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A Home Is a Good Thing: An Argument for Changing the Eviction Process

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A HOME IS A GOOD THING: AN ARGUMENT FOR
CHANGING THE EVICTION PROCESS

Samuel Spaid

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I. INTRODUCTION

Stable housing is a good thing, and the loss of stable housing carries significant and well-documented consequences both for the individual and for society.

Unstable housing makes regular medical care, access to medical treatment and adherence to complex treatment regimens more difficult.¹ Housing stability concerns are linked to high levels of stress and mental health problems.² The connection between housing and health is so well documented, many private and public organizations devote significant resources toward improving health

1. JEFFREY LUBELL ET AL., FRAMING THE ISSUES – THE POSITIVE IMPACTS OF AFFORDABLE HOUSING ON HEALTH 16 (Center for Housing Policy, 2007), available at <https://pdfs.semanticscholar.org/0dbf/ed563545d8b93877db82ee0634e68796ede7.pdf>.

2. See Elly Robinson & Rennell Adam, *Housing Stress and the Mental Health and Wellbeing of Families*, AUSTRALIAN INST. OF FAM. STUDIES, No. 12 (June 2008), <https://aifs.gov.au/cfca/sites/default/files/publication-documents/b12.pdf>; see also *Housing and Health, The Effect of Housing on the Health of Low-income Renters in Richfield, Minnesota*, CITY OF BLOOMINGTON (May 2018), <https://www.bloomingtonmn.gov/sites/default/files/media/online-Final-Report-8-16.18.pdf> (“Poor quality or insecure housing leads to high levels of stress that can cause or exacerbate chronic diseases and/or mental health issues.”).

through improved access to housing. For example, UnitedHealth Group recently began providing free or very-low cost housing to homeless members in an effort to save money on medical treatment after concluding that providing housing to homeless individuals is more cost-effective than paying the high medical costs associated with homelessness.³

Unstable housing can lead to frequent school changes, high rates of absenteeism, and low test scores among children.⁴ Housing instability and homelessness can threaten a child's academic attendance and success and contribute to long-lasting achievement gaps.⁵ Public school students in Minneapolis with one episode of homelessness had significantly lower math and reading achievement compared to other low-income, but stably-housed peers.⁶ Students in third through eighth grade with unstable housing had poorer academic achievement than students in those grades with stable housing.⁷ Furthermore, this achievement gap widened over time.⁸

Conversely, a recent study found that for every year that a child lives in tax-subsidized housing they are 3.5% more likely to attend a higher education program for four years or more and see a 3.2% increase in future earnings.⁹ The study concluded that this effect is likely due to the stability provided by the housing subsidy.¹⁰

In extreme cases, unstable housing can lead to homelessness. Homelessness in Minnesota increased by 10% from 2015 through

3. See John Tozzi, *America's Largest Health Insurer Is Giving Apartments to Homeless People*, BLOOMBERG BUSINESS (Nov. 5, 2019, 3:00 AM), <https://www.bloomberg.com/news/features/2019-11-05/unitedhealth-s-myconnections-houses-the-homeless-through-medicaid>.

4. See MARY CUNNINGHAM ET AL., *Residential Instability and the McKinney-Vento Homeless Children and Education Program*, URBAN INST., at 3, (May 2010), <https://www.urban.org/sites/default/files/publication/28736/412115-Residential-Instability-and-the-McKinney-Vento-Homeless-Children-and-Education-Program.PDF>.

5. J.J. CUTULI ET AL., *Academic Achievement Trajectories of Homeless and Highly Mobile Students: Resilience in the Context of Chronic and Acute Risk*, 84 CHILD DEV. 841, 842 (2013), https://www.researchgate.net/publication/232740319_Academic_Achievement_Trajectories_of_Homeless_and_Highly_Mobile_Students_Resilience_in_the_Context_of_Chronic_and_Acute_Risk.

6. *Id.*

7. *Id.*

8. *Id.*

9. Elena Derby, *Does Growing Up in Tax-Subsidized Housing Lead to Higher Earnings and Educational Attainment?*, GEORGETOWN U., JOINT COMMITTEE ON TAX'N (Nov. 22, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3491787.

10. *Id.*

2018¹¹ and unsheltered homelessness increased 92% during the same time period.¹² There are now more than 10,000 homeless individuals in Minnesota, of which an estimated 3,000 are children.¹³ Unstable housing and homelessness are also linked to child abuse and neglect.¹⁴

If housing instability negatively affects our entire society, then any process which results in housing instability must be evaluated by how well it balances achieving its legitimate goals with protecting and promoting housing stability.

