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Property: Preoccupation With Occupancy: Defining "Residential Tenant" Under Minnesota Statute Section 504B.375—Cocchiarella v. Driggs

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PROPERTY: PREOCCUPATION WITH OCCUPANCY: DEFINING "RESIDENTIAL TENANT" UNDER MINNESOTA STATUTE SECTION 504B.375— *COCCHIARELLA V. DRIGGS*

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I. INTRODUCTION

A tenant who enters a lease agreement gains the right to possess a landlord's property.[1] Accordingly, a landlord unlawfully excludes a tenant if, in bad faith, the landlord prohibits the tenant from maintaining or recovering possession of the property.[2] In Minnesota, a tenant who is unlawfully excluded has remedies against a landlord, including damages for ouster.[3] Additionally, "residential tenants" who are "occupying" the premises may bring a petition against the landlord to recover possession of the leased property.[4]

In *Cocchiarella v. Driggs*, the Minnesota Supreme Court held that in the context of a landlord-tenant relationship, the phrase "is occupying" encompasses the present legal right of occupancy.[5] The *Cocchiarella* decision overturned the lower courts' determinations

1. *See* Geo. Benz & Sons v. Willar, 198 Minn. 311, 315, 269 N.W. 840, 842 (1936); Place v. St. Paul Title Ins. & Tr. Co., 67 Minn. 126, 129, 69 N.W. 706, 707 (1897); *Lease,* BLACK'S LAW DICTIONARY (10th ed. 2014) ("A contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usu. [sic] rent.").

2. MINN. STAT. § 504B.231(a) (2017) (stating that a landlord who "in bad faith . . . removes, excludes, or forcibly keeps out a tenant" may be liable to the tenant for "[d]amages for ouster"); Bass v. Equity Residential Holdings, LLC, 849 N.W.2d 87, 91 (Minn. Ct. App. 2014).

3. MINN. STAT. § 504B.231 (2017); *see* MINN. STAT. § 504B.375 subdiv. 5 (2017) (permitting "additional . . . remed[ies] for residential tenants unlawfully excluded or removed from rental property").

4. MINN. STAT. § 504B.001 subdiv. 12 (1999); MINN. STAT. § 504B.375 subdiv. 1(a)–(b),(e) (2017).

5. 884 N.W.2d 621, 628 (Minn. 2016).

that a tenant under a lease who had not yet received a key to a rental property, nor ever physically possessed the premises, could not bring a claim for unlawful exclusion under Minnesota Statute section 504B.375.[6]

This case note begins with a history of the case law and statutory guidelines involved in *Cocchiarella*.[7] This note continues by discussing the facts and procedural history of *Cocchiarella*,[8] followed by a summary of the majority and dissenting opinions.[9] Next, this note argues that *Cocchiarella*'s holding conflicts with section 504B.375's plain meaning, the legislature's intent, and the statute's underlying policy concerns.[10] Finally, this note concludes that the Minnesota Supreme Court erred in ruling that a tenant without physical possession but who holds a present legal right under a lease is a "residential tenant" with the right to bring an unlawful exclusion petition under section 504B.375.[11]

II. HISTORY OF THE RELEVANT LAW

The Minnesota Supreme Court has pondered the requirements for forming a landlord-tenant relationship for over 145 years.[12] Although a lease creates a landlord-tenant relationship, the affiliation additionally requires the "transfer of possession and control of the premises."[13] Determining the timing and qualifications for the "transfer of possession" continues to challenge the statutory interpretation abilities of modern courts.[14] Sections

6. *Id.* at 628; Cocchiarella v. Driggs, 870 N.W.2d 103, 106 (Minn. Ct. App. 2015), *rev'd*, 884 N.W.2d 621 (Minn. 2016).

7. *See infra*, Part II.

8. *See infra*, Part III.A.

9. *See infra*, Parts III.B.–C.

10. *See infra*, Part IV.

11. *See infra*, Part V.

12. *See, e.g.*, Crosby v. Horne & Danz Co., 45 Minn. 249, 250, 47 N.W. 717, 717 (1891) (holding that defendant's occupancy of premises did not create a landlord-tenant relationship); Lightbody v. Truelson, 39 Minn. 310, 313–14, 40 N.W. 67, 68–69 (1888) (stating that because a lease created a landlord-tenant relationship, the tenant possessed the house).

13. *Landlord-Tenant Relationship*, BLACK'S LAW DICTIONARY (10th ed. 2014).

14. *See Cocchiarella*, 884 N.W.2d at 622 (stating that the issue before the court was if "a person must physically occupy a dwelling in a residential building to qualify as a 'residential tenant'").

504B.375 and 504B.001 of the Minnesota Statutes include rental property terms that require accurate interpretation.[15]

This section explores the history of Minnesota statutes pertaining to unlawful residential property exclusion.[16] First, this section recounts the general history of the landlord-tenant relationship in England and the United States.[17] Next, this section discusses occupancy and possession as evidence of tenancy in Minnesota case law.[18] Finally, this section describes the enactment history and content of Minnesota Statute section 504B.375.[19]

A. A General History of the Landlord-Tenant Relationship

The English feudal system produced the landlord-tenant relationship around the time of the eleventh-century Norman Conquest.[20] Farming villagers allowed "landlords" (sometimes called "knights") to own their land in exchange for protection from robbers and "nomadic warriors."[21] The lease's historical purpose was to "evade the usury laws" by exchanging the borrower's land for the lender's right to use the land to earn a profit.[22] Under this system, the law favored landlords at the tenants' expense.[23] Although the development of the mortgage in the fourteenth century negated the

15. *See* MINN. STAT. § 504B.375 (2017) (utilizing the terms "residential tenant," and "recover possession"); MINN. STAT. § 504B.001 subdiv. 12 (2017) (utilizing the terms "residential tenant," "recover possession," and "is occupying").

16. *See infra*, Part II.

17. *See infra*, Part II.A.

18. *See infra*, Part II.B.

19. *See infra*, Part II.C.

20. Gary Goldman, *Uniform Commercial and Tenant Act—A Proposal to Reform "Law out of Context"*, 19 T.M. COOLEY L. REV. 175, 180 (2002); Eloisa C. Rodriquez-Dod, *"But My Lease Isn't Up Yet!": Finding Fault with "No-Fault" Evictions*, 35 U. ARK. LITTLE ROCK L. REV. 839, 845 (2013).

21. Skip Schloming, *The Concept of "Landlord": A Short History from Medieval Times to the Present,* SMALL PROP. OWNERS ASS'N (Dec. 17, 2012), https://spoa.com/the-concept-of-landlord-a-short-history-from-medieval-times-to-the-present/.

22. Goldman, *supra* note 20, at 180; *see also* Mary Ann Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C. L. Rev. 503, 505–06 (1982) ("[As] the term for years [lease] 'began to take shape, the term was primarily used as 'a common part of the machinery whereby land was gaged for money lent.'" (quoting 2 F. POLLOCK & F. MAITLAND, THE HISTORY OF ENGLISH LAW 36, 111, 113 (2d ed. 1923))).

