into court pending a determination of a habitability defense has fulfilled her ongoing rent obligations" and found that (1) plaintiff failed to prove his nonpayment of rent claim; (2) defendant prevailed on her habitability defense; (3) defendant was entitled to rent abatement for two months due to plaintiff's violation of the statutory covenants of habitability; (4) judgment was to be entered in favor of defendant; (5) defendant was to be awarded taxation of costs; (6) defendant was entitled to costs and statutory $5 attorneys' fee; (7) plaintiff was entitled to receive part of the amount of rent deposited with the court for three months (minus the rent abatement, which was to be paid to defendant); and (8) defendant was to remain in possession of the premises.

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. Meldahl argued that the referee erred by (1) finding the tenants had not materially breached the lease; (2) finding the tenants' testimony was credible, while Meldahl's was not; and (3) failing to address the tenants' allegations of improper service. The court affirmed the referee's findings in their entirety. First, the tenants did not materially breach the lease by failing to mow the lawn, failing to pay the water bill, allowing housing inspectors into the house without Meldahl's prior notice, or failing to pay rent. The referee's findings were not clearly erroneous and the court upheld his conclusions. Furthermore, under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption, and thus the court determined Meldahl cannot base an eviction action on mere allegations. Next, in addressing Meldahl's credibility argument, the court stated that it defers to the referee's credibility determinations and would not reconsider those. And finally, the court addressed the tenants' allegations of improper service, but found that service was proper because tenants failed to prove otherwise by clear and convincing evidence.

In _____ *v. Meldahl,* 27-CV-HC-14-3813 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 711) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's findings in the previous emergency tenant remedies action. Meldahl claimed the referee (1) erred in finding the tenant had diminished use and enjoyment of the property, which entitled her to rent abatement and costs; (2) erred in finding the tenant had properly notified Meldahl of the repairs needed; (3) erred in finding the tenant's testimony was credible, while Meldahl's was not; (4) showed bias in favor of the tenant; and (5) improperly allowed the tenant to represent her co-tenant. The Court disagreed with each of Meldahls claims. First, the court held that it would not overturn the referee's credibility determinations and that the referee did not erroneously find that Tenant's use and enjoyment of the property was diminished. Further, the referee's award of attorney's fees was supported by the record and well within its authority to do so. The referee showed no bias as his evidentiary findings were an appropriate exercise of his discretion. And finally, the tenant was allowed to represent her co-tenant in this action because Minn. Gen. R. Prac. 603 only requires a power of authority for eviction actions, and this was a petition for emergency relief.

In *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007) (unpublished), the landlord filed a combination eviction action and conciliation court action in housing court, and the tenant answered alleging habitability. At trial, the tenant attempted to testify about her observations about how her dryer worked, and rodent infestation. The housing court referee did not accept her testimony, since she was not an expert in dryer repair or pest control. The referee also refused to accept the tenant's documentary evidence while accepting the landlord's documentary evidence, even though both parties failed to comply with the discovery order in a timely fashion. After the referee ruled for the landlord, the tenant sought review by a district court judge. The district court reversed the referee, finding that the referee erred by requiring expert testimony for lay testimony, and by receiving the landlord's late exhibits but refusing to receive the tenant's late exhibits. On appeal to the Minnesota Court of Appeals, the court affirmed the district court's reversal of the housing court referee.

In *Himraj v. _____,* No. HC-1060117546 (Minn. Dist. Ct. 4th Dist. April 25, 2006) (Appendix 682) (Judge McGunnigle), the landlord filed an eviction action alleging partial nonpayment of rent and late fees. The tenant argued that the landlord violated the covenant of habitability by not making repairs, including but not limited to, severe heating inadequacies, as she had no heat in her home for many winter months and many security issues with her back door. The referee determined that the landlord proved the nonpayment of rent, the defendant successfully defended by proving a violation of the statutory covenants of habitability, but awarded landlord costs and rent deposited to the court to the landlord, and gave landlord 14 days to comply with corrections required by the city because plaintiff's habitability violation warranted a court order of immediate repair due to the emergency nature of the violation.

The tenant filed a notice of request for judge review. The landlord did not respond. The court stated that "[w]here the court finds for the defendant, [it] shall enter judgment for the defendant and tax the costs to the plaintiff" and ordered that (1) judgment be entered for tenant, (2) the costs be awarded to tenant (allowing tenant to withhold equivalent amount in future rent if costs were not paid), (3) tenant may deposit future rent with the court pending landlord's compliance with any outstanding repair orders, (4) defendant may petition the court for rent abatement, and (5) part of the order requiring her to refrain from legal action for 14 days be stayed.

b. Lack of rental license

See Smith v. _____, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 620) (referee ordered landlord did not need a rental license and terminated lease; judge reversed, concluding landlord without license did not have standing to file eviction, landlord constructively evicted tenant by obtaining restraining order against tenant in bad faith entitling tenant to $500 in damages and $500 in attorney's fees, and ordering expungement).

c. Illegal fees

See Meldahl and SJM Prop. v. _____, No. 1050923509, Order on Referee Review at 28 (Minn. Dist. Ct. 4th Dist. Feb. 23, 2006) (Appendix 609) (Judge Karasov) (judge reversed referee and ordered dismissal for improper service by maintenance person who was agent for landlord; agent was not authorized by principal; corporation represented by president; breach of lease claim in eviction case claimed breach of lease and nonpayment of rent; plaintiff failed to give notice to public housing authority; lease term requiring payment of $50 service call fee was illegal and unenforceable; tenant need not give written notice to the landlord of violations of covenants of habitability, regardless of provisions in the written lease; retroactive and prospective rent abatement beyond amounts abated by Section 8 voucher office to continue until Section 8 voucher office concludes repairs have been

completed).

4. Holding over claims

In *Excelsior Devel. LLC v. Musse,* No. 27-CV-HC-09-20, Second Amended Order (Minn. Dist. Ct. 4th Dist. June 15, 2009) (Appendix 645) (Judge Karasov), the court reversed the referee's decision in a commercial eviction, concluding that (1) the landlord failed to rebut tenant's evidence of exercise of lease renewal option; (2) lease offered by landlord to tenant and signed by tenant but not landlord was binding lease; (3) the copy of alleged termination notice of tenant offered into evidence by landlord but denied by tenant lacked consideration and was invalid; (4) and the tenant given 30 days to vacate one commercial space under one expired lease but allowed to retain possession of two other spaces under other leases until expiration.

5. Breach claims

a. Public housing

In *Bassett Creek Partners LP v. _____,* No. 27-CV-HC-15-4352 (Minn. Dist. Ct. 4th Dist. Nov. 15, 2015) (Appendix 808), the public housing landlord commenced an eviction action alleging breach of lease by "using threatening and assaultive behavior towards another resident; chasing resident with a knife". The court found the testimony of the tenant more credible than the landlord's witnesses, and demonstrated that the tenant was bringing food to another tenant when she was accosted by another tenant. The court rejected the post-trial submission of fact affidavits by the landlord. The court found that landlord failed to produce any credible evidence to demonstrate by a preponderance of the evidence that tenant materially breached a term of the lease agreement. The court determined tenant was entitled to costs and disbursements.

The landlord sought judge review of the referee's decision in *Bassett Creek Partners LP v. _____,* No. 27-CV-HC-15-4352 (Minn. Dist. Ct. 4th Dist. April 6, 2016) (Appendix 810) (Judge Chou). The court found the referee was in the best position to make those determinations and supported his findings. The court affirmed the referee's rejection of post-trial fact affidavits. The court also rejected the tenant's submission of facts occurring after the referee's decision as outside the scope of review. The judge determined the referee's findings were clearly not erroneous and shall not be set aside. The decision was sealed due to the previous order that the court file and all records herein be expunged.

b. Material breach

In *Meldahl v. _____,* 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 709) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's determination in favor of the tenants. Meldahl argued that the referee erred by (1) finding the tenants had not materially breached the lease; (2) finding the tenants' testimony was credible, while Meldahl's was not; and (3) failing to address the tenants' allegations of improper service. The court affirmed the referee's findings in their entirety. First, the tenants did not materially breach the lease by failing to mow the lawn, failing to pay the water bill, allowing housing inspectors into the house without Meldahl's prior notice, or failing to pay rent. The referee's findings were not clearly erroneous and the court upheld his conclusions. Furthermore, under Minn. Stat. § 504B.291, the tenants raised a rebuttable presumption that they had paid rent for the time periods Meldahl claimed non-payment by producing money order copies exhibiting as such. Meldahl failed to rebut this presumption, and thus the court determined Meldahl cannot base an eviction action on mere allegations. Next, in addressing Meldahl's credibility argument,

the court stated that it defers to the referee's credibility determinations and would not reconsider those. And finally, the court addressed the tenants' allegations of improper service, but found that service was proper because tenants failed to prove otherwise by clear and convincing evidence.

6. Costs

In *Himraj v. _____,* No. HC-1060117546 (Minn. Dist. Ct. 4th Dist. April 25, 2006) (Appendix 682) (Judge McGunnigle), the landlord filed an eviction action alleging partial nonpayment of rent and late fees. The tenant argued that the landlord violated the covenant of habitability by not making repairs, including but not limited to, severe heating inadequacies, as she had no heat in her home for many winter months and many security issues with her back door. The referee determined that the landlord proved the nonpayment of rent, the defendant successfully defended by proving a violation of the statutory covenants of habitability, but awarded landlord costs and rent deposited to the court to the landlord, and gave landlord 14 days to comply with corrections required by the city because plaintiff's habitability violation warranted a court order of immediate repair due to the emergency nature of the violation.

The tenant filed a notice of request for judge review. The landlord did not respond. The court stated that "[w]here the court finds for the defendant, [it] shall enter judgment for the defendant and tax the costs to the plaintiff" and ordered that (1) judgment be entered for tenant, (2) the costs be awarded to tenant (allowing tenant to withhold equivalent amount in future rent if costs were not paid), (3) tenant may deposit future rent with the court pending landlord's compliance with any outstanding repair orders, (4) defendant may petition the court for rent abatement, and (5) part of the order requiring her to refrain from legal action for 14 days be stayed.

7. Personal property disposition

In *Odash v. _____,* No. 24-CV-HC-12-3214 (Minn. Dist. Ct. 4th Dist. Feb. 26, 2013) (Appendix 718) (Judge Meyer), the landlord brought an action against the tenant for unlawful detainer. The parties ultimately reached a settlement, which stated that the tenant would pay the landlord $2,500 on or before July 7, 2012 and vacate the premises on or before that date. The settlement noted that the landlord believed the tenant owed her more than $2,500 in past due rent, late fees, and court costs, but that such claims would need to be pursued separately in conciliation court. The settlement also allowed for a writ of recovery to issue if tenant broke the terms of the agreement. The tenant vacated the premises on the designated date, but a dispute arose regarding items that belong to tenant that remained at landlord's property, specifically a snow plow that remained in landlord's garage. The tenant applied for an *in forma pauperis* fee waiver, but the housing court referee denied the application, finding that the action was frivolous because a writ of recovery had not issued, and therefore Minn. Stat. § 504B.365 was inapplicable. The district court reversed the decision, holding that there is no requirement for a writ of execution to issue before the issue of storage and disposal requests are triggered in Section 504B.271. The court reversed the denial of the IFP application, reasoning that holding that a writ must be executed to trigger Section 504B.365 would discourage settlements in housing court and force additional writs to be issued and executed. The district court further noted that Section 504B.365, Subd. 4 does not appear to require a writ of execution to have issued for the housing court to retain jurisdiction over stored property; it only requires an eviction action to have been heard.

8. Expungement

See discussion, *supra*, at VIII.E.5.c.

F. JUDGE REVIEW REQUEST FORM

The Poverty Law website contains judge review forms.
http://povertylaw.homestead.com/JudgeReviewofHousingCourtRefereeDecisions.html

CHAPTER X: APPEAL

A. FIFTEEN DAY APPEAL PERIOD.

The time period for appeal is 15 days. Minn. Stat. § 504B.371 (formerly § 566.12). The Minnesota Legislature increased the appeal period from 10 days in 2013. Minn. Laws 2013 Ch. 100 § 4. However, if the eviction action is consolidated with a emergency tenant remedies action, Minn. Stat. § 504B.381 (formerly § 566.205), rent escrow action, Minn. Stat. § 504B.385 (formerly § 566.34), or a tenant remedies action, Minn. Stat. §§ 504B.395 (formerly § 566.19) - § 504B.471 (formerly § 566.33), the appeal period would be 60 days following adjudication of both actions and entry of judgment. *Sanchez v. Krey*, No. C7-99-2000 (Minn. Ct. App. Jan. 25, 2000) (Appendix 432) (60 day appeal period for consolidated eviction and tenant remedies actions), *citing Duluth Ready-Mix Concrete, Inc. v. City of Duluth*, 520 N.W.2d 775, 777 (Minn. Ct. App. 1994), *rev. den.* (Minn. Mar. 14, 1995) and Minn. R. Civ. App. P. 104.01, Subd. 1.

In *Richter v. Czock*, No. C7-01-1340, 2002 WL 338181 (Minn. Ct. App. 2002) (unpublished), the court consolidated an eviction action based on holding over after notice with a rent escrow action. The court affirmed trial court rulings that the lease required a 45 day notice, that $100 per month rent abatement would cover only the period in which the landlord knew of the habitability issues, and that the landlord did not violate the privacy statute where the tenants were present when the landlord came, and the landlord claimed an emergency. The court also held that the trial court did not err in not admitted evidence when the *pro se* tenants did request admission. The court noted that since the tenant appealed from the rent escrow action judgment but not the separate eviction action judgment, it would not

consider whether the notice was retaliatory.

An appeal filed within 10 days after the district court's order reviewing a housing court referee's determination is timely, even though the appeal is filed more than 10 days after entry of the referee's eviction judgment. *JBI and Associates, Inc. v. Soltan*, No. A05-1031, 2006 WL 1229484 (Minn. Ct. App. May 9, 2006) (unpublished). The court noted that a request for review of the referee's determination is comparable to a motion for amended findings, and tolls the appeal period until the district court rules on the request. Counsel still should request stay or vacation of entry of judgment during judge review, and entry of a new judgment following judge review, to avoid expiration of the appeal period while pursuing judge review.

B. THE APPEAL LIES FROM ENTRY OF JUDGMENT

The appeal lies from entry of judgment. Minn. Stat. § 504B.371 (formerly § 566.12); *University Community Properties Inc. v. Norton*, 311 Minn. 18, 21, 246 N.W.2d 858, 860 (1976); *Tonkaway Limited Partnerships v. McLain*, 433 N.W.2d 443, 444 (Minn. Ct. App. 1988) (exclusive mode of appeal).

The appeal can be based on an order that is final and disposes of all claims in this action by and against all parties, if the trial court has not entered judgment and has not indicated that it will enter judgment. *See In re Estate of Janecek*, 610 N.W.2d 638, 642-43 (Minn., 2000); *Weinzierl v. Lien*, 296 Minn. 539, 540, 209 N.W.2d 424, 424 (1973); *Nelson v. Glenwood Hills Hospitals*, 240 Minn. 505, 510, 62 N.W.2d 73, 77 (1953).

Consistent with allowing appeals only from entry of the judgment, the courts have held that the following orders are not appealable:

1. Order directing entry of judgment, *University Community Properties v. Norton*, 311 Minn. 18, 21, 246 N.W.2d 858, 860 (1976); *Northwest Holding Co. v. Evanson,* 265 Minn. 562, 122 N.W.2d 596 (1963);

2. Order for issuance of writ of restitution, *Fritz v. Warthen*, 298 Minn. 54, 56, 213 N.W.2d 339, 340 (1973);

3. Writ of restitution, *Makela v. Peters,* 425 N.W.2d 605, 606 (Minn. Ct. App. 1988);

4. Order overruling demurrer, *Gray v. Hurley,* 28 Minn. 388, 388, 10 N.W. 417, 417-18 (1881);

5. Order overruling special appearance, *Pushor v. Dale,* 240 Minn. 179, 180, 60 N.W.2d 128, 128 (1953);

6. Order denying a motion to set aside the writ of restitution, *Northwest Holding Co. v. Evanson,* 265 Minn. 562, 122 N.W.2d 596 (1963);

7. Order denying a motion to vacate and set aside a judgment, *Goldberg v. Fields,* 247 Minn. 213, 76 N.W.2d 668 (1956); *Doyle v. Long,* 205 Minn. 322, 324-25, 285 N.W. 832, 833 (1905); *Hammann v. Wells Fargo Bank, N.A.,* Nos. A16-0737 and A16-1161, 2017 Minn. App. Unpub. LEXIS 5 (Minn. Ct. App. Jan. 3, 2017) (unpublished). *Contra*

Wong Kong Har Wun Sun, Association v. Chin, No. C8-87-2439 (Minn. Ct. App. April 12, 1988) (Appendix 21) (unpublished: appeal from order denying motion to vacate default judgment was timely);

8. Order denying motion for new trial, *Tonkaway Limited Partnerships v. McLain*, 433 N.W.2d 443, 444 (Minn. Ct. App. 1988);

9. Order awarding attorney's fees, *LHB Properties, LLC v. E.Y.,* No. A14-0957 (Minn. Ct. App. July 16, 2014) (unpublished) (Appendix 820) (dismissal of appeal filed before entry of judgment as premature); *Equity Residential Holdings, LLC v. _____,* No. A14-0162 (Minn. Ct. App. April 9, 2014) (unpublished) (Appendix 817) (appeal of attorney's fee award premature where district court had not determined amount and entered judgment).

While the Minnesota Supreme Court was willing to hear cases not appealed from entry of judgment by discretionary review under Minn. R. Civ. App. P. 105, *University Community Properties v. Norton*, 311 Minn. 18, 21, 246 N.W.2d 858, 860 (1976); *Fritz v. Warthen*, 298 Minn. 54, 56, 213 N.W.2d 339, 340 (1973), the Court of Appeals has not. In *Tonkaway Limited Partnership*, the court did not even respond to appellant's request for discretionary review. 433 N.W.2d 443, 444 (Minn. Ct. App. 1988).

However, the court may construe an appeal based on an unappealable order to be from an appealable judgment. *Chancellor Manor v. Edwards*, No. C1-01-197, 2001 WL 826842 (Minn. Ct. App. July 24, 2001) (unpublished).

An appeal filed within 15 days after the district court's order reviewing a housing court referee's determination is timely, even though the appeal is filed more than 15 days after entry of the referee's eviction judgment. *See JBI and Associates, Inc. v. Soltan*, No. A05-1031, 2006 WL 1229484 (Minn. Ct. App. May 9, 2006) (unpublished). The court noted that a request for review of the referee's determination is comparable to a motion for amended findings, and tolls the appeal period until the district court rules on the request. At that time, the appeals deadline was 10 days, but now is 15 days. *See* discussion, *supra*, at X.A. Counsel still should request stay or vacation of entry of judgment during judge review, and entry of a new judgment following judge review, to avoid expiration of the appeal period while pursuing judge review.

C. IN SOME DISTRICTS, THE COURT DOES NOT REGULARLY ENTER JUDGMENT, BUT MERELY ISSUES OR DENIES THE WRIT OF RESTITUTION BASED UPON THE ORDER FOR JUDGMENT

The prevailing party or appellant should request that judgment be entered, pursuant to Minn. Stat. § 504B.345 (formerly § 566.09); *Makela*, 425 N.W.2d at 606 (entry of judgment required). *See Dahlgren v. Caring and Sharing Hands*, 429 N.W.2d 706, 706 (Minn. Ct. App. 1988) (civil action: Court administrator required to enter judgment forthwith upon any order that denies all relief unless the court otherwise directs).

If the clerk refuses to enter judgment, the prevailing or appellant party should serve a notice of filing of order on the adverse party under Minn. R. Civ. App. P. 104.01. *Levine v. Hauser*, 431 N.W.2d 269, 270-71 (Minn. Ct. App. 1988) (discussed contents of notice). The time period for appeal from the notice is 30 days.

D. HOUSING COURT APPEAL V. JUDGE REVIEW

In Hennepin and Ramsey County housing courts, it appears that the parties have the option of directly appealing from entry of judgment following the decision of the referee, or seeking judge review of the referee's decision and then appealing from entry of judgment following the judge's decision on review. *See Hess v. Commissioner of Public Safety*, 392 N.W.2d 586 (Minn. Ct. App. 1986); *Warner v. Warner*, 391 N.W.2d 870 (Minn. Ct. App. 1986). However, a party seeking the latter option must request that entry of judgment following the referee's decision be stayed or vacated during judge review of the referee's decision, or the ten day period to appeal to the Court of Appeals will have expired by the time the judge issues a decision. *See* discussion, *supra* at V.G. (Housing Court Rules).

An appeal filed within 15 days after the district court's order reviewing a housing court referee's determination is timely, even though the appeal is filed more than 15 days after entry of the referee's eviction judgment. *See JBI and Associates, Inc. v. Soltan*, No. A05-1031, 2006 WL 1229484 (Minn. Ct. App. May 9, 2006) (unpublished). The court noted that a request for review of the referee's determination is comparable to a motion for amended findings, and tolls the appeal period until the district court rules on the request. At that time, the appeals deadline was 10 days, but now is 15 days. *See* discussion, *supra*, at X.A. Counsel still should request stay or vacation of entry of judgment during judge review, and entry of a new judgment following judge review, to avoid expiration of the appeal period while pursuing judge review.

E. MOTIONS IN ANTICIPATION OF APPEAL

1. Motion for new trial or amended findings not required. *See* discussion, *supra* at VIII.E.1.a.

2. Notice of intent to appeal

After judgment is rendered for the plaintiff, if the defendant or the defendant's attorney states to the court the intention to appeal, the writ shall not issue for 24 hours after judgment. Minn. Stat. § 504B.371 (formerly § 566.11). The exception is(1) "In an action on a lease", based upon holding over after expiration of the lease or termination of the lease by notice to quit, and (2) "[t]he plaintiff give a bond conditioned to pay all [of the defendant's] costs and damages . . . [if] the judgment of restitution is reversed and a new trial ordered."

3. Motion to waive cost bond and set supersedeas bond: staying execution of the writ of restitution pending appeal

For most tenants, appeal will be pointless unless the tenant can retain possession of the premises pending appeal. Cost and supersedeas bonds affect the tenant's right to retain possession.

a. *Cost bond*

In 2014 the Minnesota Rules of Civil Appellate Procedure were amended to no longer require a cost bond. Minn. R. Civ. App. P. 107.01. The trial court may, upon motion of any respondent and a showing that extraordinary circumstances warrant the requirement of a cost bond, order that a bond. *Id.* 107.02. The trial court may not require a bond when the appellant has been authorized to proceed *in forma pauperis* under Rule 109. *Id.* 107.03.

However, Minn. Stat. § 504B.371 (formerly § 566.12) was not amended, and provides:

Subd. 3.Appeal bond.
If the party appealing remains in possession of the property, that party must give a bond that provides that:
(1) all costs of the appeal will be paid;
(2) the party will comply with the court's order; and
(3) all rent and other damages due to the party excluded from possession during the pendency of the appeal will be paid.

Prior to filing the notice of appeal, the appellant may move the trial court for an order waiving the bond or deposit. Under the *in forma pauperis* statute, Minn. Stat. § 563.01, subd. 3, the court shall allow appeal without prepayment of costs and security if the court finds that the action is not frivolous and the appellants affidavit is in proper form and not untrue.

b. *Supersedeas bond*

(1) Rules and statutes

Minn. R. Civ. App. P. 108.02, subd. 4 (c) provides that

(c) When the judgment or order determines the possession, ownership, or use of real or personal property (such as in actions for replevin, foreclosure, or conveyance of real property), the amount of the security normally must be fixed at such sum as will compensate the respondent for the loss of use of the property during the pendency of the appeal, costs on appeal (to the extent security for costs has not already been given under Rule 107), interest during the pendency of the appeal, and any other damages (including waste) that may be caused by depriving the respondent of the right to enforcement of the judgment or order during the pendency of the appeal.

Minn. Stat. § 504B.371, Subd. 3 (formerly § 566.12) states that the appealing defendant may remain in possession of the premises, and execution of the writ shall be stayed, if "all rent and other damages due to the party excluded from possession during the pendency of the appeal will be paid."

The exception is "In an action on a lease", based upon holding over after expiration of the lease or termination of the lease by notice to quit, and "[t]he plaintiff give a bond conditioned to pay all [of the defendant's] costs and damages . . .[if] the judgment of restitution is reversed and a new trial ordered." *Id. See* Minn. Stat. § 504B.371, Subd. 7 (formerly § 566.11). In the limited cases where this exception applies, it is inconsistent with Minn. R. Civ. App. P. 108.02, subd. 4 (c).

Since most tenants cannot afford to pay up front all of the anticipated rent accruing during appeal or a bond to cover such rent, the tenant should be allowed to pay the rent each month as it accrues. *See Buddhu v. Ellis*, No. UD-1880908580, Supplemental Order (Minn. Dist. Ct. 4th Dist. Sept. 30, 1988) (Appendix 22). Payment of past rent allegedly owed should not be included in the bond. In government subsidized housing, the bond should cover only the tenant's share of the rent. *See Tullahoma Village Apartments v. Cyree*, No. 85-206-II at 5 (Tenn. Ct. App. Feb. 7, 1986) (attached as Appendix 23).

Landlords sometimes argue that the tenant should have to pay into court rent which was withheld, in dispute, or not accepted by the landlord to avoid waiver, in order to have the right to judge review. Rule 108.01, Subd. 5, refers to "the value of the use and occupation of the property from the time of the appeal until the delivery of possession of the property if the judgment is affirmed. . . ." The tenant is obligated only to pay rent which would come due during the appeal, rather than rent that was

allegedly due before the appeal. *See Excelsior Devel. LLC v. Musse,* No. A09-1116 (Minn. Ct. App. Jul. 29, 2009) (Appendix 646) (reversed district court order that commercial tenant pay back rent into court to stay the district court order); *Phillips Neighborhood Housing Trust v. Brown*, No. UD-1960705508, transcript of proceedings at 4-6 (Minn. Dist. Ct. 4th Dist. Nov. 26, 1996) (Appendix 286a) (Denial of landlord's motion for pre-judge review rents not accepted by the landlord; tenant ordered to pay rent into court as it comes due); *Thompson v. Gates*, No. UD-197011509 (Minn. Dist. Ct. 4th Dist. Feb. 28, 1997) (Appendix 298) (On judge review tenant ordered to pay rent as it comes due into court, rather than alleged past due rent); *Phillips Neighborhood Housing Trust v. Brown*, No. UD-1960705508, (Minn. Dist. Ct. 4th Dist. Oct. 24, 1996) (Appendix 286b) (order waiving cost bond and ordering tenant to pay monthly rent to landlord in lieu of supersedeas bond).

In *ARU Props., LLC v. Clark,* No. A16-1126, 2017 Minn. App. Unpub. LEXIS 288 (Minn. Ct. App. April 3, 2017) (unpublished), the owner filed an eviction action alleging breach and rent. The referee bifurcated the trial as required by Minn. Stat. § 504B.285, subd. 5. After a trial on the breach claim, the referee entered judgment for tenant. The referee then ordered tenant to pay into court $8,400 in past-due rent and all future rent as it came due as security for the trial on the rent claim. The tenant failed to pay and the referee entered judgment for owner and authorized issuance of a writ of recovery. The tenant filed a notice of review and the district court ordered tenant to pay into court $8,400 in past-due rent and all future rent amounts to stay the judgment pending the review. The tenant then appealed and the district court set the appeal bond at $30,219.76, which the Court of Appeals reduced to $21,300 on review. The tenant did not pay the appeal bond and the owner received the writ of recovery. The Court of Appeals affirmed the district court in an unpublished decision that did not address the bond rulings. As *ARU Props., LLC* is unpublished, it is not precedential. *See* discussion at I.A.3.

In *Wells Fargo Bank, N.A. v. Badrawi,* No. A13-1417, 2014 WL 1758280 (Minn. Ct. App. May 5, 2014) (unpublished), the defendant who lost an appeal of a mortgage foreclosure eviction failed to establish that he was entitled to return of a $2,000 a month bond payment pursuant to Minn. Stat. § 504B.371(3) posted to obtain a stay of issuance of writ of recovery the pendency of appeal of order granting foreclosure to bank. The Court of Appeals affirmed trial court ruling that $2,000, which was nearly identical to the amount that homeowner had been paying to the bank under the mortgage, was a proper approximation of damages if homeowners failed to vacate at the end of the proceedings.

(2) Challenging the bond amount

If the district court sets the bond in an excessive amount, the tenant should file the appeal and make a motion to the Court of Appeals to reduce the amount. *Sisto v. Housing and Redevelopment Authority*, 258 Minn. 391, 395, 104 N.W.2d 529, ___ (1960); Minn. R. Civ. App. P. 108.02, subd. 6, and 127.

In *Fed. Home Loan Mortgage Corp. v. Pope,* No. A14-1185, 2015 WL 1401625 (Minn. Ct. App. Mar. 30, 2015) (unpublished), the defendants lost a post-foreclosure eviction. The defendants appealed, and asked the district court to stay the eviction during the appeal. The district court granted the request, provided the defendant posted a bond of $1800 per month. The defendant did not comply. The defendant argued on appeal that the district court erred in requiring a bond. The Court of Appeals first noted that the defendant should have challenged the order by motion to the Court of Appeals.

> If Pope wished to challenge the bond condition, he should have done so by bringing a motion to this court. *See* Minn. R. Civ. App. P. 108.02, subd. 6 (stating that on a motion under Minn. R. Civ. App. P. 127, a party may challenge the "amount of security pending appeal"). By failing to

do so, Pope effectively waived his right to challenge the bond condition.

Id. at *3. The Court added that a stay of eviction proceedings while other civil proceedings are pending does not apply to an eviction appeal when other civil proceedings are finished. *Id.*

In *Nationstar Mortgage, LLC v. Quale*, No. A14-1227, 2015 WL 853535 (Minn. Ct. App. Mar. 2, 2015) (unpublished), a company foreclosed on the defendants' property and conveyed the property to the plaintiff. The plaintiff then began an eviction action against the defendants who were holding over the property. The plaintiff moved for summary judgment, and the defendants moved to stay the eviction proceedings. The court granted the summary judgment, holding, that the plaintiff was entitled to an immediate writ of recovery. The defendants filed a notice of appeal and the housing court referee granted a stay of the issuance of the writ of recovery but conditioned it on the defendants posting a lump-sum bond of $48,230.53, as well as monthly bond payments in the amount of $2,198. The defendants failed to deposit the supersedeas bond and the district court lifted the stay on the issuance of the writ of recovery of the premises.

The Court of Appeals first noted:

> If appellants wanted to effectively challenge the bond for the stay pending appeal, they should have done so under Minnesota Rule of Civil Appellate Procedure 108.02. *See* Minn. R. Civ. App. P. 108.02, subd. 6 (stating that on a motion under Rule 127, a party may challenge the "amount of security pending appeal").

Id. at *4. The Court concluded:

> Based on the evidence in the record, the district court conditioned a stay on the posting of a one-time bond of $48,230.53, which represented the amount of missed mortgage payments (17) since the expiration of the redemption period, as well as a monthly bond of $2,198 based on an estimated rental value of the property provided by an online real estate agency. In doing so, the district court did not abuse its discretion.

Id. at *5.

While it was within the rule to base the bond on monthly payment during the appeal, the Court should not have based on the bond on the arrearage, as it was not a "loss of use of the property during the pendency of the appeal." Minn. R. Civ. App. P. 108.02, subd. 4 (c). As an unpublished decision, it is not precedential. *See* discussion, *supra*, at I.A.3.

c. *Mootness on appeal*

In *Lanthier v. Michaelson*, 394 N.W.2d 245, 246 (Minn. Ct. App. 1986), the tenant appealed but vacated the apartment without posting the bond nor paying rent into court. The court held that the case was moot. *Lanthier* should not be followed, since the tenant should be able to litigate on appeal the propriety of the eviction, and if successful, regain possession of the premises. Payment of the bond acts only to stay the effect of the district court decision. *Lanthier* also should be distinguishable where the tenant does not pay the bond but moves on appeal to reduce the amount under *Sisto*.

In *Scroggins v. Solchaga,* 552 N.W.2d 248 (Minn. Ct. App. 1996), the court held that removing the tenant from the property under the Writ of Restitution did not moot the appeal, distinguishing

Lanthier on the issue of whether the tenant voluntarily moves or is forced to move by execution of the writ. *Id.* (*citing Fish v. Toner*, 40 Minn. 211, 212, 41 N.W. 972, 972 (1889); *Pusher v. Dale*, 242 Minn. 564, 567, 66 N.W. 2d 11, 13,(1954).

In *Noonan v. Jacob Properties, Inc.*, C7-98-810 (Minn. Ct. App. Dec. 8, 1998) (Appendix 353) (Unpublished), the commercial tenant appealed from a judgment of restitution. Although the tenant consistently paid rent and posted a cost bond to suspend execution of the landlord's writ of restitution during the appeal, the tenant voluntarily vacated the premises at the end of the lease term and did not exercise its unilateral option to renew the lease. The court dismissed the appeal as moot, noting that the tenant voluntarily vacated the premises, in contrast to the tenant who involuntarily vacated the premises in *Scroggins v. Solchaja*, 552 N.W. 2d 248, 253 (Minn. Ct. App. 1996). *Hybben v. Constantine*, No. C9-02-734, 2002 WL 31655335 (Minn. Ct. App. 2002) (unpublished: appeal moot where tenant decided at hearing to set supercedeous bond that he would voluntarily move, citing *Lanthier v. Michaelson*, 394 N.W.2d 245, 246 (Minn. Ct. App. 1986)).

In *CAMM Properties, Inc. v. Peacock*, No. C6-97-1128, C7-97-1168, C9-97-1365, C2-97-1420 (Minn. Ct. App. May 18, 1998) (Appendix 316) (Unpublished), the mortgagor argued that the appeal was moot because the defendant had vacated the commercial property, and since the foreclosure deprived the defendant of an interest in the property. The court denied the motions to dismiss the appeals as moot, concluding that the record did not indicate whether the defendant voluntarily left the commercial property, whether the foreclosure sale which occurred after the defendant filed the appeals actually extinguished all of the defendant's interests in the property, and the mortgagee failed to provide authority showing that foreclosure necessarily deprived the defendant of an interest in the property.

In *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. Ct. App. Sept. 4, 2007) (unpublished), the Court of Appeals noted that while appellant landlord argued that respondent tenants had vacated the property, nothing in the record showed that the tenants had left the property, comparing *Lanthier v. Michaelson*, 394 N.W.2d 245, 246 (Minn. Ct. App. 1986) (appeal moot where tenant voluntarily vacated the property), *review denied*. (Minn. Nov. 26, 1986), and *Real Estate Equity Strategies LLC v. Jones*, 720 N.W.2d 352, 355 (Minn. Ct. App. 2006) (appeal is not moot where tenant vacates property involuntarily).

4. Appeal after issuance of the writ: certificate to stay execution of the writ pending appeal

The court shall give the appealing defendant a certificate of appeal, which when served upon the sheriff or police, shall stay further execution of the writ. Minn. Stat. § 504B.371 (formerly § 566.13). Exception: "where judgment for restitution has been entered on a lease" in an action for holding over after expiration of the lease or termination of the lease by notice to quit.

5. Note on exceptions

The exceptions apply only to actions based upon holding over after expiration of the lease or termination of the lease by notice to quit. The exceptions should not apply to actions based upon: (1) nonpayment of rent, (2) breach of the lease, or (3) holding over after lease expiration or termination, and nonpayment of rent or breach of the lease.

The exceptions should be susceptible to challenge as violative of equal protection. *See Lindsey v. Normet*, 405 U.S. 56, 74-79 (1972) (statute requiring tenant to post appellate bond equal to double the rent violated equal protection). However, in *Tonkaway Limited Partnership v. McLain*, No. C2-88-2222

(Minn. Ct. App. Oct. 31, 1988), the court held that appellant did not establish that the statutes were unconstitutional.

CHAPTER XI: WRITS OF MANDAMUS AND PROHIBITION

As an alternative to appeal, the defendant may request a writ of mandamus or writ of prohibition in some circumstances. *See* Minn. R. Civ. App. P. 120-121.

Requests for writs in eviction (unlawful detainer) actions involved issues such as challenges to the following actions.

1. trial court order for new trial. *Stock v. Beaulieu*, No. C4-95-989 (Minn. Ct. App. May 9, 1995) (Appendix 170) (writ granted).

2. execution of a writ of restitution against a tenant who was not a party to the eviction (unlawful detainer) action, nor named in the writ. *Kowalenko v. Haines*, No. C6-85-1365 (Minn. Ct. App. July 23, 1985 (Appendix 4) (writ granted). *See* discussion, *supra* at VI.C.

3. trial court order requiring the defendant to post full amount of past due rent alleged by the plaintiff, where the defendant disputed the arrearage. *Ted Glasrud Assoc. v. Balsimo*, No. C6-85-1821 (Minn. Ct. App. Oct. 1, 1985) (writ granted).

4. trial court's grant of an immediate writ of restitution following a brief bench discussion with the parties and counsel, but without the swearing of witnesses, formal introduction of evidence and cross examination of witnesses. *Butcher v. David Prop. 2*, No. C1-87-693 (Minn. Ct. App. April 17, 1987) (writ granted to vacate trial court order and writ of restitution and remand for trial; writ for removal of trial court judge denied).

In *Olson Property Investments v. _____*, No. A20-1073 (Minn. Ct. App. Sept. 1, 2020) (Appendix PED-17), the Minnesota Court of Appeals issued an unpublished order denying the landlord's petition for a writ of mandamus to compel the district court to issue a summons in an eviction action under the predecessors to Emergency Executive Order 20-79. The court reviewed the facts alleged by the landlord.