Residential eviction actions, by definition, are processes which result in housing instability.¹⁵ Throughout Minnesota, approximately 28.4% of households rent.¹⁶ In our two most densely populated cities, Minneapolis and Saint Paul, more than 50% of households rent.¹⁷ Evictions, also called Unlawful Detainers or UDs, are court cases filed by landlords against their tenants. An eviction action determines who should have possession of a rental unit.¹⁸ Specifically, if the landlord wins the eviction action, they get a writ of recovery of premises.¹⁹ This writ goes to the sheriff and orders the sheriff to remove the tenant, by force if necessary.²⁰

Evictions also carry lasting consequences for the individual or family beyond the initial forced move. Evictions are public court records and become publicly searchable on the internet the moment they are filed. They remain in the court system forever and can be reported by tenant screening companies for up to seven years per federal law.²¹ Most landlords perform tenant screening to identify past evictions. Many landlords have outright bans against leasing to tenants who have had an eviction action filed against them, regardless of the outcome of the court case. As a result, evicted families have few options and often face longer periods of

11. *Homelessness in Minnesota*, WILDER RESEARCH (study conducted Oct. 25, 2018), <http://mnhomeless.org/minnesota-homeless-study/homelessness-in-minnesota.php>.

12. MINN. HOUSING, KEY ISSUES AND TRENDS IN HOUSING, 5 (Feb. 2019).

13. *Homelessness in Minnesota*, *supra* note 11.

14. MARY CUNNINGHAM ET AL. HELPING FAMILIES INVOLVED IN THE CHILD WELFARE SYSTEM ACHIEVE HOUSING STABILITY 2-3 (2015).

15. MINN. STAT. § 504B.001, subd. 4 (2019).

16. *American Community Survey 2013-2017 5-Year Data Release*, U.S. CENSUS BUREAU (Dec. 6, 2018), <https://www.census.gov/newsroom/press-kits/2018/acs-5year.html>.

17. *QuickFacts, Minneapolis City, Minnesota*, U.S. CENSUS BUREAU (last visited Feb. 21, 2020), <https://www.census.gov/quickfacts/minneapoliscityminnesota>; *QuickFacts, St. Paul City, Minnesota*, U.S. CENSUS BUREAU (last visited Feb. 21, 2020), <https://www.census.gov/quickfacts/stpaulcityminnesota>.

18. MINN. STAT. § 504B.001, subd. 4 (2019).

19. MINN. STAT. § 504B.345 (2019).

20. MINN. STAT. § 504B.365 (2019).

21. 15 U.S.C. § 1681(c) (2019).

homelessness because future prospective landlords frequently deny applicants with any eviction on their record.²² Eviction records and unpaid rental debts can also prevent families from qualifying for subsidized housing programs.²³

Approximately 16,000 evictions are filed each year in Minnesota.²⁴ The majority of these court cases successfully end up removing the tenant from their current home.²⁵ Evictions are certainly a necessary part of our current housing system. However, they are the primary threat to and cause of housing instability for many Minnesotan households. As such, they should be evaluated by how well they limit that harm.

II. EVICTIONS FAIL TO LIMIT THE HARM OF HOUSING INSTABILITY

A. *Evictions Were Designed to Quickly Dispossess People and That Design Has Not Changed*

The primary purpose of the eviction process is to provide a legal way to quickly force people out of the property that they live in as an alternative to individuals using physical force or violence to remove people from their homes. This goal was clearly stated in the first section of Minnesota's original eviction laws:

No person or persons shall hereafter make an entry into lands, tenements, or other possessions, but in

22. Martha Burt, *Homeless Families, Singles, and Others: Findings from the 1996 National Survey of Homeless Assistance Providers and Clients*, 12 HOUSING POL'Y DEBATE 737, 787-90 (2001).

23. MINNEAPOLIS PUB. HOUS. AUTH., *LOW-INCOME PUBLIC HOUSING STATEMENT OF POLICIES 2020* 24 (2019).

24. In 2017, 16,000 evictions were filed in Minnesota, however, not every eviction involves residential housing. In a random sampling of 250 evictions, at least 213 were residential. This would mean about 14,000 residential eviction cases across the state if the percentage held true for all 16,381 eviction cases. Samuel Spaid, HOME LINE, *Evictions in Greater Minnesota* 2, 4, 6-9 (2018), <https://homelinemn.org/wp-content/uploads/2018/06/Evictions-in-Greater-Minnesota-Report-with-Appendix.pdf>.