23. Goldman, *supra* note 20, at 180 (explaining that this early purpose created "the law's hostility to a tenant's rights" because a lender's use of a borrower's land usually earned more money than lending money with interest to a borrower).

lease's usury avoidance purpose, the feudal system continued to support landlords' interests over tenants' rights.[24]

By the sixteenth century, leases were considered a form of property conveyance rather than contract formation.[25] Additionally, the doctrines of independent covenants and caveat lessee emerged around this time,[26] and medieval tenants leased the landlord's property to farm the land.[27] Accordingly, tenants did not expect landlords to improve or maintain any structure on the property.[28] These tenant farmers possessed the construction and repair skills needed to ensure their leased buildings' habitability.[29] Although these doctrines functioned appropriately in an agrarian society, urban tenants suffered under these ancient laws.[30]

In contrast to their medieval rural counterparts, industrial-era urban tenants possessed the more specialized skills needed to perform urban jobs.[31] Consequently, the typical urban tenant lacked the wide range of abilities and resources necessary to maintain a structure's soundness.[32] Additionally, this new breed of tenants was

24. *See Feudalism*, LORDS & LADIES (2017), http://www.lordsandladies.org/feudalism.htm (describing feudalism as a "land-based economy"); Goldman, *supra* note 20, at 180–81 (noting that this "property paradigm" allowed landlords to operate with "no mitigation, no obligation to act in good faith, and few, if any, implied terms").

25. Goldman, *supra* note 20, at 180 (adding that "the land was the primary consideration, not the structures"). *But see* Glendon, *supra* note 22, at 505 (stating that the "rights under these [early] leases were treated more as contractual than proprietary" because they "typically had nothing to do with subsistence or shelter").

26. *See* Goldman, *supra* note 20, at 180–81. The doctrine of independent covenants permitted one party to breach without requiring the other party's performance. *Id.* at 181. The doctrine of caveat lessee allowed the landlord to lease his property "as is" without commitment to maintain or improve the property's condition. *Id.*; *see also*, Glendon, *supra* note 22, at 511 (noting that "the idea of absolute contractual obligation" contributed to making rent action defense "doubly difficult for a tenant").

27. Schloming, *supra* note 21 ("Originally, then, rent was actual produce from the land and linked entirely to the land, not to a building or a part of a building.").

28. *Id.* (stating that even if the house was destroyed, the tenant was still responsible for the rent, because "the land was all-important").

29. *Id.*

30. *See* Goldman, *supra* note 20, at 181 ("Rules meant for farm leases were adopted by courts in toto and applied to urban leases of multi-tenant, residential and commercial leases.").

31. Schloming, *supra* note 21 ("In industrial society, all workers have specialized skills and jobs, unlike the mulit-skilled medieval farmers.").

32. *Id.* ("Urban tenants living in multiple-unit buildings do not construct those

much more concerned with the structure in which they resided rather than the land upon which the structure stood.[33]

In response to the changing residential landlord-tenant environment, courts sought to protect the urban tenant's interests by formulating various exceptions to existing landlord-tenant law, including the theory of constructive eviction.[34] In 1932, the Minnesota Supreme Court held that a lease that is "silent as to any [contrary] provision" implies "that the premises will be habitable."[35] Despite courts' efforts to improve tenants' positions, the doctrines of independent covenants and caveat lessee remained in effect until the late 1960s.[36]

President Johnson's "Great Society" programs bolstered a "landlord-tenant law revolution" in the late 1960s and early 1970s.[37] Housing acts, minimum habitability requirements, rent control legislation, legal aid services, and "a body of more equitable tenant-landlord law" spread across the nation.[38] During this "revolution," the "entire legal relationship of residential landlord and tenant . . . was being fundamentally restructured through legislative and judicial action."[39] Additionally, several courts during this time ruled

buildings, nor do they have the skills to deal with major problems in the heating, plumbing and electrical systems, nor with structural defects.").

33. *See* Javins v. First Nat. Realty Corp., 428 F.2d 1071, 1074 (D.C. Cir. 1970) (noting that urban apartment tenants residing on the upper floors of tenement buildings have "little interest in the land 30 or 40 feet below").

34. Goldman, *supra* note 20, at 182; *see* Dyett v. Pendleton, 8 Cow. 727, 728 (N.Y. 1826) ("A lessor erecting an intolerable nuisance, so as to deprive the lessee of his enjoyment, would be equivalent to an expulsion.") (Spencer, Sen.); *Constructive Eviction*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("A landlord's act of making premises unfit for occupancy, often with the result that the tenant is compelled to leave.").

35. Delamater v. Foreman, 184 Minn. 428, 429–30, 239 N.W. 148, 149 (1931) (concerning tenants who were forced to abandon their apartment because of "large numbers" of bedbugs coming from neighboring apartments under the landlord's control).

36. Goldman, *supra* note 20, at 183.

37. *Id.* During his 1964 State of the Union address, President Johnson declared "unconditional war on poverty in America." Alexander von Hoffman, *Let Us Continue: Housing Policy in the Great Society, Part One* 5 (Joint Ctr. for Hous. Stud., Harv. Univ., Working Paper No. W09-3, 2009).

38. Glendon, *supra* note 22, at 519 (explaining that the federal government distributed federal urban renewal funds to local governments that established housing codes); Goldman, *supra* note 20, at 183; ANDREW T. CARSWELL, THE ENCYCLOPEDIA OF HOUSING 736 (2d. ed. 2012).

39. Glendon, *supra* note 22, at 514; *see* Javins v. First Nat. Realty Corp., 428 F.2d

that "leases of urban dwelling units should be interpreted and construed like any other contract."[40]

In 1972, the National Conference of Commissioners on Uniform State Laws ratified the Uniform Residential Landlord and Tenant Act (URLTA).[41] The URLTA sought to "reorder and give a new balance to the rights and obligations of landlords and tenants" by "recogniz[ing] the modern tendency to treat performance of certain obligations of the parties as interdependent."[42] The URLTA prompted several states—including Minnesota—to adopt residential codes, implied warranties, and housing code violation remedies.[43] In 1974, Minnesota Statute section 504.23 became the first piece of Minnesota legislation to address landlord housing code violations.[44]

1071, 1081 (D.C. Cir. 1970) (holding that "the purposes and structure of the [housing] code itself" required "that the housing code must be read into housing contracts"); Edwards v. Habib, 397 F.2d 687, 699 (D.C. Cir. 1968) (holding that a landlord may not evict a tenant in retaliation for the tenant reporting the landlord's code violations); Whetzel v. Jess Fisher Mgmt. Co., 282 F.2d 943, 950 (D.C. Cir. 1960) (holding that a landlord's violation of housing regulations created sufficient evidence of negligence for a tort complaint); Sargent v. Ross, 308 A.2d 528, 534 (N.H. 1973) (discarding "the rule of 'caveat lessee' and the doctrine of landlord nonliability").

40. Lindsey v. Normet, 405 U.S. 56, 86 (1972) (Douglas, J., dissenting) (internal quotations omitted); Kline v. 1500 Mass. Ave. Apartment Corp., 439 F.2d 477, 482 (D.C. Cir. 1970); *Javins*, 428 F.2d at 1075; Winchester Mgmt. Corp. v. Staten, 361 A.2d 187, 190 (D.C. 1976).

41. UNIF. RESIDENTIAL LANDLORD & TENANT ACT (NAT'L CONF. OF COMM'RS ON UNIF. STATE LAWS, 1972). The Act's purposes were to (1) "simplify, clarify, modernize, and revise" residential landlord-tenant law; (2) "encourage landlords and tenants to maintain and improve" housing conditions; and (3) to bring uniformity to "those states which enact it." *Id.* § 1.102(a), (b)(1)–(3).

42. UNIF. RESIDENTIAL & TENANT ACT § 1.102, Comment; Samuel Jan Brakel & Donald M. McIntyre, *The Uniform Residential Landlord and Tenant Act (URLTA) in Operation: Two Reports*, 5 AM. B. FOUND. RES. J. 555, 560 (1980).