> According to the petition, petitioner gave notice of nonrenewal of the parties' residential lease on May 30, 2020 based on "illegal conduct by Tenants that seriously endangered the lives of another resident and the Landlord," but petitioner "chose not to bring the eviction until the lease expired by its natural expiration" on July 31, 2020. On August 3, 2020, petitioner filed an eviction complaint against respondents alleging that respondents (1) harassed and threatened another tenant, causing that tenant to move out, (2) harassed petitioner's agents, causing them to obtain ex parte harassment restraining orders (HROs) against respondents, and (3) made false allegations against petitioner's agents. The complaint states that expedited proceedings are not requested. See Minn. Stat. § 504B.321, subd. 2(a) (2018)) (providing in relevant part that, in action based on tenant "causing a nuisance or other illegal behavior that seriously endangers the safety of other residents," the plaintiff "shall file an affidavit stating specific facts and instances in support of why an expedited hearing is required").

Id. at 2-3. The court concluded that the landlord had not pled with enough specificity.

> Even under a rule 12.02(e) standard, which petitioner argues should be applied, speculative allegations are insufficient. Bodah v. Lakeville Motor Express, Inc., 663 N.W.2d 550, 558 (Minn. 2003) (rejecting as insufficient allegations that social security numbers are still being shared or are generally accessible because allegations were "mere speculation."). And the district court need not accept as true, for purposes of a rule 12.02(e) motion, legal conclusions in the complaint. Walsh v. US. Bank, NA., 851 N.W.2d 598, 603 (Minn. 2014) (noting that courts are "not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim"); Bahr v. Capella Univ., 788 N.W.2d 76, 80 (Minn. 2010) ("A plaintiff must provide more than labels and conclusions.").
>
> We construe the exception in EO Nos. 20-14, 20-73 for "cases where the tenant seriously endangers the safety of other residents" or "others on the premises" to contemplate circumstances in which physical safety is at current risk, warranting expedited processing. Assuming without deciding that a rule 12.02(e) standard applies to the determination whether to allow an eviction action to proceed during the peacetime emergency under EO 20-14, 20-73, petitioner has not shown that the factual allegations against respondents in the amended complaint meet that threshold. We therefore conclude that petitioner has not shown that the district court had a duty clearly required by Minn. Stat. § 504B.321, subd. 1, to issue the summons to respondents and schedule a hearing on the amended complaint.

Id. at 3-4.

Note: It should not be assumed that the results in these cases indicate that writs are routinely granted. Minn. R. Civ. App. P. 121 provides for making an oral request in emergency situations. In *Butcher*, the petitioner made a telephone request on April 14, 1987, and submitted a brief petition on April 15, 1987. The Court of Appeals issued its order on April 16, 1987 *Id.*

CHAPTER XII: OTHER LANDLORD AND TENANT ACTIONS

A. PUBLIC NUISANCE ACTIONS

Public Nuisance Actions are heard in Housing Court in Hennepin County. A prosecuting attorney many commence a public nuisance action by a verified petition to seek temporary or permanent injunctive relief after giving the defendant 30 days' notice about the alleged nuisance. Public nuisance includes two or more separate incidents within 12 months of one of more of the following acts within the building: prostitution-related activity, gambling-related activity, keeping or permitting a disorderly house, and certain illegal alcohol sales and firearm possession. Minn. Stat. §§ 617.80 - 617.83. In 1997 the list of public nuisances was expanded to include a violation by a commercial enterprise of local or state public nuisance business licensing regulations, ordinances or statutes, a violation of the general public nuisance and real property nuisance misdemeanor statutes, §§ 609.74 - 609.745. 1997 Minn. Laws Chs. 100 and 122 (Appendix 242). If the recipient of a notice abates the nuisance or enters into an agreed abatement plan within 30 days of receiving notice and complies with the agreement, the prosecuting attorney is prohibited from filing the action.

Within a public nuisance action, the owner, or the prosecuting attorney with permission by the owner, may file a motion or cancellation of the lease. Upon finding that the tenant has maintained or

conducted a nuisance, the court shall order cancellation of the lease and grant restitution of the property to the owner. Section 617.85, *amended by* 1997 Minn. Law Ch. 239, Art. 12, Section 10.

The tenant should argue that in addition to procedural defenses which may be available under the public nuisance act, unlawful detainer defenses, especially in the area of breach of lease, should be available in public nuisance lease cancellation cases.

In *DLJ Mortg. Capital, Inc. v. St. Paul City Council,* No. A06-2118, 2008 WL 496717 (Minn. Ct. App. Feb. 26, 2008) (unpublished), the property owner challenged a city council nuisance resolution according to its nuisance-abatement ordinance, ordering the demolition or removal of property within 15 days. The Court of Appeals reversed and remanded, holding that the city failed to follow its own procedure, which deprived DLJ of its right to due process, and that the city's decision was unsupported by the evidence and was arbitrary and capricious.

In *County of Hennepin v. 733 Lowry Avenue North and Okoiye*, UD-1980724506 (Minn. Dist. Ct. 4th Dist. Aug. 6, Sep. 16, Dec. 23, 1998, Feb. 9, Feb. 12, 1999) (Appendix 322), the county commenced a nuisance action, claiming drug activity, disturbances, excess traffic, and noise. The court found that the county gave proper notice, the nuisance occurred and the defendant landlord did not abate the nuisance. The court first issued a temporary injunction, in joining the landlord from residing on the property, selling or transferring his interests in the property, or conducting specified nuisance activities. (Aug. 6, 1998). The court late issued a permanent injunction in joining the landlord and some tenants from residing on the property or conducting specific nuisance activities on the property, canceled the lease between the landlord and one tenant, and enjoined the landlord from selling or transferring his interest. (Sep. 16, 1998). The court later denied the landlord's motion to vacate the judgment (Dec. 23, 1998), allowed the landlord to present a plan for re-renting the upper unit (Feb. 8, 1999), and allowed the landlord to re-enter the property to conduct repairs (Feb. 12, 1999).

B. TENANT INITIATED ACTIONS AND CLAIMS

0. Considerations for all actions

a. *Filing Fee Waivers: In Forma Pauperis*

See discussion, *supra*, at V.B1.

b. *Verification Signed by Notary No Longer Required*

See discussion, *supra*, at V.B2.

c. *Statutes of limitations*

The Minnesota statute of limitations period is six years for claims under a contract or statute, or concerning personal property, fraud, and other listed claims, Minn. Stat. § 541.05, and two years for penalties created by statute. Minn. Stat. § 541.07.

541.05 VARIOUS CASES, SIX YEARS.
Subdivision 1.Six-year limitation.

Except where the Uniform Commercial Code otherwise prescribes, the following actions shall be

commenced within six years:

(1) upon a contract or other obligation, express or implied, as to which no other limitation is expressly prescribed;

(2) upon a liability created by statute, other than those arising upon a penalty or forfeiture or where a shorter period is provided by section 541.07;

(3) for a trespass upon real estate;

(4) for taking, detaining, or injuring personal property, including actions for the specific recovery thereof;

(5) for criminal conversation, or for any other injury to the person or rights of another, not arising on contract, and not hereinafter enumerated;

(6) for relief on the ground of fraud, in which case the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(7) against sureties upon the official bond of any public officer, whether of the state or of any county, town, school district, or a municipality therein; in which case the limitation shall not begin to run until the term of such officer for which the bond was given shall have expired;

(8) for damages caused by a dam, used for commercial purposes; or

(9) for assault, battery, false imprisonment, or other tort resulting in personal injury, if the conduct that gives rise to the cause of action also constitutes domestic abuse as defined in section 518B.01.

541.07 TWO- OR THREE-YEAR LIMITATIONS.

Except where the Uniform Commercial Code, this section, section 541.05, 541.073, 541.076, or 604.205 otherwise prescribes, the following actions shall be commenced within two years:

(1) for libel, slander, assault, battery, false imprisonment, or other tort resulting in personal injury, and all actions against veterinarians as defined in chapter 156, for malpractice, error, mistake, or failure to cure, whether based on contract or tort; provided a counterclaim may be pleaded as a defense to any action for services brought by a veterinarian after the limitations period if it was the property of the party pleading it at the time it became barred and was not barred at the time the claim sued on originated, but no judgment thereof except for costs can be rendered in favor of the party so pleading it;

(2) upon a statute for a penalty or forfeiture, except as provided in sections 541.074 and 541.075;

(3) for damages caused by a dam, other than a dam used for commercial purposes; but as against one holding under the preemption or homestead laws, the limitations shall not begin to run until a patent has been issued for the land so damaged;

(4) against a master for breach of an indenture of apprenticeship; the limitation runs from the

expiration of the term of service;

(5) for the recovery of wages or overtime or damages, fees, or penalties accruing under any federal or state law respecting the payment of wages or overtime or damages, fees, or penalties except, that if the employer fails to submit payroll records by a specified date upon request of the Department of Labor and Industry or if the nonpayment is willful and not the result of mistake or inadvertence, the limitation is three years. (The term "wages" means all remuneration for services or employment, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, where the relationship of master and servant exists and the term "damages" means single, double, or treble damages, accorded by any statutory cause of action whatsoever and whether or not the relationship of master and servant exists);

(6) for damages caused by the establishment of a street or highway grade or a change in the originally established grade;

(7) against the person who applies the pesticide for injury or damage to property resulting from the application, but not the manufacture or sale, of a pesticide.

An example of a claim with a limit of six years is habitability, as it is a contract obligation created by statutes. Claims for penalties are subject to the two-year limitation, such as penalties and punitive damages regarding:

a. Limits on leasing properties in financial distress under Minn. Stat. § 504B.151, *see* discussion, *supra*, at VI.E.37.

b. Applicant screening fees under Minn. Stat. § 504B.173, *see* discussion, *supra*, at XII.B.8a.

c. Prelease deposits under Minn. Stat. § 504B.175, *see* discussion, *supra*, at XII.B.8b.

d. Security deposits under Minn. Stat. § 504B.178, *see* discussion, *infra*, at XII.B.8.

e. Disclosure of inspection orders under Minn. Stat. § 504B.195, *see* discussion, *supra*, at VI.E.1.r.

f. Privacy under Minn. Stat. § 504B.211, *see* discussion, *infra*, at XII.B.2.

g. Expedited evictions under Minn. Stat. § 504B.321, *see* discussion, *supra*, at V.Q.

h. Executing writs under Minn. Stat. § 504B.365, *see* discussion, *supra*, at VIII.B.

i. Personal property under Minn. Stat. § 504B.271, *see* discussion, *infra*, at XII.B.9.

j. Utilities under Minn. Stat. § 504B.221, *see* discussion, *supra*, at VI.E.18.

k. Lockouts and exclusions under Minn. Stat. §§ 504B.231, 557.08 and 557.09, *see* discussion, *infra*, at XII.B.1.

d. *Attorney's Fees, Costs, and Disbursements*

(1) Attorney's fees

Several statutes provide for attorney's fees for tenants.

(a) Leases and tenant claims under Minn. Stat. § 504B.172

If the lease provides to attorney's fees to the landlord, state law provides a similar claim for the tenant. Minn. Stat. § 504B.172. *See* discussion, *supra*, at VIII.E.4.a.(2)(a).

(b) Statutory tenant actions

Fee are available in statutory actions, such as:

1. Lockout action when combined with a claim for damages, *see* discussion, *infra*, at XII.B.1;

2. Rent escrow action, *see* discussion, *infra*, at XII.B.3.a;

3. Emergency tenant remedies action, *see* discussion, *infra*, at XII.B.3.b; and

4. Tenant remedies action, *see* discussion, *infra*, at XII.B.3.c.

(c) Substantive tenant claims

Fees also may be available based on the tenant's substantive claim, such as

1. Minn. Stat. § 504B.204 (condemned residential rental property), *see* discussion, *infra*, at XII.B.3.f.;

2. Minn. Stat. §§ 504B.365 and 504B.271 (refusal to return the property after proper demand following eviction), *see* discussion, *supra*, at VIII.C.2.;

3. Minn. Stat. § 504B.205 (landlord violation of police and emergency assistance statute), *see* discussion, *supra*, at VI.G.31.;

4. Minn. Stat. § 504B.221 (unlawful termination of utilities), *see* discussion, *supra*, at VI.E.18.;

5. Minn. Stat. § 504B.231 (unlawful ouster), *see* discussion, *infra*, at XII.B.1.;

6. Fair Debt Collection Practices Act, *see* discussion, *supra*, at VI.E.34.; and

7. State consumer statutes, *see* discussion, *infra*, at XII.B.7.

(d) Successful defense of landlord claims

If the lease provides to attorney's fees to the landlord, state law may provide a similar claim for

the tenant. Minn. Stat. § 504B.172. *See* discussion, *supra*, at VIII.E.4.a.(2)(a).

Where a statute provides for attorney's in a claim filed by a landlord, they may be available to the tenant who successfully defends the claim. Minn. Stat. § 504B.165 provides: "An action may be brought for willful and malicious destruction of leased residential rental property. The prevailing party may recover actual damages, costs, and reasonable attorney fees, as well as other equitable relief as determined by the court."

In *Sloan v. O'Neil*, No. 27-CV-14-12814 (Minn. Dist. Ct. 4th Dist. Oct. 2, 2015) (Appendix 731), the district court granted the tenants' motion for partial summary judgment on the landlord's unlawful destruction of property claim and awarded attorneys' fees related to defending against the claim after finding that the landlord failed to show sufficient evidence that the alleged damage was caused in a willful and malicious manner as required under Minn. Stat. § 504B.165(a). The landlord argued that the court should look at the prevailing party at final case disposition before determining attorney fees. The court disagreed, reasoning that litigation costs were easily ascertainable and that waiting until the final case disposition was unnecessary.

Later, in *Sloan v. O'Neil,* No. 27-CV-14-12814 (Minn. Dist. Ct. 4th Dist. Dec. 11, 2015) (Appendix 732), the jury decided in the landlord's favor, finding the tenants in breach of contract and liable for $13,960 in property damage. But the district court ordered the landlord to disclose the settlement that she reached with her property management company who was a defendant in the action because Minnesota law bars double recovery for the same harm. The court found that the landlord sought damages from the property management company and the tenants for the same harm and that reviewing the settlement agreement was necessary to preclude the landlord's double recovery for the same harm.

The court also ruled on the amount of attorney fees under the prior summary judgment order, applying the lodestar method to calculate the amount of attorney fees. The lodestar method required the court to "first determine the number of hours reasonably expended on the litigation and then multiply those hours by a reasonable hourly rate." *Green v. BMW of North America, LLC,* 826 N.W.2d 530 (Minn. 2013). The landlord argued for reduction of attorney fees because one attorney worked for a nonprofit and was paid a flat fee for the case. Citing *Love v. Amsler,* 441 N.W.2d 555 (Minn. Ct. App. 1989), *Blum v. Stenson,* 465 U.S. 886, 895 (1984), and *Oldham v. Ehrlich,* 617 F.2d 163, 168 (8th Cir. 1980), the court concluded that legal aid employment does not foreclose attorney fees. To deter parties from proceeding pro se in litigation, the court determined that a third tenant who was an attorney and who represented herself in the case was not entitled to attorney fees under *Kay v. Ehrler,* 499 U.S. 432, 437-38 (1991).

The Minnesota Court of Appeals affirmed in *Sloan v. O'Neil,* No. A16-0611 (Minn. Ct. App. Dec. 27, 2016) (Unpublished). The Court noted that the landlord "had the burden of proving that respondents damaged her property and that they did so willfully and maliciously."

(e) Sanctions for landlord conduct

Attorney's also may be available as sanctions for the landlord's conduct in the action. *See* discussion, *supra*, at VIII.E.4.a.(2)(c).

(2) Costs and disbursements

Costs and disbursements are available to prevailing parties. *See* discussion, *supra*, at VIII.4.b.

e. *Definitions, Tenancies, and Leases*

See discussion, *supra*, at I.E. for statutory definitions of residential tenant, person, residential building, and landlord.

See discussion, *supra*, at I.D for types of private tenancies, I.E1 for lease requirements, I.G for public and subsidized housing tenancies, and I.H for other relationships.

f. *Obtaining Addresses for Litigation from the United States Postal Service*

A party, attorney or process server can obtain from the United States Postal Service addresses of potential parties for litigation. The USPS has a website and form.

United States Postal Service Handbook AS-353, Guide to Privacy, the Freedom of Information Act, and Records Management
https://about.usps.com/handbooks/as353/as353c5_002.htm

Request Form
https://about.usps.com/who-we-are/foia/coa-or-boxholder-form.pdf

g. *Damages Awards Affecting Income and Asset limits for Government Benefit Program Recipients*

Tenants who receive government benefits have limitations on assets to remain eligible for the benefits. Those programs include:

Supplemental Security Income (SSI)
Social Security Administration
https://www.ssa.gov/ssi/spotlights/spot-resources.htm

Medical Assistance (MA)
DB101
https://mn.db101.org/mn/programs/health_coverage/ma_overview/
Research Department, Minnesota House of Representatives (2018)
https://www.house.leg.state.mn.us/hrd/pubs/MAasset.pdf

Other Minnesota Government Benefit Programs
Minnesota Department of Human Services (DHS)
https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=CM_001503
DB101
https://mn.db101.org/mn/programs/income_support/

Some programs treat lump sum payments as additional household income in the month received.

DHS
https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&Revis

ionSelectionMethod=LatestReleased&dDocName=CM_00171530

Generally, lump sum payments do not affect eligibility for public and subsidized housing programs. Most lump sum payments are excluded from income.

Calculating Attachment (HUD)
https://www.hud.gov/sites/documents/CALCULATINGATTACHMENT.PDF

Housing Choice Voucher Program Guidebook at 5-15, 5-23 - 5-24 (HUD)
https://www.hud.gov/sites/documents/DOC_35615.PDF

HUD Occupancy Handbook No. 4350.3 at 5-17 - 5-19 (HUD)
https://www.hud.gov/sites/documents/DOC_35649.PDF

DB101
https://mn.db101.org/mn/programs/income_support/housing/program2.htm

Asserts are limited to $100,000. 42 U.S. Code § 1437n(e). Actual interest on assets and imputed income from assets are counted toward income.

Housing Choice Voucher Program Guidebook at 5-24 - 5-26 (HUD)
https://www.hud.gov/sites/documents/DOC_35615.PDF

HUD Occupancy Handbook No. 4350.3 at 5-25 - 5-27 (HUD)
https://www.hud.gov/sites/documents/DOC_35649.PDF

If the claims would increase assets over these limits, the tenant could consider lower claims. Another option for tenants with special needs would be to consider creating a special needs trust since its funds are excluded as assets, and perhaps it could be the plaintiff.

DHS
http://hcopub.dhs.state.mn.us/hcpmstd/19_25_35_20.htm

Tenants with government benefit assets concerns should consult with a legal aid government benefits attorney. Some attorneys practice with disability planning, including trusts.

Poverty Law Referral List
http://povertylaw.homestead.com/files/Reading/0Referrals.htm
Free Legal Aid
Disability Planning

1. Lockout Actions

See discussion, *supra*, at XII.B.0. for a discussion of considerations for all tenant actions.

a. Statutes - XII.B.1.a.
b. Analysis of actions for tenant repossession of property and damages - XII.B.1.b.
   (1) Petition forms - XII.B.1.b.(1)
   (2) Procedure - XII.B.1.b.(2)

(3) Types of exclusions - XII.B.1.b.(3)
(4) Damages - XII.B.1.b.(4)

c. Waiver of rights - XII.B.1.c.
d. Litigating lockouts in evictions - XII.B.1.d.
e. Appeal - XII.B.1.e.

a. *Statutes*

(1) History

Many statutes address lockouts by prohibiting them, making them criminal, and providing damages and penalties. Present statutes include:

a. Minn. Stat. § 504B.101 (formerly § 504.01) (prohibition of self-help eviction, also called distress for rent);
b. Minn. Stat. § 504.281 (formerly § 566.01) (prohibition of forcible entry);
c. Minn. Stat. § 504B.225 (formerly § 504.25) and 609.606 (crime);
d. Minn. Stat. § 504B.375 (formerly § 566.175) (action);
e. Minn. Stat. § 504B.231 (formerly § 504.255) (damages, penalty and attorney's fees); and
f. Minn. Stat. § 557.08 and 557.09 (damages and penalties).

The prohibition on forcible self-help evictions goes back to the Territorial Laws. Minn. Terr. Stat. Ch. 87, § 1 (1851); Minn. Stat. Ch. 77, § 1 (1858); Minn. Stat. Ch. 84, § 1 (1863); Minn. Stat. Ch. 79, § 5497 (1891); Minn. Stat. Ch. 84, § 6108 (1894); Minn. Stat. Ch. 76, § 4036 (1905); Minn. Stat. Ch. 76, § 9147 (1927); Minn. Stat. § 566.01 (1941).

The predecessors of two of the damages statutes, Minn. Stat. Ch. §§ 557.08 and 557.09, also date back to the Territorial Laws. Minn. Terr. Stat. Ch. 74, § 21-22 (1851); Minn. Stat. Ch. 64, §§ 21-22 (1858); Minn. Stat. Ch. 75, §§ 31-32 (1863); Minn. Stat. Ch. 77, §§ 5408-09 (1891); Minn. Stat. Ch. 75, §§ 5408-09 (1891); Minn. Stat. Ch. 75, §§ 5887-88 (1891); Minn. Stat. Ch. 82, §§ 4451-52 (1905); Minn. Stat. Ch. 82, §§ 9587-88 (1927).

The prohibition on distress for rent dates back to 1878. Minn. Stat. Ch. 75, § 39 (1878); Minn. Stat. Ch. 75, § 5872 (1894); Minn. Stat. Ch. 62, § 3327 (1905); Minn. Stat. Ch. 62, § 8186 (1927); Minn. Stat. § 504.01 (1941).

The lockout action and crime statutes date back to 1975. Minn. Laws 1975 Ch. 410, creating Minn. Stat. §§ 504.25 and 566.175, now §§ 504B.271 and 504B.375.

One of the damages statutes date back to 1984. Minn. Laws 1984 Ch. 612 § 1, creating Minn. Stat. § 504.255, now § 504B.231.

A parallel statute designation of lockouts as crimes was added to Chapter 609 in 1992. Minn. Stat. § 609.606. *Compare with* Minn. Stat. § 504.25, now § 504B.271.

(2) Current statutes

(a) Definitions, tenancies, and leases

See discussion, *supra*, at I.E. for definitions of residential tenant, person, residential building, and landlord.

Minn. Stat. § 504B.001, Subd. 12 provides:

> "Residential tenant" means any person who is occupying a dwelling in a building. . . under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of money or exchange of services as rent for the use of the dwelling unit, and all other regular occupants of that dwelling unit, or any resident of a manufactured home park.

In *Cocchiarella v. Driggs,* 884 N.W.2d 621 (Minn. Aug. 31, 2016), Cocchiarella had entered into an oral lease agreement and had paid the security deposit and first month's rent, but the landlord refused to allow her to move into the apartment. Cocchiarella had a present legal right to possess the premises, but had not obtained a key, entered the dwelling, or placed any belongings there. The question presented on appeal was whether a person must physically occupy a dwelling in a residential building to qualify as a "residential tenant" under Minn. Stat. §504B.375, which protects tenants from unlawful exclusion or removal. The Minnesota Supreme Court reversed the District court and Court of Appeals and held that the legal right to present possession of the premises is sufficient to invoke the protections of the statute; physical occupancy is not required.

Minn. Stat. § 504B.001, Subd. 7 provides:

> "Landlord" means the owner or owners of the free hold of the premises or lesser estate therein, contract vendee, receiver, executor, trustee, lessee, agent, or any other person, firm or corporation directly or indirectly in control of a building.

In *Miller v. AZ Flatts,* No. 71-CV-16-653 (Minn. Dist. Ct. 10th Dist., Sherburne County, Jan. 31, 2017) (Appendix 725) (Judge Yunker), the district court found that two entities and one individual all were landlords under Minn. Stat. § 504B.001, Subd. 7 in the tenant's civil action including lockout claims.

In *Otzin v. Smith, Washington, Dubra, Renters Warehouse, and Zupfer,* No. 27-CV-HC-15-5433 (Minn. Dist. Ct. 4th Dist. April 6, 2016) (Appendix 804), the tenant of the property owners who rented the property to plaintiff later excluded the plaintiff without the participation of the owners. Neither the owners of their management company allowed the plaintiff to repossess the property. The court rejected the argument of the owners and their agent son that they were not liable for the exclusion because they did not rent to the plaintiff or initiate the exclusion. The court found plaintiff more credible than the owner on whether the owners and agent knew that the plaintiff was a tenant, and found that they participated in the exclusion by not taking action to end it. The court awarded damages for lost personal property of $2,900 and a penalty of $5,800 under Minn. Stat. § 504B.271, costs, and attorney's fees.

See discussion, *supra*, at I.D for types of private tenancies, I.E1 for lease requirements, I.G for public and subsidized housing tenancies, and I.H for other relationships.

(b) Prohibition of self-help eviction

Wrongful eviction is prohibited by common law and by statute. *Berg v. Wiley*, 264 N.W.2d 145 (Minn. 1978). Minn. Stat. § 504B.281 (formerly § 566.01) provides:

FORCIBLE ENTRY AND UNLAWFUL DETAINER PROHIBITED.

No person may occupy or take possession of real property except where occupancy or possession is allowed by law, and in such cases, the person may not enter by force, but only in a peaceable manner.

The protection against lockouts is *not* limited to residential tenants. In *Berg*, the landlord locked out a tenant-restaurant. The jury found that the tenant did not abandon or surrender the premises and the trial court found defendant's reentry forcible and wrongful as a matter of law. The Minnesota Supreme Court affirmed the judgment below holding that the jury's verdict was supported by sufficient evidence and that the trial court's determination of unlawful entry was correct as a matter of law. The Court concluded that the only lawful means to dispossess a tenant in possession under a written lease who has neither abandoned nor voluntarily surrendered the premises, and who claims possession adverse to a landlord's claim of breach of the lease, is by resort to judicial process.

The Court noted:

> Minnesota has historically followed the common-law rule that a landlord may rightfully use self-help to retake leased premises from a tenant in possession without incurring liability for wrongful eviction provided two conditions are met: (1) The landlord is legally entitled to possession, such as where a tenant holds over after the lease term or where a tenant breaches a lease containing a reentry clause; and (2) the landlord's means of reentry are peaceable. *Mercil v. Broulette,* 66 Minn. 416, 69 N.W. 218 (1896). Under the common-law rule, a tenant who is evicted by his landlord may recover damages for wrongful eviction where the landlord either had no right to possession or where the means used to remove the tenant were forcible, or both. *See, e.g., Poppen v. Wadleigh,* 235 Minn. 400, 51 N.W.2d 75 (1952); *Sweeney v. Meyers,* 199 Minn. 21, 270 N.W. 906 (1937); *Lobdell v. Keene,* 85 Minn. 90, 88 N.W. 426 (1901). See, also, Minn.St. 566.01 (statutory cause of action where entry is not "allowed by law" or, if allowed, is not made "in a peaceable manner").

Berg v. Wiley, 264 N.W.2d 145, 149 n.1 (Minn. 1978).

Minn. Stat. § 504B.101 (formerly § 504.01) provides:

DISTRESS FOR RENT.

The remedy of distress for rent is abolished.

In *Ash Creek State Bank v. Zwart,* 158 Minn. 100, 103, 196 N.W. 935 (1924), the Court noted:

> At common law the landlord could seize any chattels found on the premises whether owned by the tenant or by third parties. This right, however, was subject to several exceptions and has been entirely abrogated by the statute which abolished distress for rent. G.S. 1913, § 6806.

(c) Misdemeanor crime

Two statutes designate lockouts as crimes. Minn. Stat. § 504B.225 (formerly § 504.25) provides:

INTENTIONAL OUSTER AND INTERRUPTION OF UTILITIES; MISDEMEANOR.

A landlord, an agent, or person acting under the landlord's direction or control who unlawfully and intentionally removes or excludes a tenant from lands or tenements or intentionally interrupts or causes the interruption of electrical, heat, gas, or water services to the tenant with intent to unlawfully remove or exclude the tenant from lands or tenements is guilty of a misdemeanor. In any trial under this section, it shall be presumed that the landlord, agent, or other person acting under the landlord's direction or control interrupted or caused the interruption of the service with intent to unlawfully remove or exclude the tenant from lands or tenements, if it is established by evidence that the landlord, an agent, or other person acting under the landlord's direction or control intentionally interrupted or caused the interruption of the service to the tenant. The burden is upon the landlord to rebut the presumption.

The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void. The provisions of this section also apply to occupants and owners of residential real property which is the subject of a mortgage foreclosure or contract for deed cancellation and as to which the period for redemption or reinstatement of the contract has expired.

In *Berg v. Wiley*, 264 N.W.2d 145, 150 (Minn. 1978), the Court noted: "To further discourage self-help, our legislature has provided treble damages for forcible evictions, §§ 557.08 and 557.09, and has provided additional criminal penalties for intentional and unlawful exclusion of a tenant. § 504.25."

Similarly, Minn. Stat. § 609.606 provides:

609.606 UNLAWFUL OUSTER OR EXCLUSION.

A landlord, agent of the landlord, or person acting under the landlord's direction or control who unlawfully and intentionally removes or excludes a tenant from lands or tenements or intentionally interrupts or causes the interruption of electrical, heat, gas, or water services to the tenant with intent to unlawfully remove or exclude the tenant from lands or tenements is guilty of a misdemeanor.

The tenant can call the police, although police responses to lockouts vary considerably.

(d) Action to recover possession of the property

Minn. Stat. § 504B.375 (formerly § 566.175) created the action to restore possession of the property to the tenant.

504B.375 UNLAWFUL EXCLUSION OR REMOVAL; ACTION FOR RECOVERY OF POSSESSION.

Subdivision 1. Unlawful exclusion or removal.

(a) This section applies to actual or constructive removal or exclusion of a residential tenant which may include the termination of utilities or the removal of doors, windows, or locks. A residential tenant to whom this section applies may recover possession of the

premises as described in paragraphs (b) to (e).

(b) The residential tenant shall present a verified petition to the district court of the judicial district of the county in which the premises are located that:

(1) describes the premises and the landlord;

(2) specifically states the facts and grounds that demonstrate that the exclusion or removal was unlawful, including a statement that no writ of recovery of the premises and order to vacate has been issued under section 504B.345 in favor of the landlord and against the residential tenant and executed in accordance with section 504B.365; and

(3) asks for possession.

(c) If it clearly appears from the specific grounds and facts stated in the verified petition or by separate affidavit of the residential tenant or the residential tenant's attorney or agent that the exclusion or removal was unlawful, the court shall immediately order that the residential tenant have possession of the premises.

(d) The residential tenant shall furnish security, if any, that the court finds is appropriate under the circumstances for payment of all costs and damages the landlord may sustain if the order is subsequently found to have been obtained wrongfully. In determining the appropriateness of security, the court shall consider the residential tenant's ability to afford monetary security.

(e) The court shall direct the order to the sheriff of the county in which the premises are located and the sheriff shall execute the order immediately by making a demand for possession on the landlord, if found, or the landlord's agent or other person in charge of the premises. If the landlord fails to comply with the demand, the officer shall take whatever assistance may be necessary and immediately place the residential tenant in possession of the premises. If the landlord, the landlord's agent, or other person in control of the premises cannot be found and if there is no person in charge, the officer shall immediately enter into and place the residential tenant in possession of the premises. The officer shall also serve the order and verified petition or affidavit immediately upon the landlord or agent, in the same manner as a summons is required to be served in a civil action in district court.

Subd. 2. Motion for dissolution or modification of order. The landlord may, by written motion and notice served by mail or personally on the residential tenant or the residential tenant's attorney at least two days before the hearing date on the motion, obtain dissolution or modification of the order for possession issued under subdivision 1, paragraph (c), unless the residential tenant proves the facts and grounds on which the order is issued. A landlord bringing a motion under this subdivision may recover possession of the premises only by an eviction action or otherwise provided by law. Upon the dissolution of the order, the court shall assess costs against the residential tenant, subject to the provisions of section 563.01, and may allow damages and reasonable attorney’s fees for the wrongful granting of the order for possession. If the order is affirmed, the court shall tax costs against the landlord and may allow the residential tenant reasonable attorney's fees.

Subd. 3. Finality of order. An order issued under subdivision 1, paragraph (c), or affirmed, modified, or dissolved under subdivision 2, is a final order for purposes of appeal. Either party may appeal the order within ten days after entry. If the party appealing remains in possession of the premises, bond must be given to:

(1) pay all costs of the appeal;
(2) obey the court's order; and
(3) pay all rent and other damages that justly accrue to the party excluded from possession during the pendency of the appeal.

Subd. 4. Waiver not allowed. A provision of an oral or written lease or other agreement in which a residential tenant waives this section is contrary to public policy and void.

Subd. 5. Purpose. The purpose of this section is to provide an additional and summary remedy for res- idential tenants unlawfully excluded or removed from rental property and, except where expressly provided in this section, sections 504B.285 to 504B.371 do not apply to proceedings under this section.

Subd. 6. Application. In addition to residential tenants and landlords, this section applies to:

(1) occupants and owners of residential real property that is the subject of a mortgage foreclosure or contract for deed cancellation for which the period for redemption or reinstatement of the contract has expired; and

(2) mortgagees and contract for deed vendors.

For cases interpreting and applying the statute, *see* discussion, *infra*, at XII.B.1.(b).

(e) Damages

Three statutes provide for damages: Minn. Stat. §§ 504B.231 (formerly § 504.255), 557.08, 557.09.

504B.231 DAMAGES FOR OUSTER.

(a) If a landlord, an agent, or other person acting under the landlord's direction or control unlawfully and in bad faith removes, excludes, or forcibly keeps out a tenant from residential premises, the tenant may recover from the landlord treble damages or $500, whichever is greater, and reasonable attorney's fees.

(b) The remedies provided in this section are in addition to and shall not limit other rights or remedies available to landlords and tenants. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void. The provisions of this section also apply to occupants and owners of residential real property which is the subject of a mortgage foreclosure or contract for deed cancellation and as to which the period for redemption or reinstatement of the contract has expired.

557.08 FORCIBLE EVICTION; TREBLE DAMAGES.

If a person who is put out of real property in a forcible manner without lawful authority, or who, being so put out, is afterwards kept out by force, shall recover damages therefor, judgment may be entered for three times the amount at which the actual damages are assessed.

557.09 EVICTION; TREBLE DAMAGES.

In case of eviction, if a person, claiming in good faith, under color of title, to be rightfully in possession, so put out or kept out, shall recover damages therefor, judgment may be entered in that person's favor for three times the amount at which the actual damages are assessed.

In *Berg v. Wiley*, 264 N.W.2d 145, 150 (Minn. 1978), the Court noted: "To further discourage self-help, our legislature has provided treble damages for forcible evictions, §§ 557.08 and 557.09, and has provided additional criminal penalties for intentional and unlawful exclusion of a tenant. § 504.25." For cases interpreting and applying the statutes, *see* discussion, *infra*, at XII.B.1.(b).

b. *Analysis of actions for tenant repossession of property and damages*

(1) Petition forms

The court form for the petition to restore possession to the tenant is posted at http://www.mncourts.gov/default.aspx?page=513&item=296&itemType=formDetails. The form does not prompt the petitioner to include damages and penalties, so the tenant should include damages with the above statute citations.

A combined emergency relief and lockout action form with optional claims, and a slide show are posted at http://povertylaw.homestead.com/EmergencyReliefandLockoutActions.html.

For *in forma pauperis* fee waivers forms, *see* http://povertylaw.homestead.com/IFP.html. For a notice of removal, *see* http://www.mncourts.gov/default.aspx?page=513&item=468&itemType=formDetails.

(2) Procedure

A common practice is for the court to issue an order requiring the landlord to remedy the lockout, scheduling a hearing to determine compliance and damages and hear defenses, and providing a deadline for service of the petition and order on the defendant. The statute does not provide for a hearing procedure. The tenant has the burden of proof, even if the court has ordered the landlord to remedy the lockout, to prove (1) tenancy, (2) lockout or exclusion, (3) impact on tenant, and (4) relief requested.

(3) Types of exclusions

(a) Exclusion of tenant, a person with legal right of occupancy

In *Cocchiarella v. Driggs,* 884 N.W.2d 621 (Minn. Aug. 31, 2016), Cocchiarella had entered into an oral lease agreement and had paid the security deposit and first month's rent, but the landlord refused to allow her to move into the apartment. Cocchiarella had a present legal right to possess the premises, but had not obtained a key, entered the dwelling, or placed any belongings there. The question presented on appeal was whether a person must physically occupy a dwelling in a residential building to qualify as a "residential tenant" under Minn. Stat. §504B.375, which protects tenants from unlawful exclusion or

removal. The Minnesota Supreme Court reversed the district court and Court of Appeals and held that the legal right to present possession of the premises is sufficient to invoke the protections of the statute; physical occupancy is not required.

In *Miller v. AZ Flatts,* No. 71-CV-16-653 (Minn. Dist. Ct. 10th Dist., Sherburne County, Jan. 31, 2017) (Appendix 725) (Judge Yunker), the district court issued judgment in favor of the tenant in the tenant's action against the landlords for unlawful withholding of the security deposit, breach of lease, wrongful ouster, and other claims. The court held that changing the locks before the end of the lease term without judicial process also was wrongful ouster. The court awarded damages, costs, and attorney's fees.

(b) Exclusion of tenant before physical occupancy

In *Cocchiarella v. Driggs,* 884 N.W.2d 621 (Minn. Aug. 31, 2016), Cocchiarella had entered into an oral lease agreement and had paid the security deposit and first month's rent, but the landlord refused to allow her to move into the apartment. Cocchiarella had a present legal right to possess the premises, but had not obtained a key, entered the dwelling, or placed any belongings there. The question presented on appeal was whether a person must physically occupy a dwelling in a residential building to qualify as a "residential tenant" under Minn. Stat. §504B.375, which protects tenants from unlawful exclusion or removal. The Minnesota Supreme Court reversed the district court and Court of Appeals and held that the legal right to present possession of the premises is sufficient to invoke the protections of the statute; physical occupancy is not required.