25. *Id.* at 3 (stating greater than three out of four evictions filed resulted in tenant removal from their home in Greater Minnesota); Zoe Thiel, Minneapolis Innovation Team, *Evictions in Minneapolis* 3 (2016), <http://innovateminneapolis.com/documents/Evictions%20in%20Minneapolis%20Report.pdf> (stating that 66% of cases result in tenant removal from their home); Rebecca Hare, CURA, *KNCBR Report #1438, Evictions in Brooklyn Park* 3 (2018) [hereinafter, Hare, Brooklyn Park], <https://conservancy.umn.edu/handle/11299/200081> (stating that greater than 50% of cases result in tenant removal from their home); Rebecca Hare, CURA, *KNCBR Report #1442, Evictions in Saint Paul* 11 (2018) [hereinafter, Hare, St. Paul], <https://conservancy.umn.edu/handle/11299/201646> (stating that 68% of cases result in tenant removal from their home).

cases where entry is given by law; and in such cases, not with strong hands, nor with a multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine.²⁶

That statute exists today in substantially the same form: “[n]o 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.”²⁷ Current state law defines eviction as “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.”²⁸

In short, the eviction process was not designed to limit the harm of housing instability. Instead, it was designed to be an alternative to personal force, an important, but hardly sufficient goal. The eviction process was also designed to proceed very quickly and has not been meaningfully updated in 150 years.²⁹

B. The System Is Designed to Favor the Landlord, Not the Tenant

The system has also been designed and managed, both intentionally and unintentionally, to favor the landlord and not the tenant.

The eviction process is very fast. As noted above, an eviction is a summary court proceeding. On average, the time between the landlord filing the eviction case and the sheriff forcibly removing the tenant is about three weeks, however this time period can be under a week in some circumstances.³⁰

The consequence of a landlord failing to show up to an eviction court hearing is dismissal without prejudice. This means that although the landlord loses, they can immediately refile the court case to schedule a new hearing. While the landlord has lost court fees of a few hundred dollars³¹ and some incidental fees if they hired a process server or an attorney, they have not lost the ability to evict. The consequence for a tenant failing to show up to an eviction court hearing is a default (and usually immediate) judgment in the landlord’s favor,³² meaning an imminent forced move for the tenant.

26. MINN. TERR. STAT. CH. 87 § 1 (1851).

27. MINN. STAT. § 504B.281 (2019).

28. MINN. STAT. § 504B.001, subd. 4 (2019).

29. See Samuel Spaid & Paul Birnberg, *Not With Strong Hands, nor With a Multitude of People: The Statutory History of the Eviction Procedure in Minnesota*, 41 MITCHELL HAMLIN J. PUB. POL’Y (forthcoming 2020).

30. *Id.* See also Thiel, *supra* note 25, at 19.

31. MINN. STAT. § 357.021, subd. 2 (2019).

32. MINN. STAT. §§ 504B.335(a), .345, subd. 1(a) (2019).

In theory, the tenant can reopen the court case,³³ but in practice, this is a complicated process. The process relies not only on the tenant paying court fees and figuring out how to draft and file motion paperwork, but it ultimately relies on a judge’s discretion.³⁴ Most tenants do not even attempt to reopen a default judgment and many who try are unsuccessful.³⁵

If the landlord does not appear at the eviction hearing on time, the court often waits for the landlord. However, if the tenant does not show up on time, the court will call the case and issue a default judgment against the tenant.³⁶ Tenants almost certainly will not be granted a continuance of an eviction hearing without the landlord’s agreement. Tenants can and are evicted while in the hospital, out of town, or otherwise unavoidably detained with no legal recourse, except to attempt to reopen the case. However, reopening the case is a process that is inaccessible to most.³⁷

Generally, settlements in eviction cases contain a clause stating that a landlord can obtain a writ merely by providing an affidavit of non-compliance to the court. Notice to the tenant or the opportunity for the tenant to dispute the landlord’s assertion is not required before the court issues the writ. Courts routinely issue writs on these affidavits and order the sheriff to remove the tenant within 24-hours. A tenant can only dispute this by filing a motion to stay and quash the writ.³⁸ As with a motion to reopen, most tenants do not even attempt to stay and quash a writ and many who try are unsuccessful.³⁹

While some landlords file few to no evictions and represent themselves without any legal training, many landlords are represented by an attorney.⁴⁰ Landlords who are not represented by

33. MINN. R. CIV. P. 60.02.

34. Slatoski v. Jendro, 159 N.W. 752 (Minn. 1916).

35. Actual statistics for this fact are hard, if not impossible to come by. For this, the author relies on his experience as a landlord-tenant attorney of 10 years, having advised over 15,000 tenants during that time.