43. Glendon, *supra* note 22, at 525 (describing an "implied warranty" as the "covenant to pay rent and [the] covenant to provide a habitable house [that are] mutually dependent" (quoting Pines v. Perssion, 111 N.W.2d 409, 413 (Wis. 1961))).

44. *See* MINN. STAT. § 504.23 (1974) (repealed 1998). Although a "Landlord and Tenants" section first appeared in the Minnesota Statutes in 1905, subsections addressing security deposits, damages, automatic renewals, definitions, and code violations did not appear until 1974. *Id.*; MINN. STAT. § 62 (1905) (repealed 1941).

B. Occupancy and Possession as Evidence of Tenancy in Minnesota Case Law

In Minnesota, most decisions concerning landlord-tenant law appear in unpublished court of appeals decisions.[45] Yet, as early as 1868, the Minnesota Supreme Court addressed the creation of a landlord-tenant relationship as it related to "the statute of forcible entries and unlawful detainers."[46] Two decades later, the court found that occupancy did not necessarily create a landlord-tenant relationship.[47] However, in *Place v. St. Paul Title Insurance & Trust Company*, the court determined that a tenant is one who occupies or temporarily possesses a landlord's property.[48] The *Place* court held that the word "tenant" is "generally used in a popular sense . . . [as] 'one who has the occupation or temporary possession of lands or tenements.'"[49]

In 1888, the *Lightbody v. Truelson* court found that any words that demonstrated the lessor's intent to transfer the right to possess a property to a lessee were sufficient to create a tenancy.[50] Although the *Lightbody* court stated that "there is no artificial rule by which the contract is to be construed," the court agreed that "the existence of certain things is necessary to constitute a lease," including possession

45. Lawrence R. McDonough, *Wait a Minute! Residential Eviction Defense in 2009 Still is Much More Than "Did You Pay the Rent?"*, 35 WM. MITCHELL L. REV. 762, 767 (2009).

46. Stewart v. Murray, 13 Minn. 426, 427 (1868) (bringing an action under the statute of "forcible entries and unlawful detainers" to determine the right of possession); *see* MINN. STAT. § 566 (1997) (repealed 1998) (addressing forcible entry and unlawful detainer).

47. *See* Crosby v. Horne & Danz Co., 45 Minn. 249, 250, 47 N.W. 717, 717 (1891) (showing the defendant's occupancy of the plaintiff's premises with the plaintiff's consent was not sufficient to disallow the plaintiff from leasing the premises to a third-party); *see also* Trs. of E. Nor. Lake Norwegian Evangelical Lutheran Church v. Froislie, 37 Minn. 447, 449–50, 35 N.W. 260, 262 (1887) (holding a pastor's occupancy did not create a tenancy of years for his personal representative who "had no more right to the possession of the premises than any mere intruder").

48. 67 Minn. 126, 129, 69 N.W. 706, 707 (1897) (holding that an insurance policy with the phrase "[t]enancy of the present occupants" did not include the title holders of a property that a second party adversely possessed).

49. *Id.* (finding that the insurance policy's "tenancy" term referred to "the occupancy of temporary possession . . . in the popular sense in which that word is used").

50. 39 Minn. 310, 313, 40 N.W. 67, 68 (1888) (addressing a tenant who simultaneously lived in and managed a landlord's boardinghouse).

of the premises and landlord consent.[51] Soon after, the court in *Mercil v. Brouilette* stated that a lawful possessor of a property may not forcefully enter if another party is occupying the property.[52] Yet, if a lawful property possessor peaceably enters the property occupied by another party, the entry is not unlawful.[53] Further, such entry maintains complete possession upon the party with the legal right of possession.[54]

In 1923, the Minnesota Supreme Court found that tenants had legal possession, control, and responsibility of their rental premises.[55] However, the court later clarified that "mere . . . possession by the tenant" was not enough to establish a landlord-tenant relationship.[56] In *State v. Bowman*, the Minnesota Supreme Court held that a landlord-tenant relationship exists "where one person occupies the premises of another . . . with [the owner's] consent."[57] The *Bowman* court also found that a tenant is one who "holds or possesses [property by] any kind of right or title."[58] In 1938, *Gates v. Herberger* utilized the court's prior descriptions of possession and occupancy to determine tenancy requirements.[59]

51. *Id.* at 313–14, 68–69.

52. 66 Minn. 416, 416–18, 69 N.W. 218, 218 (1896). The plaintiff purchased an eighty-acre property from a railway company. *Id.* The defendant's family had occupied the property for seventeen years as trespassers "with no right to or title in the land." *Id.* In May 1894, the plaintiff entered the property without any opposition from the defendant and planted a wheat crop. *Id.* In the same month, the plaintiff brought an action to evict the defendant from the property. *Id.* In the fall, the defendant entered the property and "forcibly took possession of the growing grain, and harvested the same." *Id.*

53. *Id.* (finding that the plaintiff "had the right to enter in a peaceable manner, and when once in, in such a manner, he was not guilty of an unlawful detainer").

54. *Id.* (stating that the plaintiff "was entitled to the possession, and the defendants were not").

55. *See* Dewar v. Minneapolis Lodge, No. 44 B.P.O.E., 155 Minn. 98, 99–100, 192 N.W. 358, 358 (1923) (distinguishing between a tenant and a lodger by comparing the "character of [their] possession").

56. Geo. Benz & Sons v. Willar, 198 Minn. 311, 315, 269 N.W. 840, 842 (1936) (holding that an express or implied agreement was necessary to establish tenancy under a new landlord when a property's ownership changed due to foreclosure).

57. State v. Bowman, 202 Minn. 44, 46, 279 N.W. 214, 215 (1938) (determining that a couple who lived in the defendant's hotel and paid weekly rent for over a year were tenants and not hotel guests).

58. *Id.*

59. Gates v. Herberger, 202 Minn. 610, 612, 279 N.W. 711, 712 (1938) (finding that when the defendant "took possession of the premises and occupied them . . . [he] became indebted to plaintiff . . . in accordance with the rental agreement").

C. The Enactment and Content of Minnesota Statues Section 504B.375

The history of section 504B.375, on unlawful exclusion, spans almost 150 years.[60] Although the early sections bear little resemblance to the modern statute, chapter 49 of the Minnesota Territorial Statutes of 1851 addresses landlord-tenant concerns.[61] The first chapter dealing exclusively with landlord-tenant law appeared in 1905.[62] Although lacking most of section 504B.375's content, Minnesota Statutes chapter 62 expanded earlier landlord-tenant legislation to include provisions for landlord re-entry and tenant possession restoration after "the failure of the tenant to pay rent."[63]

In 1941, the Minnesota State Legislature enacted chapter 504, "Landlords and Tenants," and chapter 566, "Forcible Entry and Unlawful Detainer."[64] These chapters remained virtually unchanged for the next thirty years.[65] In 1971, the legislature added sections

60. *See* MINN. STAT. § 49 (1851) (repealed 1858). The Minnesota Office of the Revisor of Statutes Archives begins with the Minnesota Territorial Statues of 1851. *Minnesota Statutes Archive*, THE OFFICE OF THE REVISOR OF STATUTES [hereinafter *Archive*], https://www.revisor.mn.gov/statutes/?view=archive. Although precursors of the 1851 statutes likely addressed landlord-tenant law, Minnesota's 1858 entry into the Union minimizes earlier statutes' relevance for this note's purposes. *See id.* The Minnesota Territorial Statutes of 1851 did not include a separate section for landlord and tenant law. *Id.* However, chapter 49, entitled "Of Estates in Dower, by the Curtesy, and General Provisions Concerning Real Estate" included such sections as "[l]iability of persons in possession of land out of which rent is reserved," "[h]ow rent recovered," and "[w]hen joint tenant may maintain action against co-tenant." *Id.* §§ 49.31–.32, .38.