(c) Exclusion from part of the property

Exclusion of the tenant from part of the property may be unlawful. *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999) (Appendix 426) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: landlord violated unlawful exclusion statute by excluding tenant from the basement;$500 for exclusion from the basement).

(d) Landlord termination of utility service

In *LeDoux v. Zanosko*, No. CX-95-1001 (Minn. Dist. Ct. 9th Dist. Oct. 16, 1995) (Appendix 124), in an unlawful detainer action, the court awarded a two month rent abatement, relocation damages of $115 for motel room, $500 in statutory damages, and attorney's fees following unlawful termination of utilities. *See* discussion, *infra*, at XII.B.4.

(e) Exclusion through bad faith restraining order

In *Smith v.* _____, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 620), the referee ordered landlord did not need a rental license and terminated lease, but the judge reversed, concluding the landlord without license did not have standing to file eviction, the landlord constructively evicted the tenant by obtaining restraining order against the tenant in bad faith entitling the tenant to $500 in damages and $500 in attorney's fees, and ordering expungement).

(f) Towing tenant's vehicle

In *Miller v. AZ Flatts,* No. 71-CV-16-653 (Minn. Dist. Ct. 10th Dist., Sherburne County, Jan. 31,

2017) (Appendix 725) (Judge Yunker), the district court issued judgment in favor of the tenant in the tenant's action against the landlords for unlawful withholding of the security deposit, breach of lease, wrongful ouster, and other claims. The court concluded that the lease provision providing for the loss of parking privileges was unconscionable and unenforceable for the following reasons: the landlords had sole discretion to fine tenants or to deny access; any alleged violation had no relation to parking rules; no written notice was required; and there was no opportunity to contest the alleged violation. The court also held that towing the tenant's car constituted wrongful ouster because the landlords failed to give written notice or to seek judicial remedies before resorting to self-help procedures. The court awarded damages, costs, and attorney's fees.

(g) Contracts for deed

In *Follis v. State Armory Building Commission*, No. A14-2198, 2015 WL 7940309 (Minn. Ct. App. December 7, 2015) (unpublished), following cancellation of a contract for deed and the ensuing eviction, the vendor allowed the vendees access to the premises to remove belongings for 60 days, after which the vendor denied access. The vendor never completed a written inventory of the property. The vendees sued for $3,000,000 in damages and $250,000 in punitive damages. The district court granted partial summary judgment to the vendor, concluding that the vendees presented no evidence of the value of the personal property, and awarded $500 to the vendees under Minn. Stat. § 504B.231 as an unlawful ouster for failing to prepare the inventory. The Court of Appeals affirmed the partial summary judgment and award, noting:

> A landlord who removes a tenant's property in violation of section 504B.365 is guilty of an unlawful ouster under section 504B.231. Minn. Stat. § 504B.365, subd. 5. Because the SABC did not complete an inventory of the Follises' property required by section 504B.365, subdivision 3(d), the SABC violated section 504B.365 and was therefore guilty of an unlawful ouster under section 504B.231.

Id. at *4.

(h) Legal exclusion with eviction action

The action for possession is not available where the landlord obtains an eviction action writ of recovery of the premises and order to vacate under Minn. Stat. § 504B.345. Minn. Stat. § 504B.375.

In *Hammann v. Wells Fargo Bank, N.A.,* 2017 Minn. App. Unpub. LEXIS 5 (Minn. Ct. App. Jan. 3, 2017) (unpublished), Hammann entered a one-year residential lease with landlords who later defaulted on their mortgage. The bank initiated a foreclosure by advertisement on the property and bought the property in a foreclosure sale. The bank then mailed a "demand for possession of property" letter to the former owners, Hammann, the "occupants," and to any known or unknown tenant. The bank then filed an eviction action and obtained a writ of recovery of premises. Hammann did not appear in the action and the bank recovered the property.

Months later Hammann sued the bank pro se alleging claims of ouster, unlawful exclusion or removal, and breach-of-landlord covenants arguing that he did not receive a copy of the bank's letter. The district court dismissed the Hammann's claims. Then Hammann moved in the eviction action to intervene and for relief from the eviction judgment. The district court in the eviction action denied his motion to intervene because he failed to serve all of the parties and because the motion was untimely. Later, the district court also denied his motion to review its prior opinion and did not address the merits

of his motion for relief from judgment.

The Minnesota Court of Appeals held that: (i) Hammann's claim of ouster failed because the bank made numerous attempts to identify and include all occupants in the eviction action and Hammann chose to wait more than two years to challenge the district court's order and writ of recovery so he could not prove that the bank acted unlawfully or in bad faith; (ii) his claim of unlawful-exclusion failed because the bank had a writ of recovery and order to vacate; and (iii) his claim of breach-of-landlord-covenant failed because Hammann was unable to establish that a lease or license agreement existed between him and the bank. The court also decided that the district court did not err in denying Hammann's motion to intervene in the eviction action or in denying review because the service was ineffective and his motion and notice of review were untimely. Lastly, the court held that Hammann's motion for relief from judgment was improper citing precedent stating that "post-trial orders in unlawful detainer proceedings are non-appealable."

(i) Post-eviction exclusion from personal property

In *Follis v. State Armory Building Commission*, No. A14-2198, 2015 WL 7940309 (Minn. Ct. App. December 7, 2015) (unpublished), following cancellation of a contract for deed and the ensuing eviction, the vendor allowed the vendees access to the premises to remove belongings for 60 days, after which the vendor denied access. The vendor never completed a written inventory of the property. The vendees sued for $3,000,000 in damages and $250,000 in punitive damages. The district court granted partial summary judgment to the vendor, concluding that the vendees presented no evidence of the value of the personal property, and awarded $500 to the vendees under Minn. Stat. § 504B.231 as an unlawful ouster for failing to prepare the inventory. The Court of Appeals affirmed the partial summary judgment and award, noting:

> A landlord who removes a tenant's property in violation of section 504B.365 is guilty of an unlawful ouster under section 504B.231. Minn. Stat. § 504B.365, subd. 5. Because the SABC did not complete an inventory of the Follises' property required by section 504B.365, subdivision 3(d), the SABC violated section 504B.365 and was therefore guilty of an unlawful ouster under section 504B.231.

Id. at *4.

(j) Tenant abandonment

In *Clay v. Aeon,* No. 27-CV-HC-10-748 Minn. Dist. Ct. 4th Dist. Mar. 17, 2010) (Appendix 705) (Judge Neville), the tenant in a federal Section 8 apartment was taken to jail on charges that were later dismissed. During the time that the tenant was in jail, he made arrangements for his son to pay the rent and left his personal property in the apartment. However, the son did not make all of the rent payments, and the landlord sent delinquency notices and eventually an abandonment notice only to the apartment, despite the fact that she knew the tenant was in jail. Upon his release from jail, the tenant immediately returned to his apartment, but was prevented from entering because the landlord had changed the locks. The court held that the tenant did not abandon the apartment due to his involuntary absence and his stated intention to return to the apartment. The court also held that the landlord acted in bad faith because she did not send notices to the jail, even though she knew that is where tenant was at that time. Further, the landlord did not commence an eviction action or abide by the lease termination provisions required by the federal regulations for that type of apartment. The court ordered that the landlord immediately restore the tenant's possession of the apartment and return his personal property. The court

further ordered that the tenant had ten days to submit evidence of his damages and attorney's fees for the court's consideration.

See Haynes v. Butler, No. HC 060406900 (Minn. Dist. Ct. 4th Dist. Apr. 7, 2006) (Appendix 650) (lockout action: tenant had right of possession under lease and landlord failed to prove abandonment; landlord ordered to restore possession to tenant; sheriff ordered to enforce order if needed; tenant awarded statutory damages, costs and attorney's fees and allowed to deduct them from rent).

(k) Disputed residency

In *Viant v. Flores,* No. HC-060315900 (Minn. Dist. Ct. 4th Dist. Mar. 21, 2006) (Appendix 685), the referee awarded lockout action relief awarded to plaintiff who provided documentation of residency, including restoration of possession, injunction on exclusion, assistance by sheriff, and $300 penalty that can be credited against rent, but no attorney's fees. On judge review, the court awarded mandatory costs of $200 and *pro rata* rent abatement, but affirmed the referee's decision on the penalty and attorney's fees as being within the discretion of the referee. *Viant v. Flores,* No. HC-060315900 (Minn. Dist. Ct. 4th Dist. June 26, 2006) (Appendix 685a) (Judge Connolly).

(l) Owner and agent liability for exclusion

In *Otzin v. Smith, Washington, Dubra, Renters Warehouse, and Zupfer,* No. 27-CV-HC-15-5433 (Minn. Dist. Ct. 4th Dist. April 6, 2016) (Appendix 804), the tenant of the property owners who rented the property to plaintiff later excluded the plaintiff without the participation of the owners. Neither the owners of their management company allow the plaintiff to repossess the property. The court rejected the owners' argument that they were not liable for the exclusion because they did not rent to the plaintiff or initiate the exclusion. The court found plaintiff more credible than the owner on whether the owners knew that the plaintiff was a tenant. The court awarded damages for lost personal property of $2,900 and a penalty of $5,800 under Minn. Stat. § 504B.271, costs, and attorney's fees.

(4) Damages

The court can consider damages in an action for restoration to the premises, under Minn. Stat. §§ 504B.375 (formerly § 566.175). *Bass v. Equity Residential Holdings*, LLC., 849 N.W.2d 87 (Minn. Ct. App. 2014).

The three damages statutes have common elements but also differ significantly: (1) Minn. Stat. § 504B.231: bad faith, $500 or treble damages, and attorney's fees; (2) Minn. Stat. § 557.08: force required, bad faith not required, treble damages, but no $500 or attorney's fees; (3) Minn. Stat. § 557.09: put out required, bad faith not required, treble damages, but no $500 or attorney's fees. Damages can be sought in a separate action, or can be included in the action to restore possession, but the court form does not prompt the tenant to include damages. The combined form includes damages. http://povertylaw.homestead.com/EmergencyReliefandLockoutActions.html.

In *Pahnke v. Anderson Moving and Storage*, No. A09–1738, 2010 WL 3853349 at *7 (Minn. Ct. App. Oct. 5, 2010) (unpublished), the Court held that the $500 in damages under section 504B.231(a) do not have to be awarded because the statute states that the tenant may recover from the landlord treble damages or $500, and the word "may" is permissive." As an unpublished decision, it is not precedential. *See* discussion, *supra*, at I.A.3.

(a) Personal property

In *Bass v. Equity Residential Holdings*, LLC., 849 N.W.2d 87 (Minn. Ct. App. 2014), the landlord won an eviction action for nonpayment of rent, but rather than obtain and execute a writ of recovery, the landlord locked out the tenant and put her personal property in a dumpster. The tenant filed a lockout action. The landlord did not appear at the hearing and while the landlord's attorney called the court to say he also could not attend, the court proceeded with the case since there was no certificate of representation filed. The housing court referee determined that landlord had defaulted, the tenant had been wrongfully locked out and had not abandoned the premises, the landlord acted in bad faith, and the tenant suffered damages. Both parties attended another hearing on damages, and after taking testimony, the referee awarded treble damages of $9,386.97 under Minn. Stat. § 504B.231 and$1,000 as punitive damages under Minn. Stat. § 504B.271, for a total of $10,386.97 to be paid within 60 days following the order. The landlord sought judge review, which affirmed the order. *Id.* at 89-90.

The Court of Appeals affirmed the district court, holding that housing court division of district court had jurisdiction to award damages; evidence was sufficient to support findings regarding value of the tenant's destroyed property; the tenant was not required to mitigate damages by diving into dumpsters to retrieve water-damaged possessions; damages for belongings destroyed in rain-soaked dumpster were a direct consequence of ouster and thus were recoverable; evidence was sufficient to support finding that the landlord acted in bad faith; and the tenant could recover both treble damages and punitive damages under the two statutes. *Id.* at 90-93.

(b) Rent abatement

The tenant's obligation to pay rent is dependent upon the landlord's delivery of possession to the tenant. *Fritz v. Warthen*, 298 Minn. 54, ___, 213 N.W.2d 339, 341 (1973); *Cohen v. Conrad*, 110 Minn. 207, __, 124 N.W. 992, __ (1910).

The tenant can recover the full amount of rent paid for the month in which the tenant was wrongfully evicted. *Harwood v. Meloney*, 139 Minn. 212, 214, 166 N.W. 125, __ (1918) (well-established rule that where landlord wrongfully evicts tenant, the whole rent is suspended until possession has been restored to the tenant); *Chapman v. Fabian*, 104 Minn. 176, 177, 116 N.W. 207, ___ (1908) (landlord cannot recover rent for month in which tenant was wrongfully evicted; no holding on whether tenant could recover rent if rent already had been paid).

Some courts have limited rent abatement to rent paid to the landlord for the period in which the tenant was unlawfully evicted from the premises on a *pro rata* basis. In *Lindner v. Foy*, No. A04-2060, 2005 WL 1514461 (Minn. Ct. App. June 28, 2005) (unpublished), the tenant vacated property, paid rent for the month, but was denied access to retrieve property. The district court awarded the tenant rent abatement for the period of exclusion, but denied (1) the cost of the trailer her son rented to remove her property, because the trailer rental would have been necessary regardless of appellant's conduct; (2) treble damages and attorney's fees under Minn. Stat. § 504B. 231 because it found that respondent had not proved that appellant acted in bad faith; and (3) punitive damages under Minn. Stat. § 504B.271, subd. 2 because it found that appellant complied with the only written demand made on him. The landlord appealed, and the Court of Appeals affirmed that the exclusion violated the statute and affirmed the abatement award. *See Klyberg v. Elkboy,* No. UD-1910617511 (Minn. Dist. Ct. 4th Dist. July 3, 1991) (Appendix 5.M) (*pro rata* rent abatement for three days when defendants were denied use of the premises); *Yauch v. Caine*, No. UD-1900403548 at 3 (Minn. Dist. Ct. 4th Dist. Apr. 20, 1990) (Appendix 11.D) (eviction, awarded rent abatement of 86 percent of rent).

(c) Clothing

In *Hitchcock v. Kelly,* No. 27-CV-HC-14-6786 Minn. Dist. Ct. 4th Dist. Dec. 24, 2014) (Appendix 703), the landlord unlawfully and in bad faith excluded the tenant from the property by changing the locks and stopping the utilities. The landlord did not appear at the hearing and was found to be in default.

> The Court finds that Plaintiff's credible testimony established the following damages by a preponderance of the evidence: $134.00 for warm clothes purchased solely because of the unlawful exclusion, and $870.00 for alternate lodging ($30 per night for 29 nights), for a total of $1004.00. The Court finds, pursuant to the treble damages provision of Minn. Stat. 504B.231, the Plaintiff is entitled to money judgment in the amount of $3,012.00.

The court ordered that the *pro se* tenant be immediately restored to possession of the property, with the assistance of the sheriff, if necessary.

(d) Lodging

In *Hitchcock v. Kelly,* No. 27-CV-HC-14-6786 Minn. Dist. Ct. 4th Dist. Dec. 24, 2014) (Appendix 703), the landlord unlawfully and in bad faith excluded the tenant from the property by changing the locks and stopping the utilities. The landlord did not appear at the hearing and was found to be in default.

> The Court finds that Plaintiff's credible testimony established the following damages by a preponderance of the evidence: $134.00 for warm clothes purchased solely because of the unlawful exclusion, and $870.00 for alternate lodging ($30 per night for 29 nights), for a total of $1004.00. The Court finds, pursuant to the treble damages provision of Minn. Stat. 504B.231, the Plaintiff is entitled to money judgment in the amount of $3,012.00.

The court ordered that the *pro se* tenant be immediately restored to possession of the property, with the assistance of the sheriff, if necessary.

(e) $500 penalty if greater than treble damages

In *Brackins v. Simon*, No. UD-1940803531 (Minn. Dist. Ct. 4th Dist. Aug. 5, 1994) (Appendix 77), the tenant petitioned to be restored to the premises following the landlord's attempt to exclude her. The court ordered a $500 penalty and $50 in attorneys fees against the landlord under Section 504.255 (now § 504B.231), which would be paid by rent abatement for the month of August. *See Smith v.* _____, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 620) (on judge review of referee decision, award to tenant to $500 in damages and $500 in attorney's fees, and ordering expungement); *Haynes v. Butler,* No. HC 060406900 (Minn. Dist. Ct. 4th Dist. Apr. 7, 2006) (Appendix 650); ____ *v.* _____, No. C-3-94-211 (Minn. Dist. Ct. 5th Dist. Dec. 21, 1994) (Appendix 95) (stipulated application of $500.00 statutory penalty to prospective rent abatement, and extension of retaliation protection); *LeDoux v. Zanosko*, No. CX-95-1001 (Minn. Dist. Ct. 9th Dist. Oct. 16, 1995) (Appendix 124) (unlawful detainer action: two month rent abatement, relocation damages of $115 for motel room, $500 in statutory damages, and attorney's fees following unlawful termination of utilities).

In *Viant v. Flores,* No. HC-060315900 (Minn. Dist. Ct. 4th Dist. Mar. 21, 2006) (Appendix 685), the referee awarded lockout action relief awarded to plaintiff who provided documentation of residency,

including restoration of possession, injunction on exclusion, assistance by sheriff, and $300 penalty that can be credited against rent, but no attorney's fees. On judge review, the court awarded mandatory costs of $200 and *pro rata* rent abatement, but affirmed the referee's decision on the penalty and attorney's fees as being within the discretion of the referee. *Viant v. Flores,* No. HC-060315900 (Minn. Dist. Ct. 4th Dist. June 26, 2006) (Appendix 685a) (Judge Connolly).

(f) Attorney's fees

Attorney's fees are available under one of the damages statutes, Minn. Stat. § 504B.231 (formerly § 504.255).

504B.231 DAMAGES FOR OUSTER.

(a) If a landlord, an agent, or other person acting under the landlord's direction or control unlawfully and in bad faith removes, excludes, or forcibly keeps out a tenant from residential premises, the tenant may recover from the landlord treble damages or $500, whichever is greater, and reasonable attorney's fees.

The courts awarded attorney's fees in *Otzin v. Smith, Washington, Dubra, Renters Warehouse, and Zupfer,* No. 27-CV-HC-15-5433 (Minn. Dist. Ct. 4th Dist. April 6, 2016) (Appendix 804); *Haynes v. Butler,* No. HC 060406900 (Minn. Dist. Ct. 4th Dist. Apr. 7, 2006) (Appendix 650); *LeDoux v. Zanosko*, No. CX-95-1001 (Minn. Dist. Ct. 9th Dist. Oct. 16, 1995) (Appendix 124).

In *Viant v. Flores,* No. HC-060315900 (Minn. Dist. Ct. 4th Dist. Mar. 21, 2006) (Appendix 685), the referee awarded lockout action relief awarded to plaintiff who provided documentation of residency, including restoration of possession, injunction on exclusion, assistance by sheriff, and $300 penalty that can be credited against rent, but no attorney's fees. On judge review, the court awarded mandatory costs of $200 and *pro rata* rent abatement, but affirmed the referee's decision on the penalty and attorney's fees as being within the discretion of the referee. *Viant v. Flores,* No. HC-060315900 (Minn. Dist. Ct. 4th Dist. June 26, 2006) (Appendix 685a) (Judge Connolly).

In *Haynes v. Butler,* No. HC 060406900 (Minn. Dist. Ct. 4th Dist. Apr. 7, 2006) (Appendix 650), the court concluded that the tenant had right of possession under lease and landlord failed to prove abandonment. The court ordered the landlord to restore possession to tenant; the sheriff to enforce order if needed; and the tenant awarded statutory damages, costs and attorney's fees and allowed to deduct them from rent.

If the lease provides for attorney's fees to the landlord in litigation against the tenant, the tenant might be entitled to fees under Minn. Stat. § 504B.172. *See* discussion, *supra*, at VIII.E.4.a.(2)(a).

c. *Waiver of rights*

Residential tenants are protected from waiver by statute. Minn. Stat. §§ 504B.225 (formerly § 504.25), 504B.231 (formerly § 504.255), 504B.001 (formerly § 566.18).

A *commercial* lease may require a commercial tenant to waive damages for a lockout. *Duling Optical Corp. v. First Union Management, Inc.,* No. C5-95-2718 (Minn. Ct. App. Aug. 13, 1996), FINANCE & COMMERCE at 66 (Aug. 16, 1996) (Appendix 181) (unpublished decision).

d. *Litigating lockouts in evictions*

See discussion, *supra*, at VI.E.5.

e. *Appeal*

The appeal time for a lockout action under Minn. Stat. § 504B.375 is 10 days from entry of judgment. Minn. Stat. § 504B.375, Subd. 3. Appeals of other actions raising lockout issues are governed by Minn. R. Civ. App. P. 104.01 with its 60 day period.

2. Violation of Tenant's Privacy Rights

See discussion, *supra*, at XII.B.0. for a discussion of considerations for all tenant actions.

a0. *Common law*

Before enactment of Minn. Stat. § 504B.211, tenants had privacy rights under the common law. The landlord could enter the property only if the landlord reserved that right in the lease. *Glidden v. Second Ave. Inv. Co.,* 125 Minn. 471, 475-76, 147 N.W. 658, 659 (1914); *Wacholz v. Griesgraber,* 70 Minn. 220, 222, 73 N.W. 7, 8 (1897).

a. *Statutes and ordinances*

(1) Minn. Stat. § 504B.211

See discussion, *supra*, at I.E. for statutory definitions of residential tenant, person, residential building, and landlord.

See discussion, *supra*, at I.D for types of private tenancies, I.E1 for lease requirements, I.G for public and subsidized housing tenancies, and I.H for other relationships.

The 1995 Minnesota Legislature created § 504.183 (now § 504B.211), which provides that a landlord may enter the tenants premises only for a reasonable business purpose and after making a good faith effort to give the tenant reasonable notice under the circumstances. Minn. Stat. § 504B.211 (formerly § 504.183), subd. 2, 1995 Minn. Laws Ch. 226, Art. 4 § 21. The statute sets out several reasonable business purposes for landlord entry, and several exceptions to the notice requirement. If the landlord substantially violates the statute, the tenant may use a tenants remedies action or emergency tenants remedies action to enforce the statute and ask for a rent reduction, full recision of the lease, recovery of any damage deposit less amounts retained under the damage deposit statute, and up to a $100.00 civil penalty. A tenant may not waive and the landlord may not require the tenant to waive the tenant's right to prior notice. *The statute does not provide for enforcement through an eviction (unlawful detainer) action defense.*

504B.211 RESIDENTIAL TENANT'S RIGHT TO PRIVACY.

Subdivision 1. Definitions. For purposes of this section, "landlord" has the meaning defined in section 504B.001, subdivision 7, and also includes the landlord's agent or other person acting under the landlord's direction and control.

Subd. 2. Entry by landlord. Except as provided in subdivision 5, a landlord may enter the premises rented by a residential tenant only for a reasonable business purpose and after making a good faith effort to give the residential tenant reasonable notice under the circumstances of the intent to enter. A residential tenant may not waive and the landlord may not require the residential tenant to waive the residential tenant's right to prior notice of entry under this section as a condition of entering into or maintaining the lease.

Subd. 3. Reasonable purpose. For purposes of subdivision 2, a reasonable business purpose includes, but is not limited to:

(1) showing the unit to prospective residential tenants during the notice period before the lease terminates or after the current residential tenant has given notice to move to the landlord or the landlord's agent;

(2) showing the unit to a prospective buyer or to an insurance representative;

(3) performing maintenance work;

(4) allowing inspections by state, county, or city officials charged in the enforcement of health, housing, building, fire prevention, or housing maintenance codes;

(5) the residential tenant is causing a disturbance within the unit;

(6) the landlord has a reasonable belief that the residential tenant is violating the lease within the residential tenant's unit;

(7) prearranged housekeeping work in senior housing where 80 percent or more of the residential tenants are age 55 or older;

(8) the landlord has a reasonable belief that the unit is being occupied by an individual without a legal right to occupy it; or

(9) the residential tenant has vacated the unit.

Subd. 4. Exception to notice requirement. Notwithstanding subdivision 2, a landlord may enter the premises rented by a residential tenant to inspect or take appropriate action without prior notice to the residential tenant if the landlord reasonably suspects that:

(1) immediate entry is necessary to prevent injury to persons or property because of conditions relating to maintenance, building security, or law enforcement;

(2) immediate entry is necessary to determine a residential tenant's safety; or

(3) immediate entry is necessary in order to comply with local ordinances regarding unlawful activity occurring within the residential tenant's premises.

Subd. 5. Entry without residential tenant's presence. If the landlord enters when the residential tenant is not present and prior notice has not been given, the landlord shall disclose the entry by

placing a written disclosure of the entry in a conspicuous place in the premises.

Subd. 6. Penalty. If a landlord substantially violates subdivision 2, the residential tenant is entitled to a penalty which may include a rent reduction up to full rescission of the lease, recovery of any damage deposit less any amount retained under section 504B.178, and up to a $100 civil penalty for each violation.

If a landlord violates subdivision 5, the residential tenant is entitled to up to a $100 civil penalty for each violation. A residential tenant shall follow the procedures in sections 504B.381, 504B.385, and 504B.395 to 504B.471 to enforce the provisions of this section.

Subd. 7. Exemption. This section does not apply to residential tenants and landlords of manufactured home parks as defined in section 327C.01.

See discussion, *supra*, at I.E. for statutory definitions of residential tenant, person, residential building, and landlord.

(2) Ordinances

Some local ordinances contain similar protections. For instance, Minneapolis Code of Ordinances, § 244.285 (Appendix 138) provides that whenever a landlord or landlord's agent intends to enter the tenant's unit, the person entering the unit shall make a good faith and reasonable effort to notify the tenant beforehand. The ordinance also contains some exceptions, but is much less specific than the new statute. As a right protected by ordinance, a tenant could seek rent abatement for a landlord's violation of the ordinance, and in turn violation of the covenants of habitability in Minn. Stat. § 504B.161 (formerly § 504.18), the tenant could seek rent abatement. *See* discussion, *supra*, at VI.E.1.d.(3) (Covenants of habitability).

b. *Statutory privacy claims outside of eviction actions*

(1) General civil actions

In *Ghebrehiwet v. Ghneim,* No. A15-0397 (Minn. Ct. App. January 11, 2016) (unpublished), landlord claimed in district court on removal from conciliation court that tenant failed to pay rent when due, held over after the lease expired, and damaged the rental unit. The tenant counterclaimed that the landlord breached the covenants of habitability due to a pervasive smell of sewage, flooding from a leaking roof, and no heat in the rental unit. The tenant also alleged privacy violations because landlord entered the rental unit without a reasonable purpose and without making a good faith effort to provide reasonable notice on several occasions, including an incident when the tenant woke up in her master bedroom to find the landlord and another male standing within feet of her, both of whom refused to leave even after several requests. The district court held that tenant owed $1,952 in unpaid rent, but that landlord was liable for damages in the amount of $3,300 (3 months' rent) for his breach the covenant of habitability and for penalties in the amount of $3,300 for numerous privacy violations.

The Court of Appeals affirmed the privacy penalties. For a substantial violation of the tenant's right to privacy, the statute allows for penalties that may include rent reduction up to full rescission of the lease, recovery of any damage deposit, and a maximum $100 civil penalty for each violation. The district court found that more than 10 substantial violations had occurred and awarded $1,000. The district court also awarded an additional $2,300 for the egregious master bedroom incident in the form of

full rent reduction for that month ($1,100), recovery of the $1,100 damage deposit, and a $100 penalty. The Court of Appeals held that the penalties awarded to the tenant were not an abuse of discretion.

(2) Rent escrow actions

In *Singh v. Minnesota Rental Properties Group,* LLC, No. 27-CV-HC-14-4727 (Minn. Dist. Ct. 4th Dist. Nov. 28, 2014) (Appendix 781), in a rent escrow action, the court awarded the tenant on landlord's default rent abatement for habitability violations and privacy violations at $100 per violation, costs, and attorney's fees. *See Robinson v. Etukakpan,* No. 27-CV-HC- 06-4817 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2006) (Appendix 676) (Judge Reding) (rent escrow action;$100 per privacy violation, and $500 in attorney's fees; landlord ordered to comply with privacy statute with 24 hours notice); *Karon v. Boone,* No. HC #1001029902 (Minn. Dist. Ct. 4th Dist. Mar. 1, 2001) (Appendix 659) (in rent escrow action landlord's worker violated privacy statute by coming a second day without advance notice; $100 damages and $500 attorney's fees awarded that tenant may credit from rent).

(3) Criminal actions

In *State v. Devens*, 852 N.W.2d 255 (Minn. 2014), the court held that a tenant has a duty to retreat from a common area hallway to the tenant's apartment before acting in self-defense against a non-resident. The court used the privacy statute, Minn. Stat. § 504B.211 to describe the significance of the property interest a tenant has in an apartment, compared to the shared interest the tenant has in a common area hallway, noting that a tenant "could exclude even his landlord [from the apartment] unless the landlord had a reasonable business purpose for entering and made a good faith effort to notify [the tenant] of the entry." *Id.* at 259.

c. *Statutory privacy claims in consolidated eviction and tenant actions*

When the court consolidates an eviction action with a tenant initiated action, like a rent escrow, tenant remedies, or emergency tenant remedies action, the court may award relief under the privacy statute.

In *S&R Management v. _____, _____ v. Wones,* Nos. HC-#1000621500 and HC #1000627901 (Minn. Dist. Ct. 4th Dist. July 25, 2000) (Appendix 677), in consolidated eviction and rent escrow actions, the court concluded property co-owner, management company, and property manager all were landlords as defined by Minn. Stat. § 504B.001, Subd. 7; the lease contained no conspicuous writing supporting landlord's claim that tenant was required to paint and clean property; failure of the tenant to give written notice of repairs does not waive the landlord's covenant of habitability but court may consider it in determining rent abatement. The court dismissed the eviction action; awarded rent abatement of $125 per month out of $525 rent for numerous violations; ordered the landlord to make repairs; while court made no findings on privacy violations, ordered the tenant to not unreasonably deny access and authorized the landlord the give 24 hour notices for visits; and retained jurisdiction and scheduled a compliance hearing.

In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord

compliance and additional attorney's fees.

The court later ordered that the tenant could remedy violations and deduct the cost from rent, rent abatement would increase from $100 to $200 out of monthly rent of $650, or from 15% to 31% if the landlord did not complete repairs, the tenant could credit payments on the landlord's water bill against rent, the landlord must obtain a rental license, the landlord's right to collect rent was suspended until he obtained the license, and prior orders relating to court approval of future filings remained in effect. *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1999) (Appendix 354G).

Later in 1999, the court issued more orders. *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: rent abatement increase to $300 from $650 (46%) after 1 ½ years of failure to complete repairs; fine of $750 payable to county; $1000 statutory damages and $200 rent abatement for two interruptions of utilities; $1000 for ten privacy violations; landlord ordered to stop privacy violations). *See* Washington Rent Abatement Table (Appendix 427). *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999) (Appendix 426) (compliance order in the consolidated unlawful detainer and emergency tenant remedies actions: landlord violated unlawful exclusion statute by excluding tenant from the basement; landlord violated shared meter statute where tenant's meter covered her first floor apartment and the common basement which the landlord used for an office and for personal use; landlord violated tenant privacy for coming on the property to do repairs without notice, and by interrogating guests of the tenant; tenant proved that landlord did not provide a certificate of rent paid; landlord failed to prove that tenant failed to pay rent in a timely manner; tenant awarded monthly rent abatement of $300 from $650 (46%) ongoing, $500 for exclusion from the basement, $500 for privacy violations, $500 for violation of the shared meter statute, all of which could be credited against rent; landlord ordered to cease violations of tenant's privacy, and immediately provide tenant with a certificate of rent paid.[18]

In *Richter v. Czock*, No. C7-01-1340, 2002 WL 338181 (Minn. Ct. App. 2002) (unpublished), the court consolidated an eviction action based on holding over after notice with a rent escrow action. The court affirmed trial court rulings that the lease required a 45 day notice, that $100 per month rent abatement would cover only the period in which the landlord knew of the habitability issues, and that the landlord did not violate the privacy statute where the tenants were present when the landlord came, and the landlord claimed an emergency. The court also held that the trial court did not err in not admitted evidence when the *pro se* tenants did request admission. The court noted that since the tenant appealed from the rent escrow action judgment but not the separate eviction action judgment, it would not consider whether the notice was retaliatory.

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[18] *See Smith v. Brinkman* and *Brinkman v. Smith*, Nos. HC-1000124900 and HC-1000202517 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2000) (Appendix 418) (Consolidated eviction and rent escrow actions: awarded $300 in civil penalties for landlord visits without notice in which he was rude toward the tenant and her daughter, landlord restrained from harassing tenant and household members with landlord allowed to enter only to make repairs with written 24-hours notice, tenants awarded costs, disbursements and attorney's fees); *Kersten v. Ballard*, No. 96-18387 (Minn. Dist. Ct. 4th Dist. Sep. 2, 1998) (Appendix 339) (Gomez, J.: award of $1,237 in penalties for privacy violations); *Stillday v. Kittleson*, No. UD-01980421523 and 1980430900 (Minn. Dist. Ct. 4th Dist. Jul. 21, 1998) (Appendix 368) (the court consolidated unlawful detainer and rent escrow actions, dismissed the unlawful detainer action for failing to serve a copy of the summons and complaint on the Minneapolis Public Housing Authority, and concluded that the landlord violated the tenant's privacy, and awarded $100 to the tenant).

d. *Other bases for privacy claims in eviction actions*

(1) Quiet enjoyment

In *Hutton v. _____,* No. HC 1000606517 (Minn. Dist. Ct. 4th Dist. Jul. 7, 2000 (Appendix 656), the court found that the landlord violated implied and express covenants of quiet enjoyment and lease provision on use of the property by residing and allowing others to reside in property rented to tenant, leading to remedy of rent abatement. The court concluded that the parol evidence rule prohibited introduction of evidence of oral agreements made prior to execution of the written lease; the lease did not allow the landlord to restrict use of laundry facilities; and the landlord breached the habitability covenant by not building the promised deck and not correcting water condition in timely manner. The court awarded monthly rent abatement of $100 for habitability and $697.50 retroactively and prospectively for quiet enjoyment out of $1395 rent, along with costs and disbursements. The court ordered the landlord to observe quiet enjoyment.

See discussion, *infra*, at XII.B.2a.

(2) Habitability

Violations of tenant privacy and problems with security also may violate the covenant of habitability dealing with fitness of the premises for the use intended by the parties. *See* discussion, *supra*, at VI.E.1.d.(3). *But see Sandy Hill Apartments v. Kudawoo*, No. 05-2327 (PAM/JSM), 2006 WL 2974305 at *4 (D.Minn. Oct. 16, 2006) (unpublished) *(*failing to prevent noise does not constitute unlawful entry and invasion of privacy).

e. *Privacy tort*

As with cases of housing disrepair, there may be tort ramifications to tenant claims involving privacy and security. In *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998), the Minnesota Supreme Court held that a right to privacy exists in the common law of Minnesota, including causes of action in tort for intrusion upon seclusion, appropriation, and publication of private facts. In is unclear how this common law tort claim will relate to statutory tenant privacy claims. Counsel should explicitly reserve potential tort issues from the eviction (unlawful detainer) action. *See Neudecker v.Boisclair Corporation*, 351 F.3d 361 (8th Cir. 2003) (reversed dismissal of tenant's action for harassment based on disability, and ordered that tenant should be allowed to recast a claim under the Privacy Act of 1974, 5 U.S.C. § 552a, as a common-law privacy claim under *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231, 236 (Minn.1998)). *See generally* discussion, *supra*, VI.E.1.k. (Covenants of habitability: landlord's potential tort liability).

In *Hooser v. Anderson*, No. A14-1055, 2015 WL 1959898 (Minn. Ct. App. May 4, 2015) (unpublished), the plaintiffs, who had been tenants of the defendant, brought an action against the defendant asserting claims of battery, conversion, intrusion upon seclusion, and defamation. A jury awarded the plaintiffs $10,500 and $5,000, respectively, in actual damages for privacy violations, $2,500 and $5,000 in punitive damages for conversion of personal property, $15,000 in actual damages for defamation, and $7,500 for battery and $3,500 for health care expenses.

On appeal, the defendant argued that the evidence was insufficient to sustain several of the jury's findings of fact and that the damages awarded by the jury were excessive. The Court of Appeals affirmed in part, reversed in part, and remanded. The Court upheld the damages for the invasion of privacy claim,

holding that the jury verdict demonstrated that it believed the plaintiffs' testimony and the court was deferring to the jury's credibility findings.

The court also upheld the plaintiffs' defamation claim, holding, that (i) the evidence was sufficient to support the jury's findings on either of two statements, even though the jury had not specified which statement it found to be defamatory; and (ii) an issue raised by the defendant of whether the statements constituted defamation per se was a question of law that had been waived by the defendant because he failed to raise it in the district court. The court also affirmed the jury award for damages relating to the battery claim, holding, that, in light of the evidence presented, the damages awarded were not manifestly and palpably contrary to the evidence.

The court however reversed the jury award relating to the conversion claim, holding, that there was no evidence in the record that reasonably supported the damages awarded for the converted property as the plaintiffs had not testified about the value of the converted property.

Finally, in response to the defendant's claim that the district court erred by failing to review the jury's award of punitive damages before entering judgment, the court remanded the case to the district court to make the appropriate findings because while the district court had made a finding that satisfied the threshold needed for punitive damages to be presented to the jury, it had failed to evaluate the punitive awards based on the factors enumerated in the Minnesota punitive-damages statute.