36. Brief of Amicus Curiae at 21, Pass v. Seifert, No. A18-1555, 2019 WL 3000734 (Minn. Ct. App. July 1, 2019) (No. A18-1555), 2019 WL 1756597, at *1 (“Many tenants believe that housing court referees . . . act like the landlord is the customer and the service is eviction, rather than treating all parties the same with the service being due process. The referees regularly schedule calendars for the convenience of landlords but not tenants; delay hearings if landlords are late, but enter judgments against tenants who are late.”).

37. Again, for this, the author relies on his and his colleagues experience having advised numerous tenants in this situation over the years.

38. MINN. R. CIV. P. 60.02.

39. For this, the author relies on his experience as a landlord-tenant attorney of 10 years having advised over 15,000 tenants during that time.

40. Spaid, *supra* note 24, at 14 (53% of landlords were represented); Thiel, *supra* note 25, at 12 (39% of landlords were represented); Hare, Brooklyn Park, *supra* note 25, at 15 (21.5% of landlords were represented); Hare, St. Paul, *supra* note 25, at 15 (70% of landlords were represented).

counsel may themselves be frequent filers who are well versed in the eviction process. Tenants, on the other hand, are generally not well versed and are rarely represented by an attorney.⁴¹

In short, the eviction process was designed to be fast, to favor the landlord, and to do so with maximum efficiency. Watching a typical Hennepin County Housing Court calendar will prove this. Dozens of cases might be dispensed of within a few hours, with many cases being resolved in a few minutes, making the eviction system little more than an efficient factory for processing a landlord's claim. The majority of cases ultimately return possession to the landlord. The system puts the entire burden of defense directly upon the tenant and provides almost no consideration or acknowledgement of the difficulty that the tenant would have in raising their defense.⁴²

C. The System Causes Significant Housing Instability

The most straightforward proof that evictions do not protect housing stability is the cumulative result of that system. As noted above, approximately 16,000 evictions were filed in Minnesota in 2017.⁴³ The majority of these court cases successfully end up removing the tenant from their current home, whether through judgment or by settlement agreement, and the consequences of an eviction can haunt these families for years.⁴⁴

In other words, evictions overwhelmingly result in housing instability, and a system which overwhelmingly results in housing instability does not protect housing stability.

III. THE EVICTION PROCESS SHOULD BE REWORKED

It would be unfair and untrue to say that Minnesota law does not protect tenants or that residential tenants have no rights. Not only do a significant amount of current residential landlord-tenant laws protect tenants, but arguably, most additions to the general body of Minnesota landlord-tenant law in the last half-century have been for the protection of tenants. However, most of those additions have left the eviction process—the process by which a tenant and their family

41. Spaid, *supra* note 24, at 14 (2% of tenants were represented); Thiel, *supra* note 25, at 12 (2% of tenants were represented); Hare, Brooklyn Park, *supra* note 25, at 15 (0.5% of tenants were represented); Hare, St. Paul, *supra* note 25, at 15 (0.5% of tenants were represented).

42. While it is true that the burden of defense generally rests on the defendant, a normal civil court case would usually last a year or longer. A normal civil court case would also have numerous built in safeguards, such as mandatory discovery and continuances, which the summary eviction process does not provide.

43. See Spaid, *supra* note 24, at 2.

44. See *supra* notes 22–24.

are frequently forced from their home—virtually untouched since 1851. This process, as discussed above, was designed with little to no regard for protecting housing stability and, in fact, does not do so. Instead, the process exists as a persistent underlying threat to all residential tenants at all times and is a practical reality for tens of thousands of people each year, causing both immediate and lingering harm to that specific household, which in turn harms all of us by destabilizing our communities.

Why should we keep a system which has inflicted trauma on tens of thousands of households and is currently causing so much harm to everyone? It is possible and desirable to design a system which protects the rights of a business while limiting the amount of forced moves—such housing protections already exist for many others.