61. *See e.g.*, *id.* § 49.33 ("Nothing . . . shall deprive landlords of any legal remedy for the recovery of their rent."); *id.* § 49.34 (setting out guidelines to "quit" a lease at will and its corresponding rent payment obligation); *id.* § 49.38 (providing a cause of action for a joint-tenant against his co-tenant "for receiving more than his just proportion of the rents or profits").

62. *See* MINN. STAT. § 62 (1905) (repealed 1941).

63. MINN. STAT. § 62.3328 (1905) (repealed 1941) (stating that the lessee "may be restored to the possession, and hold the property according to the terms of the original lease" if the lessee pays the amount of rent due with interest, court costs, and attorney's fees).

64. *See* MINN. STAT. § 504 (1941) (repealed 1998) (utilizing various landlord-tenant terms such as "tenant," "untenatable tenements," and "urban real estate" without including a definitions section); MINN. STAT. § 566 (1997) (repealed 1998; § 566.18 repealed 2001) (describing the actions and penalties for forcible entry, unlawful detention of lands and tenements, and possession recovery for lands and tenements).

65. *See* MINN. STAT. § 504.10–.17 (1945) (revealing that the only change in

504.18 and 504.19.[66] These new sections outlined landlord obligations to provide implied warranties of habitability, refund security deposits, pay damages, and reimburse tenants' attorney's fees.[67]

In 1974, chapter 566 saw changes for the first time, expanding from seventeen to thirty-three sections.[68] Sections 566.18 to 566.33 included "[r]emedies for tenants of substandard housing," "[e]viction proceedings by owner limited," and "[p]urpose to provide additional remedies."[69] Section 566.18 became the precursor to section 504B.001, providing the first landlord-tenant definitions in Minnesota statutory law.[70] According to section 566.18, subdivision 2:

> "Tenant" means any person who is occupying a dwelling in a building as defined in subdivision 7, under any agreement, lease, or contract, whether oral or written, and for whatever period of time, which requires the payment of moneys, as rent for the use of a dwelling unit, and all other regular occupants of such dwelling unit . . . .[71]

chapters 504 and 566 from 1941 to 1971 occurred in 1945 by dropping the "obsolete" sections 504.10–.17, which concerned the termination of long leases).

66. MINN. STAT. § 504.18 (1971) (repealed 1998); MINN. STAT. § 504.19 (1971) (repealed 1973).

67. *See* MINN. STAT. § 504.19 (1971) (repealed 1973) (stating that landlords who require damage deposits must either return the deposit to the renter or provide a written reason for withholding the deposit); *see id.* § 504.19 subdiv. 2 (providing attorney fees for tenants whose landlords do not return the deposit or "furnish[ ] a written statement as required herein" and are therefore "required to start legal proceedings for the recovery thereof"); *see* MINN. STAT. § 504.18 (1971) (repealed 1973) (requiring lessors to covenant "[t]hat the premises . . . are fit for the use intended by the parties" and "[t]o keep the premises in reasonable repair").

68. *See* MINN. STAT. §§ 566.01–.33 (1997) (repealed 1998); *Archive*, *supra* note 60. This impressive number of additions to chapter 566 occurred two years after URLTA's enactment in 1972, providing a striking example of URLTA's impact on state landlord-tenant law. *See id.*; Glendon, *supra* note 22, at 523.

69. MINN. STAT. §§ 566.18, .28, .33 (1997) (repealed 1998).

70. *See* MINN. STAT. § 504B.001 (2017) (providing definitions for various legal terms in chapter 504B, including "Residential tenant," the term at issue in *Cocchiarella*); § 566.18 (defining "Tenant," "Owner," "Commercial tenant," "Person," "Violation," "Building," and "Inspector").

71. MINN. STAT. § 566.18 subdiv. 2. Additionally, section 504.22 included a small "definitions" subdivision stating that "'tenant' shall have the meaning assigned to it in section 566.18." MINN. STAT. § 504.22 subdiv. 1 (1997) (repealed 1998).

In 1976, chapter 504 gained a section designated "Unlawful ouster or exclusion; penalty."[72] Minnesota's first "lockout" statute stated that "a landlord . . . who unlawfully and intentionally removes or excludes a tenant from lands or tenements . . . is guilty of a misdemeanor."[73] Section 504.25 also provided that "[t]he burden is upon the landlord to rebut the presumption."[74] Additionally, section 504.25 included provisions for constructive eviction.[75] Interestingly, the available tenant remedies in section 504.26 applied only to the "[u]nlawful termination of utilities."[76] Thus, no provisions giving the right to recover damages under sections 504.25 and 504.26 existed for tenants who were denied physical entry, but did not experience utility interruption.[77] Moreover, section 504.26's remedies were "additional."[78] The legislature later added section 504.255 to allow physically excluded tenants to recover treble damages and attorney's fees.[79]

The year 1976 also saw the creation of section 566.175, entitled "Unlawful removal or exclusion; recovery of possession."[80] Unlike section 504.26, section 566.175 provided remedies for tenants who were physically removed or excluded from their rental premises.[81] Section 566.175 included an *ex parte* order directing a landlord to

72. MINN. STAT. § 504.25 (1997) (repealed 1998); *Archive*, *supra* note 60.

73. *Id.*

74. *Id.*

75. *Id.* (adding the "interruption of electrical, heat, gas or water services . . . with intent to unlawfully and intentionally remove or exclude the tenant" to eviction by physical removal or exclusion).

76. MINN. STAT. § 504.26 (1997) (repealed 1998); *Archive*, *supra* note 60 (providing that a tenant who experienced intentional utilities interruption could potentially recover treble damages and attorney's fees).

77. *Id.* (describing in detail the recovery procedure for tenants who experienced landlord utility interruption but lacking any remedy for physically removed or excluded tenants).

78. *See* MINN. STAT. § 504.27 (1997) (repealed 1998); *Archive*, *supra* note 60 ("The remedies provided . . . are in addition to and shall not limit other rights or remedies available to landlords and tenants.").

79. *See* MINN. STAT. § 504.255 (1997) (repealed 1998) (adding remedies for physically excluded tenants under section 504.25 to recover treble damages and attorney fees in 1984).

80. *See* MINN. STAT. § 566.175 (1997) (repealed 1998); *Archive*, *supra* note 60.

81. *Compare id.* (providing detailed procedural instructions for physically removed or excluded tenants to regain possession of their property), *with* MINN. STAT. § 504.26 (listing criminal and financial penalties for intentional landlord utility interruption).

immediately relinquish possession of the premises to a tenant.[82] Minnesota case law addressing sections 566.175 and 504.25 includes cases in which landlords removed or excluded tenants who had physically occupied the rental premises.[83] However, no Minnesota court appears to have addressed a case involving a tenant who had never occupied the premises seeking *ex parte* relief under section 566.175.[84]

In 1999, the Minnesota Legislature recodified section 566.175, creating section 504B.375 as part of a larger house bill.[85] The bill's main purpose "was to consolidate, clarify, and recodify the majority of Minnesota housing statutes under one chapter."[86] When codifying section 504B.375, the legislature did not intend to make substantive changes to the current housing laws.[87]

Section 566.175 stated that "[a]ny *tenant* who is unlawfully removed or excluded from lands or tenements which are demised

82. *See* MINN. STAT. § 566.175 subdiv. 1 (b) (1997) (repealed 1998) ("If it clearly appears . . . that the removal or exclusion was unlawful, the court shall immediately order that the petitioner have possession of the premises."); *Ex parte*, BLACK'S LAW DICTIONARY (10th ed. 2014) (describing *ex parte* relief as "usu[ally] for temporary or emergency relief").