On remand, in *Hooser v. Anderson,* No. A15-1738, 2016 WL 1619464, (Minn. Ct. App. April 25, 2016) (unpublished), the district court then found, inter alia, that the punitive damages awarded for the invasion of privacy claims ($5,000 to each tenant) were necessary and proper to deter the landlord from acting in a similar manner in the future, that the landlord should not be allowed to profit from his bad conduct by facilitating the sale of the property, and that the bad conduct occurred almost the entire length of the tenancy, even after the tenants repeatedly asked that the landlord stop invading their privacy. The landlord appealed again, and the Court of Appeals affirmed the award of punitive damages, stating that the district court had now made the specific findings necessary to support the award.

f. *Attorney's fees*

While Minn. Stat. § 504B.211 does not provide for attorney's fees, they are available in actions used to enforce the statute, such as the rent escrow action, emergency tenant remedies action, and tenant remedies action. *See* discussion, *infra*, at XII.B.3.a, XII.B.3.b, XII.B.3.c.

If the lease provides to attorney's fees to the landlord, state law may provide a similar claim for the tenant. Minn. Stat. § 504B.172. *See* discussion, *supra*, at VIII.E.4.a.(2)(a).

2a. Quiet enjoyment

See discussion, *supra*, at XII.B.0. for a discussion of considerations for all tenant actions.

a. *Generally*

Traditionally the concept of quiet enjoyment of the premises concerned possession and use of the property without interference of the landlord. "The words 'demise or let,' or their equivalent, in a lease, imply a covenant for title and for quiet enjoyment ...." *Wilkinson v. Clauson*, 29 Minn. 91, 93, 12 N.W. 147, 148 (1882).

> This right was violated by the defendant's causing plaintiff to be forcibly evicted from the premises, and converting the dwelling house to his own use, and hence the eviction was unlawful. It was a direct intentional interference with the tenant's lawful possession, and evinced a willful determination to keep him out of said possession, and deprive him of the quiet enjoyment thereof. The judgment did not absolutely terminate the tenancy, and plaintiff's eviction from his dwelling house and the premises rented entitled him to recover such damages as he suffered from the defendant's unlawful eviction. It is now the settled law that where a landlord unlawfully evicts a tenant, takes possession of the premises, and deprives the tenant of the beneficial use and enjoyment of the same, a cause of action arises in favor of the tenant.

Wacholz v. Griesgraber, 70 Minn. 220, 223, 73 N.W. 7, 8 (1897). *See Collins v. Lewis,* 53 Minn. 78, 54 N.W. 1056 (1893) (excavation right granted to neighbor violated written quiet enjoyment lease clause, reversing directed verdict for landlord against tenant); *City Power Co. v. Fergus Falls Water Co.,* 55 Minn. 172, 176, 56 N.W. 685, 686 (1893) ("It is no defense to a tenant's claim that his rights under the lease have been invaded and infringed upon, to say that the invasion and infringement were the acts of another tenant, when they have been performed with the landlord's consent and active concurrence," citing *Collins*).

There are limitations on the quiet enjoyment right. A covenant of quiet enjoyment is not breached when a governmental landlord exercises its power of eminent domain over its tenant. *Rasmussen v. Hous. & Redevelopment Auth.*, 712 N.W.2d 802 (Minn. Ct. App. 2006). In *Miles v. Oakdale*, 323 N.W.2d 51, 57 (Minn. 1982), the Court held that "no breach of the covenant of quiet possession has occurred. That covenant does not apply to mere trespasses or actions of wrongdoing third parties, notwithstanding that it is a covenant of possession. Rather, the covenant applies to adverse claims." However, in *Wacholz v. Griesgraber,* 70 Minn. 220, 223, 73 N.W. 7, 8 (1897), the Court equated trespass with breach of the covenant of quiet enjoyment.

The courts have recognized the right of tenants against actions of other tenants interfering with enjoyment of the property, under several theories including constructive eviction, quiet enjoyment, and habitability, and in various actions, including civil, evictions, and habitability actions.

b. *Civil action for rent, constructive eviction defense*

In *Colonial Court Apartments, Inc. v. Kern*, 292 Minn. 533, 163 N.W.2d. 770 (1968), the Court affirmed trial court finding in a damages action of constructive eviction for landlord's failure to respond to tenant's complaints about neighboring tenants. *See* discussion, *infra*, at XII.B.3.d.

c. *Eviction action, quiet enjoyment defense*

In *Hutton v. _____,* No. HC 1000606517 (Minn. Dist. Ct. 4th Dist. Jul. 7, 2000 (Appendix 656), the court found that the landlord violated implied and express covenants of quiet enjoyment and lease provision on use of the property by residing and allowing others to reside in property rented to tenant, leading to remedy of rent abatement. The court concluded that the parol evidence rule prohibited introduction of evidence of oral agreements made prior to execution of the written lease; the lease did not allow the landlord to restrict use of laundry facilities; and the landlord breached the habitability covenant by not building the promised deck and not correcting water condition in timely manner. The court awarded monthly rent abatement of $100 for habitability and $697.50 retroactively and prospectively for quiet enjoyment out of $1395 rent, along with costs and disbursements. The court order the landlord to observe quiet enjoyment.

In *Olson v. Brooks*, No. UD-1950209512 (Minn. Dist. Ct. 4th Dist. Mar. 7, 1995) (Appendix 112), the court interpreted a "quiet enjoyment" clause in the lease as promising that the tenant shall enjoy the possession and use of the premises in peace and without disturbance. The court concluded that the tenant had proven that the landlord violated both the covenants of habitability and of quiet enjoyment as to repairs needed in the apartment and the landlord's continued interruption of the tenant's right to enjoy the premises without disturbance caused by the landlord. The court ordered rent abatement and ordered the landlord to change his activities in order to protect the tenants' privacy.

See Ricke v. Villebrun, No. UD-1961112566 (Minn. Dist. Ct. 4th Dist. Dec. 5, 1996) (Appendix 289) (Nonpayment of rent unlawful detainer action: every lease contains right of quiet enjoyment; landlord's failure to remove known risk created by illegal drug activity violated covenant of quiet enjoyment; landlord ordered to notify court of immediate and continuing steps to enforce right to quiet enjoyment and tenants may pay rent into court if landlord does not); *Curtis v. Surrette*, 726 N.E.2d 967 (Mass. App. Ct. 2000) (Section 8 landlord was not entitled to recover entire contract rent from tenants after housing authority terminated housing subsidy payments, only the tenant’s share of the rent; landlord's breach of covenant of quiet enjoyment in connection with its efforts to delead tenants' apartment supported award of three month's rent as damages).

Violations of tenant privacy and problems with security also may violate the covenant of habitability dealing with fitness of the premises for the use intended by the parties. *See* discussion, *supra*, at VI.E.1.d.(3).

d. *Habitability actions*

In *Liedtke vs Timberland Partners,* 19AV-CV-14-468 (Minn. Dist. Ct. 1st Dist. June 20, 2014) (Judge Carter) (Appendix 780), in a rent escrow action, the tenant was awarded rent abatement for noise from business operating in neighboring apartment. The court concluded that the notice to terminate lease was retaliatory, the landlord failed to rebut retaliation presumption with evidence of breach, the property manager's testimony of complaints from other tenant inadmissible hearsay. The court ordered the landlord ordered to renew the lease. *See Person v. Torchwood Management*, No. UD-1920604543 (Minn. Dist. Ct. 4th Dist. July 6, 1992) (Appendix 205) (rent escrow action: landlord's failure to effectively abate loud and abusive language by neighboring tenants, noisy parties, and unjustified harassment by other tenants violated § 504.18 (now § 504B.161)).

Violations of tenant privacy and problems with security also may violate the covenant of habitability dealing with fitness of the premises for the use intended by the parties. *See* discussion, *supra*, at VI.E.1.d.(3).

For more on habitability actions, *see* discussion, *infra*, at XII.B.3.

e. *Privacy statute claims*

In *Sandy Hill Apartments v. Kudawoo*, No. 05-2327 (PAM/JSM), 2006 U.S. Dist. LEXIS 75229 at *15-16, 2006 WL 2974305 at *4 (D. Minn. Oct. 16, 2006) (unpublished), the court concluded that failing to prevent noise does not constitute unlawful entry and invasion of privacy rights under Minn. Stat. § 504B.211. *See* discussion, *supra*, at XII.B.2.

f. *Ordinances*

Local ordinances also may require the landlord to take action to control tenant and guest activity which affect other tenants' security. For example, the landlord licensing sections of the housing code of the Minneapolis Code of Ordinances requires the landlord to take appropriate action to deal with disorderly activity by tenants and/or guests on the premises. Section 244.2020 (Appendix 128). The landlord's violation of the ordinance would be a violation of the covenants of habitability in Minn. Stat. § 504B.161 (formerly § 504.18), supporting a claim for rent abatement. *See* discussion at VI.E.1.d.(11).

3. Habitability

For more information on habitability claims as defenses to eviction actions, *see* discussion at VI.E.1.

See discussion, *supra*, at XII.B.0. for a discussion of considerations for all tenant actions.

a0. *Definitions, tenancies, and leases*

See discussion, *supra*, at I.E. for definitions of residential tenant, person, residential building, and landlord.

See discussion, *supra*, at I.D for types of private tenancies, I.E1 for lease requirements, I.G for public and subsidized housing tenancies, and I.H for other relationships.

a01. *Landlord disclosure of housing inspection records*

See discussion, *supra*, at VI.E.1.r.

a. *Rent escrow action*

For a slide show, practice tips, and forms, *see* Rent Escrow, Tenant Remedies Actions, Emergency Tenant Remedies Actions, and Lockout Actions.
http://povertylaw.homestead.com/RentEscrowandTenantRemediesActions.html

For more information on habitability claims as defenses to eviction actions, *see* discussion at VI.E.1.

See discussion, *supra*, at XII.B.0. for a discussion of considerations for all tenant actions.

(1) Statutes

(a) Definitions

See discussion, *supra*, at I.E. for definitions of residential tenant, person, residential building, and landlord.

See also discussion, *supra*, at I.D for types of private tenancies, I.E1 for lease requirements, I.G for public and subsidized housing tenancies, and I.H for other relationships.

(b) Minn. Stat. § 504B.385

Minn. Stat. § 504B.385 provides for the rent escrow action, a tenant-initiated actions for habitability and lease violations by the landlord.

504B.385 Rent Escrow Action to Remedy Violations.

Subdivision 1. Escrow of rent.

(a) If a violation exists in a residential building, a residential tenant may deposit the amount of rent due to the landlord with the court administrator using the procedures described in paragraphs (b) to (d).

(b) For a violation as defined in section 504B.001, subdivision 14, clause (1), the residential tenant may deposit with the court administrator the rent due to the landlord along with a copy of the written notice of the code violation as provided in section 504B.185, subdivision 2. The residential tenant may not deposit the rent or file the written notice of the code violation until the time granted to make repairs has expired without satisfactory repairs being made, unless the residential tenant alleges that the time granted is excessive.

(c) For a violation as defined in section 504B.001, subdivision 14, clause (2) or (3), the residential tenant must give written notice to the landlord specifying the violation. The notice must be delivered personally or sent to the person or place where rent is normally paid. If the violation is not corrected within 14 days, the residential tenant may deposit the amount of rent due to the landlord with the court administrator along with an affidavit specifying the violation. The court must provide a simplified form affidavit for use under this paragraph.

(d) The residential tenant need not deposit rent if none is due to the landlord at the time the residential tenant files the notice required by paragraph (b) or (c). All rent which becomes due to the landlord after that time but before the hearing under subdivision 6 must be deposited with the court administrator. As long as proceedings are pending under this section, the residential tenant must pay rent to the landlord or as directed by the court and may not withhold rent to remedy a violation.

Subd. 2. Counterclaim for possession.

(a) The landlord may file a counterclaim for possession of the property in cases where the landlord alleges that the residential tenant did not deposit the full amount of rent with the court administrator.

(b) The court must set the date for a hearing on the counterclaim not less than seven nor more than 14 days from the day of filing the counterclaim. If the rent escrow hearing and the hearing on the counterclaim for possession cannot be heard on the same day, the matters must be consolidated and heard on the date scheduled for the hearing on the counterclaim.

(c) The contents of the counterclaim for possession must meet the requirements for a complaint under section 504B.321.

(d) The landlord must serve the counterclaim as provided in section 504B.331, except that the affidavit of service or mailing may be brought to the hearing rather than filed with the court before the hearing.

(e) The court must provide a simplified form for use under this section.

Subd. 3. Defenses. The defenses provided in section 504B.415 are defenses to an action brought under this section.

Subd. 4. Filing fee. The court administrator may charge a filing fee in the amount set for complaints and counterclaims in conciliation court, subject to the filing of an inability to pay affidavit.

Subd. 5. Notice of hearing.

(a) A hearing must be held within ten to 14 days from the day a residential tenant:

(1) deposits rent with the court administrator; or

(2) files the notice required under subdivision 1, paragraph (b) or (c), if the tenant is not required to deposit rent with the court administrator under subdivision 1, paragraph (d).

Nothing in this subdivision relieves the tenant of the obligation to deposit rent that becomes due to the landlord after the filing but before the hearing with the court administrator.

(b) If the cost of remedying the violation, as estimated by the residential tenant, is within the jurisdictional limit for conciliation court, the court administrator shall notify the landlord and the residential tenant of the time and place of the hearing by first class mail.

(c) The residential tenant must provide the court administrator with the landlord's name and address. If the landlord has disclosed a post office box as the landlord's address under section 504B.181, notice of the hearing may be mailed to the post office box.

(d) If the cost of remedying the violation, as estimated by the tenant, is above the jurisdictional limit for conciliation court, the tenant must serve the notice of hearing according to the Minnesota Rules of Civil Procedure.

(e) The notice of hearing must specify the amount the residential tenant has deposited with the court administrator and must inform the landlord that possession of the premises will not be in issue at the hearing unless the landlord files a counterclaim for possession or an eviction action.

Subd. 6. Hearing. The hearing shall be conducted by a court without a jury. A certified copy of an inspection report meets the requirements of rule 803(8) of the Minnesota Rules of Evidence as an exception to the rule against hearsay, and meets the requirements of rules 901 and 902 of the Minnesota Rules of Evidence as to authentication.

Subd. 7. Release of rent prior to hearing. If the residential tenant gives written notice to the court ad- ministrator that the violation has been remedied, the court administrator must release the rent to the landlord and, unless the hearing has been consolidated with another action, must cancel the hearing. If the residential tenant and the landlord enter into a written agreement signed by both parties apportioning the rent between them, the court administrator must release the rent in accordance with the written agreement and cancel the hearing.

Subd. 8. Consolidation with an eviction action. Actions under this section and eviction actions which involve the same parties must be consolidated and heard on the date scheduled for the eviction action.

Subd. 9. Judgment.

(a) Upon finding that a violation exists, the court may, in its discretion, do any or all of the following:

(1) order relief as provided in section 504B.425, including retroactive rent abatement;
(2) order that all or a portion of the rent in escrow be released for the purpose of remedying the violation;
(3) order that rent be deposited with the court as it becomes due to the landlord or abate future rent until the landlord remedies the violation; or
(4) impose fines as required in section 504B.391.

(b) When a proceeding under this section has been consolidated with a counterclaim for possession or an eviction action, and the landlord prevails, the residential tenant may redeem the tenancy as provided in section 504B.291.

(c) When a proceeding under this section has been consolidated with a counterclaim for possession or an eviction action on the grounds of nonpayment, the court may not require the residential tenant to pay the landlord's filing fee as a condition of retaining possession of the property when the residential tenant has deposited with the court the full amount of money found by the court to be owed to the landlord.

Subd. 10. Release of rent after hearing. If the court finds, after a hearing on the matter has been held, that no violation exists in the building or that the residential tenant did not deposit the full amount of rent due with the court administrator, it shall order the immediate release of the rent to the landlord. If the court finds that a violation existed, but was remedied between the commencement of the action and the hearing, it may order rent abatement and must release the rent to the parties accordingly. Any rent found to be owed to the residential tenant must be released to the tenant.

Subd. 11. Retaliation; waiver not allowed. Section 504B.441 applies to proceedings under this section. The residential tenant rights under this section may not be waived or modified and are in addition to and do not limit other rights or remedies which may be available to the residential tenant and landlord, except as provided in subdivision 1.

(b1) Minn. Stat. § 491A.01

Minn. Stat. § 491A.01, Subd. 3a sets the jurisdictional limit for conciliation court at $15,000. Under Minn. Stat. § 504B.385, Subd. 5(b), if the cost of remedying the violation, as estimated by the residential tenant, is within the jurisdictional limit for conciliation court, the court administrator shall notify the landlord and the residential tenant of the time and place of the hearing by first class mail.

(b2) Minn. Stat. §§ 504B.001, 504B.161, 504B.171, 504B.206, and 609.749

Minn. Stat. § 504B.385 references violations under Minn. Stat. § 504B.001, subdivision 14.

504B.001 DEFINITIONS.

Subd. 14.Violation.

"Violation" means:

(1) a violation of any state, county or city health, safety, housing, building, fire prevention, or housing maintenance code applicable to the building;

(2) a violation of any of the covenants set forth in section 504B.161, subdivision 1, clause (1) or (2), or in section 504B.171, subdivision 1; or

(3) a violation of an oral or written agreement, lease, or contract for the rental of a dwelling in a building.

Minn. Stat. § 504B.001, subdivision 14 references violations of § 504B.161, subdivision 1, clause (1) or (2). Minn. Stat. § 504B.161 no longer includes numbered clauses, so Minn. Stat. § 504B.001 probably refers to Minn. Stat. § 504B.161, subdivision 1, clause (a) or (b).

504B.161 COVENANTS OF LANDLORD OR LICENSOR.

Subdivision 1.Requirements.

(a) In every lease or license of residential premises, the landlord or licensor covenants:

(1) that the premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee;

(3) to make the premises reasonably energy efficient by installing weatherstripping, caulking, storm windows, and storm doors when any such measure will result in energy procurement cost savings, based on current and projected average residential energy costs in Minnesota, that will exceed the cost of implementing that measure, including interest, amortized over the ten-year period following the incurring of the cost; and

(4) to maintain the premises in compliance with the applicable health and safety laws of the state, and of the local units of government where the premises are located during the term of the lease

or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

(b) The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

Minn. Stat. § 504B.001, subdivision 14 also references violations of and § 504B.171, subdivision 1.

504B.171 COVENANT OF LANDLORD AND TENANT NOT TO ALLOW UNLAWFUL ACTIVITIES.
Subdivision 1.Terms of covenant.

(a) In every lease or license of residential premises, whether in writing or parol, the landlord or licensor and the tenant or licensee covenant that:

(1) neither will:

(i) unlawfully allow controlled substances in those premises or in the common area and curtilage of the premises;

(ii) allow prostitution or prostitution-related activity as defined in section 617.80, subdivision 4, to occur on the premises or in the common area and curtilage of the premises;

(iii) allow the unlawful use or possession of a firearm in violation of section 609.66, subdivision 1a, 609.67, or 624.713, on the premises or in the common area and curtilage of the premises; or

(iv) allow stolen property or property obtained by robbery in those premises or in the common area and curtilage of the premises; and

(2) the common area and curtilage of the premises will not be used by either the landlord or licensor or the tenant or licensee or others acting under the control of either to manufacture, sell, give away, barter, deliver, exchange, distribute, purchase, or possess a controlled substance in violation of any criminal provision of chapter 152. The covenant is not violated when a person other than the landlord or licensor or the tenant or licensee possesses or allows controlled substances in the premises, common area, or curtilage, unless the landlord or licensor or the tenant or licensee knew or had reason to know of that activity.

(b) In every lease or license of residential premises, whether in writing or parol, the tenant or licensee covenant that the tenant or licensee will not commit an act enumerated under section 504B.206, subdivision 1, paragraph (a), against a tenant or licensee or any authorized occupant.

While Minn. Stat. § 504B.171 includes a number of cross-references, § 504B.206, subdivision 1, paragraph (a) might be the most useful.

504B.206 RIGHT OF VICTIMS OF VIOLENCE TO TERMINATE LEASE.

Subdivision 1.Right to terminate; procedure.

(a) A tenant to a residential lease may terminate a lease agreement in the manner provided in this section without penalty or liability, if the tenant or another authorized occupant fears imminent violence after being subjected to:

(1) domestic abuse, as that term is defined under section 518B.01, subdivision 2;

(2) criminal sexual conduct under sections 609.342 to 609.3451; or

(3) harassment under section 609.749.

Minn. Stat. § 609.749 lists many acts that constitute harassment.

609.749 HARASSMENT; STALKING; PENALTIES.

Subd. 2.Harassment crimes.

(a) As used in this subdivision, the following terms have the meanings given:

(1) "family or household members" has the meaning given in section 518B.01, subdivision 2, paragraph (b);

(2) "personal information" has the meaning given in section 617.261, subdivision 7, paragraph (f);

(3) "sexual act" has the meaning given in section 617.261, subdivision 7, paragraph (g); and

(4) "substantial emotional distress" means mental distress, mental suffering, or mental anguish as demonstrated by a victim's response to an act including but not limited to seeking psychotherapy as defined in section 604.20, losing sleep or appetite, being diagnosed with a mental-health condition, experiencing suicidal ideation, or having difficulty concentrating on tasks resulting in a loss of productivity.

(b) A person who commits any of the acts listed in paragraph (c) is guilty of a gross misdemeanor if the person, with the intent to kill, injure, harass, or intimidate another person:

(1) places the other person in reasonable fear of substantial bodily harm;

(2) places the person in reasonable fear that the person's family or household members will be subject to substantial bodily harm; or

(3) causes or would reasonably be expected to cause substantial emotional distress to the other person.

(c) A person commits harassment under this section if the person:

(1) directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;

(2) follows, monitors, or pursues another, whether in person or through any available technological or other means;

(3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;

(4) repeatedly makes telephone calls, sends text messages, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;

(5) makes or causes the telephone of another repeatedly or continuously to ring;

(6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistive devices for people with vision impairments or hearing loss, or any communication made through any available technologies or other objects;

(7) knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties; or

(8) uses another's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person.

....

Subd. 5.Stalking.

(a) A person who engages in stalking with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim, is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than $20,000, or both.

(b) For purposes of this subdivision, "stalking" means two or more acts within a five-year period that violate or attempt to violate the provisions of any of the following or a similar law of another state, the United States, the District of Columbia, tribe, or United States territories:

(1) this section;
(2) sections 609.185 to 609.205 (first- to third-degree murder and first- and second-degree manslaughter);
(3) section 609.713 (terroristic threats);
(4) section 609.224 (fifth-degree assault);
(5) section 609.2242 (domestic assault);
(6) section 518B.01, subdivision 14 (violations of domestic abuse orders for protection);
(7) section 609.748, subdivision 6 (violations of harassment restraining orders);
(8) section 609.605, subdivision 1, paragraph (b), clauses (3), (4), and (7) (certain trespass offenses);
(9) section 609.78, subdivision 2 (interference with an emergency call);
(10) section 609.79 (obscene or harassing telephone calls);

(11) section 609.795 (letter, telegram, or package; opening; harassment);
(12) section 609.582 (burglary);
(13) section 609.595 (damage to property);
(14) section 609.765 (criminal defamation);
(15) sections 609.342 to 609.3451 (first- to fifth-degree criminal sexual conduct); or
(16) section 629.75, subdivision 2 (violations of domestic abuse no contact orders).

(c) Words set forth in parentheses after references to statutory sections in paragraph (b) are mere catchwords included solely for convenience in reference. They are not substantive and may not be used to construe or limit the meaning of the cited statutory provision.

(c) Minn. Stat. § 504B.425

In addition to the remedies stated in Minn. Stat. § 504B.385, the statute also refers to Minn. Stat. § 504B.425 for additional remedies also available in tenant remedies actions.

504B.425 Judgment.

(a) If the court finds that the complaint in section 504B.395 has been proved, it may, in its discretion, take any of the actions described in paragraphs (b) to (g), either alone or in combination.

(b) The court may order the landlord to remedy the violation or violations found by the court to exist if the court is satisfied that corrective action will be undertaken promptly.

(c) The court may order the residential tenant to remedy the violation or violations found by the court to exist and deduct the cost from the rent subject to the terms as the court determines to be just.

(d) The court may appoint an administrator with powers described in section 504B.445, and:

(1) direct that rents due:

(i) on and from the day of entry of judgment, in the case of petitioning residential tenants or housing- related neighborhood organizations; and

(ii) on and from the day of service of the judgment on all other residential and commercial tenants of the residential building, if any,

shall be deposited with the administrator appointed by the court; and

(2) direct that the administrator use the rents collected to remedy the violations found to exist by the court by paying the debt service, taxes, and insurance, and providing the services necessary to the ordinary operation and maintenance of the residential building which the landlord is obligated to provide but fails or refuses

to provide.

(e) The court may find the extent to which any uncorrected violations impair the residential tenants' use and enjoyment of the property contracted for and order the rent abated accordingly. If the court enters judgment under this paragraph, the parties shall be informed and the court shall determine the amount by which the rent is to be abated.

(f) After termination of administration, the court may continue the jurisdiction of the court over the residential building for a period of one year and order the landlord to maintain the residential building in compliance with all applicable state, county, and city health, safety, housing, building, fire prevention, and housing maintenance codes.

(g) The court may grant any other relief it deems just and proper, including a judgment against the landlord for reasonable attorney's fees, not to exceed $500, in the case of a prevailing residential tenant or neighborhood organization. The $500 limitation does not apply to awards made under section 549.211 or other specific statutory authority.

(d) Administrators

Both Minn. Stat. §§ 504B.385 and 504B.425 discuss administrators. *See* discussion, *supra*, at XII.B.3.a.(1). Other administrator statutes include Minn. Stat. §§ 504B.445-504B.461.

504B.445 Administrator.

Subdivision 1. Appointment.

The administrator may be a person, local government unit or agency, other than a landlord of the building, the inspector, the complaining residential tenant, or a person living in the complaining residential tenant's dwelling unit. If a state or court agency is authorized by statute, ordinance, or regulation to provide persons or neighborhood organizations to act as administrators under this section, the court may appoint them to the extent they are available.

Subd. 2. Posting bond.

A person or neighborhood organization appointed as administrator shall post bond to the extent of the rents expected by the court to be necessary to be collected to correct the violation or violations. Administrators appointed from governmental agencies shall not be required to post bond.

Subd. 3. Expenses.

The court may allow a reasonable amount for the services of administrators and the expense of the administration from rent money. When the administration terminates, the court may enter judgment against the landlord in a reasonable amount for the services and expenses incurred by the administrator.

Subd. 4. Powers.

The administrator may:

(1) collect rents from residential and commercial tenants, evict residential and commercial tenants for nonpayment of rent or other cause, enter into leases for vacant dwelling units, rent vacant commercial units with the consent of the landlord, and exercise other powers necessary and appropriate to carry out the purposes of sections 504B.381 and 504B.395 to 504B.471;

(2) contract for the reasonable cost of materials, labor, and services including utility services provided by a third party necessary to remedy the violation or violations found by the court to exist and for the rehabilitation of the property to maintain safe and habitable conditions over the useful life of the property, and disburse money for these purposes from funds available for the purpose;

(3) provide services to the residential tenants that the landlord is obligated to provide but refuses or fails to provide, and pay for them from funds available for the purpose;

(4) petition the court, after notice to the parties, for an order allowing the administrator to encumber the property to secure funds to the extent necessary to cover the costs described in clause (2), including reasonable fees for the administrator's services, and to pay for the costs from funds derived from the encumbrance; and

(5) petition the court, after notice to the parties, for an order allowing the administrator to receive funds made available for this purpose by the federal or state governing body or the municipality to the extent necessary to cover the costs described in clause (2) and pay for them from funds derived from this source.

The municipality shall recover disbursements under clause (5) by special assessment on the real estate affected, bearing interest at the rate determined by the municipality, but not to exceed the rate established for finance charges for open-end credit sales under section 334.16, subdivision 1, clause (b). The assessment, interest, and any penalties shall be collected as are special assessments made for other purposes under state statute or municipal charter.

Subd. 5. Termination of administration.

At any time during the administration, the administrator or any party may petition the court after notice to all parties for an order terminating the administration on the ground that the funds available to the administrator are insufficient to effect the prompt remedy of the violations. If the court finds that the petition is proved, the court shall terminate the administration and proceed to judgment under section 504B.425, paragraph (e).

Subd. 6. Residential building repairs and services.

The administrator must first contract and pay for residential building repairs and services necessary to keep the residential building habitable before other expenses may be paid. If sufficient funds are not available for paying other expenses, such as tax and mortgage

payments, after paying for necessary repairs and services, the landlord is responsible for the other expenses.

Subd. 7. Administrator's liability.

The administrator may not be held personally liable in the performance of duties under this section except for misfeasance, malfeasance, or nonfeasance of office.

Subd. 8. Dwelling's economic viability.

In considering whether to grant the administrator funds under subdivision 4, the court must consider factors relating to the long-term economic viability of the dwelling, including:

(1) the causes leading to the appointment of an administrator;

(2) the repairs necessary to bring the property into code compliance;

(3) the market value of the property; and

(4) whether present and future rents will be sufficient to cover the cost of repairs or rehabilitation.

504B.451 Receivership Revolving Loan Fund.

The Minnesota Housing Finance Agency may establish a revolving loan fund to pay the administrative expenses of receivership administrators under section 504B.445 for properties for occupancy by low- and moderate-income persons or families. Landlords must repay administrative expense payments made from the fund.

504B.455 Removal of Administrator.

Subdivision 1.Petition by administrator.

The administrator may, after notice to all parties, petition the court to be relieved of duties, including in the petition the reasons for it. The court may, in its discretion, grant the petition and discharge the administrator upon approval of the accounts.

Subd. 2. Petition by a party.

A party may, after notice to the administrator and all other parties, petition the court to remove the administrator. If the party shows good cause, the court shall order the administrator removed and direct the administrator to immediately deliver to the court an accounting of administration. The court may make any other order necessary and appropriate under the circumstances.

Subd. 3. Appointment of new administrator.

If the administrator is removed, the court shall appoint a new administrator in accordance

with section 504B.445, giving all parties an opportunity to be heard.

504B.461 Termination of Administration.

Subdivision 1. Events of termination.

The administration shall be terminated upon one of the following:

(1) certification is secured from the appropriate governmental agency that the violations found by the court to exist at the time of judgment have been remedied; or

(2) an order according to section 504B.445, subdivision 5.

Subd. 2. Accounting by administrator.

After the occurrence of any of the conditions in subdivision 1, the administrator shall:

(1) submit to the court an accounting of receipts and disbursements of the administration together with copies of all bills, receipts, and other memoranda pertaining to the administration, and, where appropriate, a certification by an appropriate governmental agency that the violations found by the court to exist at the time of judgment have been remedied; and

(2) comply with any other order the court makes as a condition of discharge.

Subd. 3. Discharge of administrator.

Upon approval by the court of the administrator's accounts and compliance by the administrator with any other order the court may make as a condition of discharge, the court shall discharge the administrator from any further responsibilities pursuant to sections 504B.381 and 504B.395 to 504B.471.

(2) Cases

(a) Habitability repairs and rent abatement

In *Jacobson v. Meinen Holdings, LLC,* No. 28-CV-16-645 (Minn. Dist. Ct. 3rd Dist., Houston County, Feb. 15, 2017) (Appendix 807) (Judge Sturino), the landlord in an email offered a tenancy for life, but the proposed lease which was not signed proposed a termination provision. The subsequent email and mail correspondence confirmed the former and that the landlord would continue to participate in the Section 8 program. After the tenant complained about conditions, the landlord attempted to terminate the tenancy. The tenant filed a rent escrow action, with the court ordering that (1) the landlord is required to make repairs in one month, including patching drywall and plaster, fixing leaks into the kitchen ceiling, replacing damaged or wet insulation and remove any mold, and repairing the chimney, (2) the tenant has the right to lease the property for life, through the part performance exception to the statute of frauds, (3) the landlord is required to participate in section 8 program for remainder of lease, (4) the landlord shall reimburse the tenant for expenses incurred in connection with repair issues, including increased utility bills and roof repair, (5) the corporate veil was pierced to make the entity and

the shareholder liable because the two were one and the same, (6) the landlord's termination was presumptively retaliatory and the landlord failed to rebut the presumption, (7) the tenant shall continue to pay rent into court, (7) the tenant may schedule a compliance hearing if needed, and (8) $500 in statutory attorneys' fees awarded for tenant.

In *Kaufman v. Lang*, No. 27-CVHC-13-1767 (Minn. Dist. Ct. 4th Dist. Apr. 13, 2015) (Appendix 698), after providing numerous oral notices to landlord, as well as at least one written notice, the plaintiff tenant filed a rent escrow action against the defendant landlord for violations of statutory covenants of habitability related to persistent bed bug infestation and non-working oven. The court held (1) the landlord was required to hire professionals, not just "maintenance personnel" to remedy the violations in 15 days; (2) the tenant was entitled to rent abatement from diminished use and enjoyment of the premises for the full amount of the monthly rent ($345.00) for approximately four months prior to the lawsuit, abatement of all future rent and termination of the lease in 2 ½ months along with return of the security deposit after vacating the property.

In *Spicer v. Equity Trust Company Custodian,* No. 27-CV-HC-13-724 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2013) (Appendix 782), in a rent escrow action, the tenant was awarded on landlord's default rent abatement for habitability violations of $1,250, prospective rent abatement of $650 per month from rent of $1,250, and the lease was rescinded.

See Robinson v. Etukakpan, No. 27-CV-HC- 06-4817 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2006) (Appendix 676) (Judge Reding) (rent escrow action; no evidence oral lease provided for late fees; landlord failed to prove rent increase was not retaliatory; landlord failed to prove tenant impaired landlord's attempts at repairs; tenant failed to prove landlord promised to supply working washer and dryer; landlord was not entitled to collect rent without a Brooklyn Park rental license; landlord did not prove a conspicuous writing with adequate consideration to require tenant to make repairs; tenant awarded rent abatement for habitability violations and lack of rental license, $100 per privacy violation, and $500 in attorney's fees; landlord ordered to comply with privacy statute with 24 hours notice); _____ *v. Brogdon Properties, Inc.*, No. HC 030904900 (Minn. Dist. Ct. 4th Dist. Sep. 17, 2003) (Appendix 435) (rent escrow action: complete rent abatement for lack of licensing, judgment of $2500); _____ *v. Gustafson*, No. 030220564 (Minn. Dist. Ct. 4th Dist. Apr. 14, 2003) (Appendix 440) (in a rent escrow action, the court ordered complete rent abatement for numerous housing code violations, partial rent abatement following substantial but not complete compliance by landlord); *Leshoure v. O'Brian*, No. UD-01000303900 (Minn. Dist. Ct. 4th Dist. May 17, 2000)(Appendix 403) (rent escrow action: monthly rent abatement of $300 out of $850 (35%) for $3,600 over one year); *Jones & Lewis v. Stein,* No. HC #1000501900 (Minn. Dist. Ct. 4th Dist. Aug. 18, 2000) (Appendix 658) (compliance hearing on rent escrow action; monthly rent abatement increased from $175 to $350 where tenants proved repairs still were needed for ceiling damage, leaking water, tom carpet, bathroom fan, face plates, kitchen cabinets, hole below kitchen sink, gaps between walls, floors and ceilings, and door frames and ceiling beam even though housing inspector cleared violations; *Wilson v. Lowe*, No. UD-1991123901 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 429) (Rent escrow action: tenant awarded treble what she paid on shared electrical meter covering basement and common areas in addition to her unit, and rent abatement of $2,600 over eight months (37%)); *Wood v. O'Brien*, No. UD-1970203900 (Minn. Dist. Ct. 4th Dist. Apr. 29, 1997) (Appendix TR 165) (Rent escrow action: $1,250 (25%) rent abatement over nine months for foundation, electrical, plumbing, heating, and basement drainage problems); *Tyus v. Minneapolis Public Housing Authority*, No. UD-1900502523 (Minn. Dist. Ct. 4th Dist. July 11, 1990) (rent abatement claim in public housing rent escrow action) (Appendix 9.A). *See also* Amended Settlement & Release, *Smith v. Meyer*, No. UD-1940804538 (Minn. Dist. Ct. 4th Dist. Oct. 3, 1994) (rent escrow action settlement; rent abatement in installments to conform to government benefits program, favorable reference, rent-free

occupancy, extended vacate date, liability releases, and continuing jurisdiction) (Appendix 30).

See discussion, *supra*, at VI.E.1 for habitability issues in eviction actions.

(i) Appliances

In *Robinson v. Etukakpan,* No. 27-CV-HC- 06-4817 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2006) (Appendix 676) (Judge Reding), the court concluded in a rent escrow action: no evidence oral lease provided for late fees; landlord failed to prove rent increase was not retaliatory; landlord failed to prove tenant impaired landlord's attempts at repairs; tenant failed to prove landlord promised to supply working washer and dryer; landlord was not entitled to collect rent without a Brooklyn Park rental license; and landlord did not prove a conspicuous writing with adequate consideration to require tenant to make repairs. The court order awarded rent abatement for habitability violations and lack of rental license, $100 per privacy violation, and $500 in attorney's fees; and the landlord was ordered to comply with privacy statute with 24 hours notice.

(ii) Bed bugs and other infestations

In *Rush v. Westwood Vill. P'ship,* 887 N.W.2d 701 (Minn. Ct. App. 2016), rev. denied Mar. 14, 2017, residential tenants filed two rent escrow actions which became consolidated appeals. In the first action, tenants requested heat treatment as opposed to chemical treatment (a cheaper method) for bed bug infestation or, alternatively, monetary compensation for their discarded personal property (done in connection with the chemical treatment option) and consequential damages. In the second action, the other set of tenants requested landlord to repair the bed bug infestation and reimburse them for any property damage and any other expenses. The Minnesota Court of Appeals affirmed the district court, holding that (1) Minn. Stat. § 504B.161, subd. 1(a)(2) covenant of reasonable repair does not protect the tenants' personalty nor protect the tenant from having to move and clean personalty as part of the landlord's extermination work, and (2) Minn. Stat. § 504B.161, subd. 1(a)(1) allows the landlord to keep the place fit for the use intended by using a method of his choosing so long as it is an effective method.