For example, before a homeowner loses their home, they are provided with a lengthy foreclosure process, a timeline which in general takes significantly longer than six months.⁴⁵ Certain forms of rental housing carry greater protections as well. In Minnesota, manufactured home park leases and most public subsidized leases can never be terminated without some breach of the lease.⁴⁶ Manufactured home park leases and most public subsidized leases also require notice before filing an eviction and a right to cure for almost every type of breach with notice periods. The right to cure may range from 10 to 30 days, depending upon the lease and the violation.⁴⁷

We can design a system with greater protection and respect for housing stability. We have done so in other areas. Even though it may not be simple, now is time to try.

IV. CHANGING THE SYSTEM

Designing evictions with an eye towards protecting housing stability means that a forced move should be the last resort. A forced move should only occur after the tenant has been given a fair opportunity to remedy the situation or present a defense. Additionally, forced moves should be limited to fewer circumstances.

With this in mind, reform suggestions include:

45. Paul Birnberg, *Basics of Mortgage Foreclosure and Contract-for-Deed Cancellation for Residential Tenants*, HOME LINE 1-3 (June 26, 2018), <https://homelinemn.org/wp-content/uploads/2018/07/Basics-of-Mortgage-Foreclosure-and-Contract-for-Deed-Cancellation.2018.a.pdf>.

46. See generally MINN. STAT. § 327C.09 (2019); Lawrence McDonough, *Residential Eviction Defense and Tenant Claims in Minnesota* 350–81 (Feb. 2020), http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.pdf.

47. MINN. STAT. § 327C.09 (2019); McDonough, *supra* note 46, at 350-81.

- Provide more deeply affordable housing, rental subsidies, and additional emergency financial assistance for tenants.⁴⁸ While our current eviction system causes considerably more harm than good for tenants and the community, it is essential that those who provide housing are compensated for this service. Providing meaningful financial resources for access to housing will provide more benefits than costs.
- The eviction process should be slower and provide greater opportunities for resolution. These resolutions should not involve a forced move in a matter of weeks or sometimes days, following nothing more than a five-minute hearing where the entire burden of defense lies on the tenant. In cases of nonpayment of rent, tenants should have a right to advance notice and an opportunity to pay or vacate before an eviction is filed and becomes public. Tenants should also have more extensive redemption rights throughout the court process. Both the notice time period and the redemption time period should be more in line with the amount of time required to foreclose on a house. For breaches of a lease, tenants should be given notice and the right to cure the breach. Forced moves and homelessness should only be the result of very significant breaches that would be significant enough to terminate a lease.⁴⁹
- Provide tenants with an absolute right to an attorney in eviction cases and modify the rules so that judges and referees must require landlords to meet certain requirements before both filing and winning an eviction case.
- Tenants should have the ability to ask for continuances and should have a say in the court date.

48. The vast majority of evictions are explicitly for nonpayment of rent. Many of the remaining evictions are implicitly for nonpayment, such as a lease non-renewal that really was caused by the tenant not paying on time. Many of these, possibly a majority, are caused by the tenant being low-income and without savings, leading to a short-term financial problem not of their own making. Spaid, *supra* note 24, at 11 (nonpayment of rent was cited in 89.2% of eviction cases); Thiel, *supra* note 25, at 9 (nonpayment of rent was cited in 93% of eviction cases); Hare, Brooklyn Park, *supra* note 25, at 12 (nonpayment of rent was cited in 96.5% of eviction cases); Hare, St. Paul, *supra* note 25, at 12 (nonpayment of rent was cited in 94% of eviction cases).

49. Landlords have other recourse in these situations, such as suing for damages or an injunction. However, the eviction process is so favorable to the landlords that these other options are seldom considered and virtually never considered first. It seems unjustifiable that the recourse for an unauthorized pet would be a forced move or homelessness instead of purely financial damages or injunctive relief.

- Landlords should not be allowed to allege in an affidavit that the tenant has breached the settlement and obtain a writ without notice to the tenant.
- Switch from an adversarial court process to one in which everyone involved, including the landlord, the tenant, and the court, works toward a resolution that respects everyone's rights.
- Remove the harmful lingering effects of evictions. Prevent cases from appearing on a tenant's record indefinitely and regulate the tenant screening practices that landlords use to deny tenants for prior evictions.

V. CONCLUSION

The eviction process was designed with little to no regard for housing stability. It harms individuals who are already struggling, and the choice to ignore the consequences of housing instability and pay for the harm later, a choice so effectively enshrined in our current eviction system, is hurting everyone. It is time to rework the eviction process and protect people's homes. Protecting homes will benefit us all.