83. *See, e.g.*, Pellowski v. Burke, 686 F.2d 631, 634 n.5 (8th Cir. 1982) (stating that under section 504.25, a landlord's kicking down a tenant's apartment door constituted forcefully regaining possession of the premises in an unlawful manner); Higgins v. Turnball, 381 N.W.2d 26, 27 (Minn. Ct. App. 1986) (addressing an appeal ordering a resident of a veteran's home to return possession of his room under section 566.175); Berg v. Wiley, 264 N.W. 145, 149 (Minn. Ct. App. 1978) (holding that "by changing the locks in [the tenant's] absence," the landlord committed an "intentional and unlawful exclusion of [the] tenant" under section 504.25).

84. *See* Brief for Minn. Multi Housing Ass'n as Amicus Curiae Supporting Respondents at 5, n.3, Cocchiarella v. Driggs, 884 N.W.2d 621 (Minn. 2016) (No. A14-1876) [hereinafter Brief for Minn. Multi Hous. Ass'n] ("MMHA is not aware of any court anywhere in the United States that has extended a residential lockout statute to persons who never actually physically occupied the premises.").

85. Occhino v. Grover, 640 N.W.2d 357, 362 (Minn. Ct. App. 2002); MINN. H.R. 199, 81st Leg., Reg. Sess. (Minn. 1999); Appellant's Brief & Addendum at 19; *Cocchiarella*, 884 N.W.2d at 621 [hereinafter Appellant's Brief].

86. *Occhino*, 640 N.W.2d at 362. Sections 504.25 and 566.175 existed in separate chapters and under separate headings, yet functioned parallel to one another for thirty-three years. *See* MINN. STAT. §§ 504.25, 566.175 (1997) (repealed 1998). Combining the two sections provided courts with logically organized resources to address changing landlord-tenant law. *See Occhino*, 640 N.W.2d at 362. *Compare* MINN. STAT. § 504B.375 (2017) (defining "residential tenant"), *with* § 566.175 (defining "tenant").

87. *Occhino*, 640 N.W.2d at 362; Appellant's Brief, *supra* note 85, at 19.

or let to the *tenant* may recover possession of the premises."[88] However, "section 504B.375, subdivision 1, states that "[t]his section applies to actual or constructive removal of a *residential* tenant . . . [who] may recover possession of the premises."[89] Section 504B.001, subdivision 12, defines a "residential tenant" as "a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written."[90]

Section 504B.375 also allows a residential tenant to petition for an *ex parte* order to "recover possession of the premises" if the tenant provides (1) a description of the premises and the landlord, (2) evidence of unlawful exclusion and absence of a writ of recovery or order to vacate the premises against the tenant, and (3) a request for possession.[91]

Two published cases appear in the legal literature concerning section 504B.375 on unlawful exclusion.[92] In 2014, the Minnesota Court of Appeals addressed section 504B.375 in a case involving a landlord ousting a tenant who physically occupied the premises.[93] In 2015, the Minnesota Court of Appeals determined that a tenant who paid a deposit and the first month's rent, but did not receive the property's keys or move into the premises, was not a "residential tenant" and could not obtain relief under section 504B.375.[94] However, *Cocchiarella* was the first reported case that attempted to apply section 504B.375 to a tenant who never physically occupied the premises.[95]

88. MINN. STAT. § 566.175 subdiv. 1 (emphasis added).

89. MINN. STAT. § 504B.375 subdiv. 1(a) (emphasis added).

90. MINN. STAT. § 504B.001 subdiv. 12 (2017).

91. MINN. STAT. § 504B.375 subdiv. 1(b)(1)–(3); *see* Bass v. Equity Residential Holdings, LLC, 849 N.W.2d 87, 89 (Minn. Ct. App. 2014) (stating that the court did not issue a writ of recovery of premises in an unlawful exclusion case).

92. *See* Cocchiarella v. Driggs, 884 N.W.2d 621, 633 (Minn. 2016) (No. A14-1876); *Bass*, 849 N.W.2d at 89.

93. *Bass*, 849 N.W.2d at 89 (addressing section 504B.375 in an unlawful ouster case, where a landlord changed the locks and threw "all of [the tenant's] possessions" in a dumpster).

94. Cocchiarella v. Driggs, 870 N.W.2d 103, 106 (Minn. Ct. App. 2015) (holding that for a "residential tenant" to obtain relief under section 504B.375, the tenant must have begun residing in the rental property before filing an unlawful exclusion petition).

95. *Cocchiarella*, 884 N.W.2d at 633 (Anderson, J., dissenting); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 5.

III. THE *COCCHIARELLA* DECISION

A. Facts and Procedure

In late January 2014, Mary Cocchiarella contacted Donald Driggs concerning a three-unit apartment building that Driggs advertised for rent.[96] After meeting Driggs at the property and looking at the units, Cocchiarella told Driggs that she wanted to rent Unit 3.[97] Although Unit 3 contained Driggs's personal property, Driggs told Cocchiarella that it was available.[98] At the end of the conversation, Driggs orally agreed to rent the unit to Cocchiarella.[99]

On February 1, 2014, Cocchiarella went to the unit "to determine when Driggs would 'fill out paperwork' and she could begin to move in."[100] Driggs told Cocchiarella that he needed to varnish the unit's floors and that she could move in "a couple of days later."[101] Driggs asked Cocchiarella to return on February 3, 2014, to sign the lease.[102] Driggs also requested that she bring $2,400 in cash for the security deposit and the February rent.[103] On February 3, Cocchiarella gave Driggs the $2,400.[104] After receiving the money, Driggs gave Cocchiarella a hand-written receipt[105] "acknowledging the parties' rental agreement and identifying the premises."[106] Cocchiarella expected to move into the unit at that time.[107] However, Driggs told Cocchiarella that he was sick and asked her to return the next day.[108]

When Cocchiarella returned on February 4, 2014, Driggs asked her to obtain a co-signer.[109] That evening, Cocchiarella brought her roommate to complete a "co-signed rental agreement."[110] When

96. *Cocchiarella*, 884 N.W.2d at 623.
97. *Cocchiarella*, 870 N.W.2d at 104.
98. *Cocchiarella*, 884 N.W.2d at 623.
99. *Id.*; Appellant's Brief, *supra* note 85, at 4.
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.*
105. Cocchiarella v. Driggs, 870 N.W.2d 103, 104 (Minn. Ct. App. 2015), *rev'd*, 884 N.W.2d 621 (Minn. 2016).
106. Appellant's Brief, *supra* note 85, at 4.
107. *Cocchiarella*, 884 N.W.2d at 623.
108. *Id.*
109. *Id.*
110. *Id.*

Cocchiarella asked when she could move into the unit, Driggs responded that he still needed a few days to remove his personal belongings.[111] On February 6, Cocchiarella and her roommate returned to the unit to ask Driggs when she could move in.[112] However, Cocchiarella and her roommate left the premises after Driggs "became angry" and asked them to leave.[113] On February 10, Driggs left Cocchiarella a voicemail, asking her to meet him at the unit so that he could return the security deposit.[114] After speaking with Cocchiarella at the unit, Driggs "changed his mind" and did not return the security deposit or the February rent.[115] Instead, Driggs told Cocchiarella that he would remove his belongings "in a couple of days" and that Cocchiarella could move in "later that week."[116]

On February 11, 2014, Cocchiarella left Driggs a voicemail stating that she would file a "lock-out petition" with the housing court if Driggs did not immediately provide Cocchiarella with the unit's keys and allow her to move in.[117] When Driggs failed to give Cocchiarella the keys, Cocchiarella claimed that Driggs had unlawfully excluded her from the unit.[118] On February 14, Cocchiarella sought relief with the Hennepin County Housing Court.[119]

Cocchiarella's petition sought possession of the unit under Minnesota Statutes section 504B.375 on unlawful exclusion or removal.[120] Additionally, Cocchiarella sought treble damages and attorney's fees under section 504B.231.[121] The order scheduling a housing court hearing "stated that Cocchiarella should 'be prepared

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* The facts do not state if Cocchiarella requested the keys or the return of her money at that time.