The first holding is especially troubling, since the common law of consequential damages for contract breaches should have included the tenants' claims. *See* discussion at VI.E.1.*l.* Since the Court did not discuss consequential damages, it appears that the claim was not asserted. Tenants should assert consequential damages claims for expenses and damages that flow from landlord violations of the lease covenants created by Minn. Stat. § 504B.161.

In *Kaufman v. Lang*, No. 27-CVHC-13-1767 (Minn. Dist. Ct. 4th Dist. Apr. 13, 2015) (Appendix 698), after providing numerous oral notices to landlord, as well as at least one written notice, the plaintiff tenant filed a rent escrow action against the defendant landlord for violations of statutory covenants of habitability related to persistent bed bug infestation and non-working oven. The court held (1) the landlord was required to hire professionals, not just "maintenance personnel" to remedy the violations in 15 days; (2) the tenant was entitled to rent abatement from diminished use and enjoyment of the premises for the full amount of the monthly rent ($345.00) for approximately four months prior to the lawsuit, abatement of all future rent and termination of the lease in 2 ½ months along with return of the security deposit after vacating the property.

In *Giardina v. R110, Inc.,* No. 27-CV-HC-09-5956 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2009) (Judge Klein) (Appendix 697), plaintiff tenant filed a rent escrow action against the landlord resulting

from landlord's failure to respond to or address infestation of bed bugs after oral and written notice from tenant of the infestation, and despite the fact that Minneapolis Department of Inspections ordered defendant landlord to exterminated bed bugs and mice in tenant's apartment. The court referee found defendant failed to timely address the infestation after notice, plaintiff's personal property was infested and needed to be destroyed, reasonable value of personal property was $2,000, and that plaintiff was entitled to rent abatement from May 2009 through August 2009 and consequential damages for property loss, offset by $400 in late fees owed by defendant. In upholding the referee's decision, the judge concluded that the findings, made after a half-day trial, did not contain clear error, and the damages amounts were properly determined as the finder of fact.

See discussion, *supra*, at VI.E.1.d.(10) for bed bug issues in eviction actions.

(iii) Flooding

In *Strohmeirer v. Akinsipe,* No. 27-CV-HC- 13-5163 (Minn. Dist. Ct. 4th Dist. Sep. 18, 2013) (Appendix 800), the court ordered in a rent escrow action: rent abatement of $2,650 over 7 months for flooding and complete abatement for most recent month; if violation not remedies, plaintiff may move for additional remedies; defendant-landlord was in default where agent appeared without power of authority; and tenant's lay testimony on medical causation excluded but expert testimony could have been offered.

(iv) Mold

In *Brendalen v. Sundae,* No. A14-0219, 2014 Minn. App. Unpub. LEXIS 992 (Minn. Ct. App. Sept. 08, 2014) (unpublished), the district court found mold in the bathroom, the water pressure is non-existent, and the gutters around the garage need to be replaced. It ordered the landlord gut and replace the entire bathroom, test water pressure and make repairs as needed, and repair the gutters. The district court also ordered that tenants' rent would not be released until the landlord showed that the ordered repairs had been completed. After a compliance hearing, the district court returned rents to the tenants when the landlord did not comply. The district court denied the landlord's request for reconsideration. The Court of Appeals held: (1) the landlord's disagreement with findings did not render them erroneous; (2) the denial of reconsideration was not appealable; (3) denial of reconsideration by letter rather than order was not an error; (4) the landlord provided no evidence that race was an issue in the denial; (5) the landlord was not denied due process; and (6) the landlord did not submit transcripts to support his other claims.

In *Dean v. Paul,* No. A12-2120, 2013 Minn. App. Unpub. LEXIS 620 (Minn. Ct. App. July 08, 2013) (unpublished), the tenant emailed the landlord about needed repairs, and after a housing inspection order, filed a rent escrow action. The district court referee found that tenant and previous tenants made the landlord aware of the property's lack of smoke detectors and the existence of mold, the landlord failed to take steps to repair or install smoke detectors or remediate the mold problem. The referee concluded that such failures constituted a breach of the terms of the lease, as well as specific covenants set forth under Minn. Stat. § 504B.161. The referee ordered that (1) the lease be terminated; (2) $2,800 in rent placed in escrow be returned to respondent; (3) the $1,500 security deposit be returned to respondent; (4) rent be abated in the amount of $924; and (5) appellant pay respondent $500 in attorney fees. The district court affirmed. The Court of Appeals held: (1) filing the rent escrow action before expiration of the inspection order did not require reversal where the district court focused on the lease and habitability covenants in Minn. Stat. § 504B.161 and not the city code, and the tenant alleged the time allowed was excessive; (2) an email satisfies the written notice requirement, as the lease referred to

email communications and the legislature likely did not contemplate email when it enacted the statute; and (3) termination of the lease is supported by the statutory provision for any other relief it deems proper.

In *Jacobson v. Meinen Holdings, LLC,* No. 28-CV-16-645 (Minn. Dist. Ct. 3rd Dist., Houston County, Feb. 15, 2017) (Appendix 807) (Judge Sturino), the landlord in an email offered a tenancy for life, but the proposed lease which was not signed proposed a termination provision. The subsequent email and mail correspondence confirmed the former and that the landlord would continue to participate in the Section 8 program. After the tenant complained about conditions, the landlord attempted to terminate the tenancy. The tenant filed a rent escrow action, with the court ordering that (1) the landlord is required to make repairs in one month, including patching drywall and plaster, fixing leaks into the kitchen ceiling, replacing damaged or wet insulation and remove any mold, and repairing the chimney, (2) the tenant has the right to lease the property for life, through the part performance exception to the statute of frauds, (3) the landlord is required to participate in section 8 program for remainder of lease, (4) the landlord shall reimburse the tenant for expenses incurred in connection with repair issues, including increased utility bills and roof repair, (5) the corporate veil was pierced to make the entity and the shareholder liable because the two were one and the same, (6) the landlord's termination was presumptively retaliatory and the landlord failed to rebut the presumption, (7) the tenant shall continue to pay rent into court, (7) the tenant may schedule a compliance hearing if needed, and (8) $500 in statutory attorneys' fees awarded for tenant.

In *Dunlap v. Steffens,* No. HC07-9619 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2007) (Appendix 643), the court ordered in a rent escrow action: §8 tenant awarded rent abatement for mold and disrepair; landlord ordered to complete repair with compliance hearing scheduled; landlord's claim about tenant's dog outside scope of action);

(a1) Lack of rent license

In *Joyce v. Renters Warehouse,* No. 27-CV-HC-14-2938 (Minn. Dist. Ct. 4th Dist. Aug. 28, 2014) (Appendix 776), in rent escrow action, the tenant was awarded $12,000 in full entire abatement for length of lease where property had habitability violations and was condemned for lack of license, requiring pregnant tenant to seek new housing), affirmed (Nov. 6, 2014) (reversed in part to add another defendant, affirmed judgment), settled on appeal, No. A14-2189 (Minn. Ct. App. 2015). *See Robinson v. Etukakpan,* No. 27-CV-HC- 06-4817 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2006) (Appendix 676) (Judge Reding) (rent escrow action; no evidence oral lease provided for late fees; landlord failed to prove rent increase was not retaliatory; landlord failed to prove tenant impaired landlord's attempts at repairs; tenant failed to prove landlord promised to supply working washer and dryer; landlord was not entitled to collect rent without a Brooklyn Park rental license; landlord did not prove a conspicuous writing with adequate consideration to require tenant to make repairs; tenant awarded rent abatement for habitability violations and lack of rental license, $100 per privacy violation, and $500 in attorney's fees; landlord ordered to comply with privacy statute with 24 hours notice); _____ *v. Brogdon Properties, Inc.*, No. HC 030904900 (Minn. Dist. Ct. 4th Dist. Sep. 17, 2003) (Appendix 435) (rent escrow action: complete rent abatement for lack of rental license, judgment of $2500);

See discussion, *supra*, at VI.E.2.c for licensing issues in eviction actions.

(a2) Condemnation

In *Joyce v. Renters Warehouse,* No. 27-CV-HC-14-2938 (Minn. Dist. Ct. 4th Dist. Aug. 28,

2014) (Appendix 776), in a rent escrow action, the tenant was awarded $12,000 in full entire abatement for length of lease where property had habitability violations and was condemned for lack of license, requiring pregnant tenant to seek new housing. The referee decision was affirmed by the district court (Nov. 6, 2014) (reversed in part to add another defendant, affirmed judgment), and settled on appeal. No. A14-2189 (Minn. Ct. App. 2015). *See Lara v. Recalde,* No. HC #1020927900 (Minn. Dist. Ct. 4th Dist. Oct. 17, 2002) (Appendix 661) (rent escrow action; tenant awarded $3000 in treble damages, costs and disbursements where landlord collected and returned $1000 in rent for condemned property).

See discussion, *supra*, at VI.E.1.c.(4) and VI.E.1.g.(3) for condemned and condemnable units in eviction actions.

(a3) Consequential damages

Since the covenants of habitability are implied into all oral and written leases under Minn. Stat. § 504B.161, Subd. 1(a), a violation of the covenants of habitability may give rise to consequential damages. The tenant may recover such consequential damages as, at the time of the making of the lease, the parties could reasonably have contemplated would result from a breach. *Poppen v. Wadleigh*, 235 Minn. 400, 405, 51 N.W.2d 75, 78 (1952) (commercial lease lost profits); *Force v. Gottwald*, 149 Minn. 268, 272-75, 183 N.W. 356 359 (1921) (lost profits); *Romer v. Topel*, 414 N.W.2d 787, 788 (Minn. Ct. App. 1987), *review denied* (transportation and stabling of horses at another location following collapse of a barn). *See generally* 5C DUNNELL MINN. DIGEST 2D *Damages* § 3.00(b). *See* discussion, *supra*, at VI.E.1.*l.*

In *Jacobson v. Meinen Holdings, LLC,* No. 28-CV-16-645 (Minn. Dist. Ct. 3rd Dist., Houston County, Feb. 15, 2017) (Appendix 807) (Judge Sturino), the landlord in an email offered a tenancy for life, but the proposed lease which was not signed proposed a termination provision. The subsequent email and mail correspondence confirmed the former and that the landlord would continue to participate in the Section 8 program. After the tenant complained about conditions, the landlord attempted to terminate the tenancy. The tenant filed a rent escrow action, with the court ordering that (1) the landlord is required to make repairs in one month, including patching drywall and plaster, fixing leaks into the kitchen ceiling, replacing damaged or wet insulation and remove any mold, and repairing the chimney, (2) the tenant has the right to lease the property for life, through the part performance exception to the statute of frauds, (3) the landlord is required to participate in section 8 program for remainder of lease, (4) the landlord shall reimburse the tenant for expenses incurred in connection with repair issues, including increased utility bills and roof repair, (5) the corporate veil was pierced to make the entity and the shareholder liable because the two were one and the same, (6) the landlord's termination was presumptively retaliatory and the landlord failed to rebut the presumption, (7) the tenant shall continue to pay rent into court, (7) the tenant may schedule a compliance hearing if needed, and (8) $500 in statutory attorneys' fees awarded for tenant.

In *Rush v. Westwood Vill. P'ship,* 887 N.W.2d 701 (Minn. Ct. App. 2016), rev. denied Mar. 14, 2017, residential tenants filed two rent escrow actions which became consolidated appeals. In the first action, tenants requested heat treatment as opposed to chemical treatment (a cheaper method) for bed bug infestation or, alternatively, monetary compensation for their discarded personal property (done in connection with the chemical treatment option) and consequential damages. In the second action, the other set of tenants requested landlord to repair the bed bug infestation and reimburse them for any property damage and any other expenses. The Minnesota Court of Appeals affirmed the district court, holding that (1) Minn. Stat. § 504B.161, subd. 1(a)(2) covenant of reasonable repair does not protect the tenants' personalty nor protect the tenant from having to move and clean personalty as part of the

landlord's extermination work, and (2) Minn. Stat. § 504B.161, subd. 1(a)(1) allows the landlord to keep the place fit for the use intended by using a method of his choosing so long as it is an effective method.

The first holding is especially troubling, since the common law of consequential damages for contract breaches should have included the tenants' claims. *See* discussion, *supra*, at VI.E.1.*l.* Since the Court did not discuss consequential damages, it appears that the claim was not asserted. Tenants should assert consequential damages claims for expenses and damages that flow from landlord violations of the lease covenants created by Minn. Stat. § 504B.161.

In *Giardina v. R110, Inc.,* No. 27-CV-HC-09-5956 (Minn. Dist. Ct. 4th Dist. Nov. 18, 2009) (Judge Klein) (Appendix 697), plaintiff tenant filed a rent escrow action against the landlord resulting from landlord's failure to respond to or address infestation of bed bugs after oral and written notice from tenant of the infestation, and despite the fact that Minneapolis Department of Inspections ordered defendant landlord to exterminated bed bugs and mice in tenant's apartment. The court referee found defendant failed to timely address the infestation after notice, plaintiff's personal property was infested and needed to be destroyed, reasonable value of personal property was $2,000, and that plaintiff was entitled to rent abatement from May 2009 through August 2009 and consequential damages for property loss, offset by $400 in late fees owed by defendant. In upholding the referee's decision, the judge concluded that the findings, made after a half-day trial, did not contain clear error, and the damages amounts were properly determined as the finder of fact.

(a4) Method of repair

In *Rush v. Westwood Vill. P'ship,* 887 N.W.2d 701 (Minn. Ct. App. 2016), rev. denied Mar. 14, 2017, residential tenants filed two rent escrow actions which became consolidated appeals. In the first action, tenants requested heat treatment as opposed to chemical treatment (a cheaper method) for bed bug infestation or, alternatively, monetary compensation for their discarded personal property (done in connection with the chemical treatment option) and consequential damages. In the second action, the other set of tenants requested landlord to repair the bed bug infestation and reimburse them for any property damage and any other expenses. The Minnesota Court of Appeals affirmed the district court, holding that (1) Minn. Stat. § 504B.161, subd. 1(a)(2) covenant of reasonable repair does not protect the tenants' personalty nor protect the tenant from having to move and clean personalty as part of the landlord's extermination work, and (2) Minn. Stat. § 504B.161, subd. 1(a)(1) allows the landlord to keep the place fit for the use intended by using a method of his choosing so long as it is an effective method.

In *Kaufman v. Lang*, No. 27-CVHC-13-1767 (Minn. Dist. Ct. 4th Dist. Apr. 13, 2015) (Appendix 698), after providing numerous oral notices to landlord, as well as at least one written notice, the plaintiff tenant filed a rent escrow action against the defendant landlord for violations of statutory covenants of habitability related to persistent bed bug infestation and non-working oven. The court held (1) the landlord was required to hire professionals, not just "maintenance personnel" to remedy the violations in 15 days; (2) the tenant was entitled to rent abatement from diminished use and enjoyment of the premises for the full amount of the monthly rent ($345.00) for approximately four months prior to the lawsuit, abatement of all future rent and termination of the lease in 2 ½ months along with return of the security deposit after vacating the property.

(b) Shared utility meters

In *Kutscheid v. Emerald Square Properties, Inc.*, 770 N.W.2d 529 (Minn. Ct. App. 2009), the tenant filed a rent escrow action against her landlord, claiming that the landlord violated Minn. Stat. §

504B.215, subd. 2a by failing to disclose the total utility cost for the building for each month of the most recent calendar year before she became a tenant in the single-metered multi-unit residential apartment building. The landlord argued that disclosure of the average monthly cost for a single unit over the course of one year was sufficient. The referee ruled to the landlord, and the district court judge affirmed. *Id.* at 530-31. The Court of Appeals reversed, holding that "statute requires disclosure of the total utility cost for the building for each month of the most recent calendar year." *Id.* at 531-32. The court also concluded that the treble damages provision on Minn. Stat. § 504B.221(a) did not apply to shared meters, and remanded for a determination of damages. *Id.* at 532-33.

In 2010 the Minnesota Legislature made a number of changes to Minn. Stat. § 504B.215, subd. 2a, including overruling *Kutscheid* regarding damages. 2010 Minn. Laws Ch. 315 § 7.

See _____ *v. Siganos*, No. HC 020201900 (Minn. Dist. Ct. 4th Dist. Mar. 5, 2002) (Appendix 451) (rent escrow action; habitability rent abatement of $100 per month for $1700, which can be credit against future rent with notice; tenant's payments for repairs and on shared meter credited against rent; tenant authorized to repair); *Wilson v. Lowe*, No. UD-1991123901 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (Appendix 429) (rent escrow action: tenant awarded treble what she paid on shared electrical meter covering basement and common areas in addition to her unit, and rent abatement of $2,600 over eight months (37%)).

See discussion, *supra*, at VI.E.18.

(c) Domestic violence release from lease

In _____ *v. Country Village Apartments*, C8-02-14178 (Minn. Dist. Ct. 1st Dist. July 8, 2002) (Appendix 436), the tenant obtained a restraining order against the father of her child. She called the police for subsequent incidents of threats and property damage, but did not feel safe. She gave notice to the landlord that she would vacate, claiming that the property was not fit for her use under Minn. Stat. § 504B.161 (formerly § 504.18). When the landlord did not agree to end the tenancy, she filed an rent escrow action under Minn. Stat. § 504B.385 (formerly § 566.34). The court found that she had been constructively evicted, and ordered her released from the lease, ending her rent liability, and that the landlord return her deposit minus the cost of damage beyond ordinary wear and tear.

See discussion, *supra*, at VI.D.23, VI.E.38, and VI.G.38 for domestic violence issues in eviction actions.

(d) Conduct of neighbors

In *Liedtke vs Timberland Partners,* 19AV-CV-14-468 (Minn. Dist. Ct. 1st Dist. June 20, 2014) (Judge Carter) (Appendix 780), in a rent escrow action, the court ordered: tenant awarded rent abatement for noise from business operating in neighboring apartment, notice to terminate lease retaliatory, landlord failed to rebut retaliation presumption with evidence of breach, property manager's testimony of complaints from other tenant inadmissible hearsay, landlord ordered to renew lease). *See Person v. Torchwood Management*, No. UD-1920604543 (Minn. Dist. Ct. 4th Dist. July 6, 1992) (Appendix 205) (rent escrow action: landlord's failure to effectively abate loud and abusive language by neighboring tenants, noisy parties, and unjustified harassment by other tenants violated § 504.18 (now § 504B.161)).

(e) Retaliation

With the advent of tenant screening companies and their access to eviction records, along with tight rent markets, tenants facing a retaliatory notice may fear fighting the notice in an eviction action. Tenants may wish to try to beat the landlord to court by filing their own action.

Where the tenant has defenses to a landlord's notice to quit and the landlord has not yet filed an eviction action, the tenant may wish to consider filing a rent escrow action to challenge the notice before the landlord files an eviction action. To do so, the tenant should send a letter to the landlord asserting why the notice is improper (i.e., inadequate time period, retaliation, etc.) and any repair problems or lease violations by the landlord. After fourteen days, the tenant may file a rent escrow action. Minn. Stat. § 504B.385 (formerly § 566.34).

In *Jacobson v. Meinen Holdings, LLC,* No. 28-CV-16-645 (Minn. Dist. Ct. 3rd Dist., Houston County, Feb. 15, 2017) (Appendix 807) (Judge Sturino), the landlord in an email offered a tenancy for life, but the proposed lease which was not signed proposed a termination provision. The subsequent email and mail correspondence confirmed the former and that the landlord would continue to participate in the Section 8 program. After the tenant complained about conditions, the landlord attempted to terminate the tenancy. The tenant filed a rent escrow action, with the court ordering that (1) the landlord is required to make repairs in one month, including patching drywall and plaster, fixing leaks into the kitchen ceiling, replacing damaged or wet insulation and remove any mold, and repairing the chimney, (2) the tenant has the right to lease the property for life, through the part performance exception to the statute of frauds, (3) the landlord is required to participate in section 8 program for remainder of lease, (4) the landlord shall reimburse the tenant for expenses incurred in connection with repair issues, including increased utility bills and roof repair, (5) the corporate veil was pierced to make the entity and the shareholder liable because the two were one and the same, (6) the landlord's termination was presumptively retaliatory and the landlord failed to rebut the presumption, (7) the tenant shall continue to pay rent into court, (7) the tenant may schedule a compliance hearing if needed, and (8) $500 in statutory attorneys' fees awarded for tenant.

See Liedtke vs Timberland Partners, 19AV-CV-14-468 (Minn. Dist. Ct. 1st Dist. June 20, 2014) (Judge Carter) (Appendix 780) (in rent escrow action tenant awarded rent abatement for noise from business operating in neighboring apartment, notice to terminate lease retaliatory, landlord failed to rebut retaliation presumption with evidence of breach, property manager's testimony of complaints from other tenant inadmissible hearsay, landlord ordered to renew lease); *Robinson v. Etukakpan,* No. 27-CV-HC-06-4817 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2006) (Appendix 676) (Judge Reding) (rent escrow action; no evidence oral lease provided for late fees; landlord failed to prove rent increase was not retaliatory; landlord failed to prove tenant impaired landlord's attempts at repairs; tenant failed to prove landlord promised to supply working washer and dryer; landlord was not entitled to collect rent without a Brooklyn Park rental license; landlord did not prove a conspicuous writing with adequate consideration to require tenant to make repairs; tenant awarded rent abatement for habitability violations and lack of rental license, $100 per privacy violation, and $500 in attorney's fees; landlord ordered to comply with privacy statute with 24 hours notice).

While the court may not be required to consider the notice issue, the court may choose to do so in the interests of judicial economy. *Dargay v. Cashman*, No. 1990825900 (Minn. Dist. Ct. 4th Dist. Sep. 17, 1999) (Appendix 387) (Rent escrow action; tenant proved failure to keep property in reasonable repair and awarded rent abatement; in interests of judicial economy, the court may decide whether pending notice to vacate is retaliatory when issue is pleaded in a rent escrow action; tenants may not be evicted or penalized for seeking police assistance, Minn. Stat. § 504B.205; tenant's call to police was a good faith attempt to secure or enforce rights under the laws of the state, Minn. Stat. § 504B.285; when

retaliation is alleged and the burden is on the landlord to show a substantial non-retaliatory reason, "the landlord must do more than state a non-retaliatory reason for the eviction . . . [the landlord] must prove the truth of the allegations of loud noise with competent evidence, and prove that the noise has an adverse impact on other residents of the building or neighbors. Accepting less as proof of a non-retaliatory purpose would strip the retaliation statute of any meaning.")

In *Judge v. Rio Hot Properties, Inc.*, Nos. UD-1981202903, UD-1981005518, and UD-1981104522 (Minn. Dist. Ct. 4th Dist. Dec. 18, 1998), (Appendix 362D), in consolidated unlawful detainer and emergency tenant remedies action, the court concluded that a notice to quit which was not effective but the parties agreed to litigate was retaliatory where the landlord only wished to rent to other tenants, and the landlords waived a no pet provision and could not rely on it to show a non-retaliatory purpose. *See Leshoure v. O'Brian*, No. UD-01000303900 (Minn. Dist. Ct. 4th Dist. May 17, 2000) (Appendix 403) (rent escrow action: landlord failed to overcome presumption of retaliatory notice with claims that the rent was late, since landlord accepted late rent in the past, or that Section 8 repair requirements were too expensive, since tenant had continuously asked for repairs); *Amsler v. Harris*, and *Harris v. Amsler*, Nos. UD-1990826901 and UD-1990902500 (Minn. Dist. Ct. 4th Dist. Sep. 20, 1999) (Appendix 376) (consolidated actions: landlord failed to prove a non-retaliatory purpose for an eviction complaint filed seven days after the tenant filed an emergency lockout petition).

In *Richter v. Czock*, No. C7-01-1340, 2002 WL 338181 (Minn. Ct. App. 2002) (unpublished), the court consolidated an eviction action based on holding over after notice with a rent escrow action. The court affirmed trial court rulings that the lease required a 45 day notice, that $100 per month rent abatement would cover only the period in which the landlord knew of the habitability issues, and that the landlord did not violate the privacy statute where the tenants were present when the landlord came, and the landlord claimed an emergency. The court also held that the trial court did not err in not admitted evidence when the *pro se* tenants did request admission. The court noted that since the tenant appealed from the rent escrow action judgment but not the separate eviction action judgment, it would not consider whether the notice was retaliatory.

See discussion, *supra*, at VI.E.9, VI.E.25, VI.F.3, and VI.G.18 for retaliation issues in eviction actions.

(f) Injunction against eviction

McNair v. Doub, No. 1960708524 (Minn. Dist. Ct. 4th Dist. July 10, 1996) (Appendix 183) (temporary retraining order in rent escrow action against landlord filing separate unlawful detainer action and allowing landlord to raise any unlawful detainer issue in a counterclaim, to protect the tenant from a tenant screening listing of an unlawful detainer action).

See discussion, *supra*, at V.D. (Injunctions and Temporary Restraining Orders).

(g) Subsequent eviction retaliation

McNair v. Doub, No. UD-1960708524 (Minn. Dist. Ct. 4th Dist. Aug.12, 1996) (Appendix 205) (landlord's claim for eviction was in retaliation to tenant's initiation of rent escrow claim; proof of retaliation may void a landlord's non-waiver lease provision).

See discussion, *supra*, at VI.E.9, VI.E.25, VI.F.3, and VI.G.18 (Retaliation Defenses in Eviction Actions).

(h) Eviction expungement

In _____ *v. Monanya*, N. HC 1991022901 (Minn. Dist. Ct. 4th Dist. Sep. 26, 2001) (Appendix 444) , the court lifted an expungement order in a combined emergency tenant remedies action and rent escrow action when the tenant sought to collect on the court's award.

See discussion, *supra*, at VIII.E.5 (Eviction Expungement).

(i) Consolidated with eviction actions

In *Timberland Partners, Inc. v. Liedtke,* No. A19-0216, 2019 Minn. App. Unpub. LEXIS 785 (Minn. Ct. App. Aug 19, 2019) (unpublished), the court held in part that the district court did not abuse its considerable discretion in hearing the rent-escrow and eviction action separately, as the rent-escrow proceedings were already well underway when the eviction-action complaint was filed, and the tenant's rent-escrow claims did not need to be decided to evaluate whether she held over or the landlord retaliated.

See discussion, *supra*, at VI.E.1.j.

(j) Privacy violations

In *Robinson v. Etukakpan,* No. 27-CV-HC- 06-4817 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2006) (Appendix 676) (Judge Reding), the court ordered in a rent escrow action: no evidence oral lease provided for late fees; landlord failed to prove rent increase was not retaliatory; landlord failed to prove tenant impaired landlord's attempts at repairs; tenant failed to prove landlord promised to supply working washer and dryer; landlord was not entitled to collect rent without a Brooklyn Park rental license; landlord did not prove a conspicuous writing with adequate consideration to require tenant to make repairs; tenant awarded rent abatement for habitability violations and lack of rental license, $100 per privacy violation, and $500 in attorney's fees; landlord ordered to comply with privacy statute with 24 hours notice. *See Karon v. Boone,* No. HC #1001029902 (Minn. Dist. Ct. 4th Dist. Mar. 1, 2001) (Appendix 659) (in rent escrow action landlord's worker violated privacy statute by coming a second day without advance notice; $100 damages and $500 attorney's fees awarded that tenant may credit from rent).

See discussion, *supra*, at XII.B.2.

(k) Lease interpretation

In *Jacobson v. Meinen Holdings, LLC,* No. 28-CV-16-645 (Minn. Dist. Ct. 3rd Dist., Houston County, Feb. 15, 2017) (Appendix 807) (Judge Sturino), the landlord in an email offered a tenancy for life, but the proposed lease which was not signed proposed a termination provision. The subsequent email and mail correspondence confirmed the former and that the landlord would continue to participate in the Section 8 program. After the tenant complained about conditions, the landlord attempted to terminate the tenancy. The tenant filed a rent escrow action, with the court ordering that (1) the landlord is required to make repairs in one month, including patching drywall and plaster, fixing leaks into the kitchen ceiling, replacing damaged or wet insulation and remove any mold, and repairing the chimney, (2) the tenant has the right to lease the property for life, through the part performance exception to the statute of frauds, (3) the landlord is required to participate in section 8 program for remainder of lease, (4) the landlord shall reimburse the tenant for expenses incurred in connection with repair issues,

including increased utility bills and roof repair, (5) the corporate veil was pierced to make the entity and the shareholder liable because the two were one and the same, (6) the landlord's termination was presumptively retaliatory and the landlord failed to rebut the presumption, (7) the tenant shall continue to pay rent into court, (7) the tenant may schedule a compliance hearing if needed, and (8) $500 in statutory attorneys' fees awarded for tenant.

(l) Subsidized housing

In *Jacobson v. Meinen Holdings, LLC,* No. 28-CV-16-645 (Minn. Dist. Ct. 3rd Dist., Houston County, Feb. 15, 2017) (Appendix 807) (Judge Sturino), the landlord in an email offered a tenancy for life, but the proposed lease which was not signed proposed a termination provision. The subsequent email and mail correspondence confirmed the former and that the landlord would continue to participate in the Section 8 program. After the tenant complained about conditions, the landlord attempted to terminate the tenancy. The tenant filed a rent escrow action, with the court ordering that (1) the landlord is required to make repairs in one month, including patching drywall and plaster, fixing leaks into the kitchen ceiling, replacing damaged or wet insulation and remove any mold, and repairing the chimney, (2) the tenant has the right to lease the property for life, through the part performance exception to the statute of frauds, (3) the landlord is required to participate in section 8 program for remainder of lease, (4) the landlord shall reimburse the tenant for expenses incurred in connection with repair issues, including increased utility bills and roof repair, (5) the corporate veil was pierced to make the entity and the shareholder liable because the two were one and the same, (6) the landlord's termination was presumptively retaliatory and the landlord failed to rebut the presumption, (7) the tenant shall continue to pay rent into court, (7) the tenant may schedule a compliance hearing if needed, and (8) $500 in statutory attorneys' fees awarded for tenant.

See Dydell v. Sumpter, No. HC 010918901 (Minn. Dist. Ct. 4th Dist. Nov. 5, 2001) (Appendix 644) (rent escrow action: RAFS subsidized housing tenant awarded rent abatement for disrepair; tenant not responsible for RAFS subsidy; lease provision requiring tenant to maintain property cannot waive Minn. Stat. § 504B.161; landlord ordered to complete repairs).

(m) Terminating the lease for the tenant

In *Dean v. Paul,* No. A12-2120, 2013 Minn. App. Unpub. LEXIS 620 (Minn. Ct. App. July 08, 2013) (unpublished), the tenant emailed the landlord about needed repairs, and after a housing inspection order, filed a rent escrow action. The district court referee found that tenant and previous tenants made the landlord aware of the property's lack of smoke detectors and the existence of mold, the landlord failed to take steps to repair or install smoke detectors or remediate the mold problem. The referee concluded that such failures constituted a breach of the terms of the lease, as well as specific covenants set forth under Minn. Stat. § 504B.161. The referee ordered that (1) the lease be terminated; (2) $2,800 in rent placed in escrow be returned to respondent; (3) the $1,500 security deposit be returned to respondent; (4) rent be abated in the amount of $924; and (5) appellant pay respondent $500 in attorney fees. The district court affirmed. The Court of Appeals held: (1) filing the rent escrow action before expiration of the inspection order did not require reversal where the district court focused on the lease and habitability covenants in Minn. Stat. § 504B.161 and not the city code, and the tenant alleged the time allowed was excessive; (2) an email satisfies the written notice requirement, as the lease referred to email communications and the legislature likely did not contemplate email when it enacted the statute; and (3) termination of the lease is supported by the statutory provision for any other relief it deems proper.

In *Kaufman v. Lang*, No. 27-CVHC-13-1767 (Minn. Dist. Ct. 4th Dist. Apr. 13, 2015) (Appendix 698), after providing numerous oral notices to landlord, as well as at least one written notice, the plaintiff tenant filed a rent escrow action against the defendant landlord for violations of statutory covenants of habitability related to persistent bed bug infestation and non-working oven. The court held (1) the landlord was required to hire professionals, not just "maintenance personnel" to remedy the violations in 15 days; (2) the tenant was entitled to rent abatement from diminished use and enjoyment of the premises for the full amount of the monthly rent ($345.00) for approximately four months prior to the lawsuit, abatement of all future rent and termination of the lease in 2 ½ months along with return of the security deposit after vacating the property.

See Spicer v. Equity Trust Company Custodian, No. 27-CV-HC-13-724 (Minn. Dist. Ct. 4th Dist. Feb. 15, 2013) (Appendix 782) (in rent escrow action tenant awarded on landlord's default rent abatement for habitability violations of $1,250, prospective rent abatement of $650 per month from rent of $1,250, lease rescinded)

(n) Res judicata

In *Sumpter v. _____,* No. HC-1011108523 (Minn. Dist. Ct. 4th Dist. Dec. 5, 2001) (Appendix 683), in an eviction action, litigation of rent abatement from previous rent escrow action barred by res judicata. Rent abatement was continued for landlord's failure to make all repairs; compliance hearing scheduled.

See discussion, *supra*, at V.N. (Res Judicata in Eviction Actions)

(o) Compliance hearings

In *Brendalen v. Sundae,* No. A14-0219, 2014 Minn. App. Unpub. LEXIS 992 (Minn. Ct. App. Sept. 08, 2014) (unpublished), the district court found mold in the bathroom, the water pressure is non-existent, and the gutters around the garage need to be replaced. It ordered the landlord gut and replace the entire bathroom, test water pressure and make repairs as needed, and repair the gutters. The district court also ordered that tenants' rent would not be released until the landlord showed that the ordered repairs had been completed. After a compliance hearing, the district court returned rents to the tenants when the landlord did not comply. The district court denied the landlord's request for reconsideration. The Court of Appeals held: (1) the landlord's disagreement with findings did not render them erroneous; (2) the denial of reconsideration was not appealable; (3) denial of reconsideration by letter rather than order was not an error; (4) the landlord provided no evidence that race was an issue in the denial; (5) the landlord was not denied due process; and (6) the landlord did not submit transcripts to support his other claims.

In *Jacobson v. Meinen Holdings, LLC,* No. 28-CV-16-645 (Minn. Dist. Ct. 3rd Dist., Houston County, Feb. 15, 2017) (Appendix 807) (Judge Sturino), the landlord in an email offered a tenancy for life, but the proposed lease which was not signed proposed a termination provision. The subsequent email and mail correspondence confirmed the former and that the landlord would continue to participate in the Section 8 program. After the tenant complained about conditions, the landlord attempted to terminate the tenancy. The tenant filed a rent escrow action, with the court ordering that (1) the landlord is required to make repairs in one month, including patching drywall and plaster, fixing leaks into the kitchen ceiling, replacing damaged or wet insulation and remove any mold, and repairing the chimney, (2) the tenant has the right to lease the property for life, through the part performance exception to the statute of frauds, (3) the landlord is required to participate in section 8 program for remainder of lease,

(4) the landlord shall reimburse the tenant for expenses incurred in connection with repair issues, including increased utility bills and roof repair, (5) the corporate veil was pierced to make the entity and the shareholder liable because the two were one and the same, (6) the landlord's termination was presumptively retaliatory and the landlord failed to rebut the presumption, (7) the tenant shall continue to pay rent into court, (7) the tenant may schedule a compliance hearing if needed, and (8) $500 in statutory attorneys' fees awarded for tenant.

In *Dunlap v. Steffens,* No. HC07-9619 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2007) (Appendix 643), the court ordered in a rent escrow action: §8 tenant awarded rent abatement for mold and disrepair; landlord ordered to complete repair with compliance hearing scheduled; landlord's claim about tenant's dog outside scope of action. *See Sumpter v. _____,* No. HC-1011108523 (Minn. Dist. Ct. 4th Dist. Dec. 5, 2001) (Appendix 683) (in eviction action, litigation of rent abatement from previous rent escrow action barred by res judicata; rent abatement continued for landlord's failure to make all repairs; compliance hearing scheduled); *Jones & Lewis v. Stein,* No. HC #1000501900 (Minn. Dist. Ct. 4th Dist. Aug. 18, 2000) (Appendix 658) (compliance hearing on rent escrow action; monthly rent abatement increased from $175 to $350 where tenants proved repairs still were needed for ceiling damage, leaking water, tom carpet, bathroom fan, face plates, kitchen cabinets, hole below kitchen sink, gaps between walls, floors and ceilings, and door frames and ceiling beam even though housing inspector cleared violations).

(p) Administrators

For administrator statutes, *see* discussion, *supra*, at XII.B.3.a.(1)(d).

In _____ *v. Miller,* No. 27-CV-HC-07-6364 (Minn. Dist. Ct. 4th Dist. Oct. 31, 2007) (Appendix 686), the court ordered in a rent escrow action: administrator appointed to complete repairs and obtain rental license for landlord; rents paid into court by tenant release to administrator; non-party Housing and Redevelopment Agency ordered to pay housing subsidies to administrator; tenant awarded penalties for landlord failure to comply with court orders; administrator order to pay for repairs and necessary services before other expenses such as taxes and mortgage payments, with landlord responsible for other expenses; municipality may assess property for funds provided to administrator).

Later, in _____ *v. Miller,* No. 27-CV-HC-07-6364 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2007) (Appendix 687), the court ordered: administrator discharged after completion of repairs and purchase of rental license; administrator awarded $1400 for costs and fees; tenant's counsel awarded $500 in attorney's fees; tenant awarded $1200 rent abatement with disbursement and rent credits; landlord fined $1500; jurisdiction retained for one year.

Courts also have appointed administrators in tenant remedies actions that are similar to rent escrow actions and follow the same administrator statutes.

In *IX of Powderhorn Park v. Frenz,* No. 27-CV-HC-16-461 (Minn. Dist. Ct. 4th Dist. Sep. 13, 2016) (Appendix 724), the plaintiff, a housing-related neighborhood organization that had obtained the written permission of a majority of the residential tenants of the property, filed a tenant remedies action for various habitability and code violations, such as a compromised front security door, infestation of roaches, bedbugs and mice, and insufficient heat to maintain all occupied units. The court found that Frenz engaged in a deliberate and elaborate misrepresentation regarding the number of occupied units in the building in an attempt to defeat plaintiff's ability to bring the claims. The court also determined that plaintiff proved the violations by a preponderance of the evidence, and although they were violations of

the statutory covenants of habitability and of the Tenant Remedies Act, the violations did not rise to the level of an emergency involving the loss of essential services under the emergency tenant remedies action. Additionally, although the violations would justify abatement of rent, there was insufficient evidence in the record to establish which tenants were entitled to the abatement and in what amounts. Finally, the court held that although some remedial efforts had been taken by the defendants, the landlord would not be able to promptly undertake the necessary corrective action to remedy all violations, so the court ordered the appointment of an administrator to do so, and also awarded reasonable attorney fees to plaintiff.

Subsequent orders included *IX of Powderhorn Park v. Frenz,* No. 27-CV-HC-16-461 (Minn. Dist. Ct. 4th Dist. Sep. 26, 2016) (Appendix 724-A) (the court found the landlord had fabricated documents causing significant delays, and invited counsel for plaintiffs to submit requests for costs and attorney's fees); *IX of Powderhorn Park v. Frenz,* No. 27-CV-HC-16-461 (Minn. Dist. Ct. 4th Dist. Oct. 27, 2016) (Appendix 724-B) (appointment of administrator); *IX of Powderhorn Park v. Frenz,* No. 27-CV-HC-16-461 (Minn. Dist. Ct. 4th Dist. Feb. 1, 2017) (Appendix 724-C) (Judge Miller) (affirmance on judge review of referee orders and findings regarding discovery, administrator appointment, plaintiff's standing, habitability violations, notice, remedies, and sanctions); *IX of Powderhorn Park v. Frenz,* No. 27-CV-HC-16-461 (Minn. Dist. Ct. 4th Dist. Feb. 2, 2017) (Appendix 724-D) (award of $187,390.64 in sanctions attorney's fees); and *IX of Powderhorn Park v. Frenz,* No. 27-CV-HC-16-461 (Minn. Dist. Ct. 4th Dist. Mar. 17, 2017) (Appendix 724-E) (contempt).

Administrators were appointed in the following cases: *Cannon v. Briscoe*, C1-92-2454 (Minn. Dist. Ct. 2nd Dist. Apr. 13, 1992) (Appendix TR-3b); *Lawson v. Quality Realty & Development Services*, C0-91-1687 (Minn. Dist. Ct. 2nd Dist. March 12, 1991) (Appendix TR-1c); *Krong v. Armogost*, 80-C-3958 (Minn. Dist. Ct. 3d Dist., Aug. 14, 1986) (Appendix TR-4); *Yang v. Payne et al.*, 44041 amended order (Henn. Cty. Mun. Ct. Sept. 22, 1986) (Appendix TR-5); *Hawkins v. McNeilus*, 2063 (Dodge Cty, Ct., May 2, 1984) (Appendix TR-7); *Smith v. Relf & Jefferson*, C2-91-12965 (Minn. Dist. Ct. 2d Dist. Jan. 24, 1992) (Appendix TR-24); *Jones v. Jayasuriya*, C6-94-6809 (Minn. Dist. Ct. 2d Dist. July 7, 1994) (Appendix TR-34); *Carpenter v. Breckman* C1-95-8107; C9-95-8503 (Minn. Dist. Ct. 2d Dist. Sept. 6, 8, 12, 1995) (Appendix TR-101); *Graddy v. Lambert*, C5-96-3440 (Minn. Dist. Ct. 2d Dist. Apr. 5, 1996) (Appendix TR-102); *Patrick & Castilleja v. Beverly et al.* C8-95-11585 (Minn. Dist. Ct. 2d Dist. Dec. 11, 1995) (Appendix TR-100.)

(q) Notice to landlord

(i) Email notice

In *Dean v. Paul,* No. A12-2120, 2013 Minn. App. Unpub. LEXIS 620 (Minn. Ct. App. July 08, 2013) (unpublished), the tenant emailed the landlord about needed repairs, and after a housing inspection order, filed a rent escrow action. The district court referee found that tenant and previous tenants made the landlord aware of the property's lack of smoke detectors and the existence of mold, the landlord failed to take steps to repair or install smoke detectors or remediate the mold problem. The referee concluded that such failures constituted a breach of the terms of the lease, as well as specific covenants set forth under Minn. Stat. § 504B.161. The referee ordered that (1) the lease be terminated; (2) $2,800 in rent placed in escrow be returned to respondent; (3) the $1,500 security deposit be returned to respondent; (4) rent be abated in the amount of $924; and (5) appellant pay respondent $500 in attorney fees. The district court affirmed. The Court of Appeals held: (1) filing the rent escrow action before expiration of the inspection order did not require reversal where the district court focused on the lease and habitability covenants in Minn. Stat. § 504B.161 and not the city code, and the tenant alleged the

time allowed was excessive; (2) an email satisfies the written notice requirement, as the lease referred to email communications and the legislature likely did not contemplate email when it enacted the statute; and (3) termination of the lease is supported by the statutory provision for any other relief it deems proper.

(ii) Excessive time in inspection order

In *Dean v. Paul,* No. A12-2120, 2013 Minn. App. Unpub. LEXIS 620 (Minn. Ct. App. July 08, 2013) (unpublished), the tenant emailed the landlord about needed repairs, and after a housing inspection order, filed a rent escrow action. The district court referee found that tenant and previous tenants made the landlord aware of the property's lack of smoke detectors and the existence of mold, the landlord failed to take steps to repair or install smoke detectors or remediate the mold problem. The referee concluded that such failures constituted a breach of the terms of the lease, as well as specific covenants set forth under Minn. Stat. § 504B.161. The referee ordered that (1) the lease be terminated; (2) $2,800 in rent placed in escrow be returned to respondent; (3) the $1,500 security deposit be returned to respondent; (4) rent be abated in the amount of $924; and (5) appellant pay respondent $500 in attorney fees. The district court affirmed. The Court of Appeals held: (1) filing the rent escrow action before expiration of the inspection order did not require reversal where the district court focused on the lease and habitability covenants in Minn. Stat. § 504B.161 and not the city code, and the tenant alleged the time allowed was excessive; (2) an email satisfies the written notice requirement, as the lease referred to email communications and the legislature likely did not contemplate email when it enacted the statute; and (3) termination of the lease is supported by the statutory provision for any other relief it deems proper.

(r) Due process

In *Brendalen v. Sundae,* No. A14-0219, 2014 Minn. App. Unpub. LEXIS 992 (Minn. Ct. App. Sept. 08, 2014) (unpublished), the district court found mold in the bathroom, the water pressure is non-existent, and the gutters around the garage need to be replaced. It ordered the landlord gut and replace the entire bathroom, test water pressure and make repairs as needed, and repair the gutters. The district court also ordered that tenants' rent would not be released until the landlord showed that the ordered repairs had been completed. After a compliance hearing, the district court returned rents to the tenants when the landlord did not comply. The district court denied the landlord's request for reconsideration. The Court of Appeals held: (1) the landlord's disagreement with findings did not render them erroneous; (2) the denial of reconsideration was not appealable; (3) denial of reconsideration by letter rather than order was not an error; (4) the landlord provided no evidence that race was an issue in the denial; (5) the landlord was not denied due process; and (6) the landlord did not submit transcripts to support his other claims.

(s) Additional remedies

In *Strohmeirer v. Akinsipe,* No. 27-CV-HC- 13-5163 (Minn. Dist. Ct. 4th Dist. Sep. 18, 2013) (Appendix 800), in a rent escrow action, the court ordered: rent abatement of $2,650 over 7 months for flooding and complete abatement for most recent month; if violation not remedies, plaintiff may move for additional remedies; defendant-landlord was in default where agent appeared without power of authority; tenant's lay testimony on medical causation excluded but expert testimony could have been offered.

(t) Landlord defenses and claims

(i) Landlord's claims outside of scope of action

In *Dunlap v. Steffens,* No. HC07-9619 (Minn. Dist. Ct. 4th Dist. Dec. 19, 2007) (Appendix 643), the court ordered in a rent escrow action: §8 tenant awarded rent abatement for mold and disrepair; landlord ordered to complete repair with compliance hearing scheduled; landlord's claim about tenant's dog outside scope of action. *See Gardner v. Burrichter,* No. C7-002325 (Minn. Dist. Ct. 2nd Dist. Jul. 31, 2006) (Appendix 648) (Judge Cleary) (rent escrow action; landlord's motion to terminate lease based on late rent denied as outside of jurisdiction).

(ii) Tenant impairing landlord repair

In *Robinson v. Etukakpan,* No. 27-CV-HC- 06-4817 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2006) (Appendix 676) (Judge Reding), the court ordered in a rent escrow action: no evidence oral lease provided for late fees; landlord failed to prove rent increase was not retaliatory; landlord failed to prove tenant impaired landlord's attempts at repairs; tenant failed to prove landlord promised to supply working washer and dryer; landlord was not entitled to collect rent without a Brooklyn Park rental license; landlord did not prove a conspicuous writing with adequate consideration to require tenant to make repairs; tenant awarded rent abatement for habitability violations and lack of rental license, $100 per privacy violation, and $500 in attorney's fees; landlord ordered to comply with privacy statute with 24 hours notice)

(iii) Lease requirement for tenant maintenance

In *Robinson v. Etukakpan,* No. 27-CV-HC- 06-4817 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2006) (Appendix 676) (Judge Reding), the court ordered in a rent escrow action: no evidence oral lease provided for late fees; landlord failed to prove rent increase was not retaliatory; landlord failed to prove tenant impaired landlord's attempts at repairs; tenant failed to prove landlord promised to supply working washer and dryer; landlord was not entitled to collect rent without a Brooklyn Park rental license; landlord did not prove a conspicuous writing with adequate consideration to require tenant to make repairs; tenant awarded rent abatement for habitability violations and lack of rental license, $100 per privacy violation, and $500 in attorney's fees; landlord ordered to comply with privacy statute with 24 hours notice). *See Dydell v. Sumpter,* No. HC 010918901 (Minn. Dist. Ct. 4th Dist. Nov. 5, 2001) (Appendix 644) (rent escrow action: RAFS subsidized housing tenant awarded rent abatement for disrepair; tenant not responsible for RAFS subsidy; lease provision requiring tenant to maintain property cannot waive Minn. Stat. § 504B.161; landlord ordered to complete repairs).

See discussion, *supra*, at VI.E.1.f. (Landlord Defenses to Tenant's Habitability Defense in Eviction Actions).

(u) Attorney's fees

Minn. Stat. § 504B.425(g) provides for "reasonable attorney fees, not to exceed $500, in the case of a prevailing residential tenant or neighborhood organization.

In *Dean v. Paul,* No. A12-2120, 2013 Minn. App. Unpub. LEXIS 620 (Minn. Ct. App. July 08, 2013) (unpublished), the tenant emailed the landlord about needed repairs, and after a housing inspection order, filed a rent escrow action. The district court referee found that tenant and previous tenants made the landlord aware of the property's lack of smoke detectors and the existence of mold, the landlord failed to take steps to repair or install smoke detectors or remediate the mold problem. The referee

concluded that such failures constituted a breach of the terms of the lease, as well as specific covenants set forth under Minn. Stat. § 504B.161. The referee ordered that (1) the lease be terminated; (2) $2,800 in rent placed in escrow be returned to respondent; (3) the $1,500 security deposit be returned to respondent; (4) rent be abated in the amount of $924; and (5) appellant pay respondent $500 in attorney fees. The district court affirmed. The Court of Appeals held: (1) filing the rent escrow action before expiration of the inspection order did not require reversal where the district court focused on the lease and habitability covenants in Minn. Stat. § 504B.161 and not the city code, and the tenant alleged the time allowed was excessive; (2) an email satisfies the written notice requirement, as the lease referred to email communications and the legislature likely did not contemplate email when it enacted the statute; and (3) termination of the lease is supported by the statutory provision for any other relief it deems proper.

See Jacobson v. Meinen Holdings, LLC, No. 28-CV-16-645 (Minn. Dist. Ct. 3rd Dist., Houston County, Feb. 15, 2017) (Appendix 807) (Judge Sturino) ($500 in statutory attorneys' fees awarded for tenant); *Robinson v. Etukakpan,* No. 27-CV-HC- 06-4817 (Minn. Dist. Ct. 4th Dist. Nov. 3, 2006) (Appendix 676) (Judge Reding) (rent escrow action; no evidence oral lease provided for late fees; landlord failed to prove rent increase was not retaliatory; landlord failed to prove tenant impaired landlord's attempts at repairs; tenant failed to prove landlord promised to supply working washer and dryer; landlord was not entitled to collect rent without a Brooklyn Park rental license; landlord did not prove a conspicuous writing with adequate consideration to require tenant to make repairs; tenant awarded rent abatement for habitability violations and lack of rental license, $100 per privacy violation, and $500 in attorney's fees; landlord ordered to comply with privacy statute with 24 hours notice).

Attorney's fees without the $500 limitation also may be available to the tenant if the lease provides for fees for the landlord, or if the tenant claims violations of housing statutes that provide for fees. *See* discussion, *supra*, at VIII.E.4.a.(2).

(v) Reconsideration

In *Brendalen v. Sundae,* No. A14-0219, 2014 Minn. App. Unpub. LEXIS 992 (Minn. Ct. App. Sept. 08, 2014) (unpublished), the district court found mold in the bathroom, the water pressure is non-existent, and the gutters around the garage need to be replaced. It ordered the landlord gut and replace the entire bathroom, test water pressure and make repairs as needed, and repair the gutters. The district court also ordered that tenants' rent would not be released until the landlord showed that the ordered repairs had been completed. After a compliance hearing, the district court returned rents to the tenants when the landlord did not comply. The district court denied the landlord's request for reconsideration. The Court of Appeals held: (1) the landlord's disagreement with findings did not render them erroneous; (2) the denial of reconsideration was not appealable; (3) denial of reconsideration by letter rather than order was not an error; (4) the landlord provided no evidence that race was an issue in the denial; (5) the landlord was not denied due process; and (6) the landlord did not submit transcripts to support his other claims.

(w) Appeals

(i) Consolidation with eviction action

In *Timberland Partners, Inc. v. Liedtke,* No. A19-0216, 2019 Minn. App. Unpub. LEXIS 785 (Minn. Ct. App. Aug 19, 2019) (unpublished), the court held in part that the district court did not abuse its considerable discretion in hearing the rent-escrow and eviction action separately, as the rent-escrow

proceedings were already well underway when the eviction-action complaint was filed, and the tenant's rent-escrow claims did not need to be decided to evaluate whether she held over or the landlord retaliated.

See discussion, *supra*, at VI.E.1.j.

(ii) Bed bugs

In *Rush v. Westwood Vill. P'ship,* 887 N.W.2d 701 (Minn. Ct. App. 2016), rev. denied Mar. 14, 2017, residential tenants filed two rent escrow actions which became consolidated appeals. In the first action, tenants requested heat treatment as opposed to chemical treatment (a cheaper method) for bed bug infestation or, alternatively, monetary compensation for their discarded personal property (done in connection with the chemical treatment option) and consequential damages. In the second action, the other set of tenants requested landlord to repair the bed bug infestation and reimburse them for any property damage and any other expenses. The Minnesota Court of Appeals affirmed the district court, holding that (1) Minn. Stat. § 504B.161, subd. 1(a)(2) covenant of reasonable repair does not protect the tenants' personalty nor protect the tenant from having to move and clean personalty as part of the landlord's extermination work, and (2) Minn. Stat. § 504B.161, subd. 1(a)(1) allows the landlord to keep the place fit for the use intended by using a method of his choosing so long as it is an effective method.

See discussion, *supra*, at VI.E.1.d.(10) (Bed Bug Habitability Defense in Eviction Actions) and XII.B.3.a.(2)(a)(ii) (Bed Bug Claims in Rent Escrow Actions).

(iii) Due process and denial of reconsideration

In *Brendalen v. Sundae,* No. A14-0219, 2014 Minn. App. Unpub. LEXIS 992 (Minn. Ct. App. Sept. 08, 2014) (unpublished), the district court found mold in the bathroom, the water pressure is non-existent, and the gutters around the garage need to be replaced. It ordered the landlord gut and replace the entire bathroom, test water pressure and make repairs as needed, and repair the gutters. The district court also ordered that tenants' rent would not be released until the landlord showed that the ordered repairs had been completed. After a compliance hearing, the district court returned rents to the tenants when the landlord did not comply. The district court denied the landlord's request for reconsideration. The Court of Appeals held: (1) the landlord's disagreement with findings did not render them erroneous; (2) the denial of reconsideration was not appealable; (3) denial of reconsideration by letter rather than order was not an error; (4) the landlord provided no evidence that race was an issue in the denial; (5) the landlord was not denied due process; and (6) the landlord did not submit transcripts to support his other claims.

(iv) Notice to landlord and extent of relief

In *Dean v. Paul,* No. A12-2120, 2013 Minn. App. Unpub. LEXIS 620 (Minn. Ct. App. July 08, 2013) (unpublished), the tenant emailed the landlord about needed repairs, and after a housing inspection order, filed a rent escrow action. The district court referee found that tenant and previous tenants made the landlord aware of the property's lack of smoke detectors and the existence of mold, the landlord failed to take steps to repair or install smoke detectors or remediate the mold problem. The referee concluded that such failures constituted a breach of the terms of the lease, as well as specific covenants set forth under Minn. Stat. § 504B.161. The referee ordered that (1) the lease be terminated; (2) $2,800 in rent placed in escrow be returned to respondent; (3) the $1,500 security deposit be returned to respondent; (4) rent be abated in the amount of $924; and (5) appellant pay respondent $500 in attorney

fees. The district court affirmed. The Court of Appeals held: (1) filing the rent escrow action before expiration of the inspection order did not require reversal where the district court focused on the lease and habitability covenants in Minn. Stat. § 504B.161 and not the city code, and the tenant alleged the time allowed was excessive; (2) an email satisfies the written notice requirement, as the lease referred to email communications and the legislature likely did not contemplate email when it enacted the statute; and (3) termination of the lease is supported by the statutory provision for any other relief it deems proper.

(v) Shared utility meters

In *Kutscheid v. Emerald Square Properties, Inc.*, 770 N.W.2d 529 (Minn. Ct. App. 2009), the tenant filed a rent escrow action against her landlord, claiming that the landlord violated Minn. Stat. § 504B.215, subd. 2a by failing to disclose the total utility cost for the building for each month of the most recent calendar year before she became a tenant in the single-metered multi-unit residential apartment building. The landlord argued that disclosure of the average monthly cost for a single unit over the course of one year was sufficient. The referee ruled to the landlord, and the district court judge affirmed. *Id.* at 530-31. The Court of Appeals reversed, holding that "statute requires disclosure of the total utility cost for the building for each month of the most recent calendar year." *Id.* at 531-32. The court also concluded that the treble damages provision on Minn. Stat. § 504B.221(a) did not apply to shared meters, and remanded for a determination of damages. *Id.* at 532-33. In 2010 the Minnesota Legislature made a number of changes to Minn. Stat. § 504B.215, subd. 2a, including overruling *Kutscheid* regarding damages. 2010 Minn. Laws Ch. 315 § 7.

See discussion, *supra*, at VI.E.18.(b) (Tenant Shared Meter Defenses in Eviction Actions) and XII.B.3.a.(2)(b) (Shared Utility Meters in Rent Escrow Actions).

b. *Emergency tenant remedies action*

For a slide show, practice tips, and forms, *see* Emergency Tenant Remedies Actions and Lockout Actions.
http://povertylaw.homestead.com/EmergencyReliefandLockoutActions.html

For more information on habitability claims as defenses to eviction actions, *see* discussion at VI.E.1.

See discussion, *supra*, at XII.B.0. for a discussion of considerations for all tenant actions.

(1) Statutes

(a) Definitions

See discussion, *supra*, at I.E. for definitions of residential tenant, person, residential building, and landlord.

See also discussion, *supra*, at I.D for types of private tenancies, I.E1 for lease requirements, I.G for public and subsidized housing tenancies, and I.H for other relationships.

(b) Minn. Stat. § 504B.381

Minn. Stat. § 504B.381 (formerly Minn. Stat. § 566.205) provides:

504B.381 Emergency Tenant Remedies Action.

Subdivision 1. Petition. A person authorized to bring an action under section 504B.395, subdivision 1, may petition the court for relief in cases of emergency involving the loss of running water, hot water, heat, electricity, sanitary facilities, or other essential services or facilities that the landlord is responsible for providing.

Subd. 2. Venue. The venue of the action authorized by this section is the county where the residential building alleged to contain the emergency condition is located.

Subd. 3. Petition information. The petitioner must present a verified petition to the district court that contains:

(1) a description of the premises and the identity of the landlord;

(2) a statement of the facts and grounds that demonstrate the existence of an emergency caused by the loss of essential services or facilities; and

(3) a request for relief.

Subd. 4. Notice. The petitioner must attempt to notify the landlord, at least 24 hours before application to the court, of the petitioner's intent to seek emergency relief. An order may be granted without notice to the landlord if the court finds that reasonable efforts, as set forth in the petition or by separate affidavit, were made to notify the landlord but that the efforts were unsuccessful.

Subd. 5. Relief; service of order. The court may order relief as provided in section 504B.425. The petitioner shall serve the order on the landlord personally or by mail as soon as practicable.

Subd. 6. Limitation. This section does not extend to emergencies that are the result of the deliberate or negligent act or omission of a residential tenant or anyone acting under the direction or control of the residential tenant.

Subd. 7. Effect of other laws. Section 504B.395, subdivisions 3 and 4, do not apply to a petition for emergency relief under this section.

(c) Minn. Stat. § 504B.425

For relief, Minn. Stat. § 504B.381 makes a cross reference to Minn. Stat. § 504B.425 from the Tenant Remedies Action.

504B.425 Judgment.

(a) If the court finds that the complaint in section 504B.395 has been proved, it may, in its discretion, take any of the actions described in paragraphs (b) to (g), either alone or in combination.

(b) The court may order the landlord to remedy the violation or violations found by the court to exist if the court is satisfied that corrective action will be undertaken promptly.

(c) The court may order the residential tenant to remedy the violation or violations found by the court to exist and deduct the cost from the rent subject to the terms as the court determines to be just.

(d) The court may appoint an administrator with powers described in section 504B.445, and:

(1) direct that rents due:

(i) on and from the day of entry of judgment, in the case of petitioning residential tenants or housing- related neighborhood organizations; and

(ii) on and from the day of service of the judgment on all other residential and commercial tenants of the residential building, if any,

shall be deposited with the administrator appointed by the court; and

(2) direct that the administrator use the rents collected to remedy the violations found to exist by the court by paying the debt service, taxes, and insurance, and providing the services necessary to the ordinary operation and maintenance of the residential building which the landlord is obligated to provide but fails or refuses to provide.

(e) The court may find the extent to which any uncorrected violations impair the residential tenants' use and enjoyment of the property contracted for and order the rent abated accordingly. If the court enters judgment under this paragraph, the parties shall be informed and the court shall determine the amount by which the rent is to be abated.

(f) After termination of administration, the court may continue the jurisdiction of the court over the residential building for a period of one year and order the landlord to maintain the residential building in compliance with all applicable state, county, and city health, safety, housing, building, fire prevention, and housing maintenance codes.

(g) The court may grant any other relief it deems just and proper, including a judgment against the landlord for reasonable attorney's fees, not to exceed $500, in the case of a prevailing residential tenant or neighborhood organization. The $500 limitation does not apply to awards made under section 549.211 or other specific statutory authority.

(2) Analysis

The court's form petition is posted at http://www.mncourts.gov/selfhelp/?page=3520 but it does not include optional claims. A combined emergency relief and lockout action form with optional claims, and a slide show are posted at http://povertylaw.homestead.com/EmergencyReliefandLockoutActions.html. For *in forma pauperis* fee waivers, *see* http://povertylaw.homestead.com/IFP.html. For a notice of removal for, *see* http://www.mncourts.gov/default.aspx?page=513&item=468&itemType=formDetails.

The statute does not provide for a prehearing procedure other than tenant service of court orders. A common practice is for the court to issue an order requiring the landlord to remedy the emergency, scheduling a hearing to determine compliance and damages and hear defenses, and providing a deadline for service of the petition and order on the defendant.

The statute also does not provide for a hearing procedure. The tenant has the burden of proof, even if the court has ordered the landlord to remedy the emergency: (1) emergency, (2) tenant not responsible, (3) impact on tenant, and (4) relief requested.

(3) Cases

(a) Certificate of rent paid

In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees.

The court later ordered that the tenant could remedy violations and deduct the cost from rent, rent abatement would increase from $100 to $200 out of monthly rent of $650, or from 15% to 31% if the landlord did not complete repairs, the tenant could credit payments on the landlord's water bill against rent, the landlord must obtain a rental license, the landlord's right to collect rent was suspended until he obtained the license, and prior orders relating to court approval of future filings remained in effect. *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1999) (Appendix 354G).

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(b) Change in ownership

In _____ *v. Gibson*, and _____ *v. Gibson*, Nos. 1000301900 and 1000301901 (Minn. Dist. Ct. 4th Dist. Mar. 27, June 30, 2000) (Appendix 439), the court granted 100% rent abatement for condemnation, and additional treble damages, tenant may repair and deduct costs from rent, replacement housing, fines; subsequent order that new owner bound by predecessor landlord's obligations, $1800 in attorney's fees, injunction against retaliation.

(c) Condemnation

In *Floy v. _____,* No. HC-010821507 (Minn. Dist. Ct. 4th Dist. Sep. 13, 2001) (Appendix 499), in a combined eviction and emergency tenant remedies action, the court ordered dismissal of eviction breach claim since tenant actions did not violate the lease; dismissal of notice claim since notice was not attached to complaint and there was no evidence of when notice was given; tenant raising condemnation as a habitability defense did have to pay rent into court; landlord who rented out condemned property was liable for $1900 in rent and deposit paid plus $5700 additional treble damages, plus $500 in moving expenses, for $8100; deadlines for payment; expungement of eviction case.

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(c1) Consequential damages

Since the covenants of habitability are implied into all oral and written leases under Minn. Stat. § 504B.161, Subd. 1(a), a violation of the covenants of habitability may give rise to consequential damages. The tenant may recover such consequential damages as, at the time of the making of the lease, the parties could reasonably have contemplated would result from a breach. *Poppen v. Wadleigh*, 235 Minn. 400, 405, 51 N.W.2d 75, 78 (1952) (commercial lease lost profits); *Force v. Gottwald*, 149 Minn. 268, 272-75, 183 N.W. 356 359 (1921) (lost profits); *Romer v. Topel*, 414 N.W.2d 787, 788 (Minn. Ct. App. 1987), *review denied* (transportation and stabling of horses at another location following collapse of a barn). *See generally* 5C DUNNELL MINN. DIGEST 2D *Damages* § 3.00(b). *See* discussion, *supra*, at VI.E.1.*l.*

In *Good v. Axe Mgmt. et al.,* No. 01-CV-16-758 (Minn. Dist. Ct. 9th Dist., Aitkin County, Aug. 31, 2016) (Appendix 745) (Judge R. Zimmerman), the property rented by plaintiff tenant from the defendant landlords was severely damaged by a storm in July 2016. Roof damaged left portions of the house open to the air and further resulted in significant water and debris damage. Electrical service was lost and the home cannot be secured. The defendants were unresponsive to requests for repair and relocation assistance. Neither party requested termination of the lease, but the defendants attempted to modify the lease terms to prorate rent during month loss occurred and abate until repairs are completed. The tenant filed an emergency tenant remedies action against the landlord. The court found the tenant gave proper advance notice, and suffered an emergency not of the tenant's fault. The court awarded relocation costs and consequential damages for personal property loss, transportation, daycare, moving expenses, and storage unit rental expenses. The Court further awarded past and future full rent abatement and required the defendant to the tenant's alterative housing costs pay utility bills until house is repaired and habitable.

(d) Consolidation with eviction action

In *Floy v. _____,* No. HC-010821507 (Minn. Dist. Ct. 4th Dist. Sep. 13, 2001) (Appendix 499), in a combined eviction and emergency tenant remedies action, the court ordered dismissal of eviction breach claim since tenant actions did not violate the lease; dismissal of notice claim since notice was not attached to complaint and there was no evidence of when notice was given; tenant raising condemnation as a habitability defense did have to pay rent into court; landlord who rented out condemned property was liable for $1900 in rent and deposit paid plus $5700 additional treble damages, plus $500 in moving expenses, for $8100; deadlines for payment; expungement of eviction case.

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(e) Economic viability

In *Edwards v. Smith,* C7-90-141 (Minn. Dist. Ct. 3d Dist. June 5, 1990) (TR-Appendix 2), the court rejected landlord's request to remove tenant's apartment from the rental market alleging that it would be too costly to make the necessary repairs, and concluded the bid submitted to tenant was reasonable and not so costly as to justify a removal of the apartment form the rental market for economic or business reasons. *See also, Rodriguez v. Cziment*, HP-1317/90 (N.Y. City Civ. Ct. Kings Cty. Mar.

11, 1992) (Appendix 3c) (judge stated that if the landlord "were permitted to prevail with the evidence [of economic inviability] presented at trial, then the availability of this defense to landlords who believe that they are not receiving sufficient profits from the operation of their building could be used to defeat tenants' rights to live in premises that are unfit for human habitation and in good repair. The economic viability of a building cannot be used by landlords to escape their duty to maintain the premises in good repair."

(f) Exclusion and lockout

In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees.

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(g) Fines

In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a

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(h) Lack of license

In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees.

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(h1) Notice

In _____ *v. Meldahl,* 27-CV-HC-14-3813 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2014) (Appendix 710), a companion case to Meldahl v. _____, 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix 708), the tenant filed a petition for emergency relief under the Tenant Remedies Act, codified as Minn. Stat. § 504B.381. The tenant claimed Meldahl unlawfully interrupted the utility service to her refrigerator and freezer, which lacked electricity and thus caused food spoilage. She stated that she called Meldahl weeks prior to bringing this action, requesting he fix these problems, in addition to plumbing problems in the bathroom, but was promptly ignored. Prior to this trial, the referee had granted the petition for emergency relief and ordered Meldahl to remedy the situation immediately. However, as of trial, the problems had yet to be remedied. At trial, Meldahl incorrectly claimed that notice to a landlord regarding problems in the property must be made in writing. Minn. Stat. § 504B.381(4) forecloses this argument, as it does not require notice to be written, and the tenant's notice by telephone was sufficient. The court found she failed to adequately prove Meldahl intentionally and unlawfully tampered with her electricity. However, in light of Meldahl's failure to remedy the problems, the court found the tenant was entitled to rent abatement for the months she paid rent while the premise was in disrepair, along with costs, totaling $4,197, and statutory attorney's fees of $500.

In _____ *v. Meldahl,* 27-CV-HC-14-3813 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 711) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's findings in the previous action. Meldahl claimed the referee (1) erred in finding the tenant had diminished use and enjoyment of the property, which entitled her to rent abatement and costs; (2) erred in finding the tenant had properly notified Meldahl of the repairs needed; (3) erred in finding the tenant's testimony was credible, while Meldahl's was not; (4) showed bias in favor of the tenant; and (5) improperly allowed the tenant to represent her co-tenant. The Court disagreed with each of Meldahl's claims. First, the court held that it would not overturn the referee's credibility determinations and that the referee did not erroneously find that Tenant's use and enjoyment of the property was diminished. Further, the referee's award of attorney fees was supported by the record and well within its authority to do so. The referee showed no bias as his evidentiary findings were an appropriate exercise of his discretion. And finally, the tenant was allowed to represent her co-tenant in this action because Minn. Gen. R. Prac. 603 only requires a power of authority for eviction actions, and this was a petition for emergency relief.

(i) Privacy

In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees.

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(j) Relocation and replacement housing

In *Barnes v. Alan Spaulding, Mike Cashill, At Home Apartments, Gateway Real Estate LLC, Cashill Spaulding Properties, and West River Commons,* No. 27-CV-HC-17-6053 (Minn. Dist. Ct. 4th Dist. Dec. 22, 2017), in an emergency tenant remedies action, the court allowed the tenant to orally amend her complaint to add multiple people and entities as landlords and defendants under Minn. Stat. § 504B.001, and ordered that the landlords shall immediately repair the subject property to be fully compliant with the Minneapolis Codes of Ordinances and federal subsidized housing requirements, and the landlords shall immediately prepay the tenant to cover the costs of staying with her son at a hotel of her choosing in a room with kitchenette so that the tenant can avoid the costs of purchasing pre-made food.

In *Good v. Axe Mgmt. et al.,* No. 01-CV-16-758 (Minn. Dist. Ct. 9th Dist., Aitkin County, Aug.

31, 2016) (Appendix 745) (Judge R. Zimmerman), the property rented by plaintiff tenant from the defendant landlords was severely damaged by a storm in July 2016. Roof damaged left portions of the house open to the air and further resulted in significant water and debris damage. Electrical service was lost and the home cannot be secured. The defendants were unresponsive to requests for repair and relocation assistance. Neither party requested termination of the lease, but the defendants attempted to modify the lease terms to prorate rent during month loss occurred and abate until repairs are completed. The tenant filed an emergency tenant remedies action against the landlord. The court found the tenant gave proper advance notice, and suffered an emergency not of the tenant's fault. The court awarded relocation costs and consequential damages for personal property loss, transportation, daycare, moving expenses, and storage unit rental expenses. The Court further awarded past and future full rent abatement and required the defendant to the tenant's alterative housing costs pay utility bills until house is repaired and habitable.

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In *Soto v. Mananyi,* Nos. UD-1991022901 and UD-1991022902 (Minn. Dist. Ct. 4th Dist. Jan. 25, 2000) (Appendix 679), in an emergency tenant remedies action, the court order full rent abatement for 17 housing code violations and malfunctioning gas water heater requiring tenant to vacate property; tenant awarded damages for shelter, storing property, and transportation of $678 trebled to $2034, costs, and attorney's fees; expungement of earlier eviction action settlement granted.

(k) Rent abatement credit against rent

In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees.

The court later ordered that the tenant could remedy violations and deduct the cost from rent, rent abatement would increase from $100 to $200 out of monthly rent of $650, or from 15% to 31% if the landlord did not complete repairs, the tenant could credit payments on the landlord's water bill against rent, the landlord must obtain a rental license, the landlord's right to collect rent was suspended until he obtained the license, and prior orders relating to court approval of future filings remained in effect. *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Feb. 4,

1999) (Appendix 354G).

Later in 1999, the court issued more orders. *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: rent abatement increase to $300 from $650 (46%) after 1 ½ years of failure to complete repairs; fine of $750 payable to county; $1000 statutory damages and $200 rent abatement for two interruptions of utilities; $1000 for ten privacy violations; landlord ordered to stop privacy violations). *See* Washington Rent Abatement Table (Appendix 427). *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999) (Appendix 426) (compliance order in the consolidated unlawful detainer and emergency tenant remedies actions: landlord violated unlawful exclusion statute by excluding tenant from the basement; landlord violated shared meter statute where tenant's meter covered her first floor apartment and the common basement which the landlord used for an office and for personal use; landlord violated tenant privacy for coming on the property to do repairs without notice, and by interrogating guests of the tenant; tenant proved that landlord did not provide a certificate of rent paid; landlord failed to prove that tenant failed to pay rent in a timely manner; tenant awarded monthly rent abatement of $300 from $650 (46%) ongoing, $500 for exclusion from the basement, $500 for privacy violations, $500 for violation of the shared meter statute, all of which could be credited against rent; landlord ordered to cease violations of tenant's privacy, and immediately provide tenant with a certificate of rent paid.

(l) Repair and deduct

In _____ *v. Gibson*, and _____ *v. Gibson*, Nos. 1000301900 and 1000301901 (Minn. Dist. Ct. 4th Dist. Mar. 27, June 30, 2000) (Appendix 439), the court granted 100% rent abatement for condemnation, and additional treble damages, tenant may repair and deduct costs from rent, replacement housing, fines; subsequent order that new owner bound by predecessor landlord's obligations, $1800 in attorney's fees, injunction against retaliation.

In *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998) (Appendix 354C), the court consolidated unlawful detainer and emergency tenant remedies actions, and awarded $100 in monthly rent abatement, $100 for rent abatement for water shutoff, $250 as a stayed fine for violating a repair order, $500 in utility termination damages, $353 as a credit for tenant payments on the landlord's water bill, $500 in privacy violations, all of which could be credited against rent, and $500 in attorney's fees, with a later hearing scheduled to review landlord compliance and additional attorney's fees.

The court later ordered that the tenant could remedy violations and deduct the cost from rent, rent abatement would increase from $100 to $200 out of monthly rent of $650, or from 15% to 31% if the landlord did not complete repairs, the tenant could credit payments on the landlord's water bill against rent, the landlord must obtain a rental license, the landlord's right to collect rent was suspended until he obtained the license, and prior orders relating to court approval of future filings remained in effect. *Washington v. Okoiye*, Nos. UD-1981029901 and UD-19809090564 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1999) (Appendix 354G).