117. *Id.*

118. *Id.*

119. Cocchiarella v. Driggs, 870 N.W.2d 103, 104 (Minn. Ct. App. 2015), *rev'd*, 884 N.W.2d 621 (Minn. 2016).

120. *Cocchiarella*, 884 N.W.2d at 623; *see* MINN. STAT. § 504B.375 subdiv. 1(a) (2017) (providing that a "residential tenant . . . may recover possession of the premises" if a landlord actually or constructively removes or excludes the tenant).

121. Appellant's Brief, *supra* note 85, at 5; *see* MINN. STAT. § 504B.231 (2017) (providing that a "tenant may recover from the landlord treble damages or $500, whichever is greater, and reasonable attorney's fees" when unlawfully excluded or removed).

to address the issue of whether she has standing to bring this action as a residential tenant as defined by Minnesota Statutes section 504B.001, subdivision 12.'"[122]

Hennepin County Housing Court Referee Harris heard the case on February 20, February 26, and April 23, 2014.[123] At the April housing court hearing, Driggs appeared pro se and moved to dismiss Cocchiarella's claim under section 504B.375, stating that Cocchiarella did not meet the statutory definition of a "residential tenant" under section 504B.001, subdivision 12.[124] The housing court[125] determined that Cocchiarella was not a "residential tenant" and recommended dismissing Cocchiarella's unlawful exclusion claim.[126] The district court dismissed Cocchiarella's petition based on the housing court referee's recommendation, agreeing with the reasoning that Cocchiarella was not a "residential tenant" because she "had not physically occupied the premises."[127] The Minnesota Court of Appeals upheld the district court's decision.[128] Cocchiarella appealed, and the Minnesota Supreme Court granted her request for review.[129]

B. The Minnesota Supreme Court's Decision

Cocchiarella argued that the court should grant her recovery of the rental unit under section 504B.375 because she met the requirements for a "residential tenant" under section 504B.001, subdivision 12.[130] Cocchiarella claimed that the statutory definition did not require "actual, physical occupancy of the premises" and that

122. *Cocchiarella*, 870 N.W.2d at 104.

123. Appellant's Brief, *supra* note 85, at 5.

124. *Cocchiarella*, 870 N.W.2d at 104.

125. MINN. STAT. § 484.013 (2014); *see* Bass v. Equity Residential Holdings, LLC, 849 N.W.2d 87, 92 (Minn. Ct. App. 2014) ("[T]he housing court is a program within the district court; once the district court reviews and confirms the housing court referee's decision, the findings and order become the district court's findings and order.").

126. *Cocchiarella*, 884 N.W.2d at 622–23; *see* MINN. STAT. § 504B.001 subdiv. 12 (2017); MINN. STAT. § 504B.375 subdiv. 1(a) (2017).

127. *Cocchiarella*, 884 N.W.2d at 622; *see* MINN. STAT. § 504B.001(12).

128. *Cocchiarella*, 884 N.W.2d at 623–24; *see Cocchiarella*, 870 N.W.2d at 106 (stating that for a "residential tenant" to obtain relief under section 504B.375, the tenant must have begun residing in the rental property before filing an unlawful exclusion petition).

129. *Cocchiarella*, 884 N.W.2d at 624.

130. *Id.*

"the present legal right of occupancy [was] sufficient."[131] The issue before the court was determining if Cocchiarella met the statutory definition for "residential tenant" when she did not possess a key or manifest any sign of physically occupying the unit.[132] The court reversed the dismissal of the petition and remanded the case to the housing court.[133]

To determine if Cocchiarella was a residential tenant, the Minnesota Supreme Court analyzed two primary factors.[134] First, the court focused on the word "occupy" and considered several common dictionary definitions to determine the word's plain and ordinary meaning.[135] The court determined that the common definitions did not adequately demonstrate whether the word "occupy" required physical occupancy or if a tenant could "occupy" a premises by legal possession alone.[136] After examining the statutory and legal contexts,[137] the court determined that the word "occupying" in section 504B.001, subdivision 12, had a "special or technical" meaning that referred to "both physical occupancy and to the legal right of occupancy under a residential lease."[138]

Second, the Minnesota Supreme Court addressed the lower courts' position that a tenant must physically occupy the premises to satisfy the statutory "residential tenant" requirement.[139] The court

131. *Id.*

132. *Id.*

133. *Id.* at 628.

134. *Cocchiarella*, 884 N.W.2d at 627.

135. *Id.* at 625 (listing common dictionary definitions of the word "occupy," then changing the term in question to "occupancy," and pursuing a technical meaning that supported "legal possession").

136. *Id.* at 625–26 (determining that because the dictionary definitions failed to clarify if physical occupancy was required for "occupancy," the word "occupy" had "a variety of meanings" that required the court to interpret the term in its statutory and legal contexts).

137. *Id.* at 626–27 (stating that the phrase "is occupying" found in section 504B.001, subdivision 12, refers to a "dwelling . . . under a lease"); *id.* at 626 (determining that a lease creates a tenancy, which "is commonly understood to mean the '[p]ossession or occupancy of lands, buildings, or other property by title, under a lease, or on payment of" (quoting THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1782 (4th ed. 2000))). The court concluded that a "residential tenant who 'is occupying a dwelling' under 'a lease or contract' therefore includes one who has the legal right of occupancy." *Cocchiarella*, 884 N.W.2d at 626.

138. *Cocchiarella*, 884 N.W.2d at 627.

139. *Id.*

determined that case law did not support the physical occupancy requirement.[140] Additionally, the court stated that requiring physical occupancy to form a tenancy conflicted with the definition of a residential building in section 504B.001, subdivision 11.[141] The court concluded that a tenant with legal occupancy under a lease fulfilled the statutory requirement of a "residential tenant."[142] Because the court concluded that Cocchiarella was a residential tenant, the Court remanded the case with instruction to grant her recovery of the rental unit.[143]

C. The Dissenting Opinion

Justice Anderson filed a dissenting opinion, joined by Chief Justice Gildea.[144] The dissent objected to several aspects of the majority's approach to statutory interpretation.[145] First, the dissent disagreed that "occupying" was a technical term and stated that the majority should have interpreted the word according to its "common and ordinary meaning."[146] Second, Justice Anderson maintained that the majority violated the statutory construction rule against

140. *Id.* (following a path from "occupy" to "lease" to "tenant" in the common law and finding that a tenant "possesses lands or tenements by any kind of right or title"); *see also* State v. Bowman, 202 Minn. 44, 46, 279 N.W. 214, 215 (1938) (finding that occupancy "in subordination" to another's title created a landlord-tenant relationship).