Later in 1999, the court issued more orders. *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. June 15, 1999) (Appendix 423) (compliance order in consolidated unlawful detainer and emergency tenant remedies actions: rent abatement increase to $300 from $650 (46%) after 1 ½ years of failure to complete repairs; fine of $750 payable to county; $1000 statutory damages and $200 rent abatement for two interruptions of utilities; $1000 for ten privacy violations;

landlord ordered to stop privacy violations). *See* Washington Rent Abatement Table (Appendix 427). *Washington v. Okoiye* and *Okoiye v. Washington*, No. UD-1981029901 (Minn. Ct. Dist. Oct. 8, 1999) (Appendix 426) (compliance order in the consolidated unlawful detainer and emergency tenant remedies actions: landlord violated unlawful exclusion statute by excluding tenant from the basement; landlord violated shared meter statute where tenant's meter covered her first floor apartment and the common basement which the landlord used for an office and for personal use; landlord violated tenant privacy for coming on the property to do repairs without notice, and by interrogating guests of the tenant; tenant proved that landlord did not provide a certificate of rent paid; landlord failed to prove that tenant failed to pay rent in a timely manner; tenant awarded monthly rent abatement of $300 from $650 (46%) ongoing, $500 for exclusion from the basement, $500 for privacy violations, $500 for violation of the shared meter statute, all of which could be credited against rent; landlord ordered to cease violations of tenant's privacy, and immediately provide tenant with a certificate of rent paid.

(m) Retaliation

In an eviction action, *Hughes v. Schudi*, Nos. 1990208901 and UD-1990205510 (Minn. Dist. Ct. 4th Dist. Feb. 25, 1999) (Appendix 232B) (Scherer J.), the court rejected landlord's argument that notice to quit was not retaliatory because tenant's emergency tenant remedies action were dismissed for non-appearance, where landlord was aware of tenant's actions in reporting disrepair and initiating court actions; notice to quit and unlawful detainer action were filed in that phase; unlawful detainer file expunged).

In *Judge v. Rio Hot Properties, Inc.*, Nos. UD-1981202903, UD-1981005518, and UD-1981104522 (Minn. Dist. Ct. 4th Dist. Dec. 18, 1998) (Appendix 362D), in consolidated unlawful detainer and emergency tenant remedies actions, the court concluded that a notice to quit which was not effective but the parties agreed to litigate was retaliatory where the landlord only wished to rent to other tenants, the landlords waived a no pet provision and could not rely on it to show a non-retaliatory purpose, the tenants were entitled to additional rent abatement beyond an ongoing rent abatement for loss of utilities, and the tenants were entitled to $500 in statutory damages for termination of utility services which they could credit against future rent.

(n) Utilities

In _____ *v. Hermel,* No. 27-CV-HC-17-1509 (Minn. Dist. Ct. 4th Dist. May 2, 2017) (Appendix 813), the tenant filed a petition for emergency relief alleging the existence of an emergency in the form of lack of hot water, plumbing issues, and a leaking water heater. The tenant notified the landlord on several occasions of plumbing problems which led to an unusable toilet and continuous flooding, which massively increased water bills. The landlord's response to tenant indicated that tenant would need to get a plumber. Eventually landlord paid a general contractor (without the t required plumbing permit) to fix the water heater, however the plumbing problems persisted. The Court ordered landlord to retroactively abate tenant's rent from the time of the first complaint, and prospective rent abatement until the problems were resolved by a licensed plumber, and the Court and tenant were provided with written verification thereof. The Court further awarded tenant attorney's fees of $500, fees for costs, and allowable disbursements.

In *Baker v Avalos,* No. 27-CV-HC 15-1458 (Minn. Dist. Ct. 4th Dist. April 22, 2015) (Appendix 744), the court previously entered an emergency tenant remedies action order requiring defendant building owners to restore water service to plaintiff's residential rental property. Defendants refused to comply with order. The court did not consider civil contempt sanctions or appoint an administrator as

neither was requested by plaintiff. The court entered judgment in favor of the plaintiff and against the defendant in the amount of $5000.00, pursuant to Minn. Stat. 504B.231 and Minn. Stat. 504B.425(g), $500 for each of 10 days post service of the ETRA order for failure to restore water service. The court also held that the plaintiff was not liable for 3 months withheld rent while water service was shut off.

In _____ *v. Meldahl,* 27-CV-HC-14-3813 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2014) (Appendix 710), a companion case to Meldahl v. _____, 27-CV-HC-14-2983 (Minn. Dist. Ct. 4th Dist. Aug. 26, 2014) (Appendix 708), the tenant filed a petition for emergency relief under the Tenant Remedies Act, codified as Minn. Stat. § 504B.381. The tenant claimed Meldahl unlawfully interrupted the utility service to her refrigerator and freezer, which lacked electricity and thus caused food spoilage. She stated that she called Meldahl weeks prior to bringing this action, requesting he fix these problems, in addition to plumbing problems in the bathroom, but was promptly ignored. Prior to this trial, the referee had granted the petition for emergency relief and ordered Meldahl to remedy the situation immediately. However, as of trial, the problems had yet to be remedied. At trial, Meldahl incorrectly claimed that notice to a landlord regarding problems in the property must be made in writing. Minn. Stat. § 504B.381(4) forecloses this argument, as it does not require notice to be written, and the tenant's notice by telephone was sufficient. The court found she failed to adequately prove Meldahl intentionally and unlawfully tampered with her electricity. However, in light of Meldahl's failure to remedy the problems, the court found the tenant was entitled to rent abatement for the months she paid rent while the premise was in disrepair, along with costs, totaling $4,197, and statutory attorney's fees of $500.

In _____ *v. Meldahl,* 27-CV-HC-14-3813 (Minn. Dist. Ct. 4th Dist. Oct. 23, 2014) (Appendix 711) (Judge Engisch), the landlord Meldahl sought review of the housing court referee's findings in the previous action. Meldahl claimed the referee (1) erred in finding the tenant had diminished use and enjoyment of the property, which entitled her to rent abatement and costs; (2) erred in finding the tenant had properly notified Meldahl of the repairs needed; (3) erred in finding the tenant's testimony was credible, while Meldahl's was not; (4) showed bias in favor of the tenant; and (5) improperly allowed the tenant to represent her co-tenant. The Court disagreed with each of Meldahl's claims. First, the court held that it would not overturn the referee's credibility determinations and that the referee did not erroneously find that Tenant's use and enjoyment of the property was diminished. Further, the referee's award of attorney fees was supported by the record and well within its authority to do so. The referee showed no bias as his evidentiary findings were an appropriate exercise of his discretion. And finally, the tenant was allowed to represent her co-tenant in this action because Minn. Gen. R. Prac. 603 only requires a power of authority for eviction actions, and this was a petition for emergency relief.

In *Walters v. Demmings*, No. UD-1990916517 (Minn. Dist. Ct. 4th Dist. Nov. 15, 1999) (Appendix 422), the duplex had separate electrical and gas meters for each unit. The electrical meter for the downstairs tenant also covered the basement and hallways, with the court concluding that it was a shared meter. After the furnace became inoperable and the landlord failed to supply adequate temporary heat and the tenant withheld rent, the landlord and tenant filed unlawful detainer and emergency tenant remedies actions, which the court consolidated. The court dismissed the landlord's notice to quit claim as premature, as the action was filed before the effective date of the notice. The court awarded rent abatement at $200 a month from $480 per month rent (42%), $500 in shared meter statutory damages, $500 for utility service interruption damages, all of which could be credited against future rent. The tenant moved for reconsideration of the shared meter damages, arguing that her damages exceeded the $500 statutory minimum. The court rejected the argument, concluding that the tenant must prove how much usage occurred outside of her unit. *Demmings v. Walters*, No. UD-1991006902 (Minn. Dist. Ct. 4th Dist. Mar. 22, 2000) (Appendix 422).

In *Soto v. Mananyi,* Nos. UD-1991022901 and UD-1991022902 (Minn. Dist. Ct. 4th Dist. Jan. 25, 2000) (Appendix 679), in an emergency tenant remedies action, the court order full rent abatement for 17 housing code violations and malfunctioning gas water heater requiring tenant to vacate property; tenant awarded damages for shelter, storing property, and transportation of $678 trebled to $2034, costs, and attorney's fees; expungement of earlier eviction action settlement granted.

In *Judge v. Rio Hot Properties, Inc.*, Nos. UD-1981202903, UD-1981005518, and UD-1981104522 (Minn. Dist. Ct. 4th Dist. Dec. 18, 1998) (Appendix 362D), in consolidated unlawful detainer and emergency tenant remedies actions, the court concluded that a notice to quit which was not effective but the parties agreed to litigate was retaliatory where the landlord only wished to rent to other tenants, the landlords waived a no pet provision and could not rely on it to show a non-retaliatory purpose, the tenants were entitled to additional rent abatement beyond an ongoing rent abatement for loss of utilities, and the tenants were entitled to $500 in statutory damages for termination of utility services which they could credit against future rent.

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(o) More examples of relief in similar actions

For more examples of relief, *see* discussion, *supra*, at XII.B.3.a (Rent Escrow Action) NS XII.b.3.b (Tenant Remedies Action).

c. *Tenant remedies action*

For a slide show, practice tips, and forms, *see* http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html under Repair Cases.

(1) Minn. Stat. §§ 504B.395-504B.471

The tenant remedies action is an alternative to the rent escrow action. While there is much overlap with the rent escrow action, it also is available to parties that cannot file a rent escrow action.

504B.395 Procedure.

Subdivision 1. Who may bring action. An action may be brought in district court by:

(1) a residential tenant of a residential building in which a violation, as defined in section 504B.001, subdivision 14, is alleged to exist;

(2) any housing-related neighborhood organization with the written permission of a residential tenant of a residential building in which a violation, as defined in section 504B.001, subdivision 14, clause (1) or (2), is alleged to exist;

(3) a housing-related neighborhood organization that has within its geographical area an unoccupied residential building in which a violation, as defined in section 504B.001, subdivision 14, clause (1) or (2), is alleged to exist; or

(4) a state, county, or local department or authority, charged with the enforcement of codes relating to health, housing, or building maintenance.

Subd. 2. Venue. The venue of the action authorized by this section is the county where the residential building alleged to contain violations is located.

Subd. 3. When action may be brought.

(a) After a residential building inspection has been made under section 504B.185, an action may not be brought under sections 504B.381, 504B.385, or 504B.395 to 504B.451 until the time granted under section 504B.185, subdivision 2, has expired and satisfactory repairs to remove the code violations have not been made.

(b) Notwithstanding paragraph (a), an action may be brought if the residential tenant, or neighborhood organization with the written permission of a tenant, alleges the time granted under section 504B.185, sub- division 2, is excessive.

Subd. 4. Landlord must be informed. A landlord must be informed in writing of an alleged violation at least 14 days before an action is brought by:

(1) a residential tenant of a residential building in which a violation as defined in section 504B.001, subdivision 14, clause (2) or (3), is alleged to exist; or

(2) a housing-related neighborhood organization, with the written permission of a residential tenant of a residential building in which a violation, as defined in section 504B.001, subdivision 14, clause (2), is alleged to exist. The notice requirement may be waived if the court finds that the landlord cannot be located despite diligent efforts.

Subd. 5. Summons and complaint required. The action must be started by service of a complaint and summons. The summons may be issued only by a judge or court administrator.

Subd. 6. Contents of complaint.

(a) The complaint must be verified and must:

(1) allege material facts showing that a violation or violations exist in the residential building;
(2) state the relief sought; and
(3) list the rent due each month from each dwelling unit within the residential building, if known.

(b) If the violation is a violation as defined in section 504B.001, subdivision 14, clause (1), the complaint must be accompanied by:

(1) a copy of the official report of inspection by a department of health, housing, or buildings, certified by the custodian of records of that department stating:

(i) when and by whom the residential building concerned was inspected;
(ii) what code violations were recorded; and
(iii) that notice of the code violations has been given to the landlord; or

(2) a statement that a request for inspection was made to the appropriate state, county, or municipal department, that demand was made on the landlord to correct the alleged code violation, and that a reasonable period of time has elapsed since the demand or request was made.

504B.401 Summons.

Subdivision 1. Contents.

(a) On receipt of the complaint in section 504B.395, the court administrator shall prepare a summons. The summons shall:

(1) specify the time and place of the hearing to be held on the complaint;

and

(2) state that if at the time of the hearing a defense is not interposed and established by the landlord, judgment may be entered for the relief requested and authorized by sections 504B.381 and 504B.395 to 504B.471.

(b) The hearing must be scheduled not less than seven nor more than 14 days after receipt of the complaint by the court administrator.

Subd. 2. Service. The summons and complaint must be served upon the landlord or the landlord's agent not less than seven nor more than 14 days before the hearing. Service shall be by personal service upon the defendant pursuant to the Minnesota Rules of Civil Procedure. If personal service cannot be made with due diligence, service may be made by affixing a copy of the summons and complaint prominently to the residential building involved, and mailing at the same time a copy of the summons and complaint by certified mail to the last known address of the landlord.

504B.411 Answer.

At or before the time of the hearing, the landlord may answer in writing. Defenses that are not contained in a written answer must be orally pleaded at the hearing before any testimony is taken. No delays in the date of hearing may be granted to allow time to prepare a written answer or reply except with the consent of all parties.

504B.415 Defenses.

It is a sufficient defense to a complaint under section 504B.385 or 504B.395 that:

(1) the violation or violations alleged in the complaint do not exist or that the violation or violations have been removed or remedied;

(2) the violations have been caused by the willful, malicious, negligent, or irresponsible conduct of a complaining residential tenant or anyone under the tenant's direction or control; or

(3) a residential tenant of the residential building has unreasonably refused entry to the landlord or the landlord's agent to a portion of the property for the purpose of correcting the violation, and that the effort to correct was made in good faith.

504B.421 Hearing.

If issues of fact are raised, they must be tried by the court without a jury. The court may grant a post- ponement of the trial on its own motion or at the request of a party if it determines that postponements are necessary to enable a party to procure necessary witnesses or evidence. A postponement must be for no more than ten days except by consent of all appearing parties.

504B.425 Judgment.

(a) If the court finds that the complaint in section 504B.395 has been proved, it may, in its discretion, take any of the actions described in paragraphs (b) to (g), either alone or in combination.

(b) The court may order the landlord to remedy the violation or violations found by the court to exist if the court is satisfied that corrective action will be undertaken promptly.

(c) The court may order the residential tenant to remedy the violation or violations found by the court to exist and deduct the cost from the rent subject to the terms as the court determines to be just.

(d) The court may appoint an administrator with powers described in section 504B.445, and:

(1) direct that rents due:

(i) on and from the day of entry of judgment, in the case of petitioning residential tenants or housing- related neighborhood organizations; and

(ii) on and from the day of service of the judgment on all other residential and commercial tenants of the residential building, if any,

shall be deposited with the administrator appointed by the court; and

(2) direct that the administrator use the rents collected to remedy the violations found to exist by the court by paying the debt service, taxes, and insurance, and providing the services necessary to the ordinary operation and maintenance of the residential building which the landlord is obligated to provide but fails or refuses to provide.

(e) The court may find the extent to which any uncorrected violations impair the residential tenants' use and enjoyment of the property contracted for and order the rent abated accordingly. If the court enters judgment under this paragraph, the parties shall be informed and the court shall determine the amount by which the rent is to be abated.

(f) After termination of administration, the court may continue the jurisdiction of the court over the residential building for a period of one year and order the landlord to maintain the residential building in compliance with all applicable state, county, and city health, safety, housing, building, fire prevention, and housing maintenance codes.

(g) The court may grant any other relief it deems just and proper, including a judgment against the landlord for reasonable attorney’s fees, not to exceed $500, in the case of a prevailing residential tenant or neighborhood organization. The $500 limitation does not apply to awards made under section 549.211 or other specific statutory authority.

504B.431 Service of Judgment.

A copy of the judgment must be personally served on every residential and commercial tenant of the residential building whose obligations will be affected by the judgment. If,

with due diligence, personal service cannot be made, service may be made by posting a notice of the judgment on the entrance door of the residential tenant's dwelling or commercial tenant's unit and by mailing a copy of the judgment to the residential tenant or commercial tenant by certified mail.

504B.435 Landlord's Right to Collect Rent Suspended.

If an administrator has been appointed pursuant to section 504B.425, paragraph (d), any right of the landlord to collect rent from the petitioner is void and unenforceable from the time the court signs the order for judgment until the administration is terminated. Any right of the landlord to collect rent from other tenants is void and unenforceable from the time of service of judgment as set forth in section 504B.431 until the administration is terminated.

504B.441 residential tenant may not be penalized for complaint.

A residential tenant may not be evicted, nor may the residential tenant's obligations under a lease be increased or the services decreased, if the eviction or increase of obligations or decrease of services is intended as a penalty for the residential tenant's or housing-related neighborhood organization's complaint of a violation. The burden of proving otherwise is on the landlord if the eviction or increase of obligations or decrease of services occurs within 90 days after filing the complaint, unless the court finds that the complaint was not made in good faith. After 90 days the burden of proof is on the residential tenant.

504B.445 Administrator.

Subdivision 1. Appointment. The administrator may be a person, local government unit or agency, other than a landlord of the building, the inspector, the complaining residential tenant, or a person living in the complaining residential tenant's dwelling unit. If a state or court agency is authorized by statute, ordinance, or regulation to provide persons or neighborhood organizations to act as administrators under this section, the court may appoint them to the extent they are available.

Subd. 2. Posting bond. A person or neighborhood organization appointed as administrator shall post bond to the extent of the rents expected by the court to be necessary to be collected to correct the violation or violations. Administrators appointed from governmental agencies shall not be required to post bond.

Subd. 3. Expenses. The court may allow a reasonable amount for the services of administrators and the expense of the administration from rent money. When the administration terminates, the court may enter judgment against the landlord in a reasonable amount for the services and expenses incurred by the administrator.

Subd. 4. Powers. The administrator may:

(1) collect rents from residential and commercial tenants, evict residential and commercial tenants for nonpayment of rent or other cause, enter into leases for vacant dwelling units, rent vacant commercial units with the consent of the landlord, and exercise other powers necessary and appropriate to carry out the

purposes of sections 504B.381 and 504B.395 to 504B.471;

(2) contract for the reasonable cost of materials, labor, and services including utility services provided by a third party necessary to remedy the violation or violations found by the court to exist and for the rehabilitation of the property to maintain safe and habitable conditions over the useful life of the property, and disburse money for these purposes from funds available for the purpose;

(3) provide services to the residential tenants that the landlord is obligated to provide but refuses or fails to provide, and pay for them from funds available for the purpose;

(4) petition the court, after notice to the parties, for an order allowing the administrator to encumber the property to secure funds to the extent necessary to cover the costs described in clause (2), including reasonable fees for the administrator's services, and to pay for the costs from funds derived from the encumbrance; and

(5) petition the court, after notice to the parties, for an order allowing the administrator to receive funds made available for this purpose by the federal or state governing body or the municipality to the extent necessary to cover the costs described in clause (2) and pay for them from funds derived from this source.

The municipality shall recover disbursements under clause (5) by special assessment on the real estate affected, bearing interest at the rate determined by the municipality, but not to exceed the rate established for finance charges for open-end credit sales under section 334.16, subdivision 1, clause (b). The assessment, interest, and any penalties shall be collected as are special assessments made for other purposes under state statute or municipal charter.

Subd. 5. Termination of administration. At any time during the administration, the administrator or any party may petition the court after notice to all parties for an order terminating the administration on the ground that the funds available to the administrator are insufficient to effect the prompt remedy of the violations. If the court finds that the petition is proved, the court shall terminate the administration and proceed to judgment under section 504B.425, paragraph (e).

Subd. 6. Residential building repairs and services. The administrator must first contract and pay for residential building repairs and services necessary to keep the residential building habitable before other expenses may be paid. If sufficient funds are not available for paying other expenses, such as tax and mortgage payments, after paying for necessary repairs and services, the landlord is responsible for the other expenses.

Subd. 7. Administrator's liability. The administrator may not be held personally liable in the per- formance of duties under this section except for misfeasance, malfeasance, or nonfeasance of office.

Subd. 8. Dwelling's economic viability. In considering whether to grant the administrator funds under subdivision 4, the court must consider factors relating to the long-term

economic viability of the dwelling, including:

(1) the causes leading to the appointment of an administrator;
(2) the repairs necessary to bring the property into code compliance;
(3) the market value of the property; and
(4) whether present and future rents will be sufficient to cover the cost of repairs or rehabilitation.

504B.451 Receivership Revolving Loan Fund.

The Minnesota Housing Finance Agency may establish a revolving loan fund to pay the administrative expenses of receivership administrators under section 504B.445 for properties for occupancy by low- and moderate-income persons or families. Landlords must repay administrative expense payments made from the fund.

504B.455 Removal of Administrator.

Subdivision 1. Petition by administrator. The administrator may, after notice to all parties, petition the court to be relieved of duties, including in the petition the reasons for it. The court may, in its discretion, grant the petition and discharge the administrator upon approval of the accounts.

Subd. 2. Petition by a party. A party may, after notice to the administrator and all other parties, petition the court to remove the administrator. If the party shows good cause, the court shall order the administrator removed and direct the administrator to immediately deliver to the court an accounting of administration. The court may make any other order necessary and appropriate under the circumstances.

Subd. 3. Appointment of new administrator. If the administrator is removed, the court shall appoint a new administrator in accordance with section 504B.445, giving all parties an opportunity to be heard.

504B.461 Termination of Administration.

Subdivision 1. Events of termination. The administration shall be terminated upon one of the following:

(1) certification is secured from the appropriate governmental agency that the violations found by the court to exist at the time of judgment have been remedied; or

(2) an order according to section 504B.445, subdivision 5.

Subd. 2. Accounting by administrator. After the occurrence of any of the conditions in subdivision 1, the administrator shall:

(1) submit to the court an accounting of receipts and disbursements of the administration together with copies of all bills, receipts, and other memoranda pertaining to the administration, and, where appropriate, a certification by an

appropriate governmental agency that the violations found by the court to exist at the time of judgment have been remedied; and

(2) comply with any other order the court makes as a condition of discharge.

Subd. 3. Discharge of administrator. Upon approval by the court of the administrator's accounts and compliance by the administrator with any other order the court may make as a condition of discharge, the court shall discharge the administrator from any further responsibilities pursuant to section 504B.381 and sections 504B.395 to 504B.471.

504B.465 Waiver Not Allowed.

Any provision of a lease or other agreement in which a provision of section 504B.381 or sections 504B.395 to 504B.471 is waived by a residential tenant is contrary to public policy and void.

504B.471 Purpose to Provide Additional Remedies.

The purpose of section 504B.381 and sections 504B.395 to 504B.471 is to provide additional remedies and nothing contained in those sections alters the ultimate financial liability of the landlord or residential tenant for repairs or maintenance of the building.

(2) Cases

For examples of relief, *see* discussion, *supra*, at XII.B.3.a (Rent Escrow Action).

(a) Retaliation

City View Apartments v. Sanchez, No. C2-00-313, 2000 WL 1064897 (Minn. Ct. App. Aug. 2000) (unpublished: combined eviction action and tenant remedies action; retaliation statute applies to efforts of tenant to make repair complaints to other tenants; the trial court erred by finding the notice was proper without making findings on the factors in *Parkin v. Fitzgerald*, 307 Minn. 423, 240 N.W.2d 828 (1976); trial court erred in dismissing tenant remedies action based on inadequate findings on the notice in the eviction action).

(b) Administrators

The property owner may not be a proper eviction plaintiff when the property is under the control of a court appointed administrator in a tenant remedies action. *See Sun Trust Mortgage Inc. V.* _____, No. 27-CV-HC-08-5044, Order (Minn. Dist. Ct. 4th Dist. June 25, 2008) (Appendix 622) (eviction filed by owner dismissed and expunged where property was under control of administrator in another action); Minn. Stat. §§ 504B.385, 504B.425, 504B.435, 504B.445, 504B.451, 504B.455, 504B.461.

(c) Appeal

Sanchez v. Krey, No. C7-99-2000 (Minn. Ct. App. Jan. 25, 2000) (Appendix 432) (60 day appeal period for consolidated eviction and tenant remedies actions), *citing Duluth Ready-Mix Concrete, Inc. v. City of Duluth*, 520 N.W.2d 775, 777 (Minn. Ct. App. 1994), *rev. den.* (Minn. Mar. 14, 1995) and Minn. R. Civ. App. P. 104.01, Subd. 1.

d. *Constructive eviction*

Minn. Stat. § 504B.131 (formerly § 504.05) provides that where the property is "destroyed or is so injured by the elements or any other cause as to be untenantable or unfit for occupancy, [the tenant] is not liable thereafter to pay rent ...." The statute generally serves as the basis for constructive eviction. In *Ellis v. McDaniel*, No. UD-1960318520 (Minn. Dist. Ct. 4th Dist. Apr. 4, 1996) (Appendix 203), the court held that the tenant was not liable for rent where apartment is made uninhabitable due to actions of a third party and through no fault or negligence of the landlord or tenant, under Sections 504.05 (now § 504B.131) and 504.18 (now § 504B.161). *See Smith v.* _____, No. 27-CV-HC-06-921 (Minn. Dist. Ct. 4th Dist. July 18, 2006) (Appendix 620) (referee ordered landlord did not need a rental license and terminated lease; judge reversed, concluding landlord without license did not have standing to file eviction, landlord constructively evicted tenant by obtaining restraining order against tenant in bad faith entitling tenant to $500 in damages and $500 in attorney's fees, and ordering expungement).

In *Delamater v. Foreman*, 184 Minn. 428, 239 N.W. 148 (1931), the Minnesota Supreme Court held for the tenants on their claims for damages and constructive eviction in a bed bug-infested apartment in a multi-unit apartment building where the lease was silent on habitability.

In _____ *v. Country Village Apartments*, C8-02-14178 (Minn. Dist. Ct. 1st Dist. July 8, 2002) (Appendix 436), the tenant obtained a restraining order against the father of her child. She called the police for subsequent incidents of threats and property damage, but did not feel safe. She gave notice to the landlord that she would vacate, claiming that the property was not fit for her use under Minn. Stat. § 504B.161 (formerly § 504.18). When the landlord did not agree to end the tenancy, she filed an rent escrow action under Minn. Stat. § 504B.385 (formerly § 566.34). The court found that she had been constructively evicted, and ordered her released from the lease, ending her rent liability, and that the landlord return her deposit minus the cost of damage beyond ordinary wear and tear. *See Person v. Torchwood Management*, No. UD-1920604543 (Minn. Dist. Ct. 4th Dist. July 6, 1992) (Appendix 205) (rent escrow action: landlord's failure to effectively abate loud and abusive language by neighboring tenants, noisy parties, and unjustified harassment by other tenants violated § 504.18 (now § 504B.161)); *Colonial Court Apartments, Inc. v. Kern*, 292 Minn. 533, 163 N.W.2d. 770 (1968) (damages action: affirmed trial court finding of constructive eviction for landlord's failure to respond to tenant's complaints about neighboring tenants).

e. *Damages action*

(1) Habitability

See discussion, *supra*, at XII.B.0. for a discussion of considerations for all tenant actions. For more information on habitability claims as defenses to eviction actions, *see* discussion at VI.E.1.

Prior to 1971, the landlord only had an obligation to maintain the property if the landlord agreed to take the obligation, or if the lease was silent. *Delamater v. Foreman*, 184 Minn. 428, 239 N.W. 148 (1931). In 1971 the Minnesota Legislature enacted Minn. Stat. § 504.18. Subdivision 1 provided that implied in every oral and written residential lease are three covenants or obligations of the landlord:

1. That the premises and all common areas are fit for the use intended by the parties.

2. To keep the premises in reasonable repair, except where the disrepair was caused by the

willful, malicious or irresponsible conduct of the tenant or tenant's agent.

3. Maintain the premises in compliance with applicable state and local housing maintenance, health, and safety laws, except where the violation was caused by the willful, malicious, or irresponsible conduct of the tenant or tenant's agent. Included in "health and safety laws" are: (a) The weatherstripping, caulking, storm window, and storm door energy efficiency standards for rental property contained in Minn. Stat. § 216C.27, subd. 1, 3. *See* Minn. Stat. § 216C.30, subd. 5, Minn. R. § 7655.0400; and (b) Fire extinguisher and smoke detector installation requirements. Minn. Stat. §§ 299F.361, 299F.362.

The successor statute Minn. Stat. § 504B.161 now reads:

504B.161 COVENANTS OF LANDLORD OR LICENSOR.

Subdivision 1. Requirements.

(a) In every lease or license of residential premises, the landlord or licensor covenants:

(1) that the premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee;

(3) to make the premises reasonably energy efficient by installing weatherstripping, caulking, storm windows, and storm doors when any such measure will result in energy procurement cost savings, based on current and projected average residential energy costs in Minnesota, that will exceed the cost of implementing that measure, including interest, amortized over the ten-year period following the incurring of the cost; and

(4) to maintain the premises in compliance with the applicable health and safety laws of the state, and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

(b) The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

Subd. 2. Tenant maintenance.

The landlord or licensor may agree with the tenant or licensee that the tenant or licensee is to perform specified repairs or maintenance, but only if the agreement is supported by adequate consideration and set forth in a conspicuous writing. No such agreement, however, may waive the provisions of subdivision 1 or relieve the landlord or licensor of the duty to maintain common areas of the premises.

Subd. 3. Liberal construction.

> This section shall be liberally construed, and the opportunity to inspect the premises before concluding a lease or license shall not defeat the covenants established in this section.
>
> Subd. 4. Covenants are in addition.
>
> The covenants contained in this section are in addition to any covenants or conditions imposed by law or ordinance or by the terms of the lease or license.
>
> Subd. 5. Injury to third parties.
>
> Nothing in this section shall be construed to alter the liability of the landlord or licensor of residential premises for injury to third parties.
>
> Subd. 6. Application.
>
> The provisions of this section apply only to leases or licenses of residential premises concluded or renewed on or after June 15, 1971. For the purposes of this section, estates at will shall be deemed to be renewed at the commencement of each rental period.

The "fit for intended use covenant" includes the landlord's statutory obligations to be the bill payer and customer of record for utility services supplied to a building through one meter where the service covers more than one unit or the common areas. Minn. Stat. § 504B.215 (formerly § 504.185). *See* Utilities, *infra*, at VI.E.4.

The statute is to be liberally construed. Minn. Stat. § 504B.161, Subd. 3. The covenants of habitability and the covenant to pay rent are mutual and dependant, and all or part of the rent is not due when the landlord has breached the covenants. *Fritz v. Warthen*, 298 Minn. 48, 54, 213 N.W.2d 339, 341-42 (1973).

> Three possible alternative remedies are available to enforce the statutory covenants: (1) The tenant may assert breach of the covenants as a defense to the landlord's unlawful detainer action for nonpayment of rent; (2) the tenant may continue to pay rent and bring his own action to recover damages for breach of the covenants by the landlord; (3) the tenant, after vacating the premises and suspending rent payments, may raise breach of the covenants as a defense to an action by the landlord for the rent.

Id. at 58, 213 N.W.2d at 341.

In *Love v. Amsler,* No. 87-14719 (Minn. Dist. Ct. 4th Dist. July 14, 1988) (TR App. 87), , *aff'd Love v. Amsler*, 441 N.W.2d 555 (Minn. Ct. App. 1989), the tenant withheld rent and when the landlord filed an eviction action, the tenant settled and moved. The landlord filed an action for rent and damages in conciliation court just before the tenant vacated, after which the tenant filed an action in district court claiming habitability violations and violations of the Prevention of Consumer Fraud Act and Uniform Deceptive Trade Practices Act. The district court found the landlord required the tenant to pay utilities even though the lease required the landlord to pay; inoperable heat, a dangerous space heater, excessive soot, dangerous electrical and structural defects, serious flooding problems, trip hazards, poor drainage, inadequate foundation, defective insulation and weatherstripping, loose and rotting walls, and defective paint and roofing; and fraudulent claims in actions in conciliation court and district court against numerous tenants. The district court awarded a complete rent abatement of $3,373 for habitability

violations; ordered return of the security deposit and interest along with bad faith punitive damages; order the landlord to obtain judicial approved to commence actions and awarded costs, disbursements, and attorney's fees for violations of the Prevention of Consumer Fraud Act. On appeal, the Court of Appeals affirmed, holding that trial court did not err (1) in applying the Prevention of Consumer Fraud Act applied to deceptive practices in leased housing, (2) awarding damages of previously paid rent, and (3) in its award of fees and costs or by imposing conditions on Amsler's right to file suit. *Love v. Amsler*, 441 N.W.2d 555 (Minn. Ct. App. 1989).

In *Ghebrehiwet v. Ghneim,* No. A15-0397 (Minn. Ct. App. January 11, 2016) (unpublished), landlord claimed in district court on removal from conciliation court that tenant failed to pay rent when due, held over after the lease expired, and damaged the rental unit. The tenant counterclaimed that the landlord breached the covenants of habitability due to a pervasive smell of sewage, flooding from a leaking roof, and no heat in the rental unit. The tenant also alleged privacy violations because landlord entered the rental unit without a reasonable purpose and without making a good faith effort to provide reasonable notice on several occasions, including an incident when the tenant woke up in her master bedroom to find the landlord and another male standing within feet of her, both of whom refused to leave even after several requests. The district court held that tenant owed $1,952 in unpaid rent, but that landlord was liable for damages in the amount of $3,300 (3 months' rent) for his breach the covenant of habitability and for penalties in the amount of $3,300 for numerous privacy violations.

The Court of Appeals affirmed the penalties, but reversed the damage award. For a substantial violation of the tenant's right to privacy, the statute allows for penalties that may include rent reduction up to full rescission of the lease, recovery of any damage deposit, and a maximum $100 civil penalty for each violation. The district court found that more than 10 substantial violations had occurred and awarded $1,000. The district court also awarded an additional $2,300 for the egregious master bedroom incident in the form of full rent reduction for that month ($1,100), recovery of the $1,100 damage deposit, and a $100 penalty. The Court of Appeals held that the penalties awarded to the tenant were not an abuse of discretion.

However, the Court of Appeals found that the tenant did not provide photographs or a contemporaneous record of the habitability problems, such as when they began, when complaints were made, and when each problem was fixed. Since the tenant failed to present specific proof of those damages, the district court simply abated the entire rent for the three months when the most egregious violations occurred. This was an abuse of discretion because the statute requires a proportionate approach (the extent the violations impaired the use and enjoyment of the unit) if rent is to be retroactively abated as a remedy for the breach of habitability. The Court of Appeals found there is no precedential authority for complete abatement of rent for any month when a violation has occurred. Accordingly, the award of damages was reversed.

In *Perez v. Wilson,* No. C4-94-2182, 1995 WL 265018 (Minn. App. May 9, 1995) (unpublished), the former tenant sued his landlord after he vacated the apartment pursuant to a notice of eviction. The district court held that the landlord did not violate the covenants under Minn. Stat. §504.18 because health and safety violations at the building were often caused by the tenants' conduct, and the tenant did not cooperate with attempts to repair his apartment. Further, the landlord did not violate Minn. Stat. §504.20, which requires return of the security deposit or a written statement regarding why it was not being returned, within three weeks after termination of the tenancy, because the landlord did not know the tenant's new address during that time. The district court also found that the landlord did not engage in any deceptive practices because, among other things, the lease addendum that required tenants to contact the manager or owner with complaints, instead of the government inspector, was intended to

give the landlord a chance to remedy the problems, not to deceive. Finally, the district court held that the landlord was entitled to the full rent for the final month of the lease, even though the tenant vacated prior to the end of the month deadline in the notice. The Court of Appeals affirmed the decisions below and also held that the district court's evidentiary rulings were either proper or lacked prejudice, and therefore, the motion for a new trial was properly denied.

In *Braddick v. Marlin Manor LLC,* No. 69VI-CO-15-463 (Minn. Dist. Ct. 6th Dist., St. Louis County, Mar. 22, 2016) (Appendix 736), the tenant filed a breach of implied covenant of habitability claim against landlord arguing that the water provided to the apartment was occasionally too hot (ranging from 140-215 degrees Fahrenheit) for use and requesting $200 rent abatement per month for every month the water temperature was in need of repair. The landlord argued that the case was barred by res judicata or claim preclusion. The conciliation court stated that res judicata did not apply because although the previous claim was brought under the same set of factual circumstances and between the same parties, there was no final judgment on the merits and the plaintiff did not have a full and fair opportunity to litigate the matter. The court explained that a tenant "may continue to rent and bring his own action to recover damages for breach of the covenants by the landlord" and that "[u]npredictable and unregulated hot water not only prevents a tenant from making reasonable use of a residence but, indeed, materially affects his or her health and safety." The court held that plaintiff was entitled to rent abatement as reasonable damages of $50 per month for a total of $350.

(2) Lack of rental license

See discussion, *supra*, at XII.B.0. for a discussion of considerations for all tenant actions. *See* discussion of licenses at XII.B.3.f1.

f. *Condemned housing*

See discussion, *supra*, at XII.B.0. for a discussion of considerations for all tenant actions. For more information on habitability claims regarding condemned housing as defenses to eviction actions, *see* discussion at VI.E.1.g.(3).

Where the premises have been condemned as uninhabitable or are condemnable, the present value is $0.00 and no rent is due to the landlord. *See Hamre v. Wu*, No. 797483 at 7 (Minn. Dist. Ct. 4th Dist. Jan. 26, 1983) (three judge appellate panel) (Appendix 8). *See also Zeman v. Smith*, Nos. UD-1840504512, UD-1840605520 at 5-6 (Henn. Cty. Mun. Ct., July 11, 1984) (Appendix 9) (tenant also owes no rent for period prior to condemnation where premises were in condemnable condition; inspection occurred after rent was due, and inspection orders warning of condemnation were placed on the property during the time period and were not obeyed, leading to condemnation).

If a landlord, agent, or person acting under the landlord's direction or control rents out residential housing after the premises were condemned or declared unfit for human habitation, the landlord is liable to the tenant for actual damages and an amount equal to three times the amount of all money collected from the tenant, including rent and security deposits, after the date of condemnation or declaration, plus costs and attorney's fees. Minn. Stat. § 504B.204 (formerly § 504.245). The provisions of § 504B.204 (formerly § 504.245) may not be waived.

In *Dellmore v. IPM Realty,* No. CX-06-2688 (Minn. Dist. Ct. 2nd June 29, 2006) (Appendix 641), in a tenant remedies action, the court made extensive findings on habitability and use and enjoyment of the property and concluded that the subsidized housing tenant's habitability damages were

not limited to tenant's share of rent especially where housing authority did not seek repayment of subsidy from landlord, and collection of rent after condemnation entitled tenant to treble damages. The court awarded the tenant rent abatement trebled and reimbursement of expenses resulting from habitability violations and condemnation for total of $28,000, and order the landlord ordered to prepay hotel expenses for displaced tenants. *See Lara v. Recalde,* No. HC #1020927900 (Minn. Dist. Ct. 4th Dist. Oct. 17, 2002) (Appendix 661) (rent escrow action; tenant awarded $3000 in treble damages, costs and disbursements where landlord collected and returned $1000 in rent for condemned property).

f1. *Lack of rental license*

(1) As a defense in eviction actions

For more information on lack of rental license claims as defenses to eviction actions, *see* discussion at VI.E.2.c.

(2) In damages actions

In *Young v. Holzer-Steil,* No. 27-CV-14-19681 (Minn. Dist. Ct. 4th Dist. July 28, 2015) (Judge Bratvold) (Appendix 775), in an action by former tenant against former landlord, partial summary judgment was granted for the defendants landlord and management company, concluding that (1) while the lack of a required rental license rendered the lease illegal, rent abatement was not available because the lease was fully executed, and (2) the management company was not liable since it did enter into the lease or collect rents. The court denied summary judgment to defendants on the issue of breach of the habitability covenants. The court also denied summary judgment on plaintiff's Minnesota Consumer Fraud Act claim that the management company falsely advertised that the property was available to rent when the landlord did not have a rental license.

The court granted full rent abatement for lack of a rental license in *Rivera v. Vasquez,* No. 27-CV-13-20840 (Minn. Dist. Ct. 4th Dist. June 24, 2014) (Judge Moore) (Appendix 777) (in appeal from conciliation court, summary judgment granted to former tenants against former landlord for $2,000 in full entire abatement for length of lease, $500 deposit, and fees and costs for lack of rental license).

(3) In rent escrow actions

To be completed.

(4) In emergency tenant remedies actions

To be completed.

(5) In tenant remedies actions

To be completed.

g. *Tort liability for personal injury and property damage*

Landlord's may have tort liability related to housing repair problems, but the law of torts has not kept pace with modern developments in landlord and tenant law, leaving tenants relatively unprotected in tort for injuries resulting from apartment disrepair. Before enactment of the covenants of habitability

statute, Minn. Stat. § 504.18 (now § 504B.161)), the landlord had no duty to the tenant, and thus no liability. *Johnson v. O'Brien*, 258 Minn. 502, 504-06, 105 N.W.2d 244, 246-47 (1960). The exceptions included the property has a public use, the landlord controlled the property, the landlord committed fraud or concealed the property's condition, the landlord kept defects in the property secret, the landlord fails to disclose a danger which a tenant would not discover, or the landlord agreed to repair the property. *Id.*; *Harpel v. Fall*, 63 Minn. 520, 524, 65 N.W. 913, 914 (1896).

While enactment of the statute should have created liability, as it created the landlord's covenant to maintain the property, the appellate courts have disagreed. *See* L. McDonough, *Who Pays When Tenants Are Injured Due to the Landlord's Failure to Repair?* (Slide Show) (discussion of cases) http://povertylaw.homestead.com/files/Reading/Who_Pays_When_Tenants_Are_Injured_Due_to_the_Landlord_s_Failure_to_Repair.pptx; L. McDonough, *Still Crazy after All of These Years: Landlords and Tenants and the Law of Torts*, 33 WM. MITCHELL L. REV. 427 (2006).

There was hope for a change in *Bills v. Willow Run I Apartments*, 534 N.W.2d 286 (Minn. Ct. App. 1995), where the Court of Appeals held that a violation of the Uniform Building Code in leased premises is negligence *per se* when the violation harms tenants and that harm is the type which the building code was intended to prevent). But in *Bills v. Willow Run I Apartments*, 547 N.W.2d 693 (Minn. 1996), the Minnesota Supreme Court, reversing the Court of Appeals, held that an owner is not negligent *per se* for a violation of the uniform building code, *unless* the owner knew or should have known of the violation, the owner failed to take reasonable steps to remedy the violation, the injury suffered was the kind the code was intended to prevent, and the violation was the proximate cause of the injury. *See Smith v. Hemphill*, No. 94-12234 (Minn. Dist. Ct. 4th Dist. Dec. 12, 1994) (Appendix 127) (negligence *per se* and strict liability applied to violation of ordinance enacted to protect children from harms associated with ingesting lead contaminated paint and soil); *Canada v. McCarthy*, 567 N.W.2d 496 (Minn. 1997) (When performing lead abatement work at tenant's property, landlord owes duty of care to tenant and guests; damages award affirmed); *Peterson-White v. Duluth Housing and Redevelopment Authority*, No. CX-96-1915, 1997 WL 88934 (Minn. Ct. App. Mar. 4, 1997) (Appendix 285) (Unpublished: Public housing authority not entitled to statutory or official immunity in tort action for lead poisoning).

In *Gradjelick v. Hance*, 627 N.W.2d 708 (Minn. Ct. App. 2001), reversed 646 N.W.2d 225 (Minn. 2002), the Minnesota Supreme Court reversed both the trial court and Court of Appeal rulings for the landlord on summary judgment, holding that analyses under negligence per se and ordinary common law negligence are both available in landlord liability cases when uniform building code violations are alleged, citing *Bills v. Willow Run I Apartments*, 547 N.W.2d 693 (Minn. 1996). *See Stauffenecker v. Salmela*, No. C4-02-1712, 2003 WL 1962160 (Minn. Ct. App. 2003) (unpublished) (affirmed summary judgment for landlord, holding that covenants of liability under Minn. Stat. § 504B.161 (formerly § 504.18) does not create liability, citing *Meyer v. Parkin*, 350 N.W.2d 435, 437-39 (Minn. Ct. App. 1984)).

In *Funchess v. Cecil Newman Corp*, 615 N.W.2d 397 (Minn. Ct. App. 2000), reversed 632 N.W.2d 666 (Minn. 2001), the Court of Appeals reversed summary judgment for the landlord in a tort case filed by the mother of a tenant killed by a person who allegedly entered the building through a defective security system, holding that the landlord has a special relationship and duty to maintain security, and assumed a duty to maintain its security system. The Minnesota Supreme Court reversed, holding that the plaintiff did not create a record of statutory liability for appeal, the landlord did not have a special relationship to the tenant, and that the plaintiff did not plead breach of contract as a claim.

In *White v. Many Rivers West Ltd. Partnership*, 797 N.W.2d 739 (Minn. Ct. App. 2011), a two year old child who fell out of third-floor window and died. The parents sued the landlord for negligence. The district court granted summary judgment in favor of landlord, and parents appealed. The court affirmed and held that several exceptions to the bar on landlord liability did not apply. Specifically, the court concluded that (1) the negligent repair exception did not apply to create a duty on landlord to repair screens to a more secure strength than that otherwise imposed by law, *id.* at 744; (2) the retained control exception did not apply to create a duty on landlord to ensure window screens were properly maintained, or to enhance window screens to prevent a child from falling, *id.* at 744-45; (3) the landlord did not breach any duty to warn of a hidden danger, *id.* at 745-46; and (4) notices made by the landlord to tenants after child fell from window did not create a contractual duty on landlord to repair window screens, *id.* at 746.

In *Moore v. CenterPoint Energy Resources Corporation*, No. A14-1751, 2015 WL 4715076 (Minn. Ct. App. August 10, 2015)(unpublished), the tenant began leasing her home five months after the landlords had a new Whirlpool gas stove installed in the kitchen. The tenant called the natural gas company to report an odor that she believed may have been natural gas, the gas company instructed her to open the window and leave the home, but the tenant failed to do so before the gas in the house exploded and caused fatal burns. The fire marshal determined that the fire was the result of an improperly installed gas connection to the stove, but the stove was not the cause of the explosion. This appeal concerns only the claims against Whirlpool for negligent failure to warn, negligent design, breach of implied warranty, and deceptive trade practices. The district court granted Whirlpool's motion for summary judgment on all claims against it. The Court of Appeals affirmed because there was no evidence that any action or inaction by Whirlpool caused the tenant 's injuries; more specifically, (1) the failure to warn claim and the design defect claim both fail on the causation element because the tenant actually detected the natural gas in her home but failed to take the action recommended by the gas company, (2) the implied warranty claim fails because no evidence was presented to show that the stove was unfit for its ordinary use, and (3) the deceptive trade practice claim fails because no improper practice was identified against Whirlpool.

In *Shire v. Minneapolis Public Housing Authority*, No. A14–0442, 2014 WL 7237108 (Minn. App. Ct. Dec. 22, 2014) (unpublished), the plaintiff claimed that she was injured when she slipped and fell in her apartment complex, owned by the defendants. Two days before the applicable statute of limitations, the summons and complaint were delivered to the city clerk instead of the defendant. The city clerk emailed the complaint to the defendant, who then emailed then plaintiff's counsel objecting to service. The district court denied the defendant's motion to dismiss for lack of service, reasoning that defendant and the City of Minneapolis shared an identity of interest such that service upon the city could be imputed to the defendant. The Court of Appeals reversed, finding that the defendant was not properly served. There was no identity of interest sufficient to warrant a relaxation of strict compliance with statutory service requirements where, though defendant had ties to the City of Minneapolis, it operated independently from it: had its own website, location and letterhead; it contracted independently with vendors, hired and fired its own employees, and sues and is sued under its own name. The defendant and the city also did not have a parent-subsidiary relationship because substitute service is not permitted upon public corporations.

In *Okani v. Loven*, No. A03-1545, 2004 WL 1049182 (Minn. Ct. App. May 11, 2004) (unpublished), the Court of Appeals reversed the trial court summary judgment for landlord where material facts existed over whether the landlord negligently repaired the property, and whether negligent repair was a superseding or intervening cause of injury, but affirmed the district court ruling that Minn. Stat. § 405B.161 did not create negligence *per se* liability, citing *Meyer v. Parkin*, 350 N.W.2d 435, 438

(Minn. Ct. App. 1984).

In *Gutierrez v. Eckert Farm Supply, Inc.,* No. C5-02-1900, 2003 WL 21500161 (Minn. Ct. App. July 1, 2003) (unpublished), the Court of Appeals held that a landlord does not have a duty in tort to protect tenants against the actions of third parties.

While the collateral estoppel affect of eviction (unlawful detainer) litigation is limited, tenant attorneys' and advocates should make a record in appropriate cases that the tenant is not litigating nor waiving a potential tort claim. In *Judge v. Rio Hot Properties, Inc.*, Nos. UD-1981202903, UD-1981005518, and UD-1981104522 (Minn. Dist. Ct. 4th Dist. Dec. 18, 1998), (Appendix 362D), the court made no findings or conclusions on tenant's potential tort claims as they did not litigate them in the summary proceeding. *See generally* discussion *supra*, at V.N.

h. *Contract liability for personal injury and property damage*

[To be completed]

4. Utilities

See discussion, *supra*, at VI.E.18.

5. Domestic Violence, Harassment and Abuse

a. *Harassment*

(1) Statutes

Minn. Stat. § 609.748 provides in part that a victim of harassment may obtain a restraining order for:

> (1) a single incident of physical or sexual assault, a single incident of harassment under section 609.749, subdivision 2, clause (8), a single incident of nonconsensual dissemination of private sexual images under section 617.261, or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target;
>
> (2) targeted residential picketing; and
>
> (3) a pattern of attending public events after being notified that the actor's presence at the event is harassing to another.

Minn. Stat. § 609.748, Subd. 1(a).
https://www.revisor.mn.gov/statutes/cite/609.748

The cross-referenced statutes provide:

> Subd. 2. Harassment crimes.

A person who harasses another by committing any of the following acts is guilty of a gross misdemeanor:

(1) directly or indirectly, or through third parties, manifests a purpose or intent to injure the person, property, or rights of another by the commission of an unlawful act;

(2) follows, monitors, or pursues another, whether in person or through any available technological or other means;

(3) returns to the property of another if the actor is without claim of right to the property or consent of one with authority to consent;

(4) repeatedly makes telephone calls, sends text messages, or induces a victim to make telephone calls to the actor, whether or not conversation ensues;

(5) makes or causes the telephone of another repeatedly or continuously to ring;

(6) repeatedly mails or delivers or causes the delivery by any means, including electronically, of letters, telegrams, messages, packages, through assistive devices for people with vision impairments or hearing loss, or any communication made through any available technologies or other objects;

(7) knowingly makes false allegations against a peace officer concerning the officer's performance of official duties with intent to influence or tamper with the officer's performance of official duties; or

(8) uses another's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person.

For purposes of this clause, "personal information" and "sexual act" have the meanings given in section 617.261, subdivision 7.

Minn. Stat. § 609.749, Subd. 2.
https://www.revisor.mn.gov/statutes/cite/609.749#stat.609.749.2

(f) "Personal information" means any identifier that permits communication or in-person contact with a person, including:

(1) a person's first and last name, first initial and last name, first name and last initial, or nickname;

(2) a person's home, school, or work address;

(3) a person's telephone number, e-mail address, or social media account information; or

(4) a person's geolocation data.

Minn. Stat. § 617.261, Subd. 7(f).
https://www.revisor.mn.gov/statutes/cite/617.261#stat.617.261.7

It is a crime to intentionally disseminate an image of another person who is depicted in a sexual act or whose intimate parts are exposed, in whole or in part, when:

(1) the person is identifiable:

(i) from the image itself, by the person depicted in the image or by another person; or

(ii) from personal information displayed in connection with the image;

(2) the actor knows or reasonably should know that the person depicted in the image does not consent to the dissemination; and

(3) the image was obtained or created under circumstances in which the actor knew or reasonably should have known the person depicted had a reasonable expectation of privacy.

Minn. Stat. § 617.261, Subd. 1.
https://www.revisor.mn.gov/statutes/cite/617.261

(2) Cases

In *Williams v. Rimmer*, No. A14–1431, 2015 WL 2457003 (Minn. Ct. App. May 26, 2015) (unpublished), the court affirmed a harassment restraining order against the petitioner tenant's landlord, but remanded to the district court for a more specific order on the minimum distance for the landlord to be away from the petitioner.

In *Johnson v. Koski*, No. A15-0610, 2015 WL 8549309 (Minn. Ct. App. December 14, 2005) (unpublished), between the landlord's second and third attempts to evict the tenant via a property management company, the tenant obtained an ex parte Harassment Restraining Order (HRO) against the landlord. However, the landlord was not served with the HRO until 70 days after it was issued, which was beyond the 45 day period in which the landlord was permitted to request a hearing on the ex parte order. The district court granted the landlord's motion for an evidentiary hearing based on the late service, found that there was no evidence of harassment, and dismissed the HRO. The tenant appealed, arguing that the landlord should not have been granted the untimely-requested evidentiary hearing. The Court of Appeals affirmed the decision, holding that: (1) Minn. R. Civ. P. 60.02 is available generally to seek relief from a final order or judgment, including an HRO; (2) the landlord met the *Hinz* test to open a default judgment, including showing that he had a reasonable defense on the merits (a property manager handled all communications with the tenant, not the landlord), a reasonable excuse for his failure to answer (he was not served until after the time limit expired), due diligence after notice of entry of the judgment, and no prejudice to the tenant (because the HRO remained in effect until conclusion of the hearing); and (3) there was not sufficient evidence to show any harassment had occurred.

In *Kush v. Mathison*, 683 N.W.2d 841 (Minn. Ct. App. 2004), the court held that (1) inappropriate or argumentative statements alone cannot be considered harassment, (2) a neighbor's conduct constituted "repeated incidents" of harassment against property owner where the neighbor engaged in harassing face-to-face encounters, telephone threats of physical violence, use of crude and profane language, restricting access to the property owner's property with multiple "no parking" signs, and uninvited visits to owner's property over a two year period, (3) a district court may make a finding of harassment if conduct has, or is intended to have, a substantial adverse effect on the safety, security or privacy of the average, reasonable individual, even if the intended victim shows resilience to the

harasser's ongoing conduct, and (4) the owner's testimony that the neighbor's threatening phone calls, uninvited visits, and pounding on his door caused him fear and apprehension was sufficient evidence to support the trial court's findings of a substantial adverse effect on safety, security and privacy of property owner. *Id*. at 844-845.

In *Starnes v. LoPesio,* No. C4-94-1548, 995 WL 15115 (Minn. Ct. App. Jan. 17, 1995) (unpublished), the court affirmed the district court order that prohibited the landlord from harassing the tenants or coming within 100 feet of the property he rented to them.

b. *Domestic abuse order for protection*

Minn. Stat. § 518B.01, the Minnesota Domestic Abuse Act, provides remedies for victims of domestic abuse. The definitions include:

Subd. 2. Definitions.

As used in this section, the following terms shall have the meanings given them:

(a) "Domestic abuse" means the following, if committed against a family or household member by a family or household member:

(1) physical harm, bodily injury, or assault;

(2) the infliction of fear of imminent physical harm, bodily injury, or assault; or

(3) terroristic threats, within the meaning of section 609.713, subdivision 1; criminal sexual conduct, within the meaning of section 609.342, 609.343, 609.344, 609.345, or 609.3451; or interference with an emergency call within the meaning of section 609.78, subdivision 2.

(b) "Family or household members" means:

(1) spouses and former spouses;

(2) parents and children;

(3) persons related by blood;

(4) persons who are presently residing together or who have resided together in the past;

(5) persons who have a child in common regardless of whether they have been married or have lived together at any time;

(6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and

(7) persons involved in a significant romantic or sexual relationship.

Issuance of an order for protection on the ground in clause (6) does not affect a determination of paternity under sections 257.51 to 257.74. In determining whether persons are or have been

involved in a significant romantic or sexual relationship under clause (7), the court shall consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination.

Minn. Stat. § 518B.01, Subd. 2(a)-(b).
https://www.revisor.mn.gov/statutes/cite/518B.01

In *Elmasry v. Verdin*, 727 N.W.2d 163 (Minn. Ct. App. 2007), the court held that the protections of Domestic Abuse Act, Minn. Stat. § 518B.01, subd. 2(b), extend to persons who are residing together, whether they are involved in a sexual relationship or whether they are just co-residents, and where landlord and tenant were residing together, they were household members for purposes of Domestic Abuse Act. *Id.* at 165-66. The court noted that

> Had appellant lived in a separate, self-contained unit of the building, and had respondent rented a separate, self-contained unit from appellant, the district court might have been correct in concluding that respondent was merely appellant's tenant and that the two did not reside together. But because the parties shared common living areas of the duplex, they were "residing together" and therefore meet the definition of "household members."

Id. at 166.

b1. *Termination of Lease by Victims of Violence*

(1) Minn. Stat. § 504B.206

Minn. Stat. § 504B.206 provides the right of victims of violence to terminate the lease.

504B.206 RIGHT OF VICTIMS OF VIOLENCE TO TERMINATE LEASE.

Subdivision 1. Right to terminate; procedure.

(a) A tenant to a residential lease may terminate a lease agreement in the manner provided in this section without penalty or liability, if the tenant or another authorized occupant fears imminent violence after being subjected to:

(1) domestic abuse, as that term is defined under section 518B.01, subdivision 2;
(2) criminal sexual conduct under sections 609.342 to 609.3451; or
(3) harass, as that term is defined under section 609.749, subdivision 1.

(b) The tenant must provide signed and dated advance written notice to the landlord:

(1) stating the tenant fears imminent violence from a person as indicated in a qualifying document against the tenant or an authorized occupant if the tenant or authorized occupant remains in the leased premises;
(2) stating that the tenant needs to terminate the tenancy;
(3) providing the date by which the tenant will vacate; and
(4) providing written instructions for the disposition of any remaining personal property in accordance with section 504B.271.

(c) The written notice must be delivered before the termination of the tenancy by mail, fax, or in person, and be accompanied by a qualifying document.

(d) The landlord may request that the tenant disclose the name of the perpetrator and, if a request is made, inform the tenant that the landlord seeks disclosure to protect other tenants in the building. The tenant may decline to provide the name of the perpetrator for safety reasons. Disclosure shall not be a precondition of terminating the lease.

(e) The tenancy terminates, including the right of possession of the premises, as provided in subdivision 3.

Subd. 2. Treatment of information.

(a) A landlord must not disclose:

(1) any information provided to the landlord by a tenant in the written notice required under subdivision 1, paragraph (b);
(2) any information contained in the qualifying document;
(3) the address or location to which the tenant has relocated; or
(4) the status of the tenant as a victim of violence.

(b) The information referenced in paragraph (a) must not be entered into any shared database or provided to any person or entity but may be used when required as evidence in an eviction proceeding, action for unpaid rent or damages arising out of the tenancy, claims under section 504B.178, with the consent of the tenant, or as otherwise required by law.

Subd. 3. Liability for rent; termination of tenancy.

(a) A tenant who is a sole tenant and is terminating a lease under subdivision 1 is responsible for the rent payment for the full month in which the tenancy terminates. The tenant forfeits all claims for the return of the security deposit under section 504B.178 and is relieved of any other contractual obligation for payment of rent or any other charges for the remaining term of the lease, except as provided in this section. In a sole tenancy, the tenancy terminates on the date specified in the notice provided to the landlord as required under subdivision 1.

(b) In a tenancy with multiple tenants, one of whom is terminating the lease under subdivision 1, any lease governing all tenants is terminated at the later of the end of the month or the end of the rent interval in which one tenant terminates the lease under subdivision 1. All tenants are responsible for the rent payment for the full month in which the tenancy terminates. Upon termination, all tenants forfeit all claims for the return of the security deposit under section 504B.178 and are relieved of any other contractual obligation for payment of rent or any other charges for the remaining term of the lease, except as provided in this section. Any tenant whose tenancy was terminated under this paragraph may reapply to enter into a new lease with the landlord.

(c) This section does not affect a tenant's liability for delinquent, unpaid rent or other amounts owed to the landlord before the lease was terminated by the tenant under this

section.

Subd. 4. [Repealed by amendment, 2014 c 188 s 2]

Subd. 5. Waiver prohibited.

A residential tenant may not waive, and a landlord may not require the residential tenant to waive, the tenant's rights under this section.

Subd. 6. Definitions.

For purposes of this section, the following terms have the meanings given:

(1) "court official" means a judge, referee, court administrator, prosecutor, probation officer, or victim's advocate, whether employed by or under contract with the court, who is authorized to act on behalf of the court;

(2) "qualified third party" means a person, acting in an official capacity, who has had in-person contact with the tenant and is:

(i) a licensed health care professional operating within the scope of the license;
(ii) a domestic abuse advocate, as that term is defined in section 595.02, subdivision 1, paragraph (l); or
(iii) a sexual assault counselor, as that term is defined in section 595.02, subdivision 1, paragraph (k);

(3) "qualifying document" means:

(i) a valid order for protection issued under chapter 518B;
(ii) a no contact order currently in effect, issued under section 629.75 or chapter 609;
(iii) a writing produced and signed by a court official, acting in an official capacity, documenting that the tenant or authorized occupant is a victim of domestic abuse, as that term is defined under section 518B.01, subdivision 2, criminal sexual conduct, under sections 609.342 to 609.3451, or harassment, as that term is defined under section 609.749, subdivision 1, and naming the perpetrator, if known;
(iv) a writing produced and signed by a city, county, state, or tribal law enforcement official, acting in an official capacity, documenting that the tenant or authorized occupant is a victim of domestic abuse, as that term is defined under section 518B.01, subdivision 2, criminal sexual conduct, under sections 609.342 to 609.3451, or harassment, as that term is defined under section 609.749, subdivision 1, and naming the perpetrator, if known; or
(v) a statement by a qualified third party, in the following form:

STATEMENT BY QUALIFIED THIRD PARTY

I, ... (name of qualified third party), do hereby verify as follows:

1. I am a licensed health care professional, domestic abuse advocate, as that term is defined in section 595.02, subdivision 1, paragraph (l), or sexual assault counselor, as that term is defined in section 595.02, subdivision 1, paragraph (k), who has had in-person contact with ..... (name of victim(s)).

2. I have a reasonable basis to believe ..... (name of victim(s)) is a victim/are victims of domestic abuse, criminal sexual conduct, or harassment and fear(s) imminent violence against the individual or authorized occupant if the individual remains (the individuals remain) in the leased premises.

3. I understand that the person(s) listed above may use this document as a basis for gaining a release from the lease.

I attest that the foregoing is true and correct.

(Printed name of qualified third party)
(Signature of qualified third party)
(Business address and business telephone)
(Date)

Subd. 7. Conflicts with other laws.

If a federal statute, regulation, or handbook permitting termination of a residential tenancy subsidized under a federal program conflicts with any provision of this section, then the landlord must comply with the federal statute, regulation, or handbook.

(2) Forms and Information for Tenants

Here is a copy of the form statement by qualified third party.
https://www.lawhelpmn.org/sites/default/files/2018-10/Statement%20by%20qualified%20third%20party.pdf

Here is a copy of the notice to the landlord.
https://www.lawhelpmn.org/sites/default/files/2018-10/Notice%20To%20End%20Lease%20Due%20To%20Fear%20of%20Violence.pdf

Law Help MN has a good summary for tenants.
https://www.lawhelpmn.org/self-help-library/fact-sheet/victims-domestic-violence-stalking-or-criminal-sexual-conduct-your

c. *Vulnerable adults*

A vulnerable adult victim of financial exploitation can recover damages equal to three times the amount of compensatory damages or $10,000, whichever is greater. Minn. Stat. §§ 626.557, Subd. 20, 626.5572, Subd. 9.

626.557 Reporting of Maltreatment of Vulnerable Adults.

Subd. 20.Cause of action for financial exploitation; damages.

(a) A vulnerable adult who is a victim of financial exploitation as defined in section 626.5572, subdivision 9, has a cause of action against a person who committed the financial exploitation. In an action under this subdivision, the vulnerable adult is entitled to recover damages equal to three times the amount of compensatory damages or $10,000, whichever is greater.

(b) In addition to damages under paragraph (a), the vulnerable adult is entitled to recover reasonable attorney fees and costs, including reasonable fees for the services of a guardian or conservator or guardian ad litem incurred in connection with a claim under this subdivision.

(c) An action may be brought under this subdivision regardless of whether there has been a report or final disposition under this section or a criminal complaint or conviction related to the financial exploitation.

626.5572 Definitions.

Subd. 9.Financial exploitation.

"Financial exploitation" means:

(a) In breach of a fiduciary obligation recognized elsewhere in law, including pertinent regulations, contractual obligations, documented consent by a competent person, or the obligations of a responsible party under section 144.6501, a person:

(1) engages in unauthorized expenditure of funds entrusted to the actor by the vulnerable adult which results or is likely to result in detriment to the vulnerable adult; or

(2) fails to use the financial resources of the vulnerable adult to provide food, clothing, shelter, health care, therapeutic conduct or supervision for the vulnerable adult, and the failure results or is likely to result in detriment to the vulnerable adult.

(b) In the absence of legal authority a person:

(1) willfully uses, withholds, or disposes of funds or property of a vulnerable adult;

(2) obtains for the actor or another the performance of services by a third person for the wrongful profit or advantage of the actor or another to the detriment of the vulnerable adult;

(3) acquires possession or control of, or an interest in, funds or property of a vulnerable adult through the use of undue influence, harassment, duress, deception, or fraud; or

(4) forces, compels, coerces, or entices a vulnerable adult against the vulnerable adult's will to perform services for the profit or advantage of another.

(c) Nothing in this definition requires a facility or caregiver to provide financial management or supervise financial management for a vulnerable adult except as otherwise required by law.

....

Subd. 21.Vulnerable adult.

(a) "Vulnerable adult" means any person 18 years of age or older who:

(1) is a resident or inpatient of a facility;

(2) receives services required to be licensed under chapter 245A, except that a person receiving outpatient services for treatment of chemical dependency or mental illness, or one who is served in the Minnesota sex offender program on a court-hold order for commitment, or is committed as a sexual psychopathic personality or as a sexually dangerous person under chapter 253B, is not considered a vulnerable adult unless the person meets the requirements of clause (4);

(3) receives services from a home care provider required to be licensed under sections 144A.43 to 144A.482; or from a person or organization that offers, provides, or arranges for personal care assistance services under the medical assistance program as authorized under section 256B.0625, subdivision 19a, 256B.0651, 256B.0653, 256B.0654, 256B.0659, or 256B.85; or

(4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction:

(i) that impairs the individual's ability to provide adequately for the individual's own care without assistance, including the provision of food, shelter, clothing, health care, or supervision; and

(ii) because of the dysfunction or infirmity and the need for care or services, the individual has an impaired ability to protect the individual's self from maltreatment.

(b) For purposes of this subdivision, "care or services" means care or services for the health, safety, welfare, or maintenance of an individual.

6. Discrimination

See generally What Is Fair Housing, http://fairhousingmn.org/rentersowners/about/; Your Rights

in Housing, http://mn.gov/mdhr/yourrights/housing.html.

See also discussion, *supra*, at VI.F.8, VI.G.8, and VI.G.9.

7. Consumer Claims

To be completed.

8. Security Deposits

See Security Deposits in Minnesota.

9. Disposition of Abandoned Personal Property

The landlord is responsible for proper removal, storage and care of the property, and is liable for damages for loss of or injury to the property caused by a failure to exercise care as a reasonably careful person would exercise under the circumstances. The abandoned property statute, § 504B.271 (formerly § 504.24), governs storage and return of the property. The landlord must store the property for 28 days. The landlord must notify the tenant at least 14 days before sale of the property. The landlord has only a claim, and not a lien, for the reasonable removal and storage costs. *Conseco Loan Finance Co. v. Boswell*, 687 N.W.2d 646, (Minn. Ct. App. 2004) (manufactured home park lot owner who stored tenant's manufactured home on the premises retained only a claim for storage costs, and not a lien); *City View v. Brooks*, No. UD-1950907539 (Minn. Dist. Ct. 4th Dist. Nov. 13, 1995) (Appendix 167) (landlord may not hold property to force payment of back rent; landlord ordered to return property).

If the landlord fails to allow the tenant to take possession of the property within 24 hours of the tenant's written demand, exclusive of weekends and holidays, the landlord is liable for punitive damages of the greater of double damages or $1,000 in addition to actual damages and reasonable attorney's fees. The statute states four factors for the court to consider in determining the amount of punitive damages - the nature and value of the property, the effect of deprivation of the property on the tenant, and whether the landlord or landlord's agent unlawfully took possession of the property or acted in bad faith in not allowing the tenant to retake possession. § 504B.271 (formerly § 504.24).

In *Pentel v. Bakewell*, No. CX-95-1595, 1996 WL 45168 (Minn. Ct. App. Feb. 6, 1996) (Appendix 356), the prevailing unlawful detainer plaintiff executed the writ on October 15, sent notice of sale of the tenants' property on December 4, and sold the tenants' property on December 21. The tenants sent a notice to recover the property on December 26. The court affirmed the district court's conclusions that the plaintiff complied with the statute, noting that the statute allows the landlord to sell the property if it reasonably appears that the tenant abandoned the premises, and the tenants' notice came after the sale.

For disposition of the tenant's personal property in an eviction action, *see* discussion, *supra*, at VIII.C.2.

C. LANDLORD ACTIONS AND CLAIMS AND TENANT DEFENSES

1. Rent in damages actions

In *Annex Properties, LLC v. TNS Research Intern*, 712 F.3d 381 (8th Cir. Minn. 2013), the

commercial landlord filed a damages action in state court against the commercial tenant seeking unpaid rent and penalties allegedly owed under the lease. The action was removed to federal court, which entered partial summary judgment for landlord, concluding that the tenant terminated the at-will holdover tenancy with notice. *Id.* at 382.

The Eighth Circuit United States Court of Appeals noted first that one email from the tenant did not terminate the tenancy, as the tenant held over and waived the notice. *Id.* at 383, citing *King v. Durkee-Atwood Co.*, 126 Minn. 452, 148 N.W. 297, 298 (1914). The court reviewed the history of Minnesota Supreme Court decisions interpreting Minn. Stat. § 504B.135(a), reversing that district court's conclusion that the law has evolved from strict compliance to substantial compliance with the termination notice requirement. The court noted that the Minnesota Supreme Court historically used and continues to use of the terms "strict compliance," "reasonable exactness" and "substantial compliance," and concluded that the proper standard is that "'the [statutory] notice should fix with reasonable exactness the time at which these consequences may begin to take effect.'" *Id.* at 383-85, quoting *Grace v. Michaud*, 50 Minn. 139, 141, 52 N.W. 390, 390 (Minn.1892). The court then concluded:

> Viewed from this perspective, TNS's [the tenant's] July 7 letter, even read in the context of its earlier May email, did not substantially comply with a statutory notice requirement that the Supreme Court of Minnesota has repeatedly said requires reasonable exactness. First, the letter was not a notice; rather, it responded to a landlord inquiry that reasonably assumed the holdover lease was still in effect. Second, the letter declared that TNS had vacated the premises. Under well-established Minnesota law, simply vacating leased premises does not terminate a lease unless the landlord accepts surrender of the premises. Finally, the letter made no mention of lease termination. In referring to TNS's prior action, it did not name a wrong termination date; it named no date at all, other than to confirm the oral advice that TNS had "moved out." No landlord with any familiarity with Minnesota law would con-strue this letter as a statutory notice of termination. Thus, Annex [the landlord] was on sound legal ground when it promptly responded that it did not accept surrender, a response which meant that a statutory notice of termination was required to terminate this holdover lease. In these circumstances, the letter's statements that the holdover lease had ended and no more rent was owing were nothing more than erroneous legal conclusions. If the letter had clearly stated, "TNS intends to end the lease on August 31, 2011," we would have a different case.

Id. at 385-86. Justice Loken, joined by Justice Melloy, concurred but asserted that state case law does not support unlimited ongoing rent liability of the tenant to the landlord. *Id.* at 386-87.

Tenant defenses to landlord civil damages actions for rent include many of the defenses available in defending eviction actions for nonpayment of rent. *See* discussion, *supra*, at VI.E. *See also* Security Deposits in Minnesota at http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html.

2. Property damage

In *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1 (Minn. 2012), the commercial landlord's insurance company filed a subrogation action against the commerical tenant to recover the payment it made to the landlord for the repair of water damage allegedly caused by the negligence of the tenant. On appeal from the district court's grant of summary judgment to the tenant that the Minnesota Court of Appeals affirmed, the Minnesota Supreme Court reversed and held that "the question of whether an insurer may pursue a subrogation action against the tenant of an insured, when the tenant's negligence caused damage to the insured's property, must be answered by examining the unique facts and

circumstances of each case." *Id.* at 3-4. In doing so, the court rejected the Court of Appeals decision in *United Fire & Casualty Co. v. Bruggeman*, 505 N.W.2d 87 (Minn. App.1993), *rev. denied* (Minn. Oct. 19, 1993), which had held that the landlord and the tenant were co-insureds in practice, precluding subrogation by the insurer. *RAM Mut. Ins. Co.* at 7-16. The court concluded that:

> under our case-by-case approach, consistent with the principles outlined above, an insurer will be able to maintain a subrogation action where, based on "the lease as a whole, along with any other relevant and admissible evidence," the district court determines that "it was reasonably anticipated by the landlord and the tenant that the tenant would be liable, in the event of a [tenant-caused property] loss paid by the landlord's insurer, to a subrogation claim by the insurer."

Id. at 16 (citations omitted).

See Security Deposits in Minnesota at http://povertylaw.homestead.com/ResidentialUnlawfulDetainer.html.

3. Collection

In *Enright v. Lehmann,* 735 N.W.2d 326 (Minn. 2007, the commercial landlord filed a damages action against the commercial tenants, an individual and his corporation, for failure to pay rent. The landlord obtained default judgment for attorney's fees and for unpaid rent against both tenants. The individual owner moved for order staying execution on grounds garnishment of account held jointly with wife was improper. The district court denied motion and later concluded that the account was not exempt from garnishment. *Id.* at 329. The Court of Appeals affirmed, holding that the money in joint account was all subject to garnishment to satisfy debt, and the tenant's claim of debilitating illness was insufficient to warrant relief from judgment. 724 N.W.2d 546, 549-51 (Minn. Ct. App. 2006).

On further appeal, the Minnesota Supreme Court held that the Multi-Party Accounts Act, Minn. Stat. § 524.6-203(a) overruled *Park Enterprises v. Trach*, 233 Minn. 467, 47 N.W.2d 194 (1951), in that it provides that a creditor may not garnish funds in a joint account not contributed by the debtor, unless the creditor proves by clear and convincing evidence that the depositor intended to confer ownership of the funds on the debtor. 735 N.W.2d at 330-34. The court noted that a joint account holder's unlimited power of withdrawal does not mean that funds he did not contribute are "due" him within the meaning of Minn. Stat. § 571.73, subd. 3(2). *Id.* at 334-36.

4. Exclusion of non-tenants

Adult members of the same family in the same dwelling might or might not be in a landlord and tenant relationship. If one member owns the property and the other does not pay rent or provide services in lieu of rent under Minn. Stat. § 504B.001, the latter is not a tenant. *See* discussion at I.E.

The owner still could file an eviction action to evict the other person as one unlawful detaining the property under Minn. Stat. § 504B.301. *See DePetro v. DePetro*, No. A03-727, 2004 WL 885552 (Minn. Ct. App. April 27, 2004) (unpublished) (affirmed eviction by owner of her adult daughter who was not a rent-paying tenant).

The owner could change the locks. While an owner cannot lockout a tenant, the owner may lock out a non-tenant. The risk for the owner is if a person excluded filed a lockout action and the court concluded the person was a tenant, the owner would be liable for damages, penalties, and attorney's fees.

See discussion at XII.B.1.

The owner also could trespass a non-tenant. If the owner tells the non-tenant to leave and the non-tenant does not comply, the owner could call the police for trespass. *See* discussion at VI.G.22.