141. *See* MINN. STAT. § 504B.001 subdiv. 11(2) (2017) (providing that a "residential building" may be "an unoccupied building which was previously used . . . as a dwelling"); *Cocchiarella*, 884 N.W.2d at 627–28 (stating that the physical occupancy requirement conflicted with section 504B.001, subdivision 11(2)); *id.* (reasoning that a residential tenant could "legally occupy" an "unoccupied" residential building under section 5048.001, subdivisions 11 and 12).

142. *Cocchiarella*, 884 N.W.2d at 628. The majority concluded that because a "residential tenant" could "occupy" an "unoccupied residential building" only by "legal occupancy," a "landlord-tenant relationship incorporates not only physical occupancy, but also the present legal right of occupancy under a lease." *Id.* (footnote omitted).

143. *Id.*

144. *Id.* at 621; *id.* at 628 (Anderson, J., dissenting).

145. *Id.* at 629 (Anderson, J., dissenting).

146. *Id.*

surplusage.[147] Third, the dissent stated the statutory definition of "residential tenant" was sufficient to define "occupying."[148]

Additionally, Justice Anderson reasoned that Cocchiarella did not have legal possession, noting that the oral lease agreement "did not include an effective date."[149] According to the dissent, a tenant must demonstrate some physical manifestation of control, such as obtaining the property's keys, to qualify as a "residential tenant."[150] Further, Justice Anderson said that allowing tenants who "merely claim[ed] a present legal right to occupancy" to receive relief under section 504B.395 was inconsistent with the statute's legislative intent and public policy.[151]

IV. ANALYSIS

The analysis section begins by addressing the plain and ordinary meaning of the term "residential tenant" in sections 504B.375 and 504B.001 of the Minnesota Statutes, focusing on the court's divergence from the canons of statutory construction.[152] The analysis continues by examining the Minnesota State Legislature's intent behind section 504B.375.[153] Particularly, it examines tenants without physical possession of property, arguing that the *Cocchiarella* decision conflicts with the statute's intent, including the statute's summary nature, absence of contradictions to other sections, requirement for no writ of recovery, and purposes.[154] Finally, this section discusses the policy and enforcement issues generated by the court's

147. *Id.* at 631 (stating that the majority's definition of a "residential tenant" as one who "merely . . . executes a lease agreement" violated the rule against surplusage by failing to give effect to the phrase "is occupying" in section 504B.001, subdivision 12); *see Surplusage Canon*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("[E]very word and every provision in a legal instrument is to be given effect.").

148. *Cocchiarella*, 884 N.W.2d at 631 (Anderson, J., dissenting).

149. *See id.* at 633 n.4 (noting that the parties never established a firm move-in date). *But cf. id.* at 623 (majority opinion) (stating that Cocchiarella paid Driggs $2,400 on February 3, 2014, for "the February rent").

150. *Id.* at 632 (Anderson, J., dissenting).

151. *Id.* at 632–33. Justice Anderson stated that because "lockout statute" affords the tenant relief "without an opportunity for the landlord to object or respond," the legislature only intended such a remedy to "dispossessed tenants who were actually '*occupying*' a residential unit by physical presence or control." *Id.* at 633.

152. *See infra*, Part IV.A.

153. *See id.* Part IV.B.

154. *See id.*

interpretation of section 504B.001, subdivision 12.[155] *Cocchiarella*'s holding creates potential policy and practical concerns with which courts, landlords, tenants, and law enforcement officials may have to contend.[156]

A. Section 504B.001's Plain and Ordinary Meaning Unambiguously Defines the Term "Residential Tenant"

According to the Minnesota canons of statutory construction, courts should construe terms "according to their common and approved usage."[157] Technical words that have "acquired a special meaning . . . are construed according to such special meaning."[158] Additionally, a phrase may be separated into "its 'component terms' and then reconstruct[ed] . . . to determine its meaning."[159] However, this interpretation method only applies if the term "lacks a technical meaning."[160]

The *Cocchiarella* majority began its interpretation of the term "residential tenant" by listing the meanings of the phrase "is occupying" according to common dictionaries.[161] The court found that the first two dictionary meanings for "occupy" were "[t]o fill up [time or space]" and "[t]o dwell or reside in."[162] However, the court chose not to accept these common dictionary definitions and instead turned to the "derivative word 'occupancy.'"[163] The court utilized

155. *See infra*, Part IV.C.

156. *See id.*

157. MINN STAT. § 645.08 subdiv. 1 (2017); *accord* State v. Vasko, 889 N.W.2d 551, 556 (Minn. 2017) (reviewing issues of statutory interpretation de novo by giving "words and phrases their plain and ordinary meaning"); Jaeger v. Palladium Holdings, 884 N.W.2d 601, 605 (Minn. 2016) ("When a statute or a rule does not contain a definition of a word or phrase, we look to the 'common dictionary definition of the word or phrase' to discover its 'plain and ordinary meaning.'" (citing State v. Brown, 792 N.W.2d 815, 822 (Minn. 2011))).

158. MINN STAT. § 645.08 subdiv. 1; *see* In re Welfare of J.J.P., 831 N.W.2d 260, 266 (Minn. 2013) ("The canons of construction provide that technical words and phrases be given their special or defined meaning." (citing Staab v. Diocese of St. Cloud, 813 N.W.2d 68, 72 (Minn. 2012))).

159. *Jaeger*, 884 N.W.2d at 605.

160. *Id.*

161. *See Cocchiarella*, 884 N.W.2d at 625; *see also* MINN. STAT. § 504B.001 subdiv. 12 (2017); MINN. STAT. § 504B.375 subdiv. 1(b) (2017).

162. *Cocchiarella*, 884 N.W.2d at 625 (quoting THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1215 (4th ed. 2000)).

163. *Id.* Immediately after providing five common language definitions of "to occupy," the court turned to defining "occupancy." *Id.* The majority opinion offered

Black's Law Dictionary to define "occupancy" as "condition of holding."[164] Then, the court returned to the common dictionary to define "holding" as "to be the legal possessor of."[165] Despite this research, the court felt unable to determine if the plain and ordinary meaning of "occupy" required physical possession of the premises or if the present right of legal occupancy would suffice.[166] Thus, the majority disregarded the plain language interpretation to seek a definition "lending some support to an interpretation . . . that include[d] legal possession."[167]

After abandoning its plain language interpretation,[168] the court embarked on a circular, convoluted, and poorly supported path to interpret "occupy" as a technical term. [169] First, the majority stated that "is occupying" refers to a lease that creates a tenancy that creates

no motive for looking beyond the infinitive verb form contained in the statute. *Id.*; *see* MINN. STAT. § 504B.001 subdiv. 12. Instead, the court proceeded to comprehensively define a term not found in the statute. *Cocchiarella*, 884 N.W.2d at 625–26; *see* MINN. STAT. § 504.001 subdiv. 12; MINN. STAT. § 504B.375.

164. *Cocchiarella*, 884 N.W.2d at 625 (quoting *Occupancy*, BLACK'S LAW DICTIONARY (10th ed. 2014)). The majority quoted *Black's* definition as "[t]he act, state, or condition of *holding*, possessing, or residing in or on something; actual possession residence or *tenancy* esp. of a dwelling or land." *Id.* Although this definition included several other gerunds, the court chose to isolate "holding" in continuing the effort to define "is occupying." *See id.*

165. *Cocchiarella*, 884 N.W.2d at 625 (quoting THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1215 (4th ed. 2000) ("'Hold[ing],' in turn, can be defined as '[t]o be the legal possessor of,' lending some support to an interpretation of 'occupying' that includes legal possession."). The court provided no explanation for first utilizing a common dictionary to define "occupy," switching to *Black's* to define "occupancy," and then returning to the same common dictionary to define "holding." *See id.*

166. *See Cocchiarella*, 884 N.W.2d at 625–26 (concluding that the dictionary definitions did not determine if "'is occupying' refers only to physical occupancy, or whether it also includes the present legal right of occupancy").

167. *See id.* at 625 (citing THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 836 (4th ed. 2000)).

168. *See id.* at 625–26.

169. *Compare Cocchiarella*, 884 N.W.2d at 624 (citing Staab v. Diocese of St. Cloud, 813 N.W.2d 68, 72 (Minn. 2012) (reversing the canon of construction order found in section 645.08(1) by stating first that "we construe technical words and phrases 'according to [their] special meaning,'" before mentioning that "[we construe] other words and phrases according to their 'common and approved usage'''), *with* MINN. STAT. § 645.08(1) (2017) (directing first the construction of words according to their "common and approved usage" before discussing the construction of "technical words and phrases").

a "legal right of occupancy."[170] Next, the court determined that its "legal right of occupancy" theory conferred a technical meaning on the term "is occupying."[171] The court supported its technical meaning assessment by determining that the term "residential tenant" does not have a "physical occupancy requirement" because a "residential building" may be, at some point, "unoccupied."[172]

In contrast, the three lower courts resisted the temptation to apply the common law or a technical meaning to the term "is occupying."[173] The lower courts correctly maintained the statutory construction boundaries by not applying a word's common law definition "if the statute provides its own definition."[174] Granted, the statutory definition here contains the term in question.[175] Yet, the *Cocchiarella* court gave no clear reasoning for determining that the term "is occupying" had a "variety of meanings" that required the court to advance to the next interpretation step.[176]

170. *Cocchiarella*, 884 N.W.2d at 626 ("[T]he phrase 'is occupying' refers to 'a dwelling in a residential building under a lease or contract.'").

171. *Id.* at 627 (stating "occupying" had a "definite and well-understood special or technical meaning in the context of the landlord-tenant relationship"); *see* MINN. STAT. § 645.08(1).

172. *Cocchiarella*, 884 N.W.2d at 627; *see* MINN. STAT. § 504B.001, subdivs. 11, 12 (2017). Minnesota Statutes section 504B.001 subdivision 11 contains two definitions for the term "residential building." MINN. STAT. § 504B.001, subdiv. 11. Subdivision 11's first definition describes a "residential building" as a "building used . . . as a dwelling . . . multi-family units such as apartments." *Id.* § 504B.001, subdiv. 11(1). Subdivision 11's second definition states that a "residential building" may be "an unoccupied building which was previously used in whole or in part as a dwelling and which constitutes a nuisance under section 561.01." *Id.* The disjunctive nature of the subdivision is evidenced by the word "or" separating subsections 1 and 2. *See id.* Since Driggs was occupying the building and no reason existed to believe that the building constituted a nuisance, the court's reliance on subdivision 11, subsection 2 to define a "residential building" is illogical and irrelevant to the case at hand. *See id.*

173. *See Cocchiarella*, 870 N.W.2d at 106 (noting that Cocchiarella "relie[d] on case law" to define the landlord-tenant relationship).

174. *Id.* at 106 (contrasting *Cocchiarella*'s interpretive approach to the appellate court's "obligat[ion] to apply the statutory definition of the term 'residential tenant,' which is the term used in section 504B.375" (quoting State v. Schmid, 859 N.W.2d 816, 820 (Minn. 2015))).

175. *See* MINN. STAT. § 504B.001, subdiv. 12.

176. *See Cocchiarella*, 884 N.W.2d at 625 (including additional terms in its plain meaning analysis, such as "occupancy" and "holding," and then concluding that the term "occupying" possessed a "variety of meanings").

The court provided no explanation for first utilizing a common dictionary to define "occupy," switching to Black's to define occupancy," and then returning to the same common dictionary to define "holding."[177] Moreover, the court sought to define "occupying" as a technical term by nominalizing the word to "occupancy."[178] Transforming the term "is occupying" to the derivative word "occupancy" involved breaking the term into its components.[179] But the Minnesota Supreme Court had previously held that a court may only break a phrase into "component terms" if the phrase "lacks a technical meaning."[180] Consequently, the court violated its own supporting rule concerning "component terms" by applying the rule to a term the court itself deemed to be "technical."[181]

Section 504B.001's clear definition of "residential tenant" provided guidance for interpreting section 504B.375 for seventeen years.[182] Accordingly, no reported Minnesota case before *Cocchiarella* addressed the issue of a tenant without physical possession seeking *ex parte* under section 504B.375.[183] Thus, the Minnesota Supreme Court erred by rejecting the plain and ordinary meaning of the phrase "is occupying" in section 504B.001, subdivision 12.[184]

177. *See id.* (stating the court consulted *Black's Law Dictionary* to define "occupancy").

178. *See id.* (moving from defining "occupying" to "occupancy" after listing common definitions of "occupying").

179. *See id.* The court supports defining "occupancy" to interpret the statutory phrase "is occupying" based on the "separate-and-reconstruct method" found in *Jaeger*. Jaeger v. Palladium Holdings, 884 N.W.2d 601, 605 (Minn. 2016); *see also* PAUL R. KROEGER, ANALYZING GRAMMAR: AN INTRODUCTION 248 (2005) ("A stem is the part of the word that contains . . . the root plus any derivational morphology.").

180. *See Jaeger*, 884 N.W.2d at 605.

181. *See Jaeger*, 884 N.W.2d at 605 (stating the Minnesota Supreme Court's determination that a court may break a phrase into "component terms" if the phrase "lacks a technical meaning").

182. *See* MINN. STAT. § 504B.001 subdiv. 12 (2017); MINN. STAT. § 504B.375 (2017).

183. *See Cocchiarella*, 884 N.W.2d at 633 (Anderson J., dissenting) ("In the two decades since the lockout statue was enacted, there is no reported decision from a Minnesota court . . . ever allowing a lockout petition to proceed on the basis of a disputed lease agreement and no actual occupation of a residential building."); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 5 (being unaware of any case in the United States involving a tenant without physical possession seeking relief under a "residential lockout statute").

184. *See Cocchiarella*, 884 N.W.2d at 629 (Anderson J., dissenting) ("[T]he plain and only reasonable meaning of the word 'occupying,' as used in section 504B.001,

B. The Reasonable Legislative Intent of Section 504B.375 Does Not Apply to Tenants Without Physical Possession

In ascertaining the legislature's intent, a court should apply unambiguous terms to "an existing situation" and not overlook the "letter of the law . . . under the pretext of pursuing the spirit."[185] If a statute's words are unclear, a court may determine legislative intent by considering the statute's goal and "the consequences of a particular interpretation."[186]

1. The Court Failed to Consider the Drastic Nature of Section 504B.375: Allowing a Tenant to Obtain an Ex Parte Order

> The court shall direct the order to the sheriff . . . [to] execute the order immediately by making a demand for possession on the landlord . . . . 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.[187]

Black's Law Dictionary describes an *ex parte* action as one "[d]one or made at the instance and for the benefit of one party only."[188] Generally, a defendant may not appeal an *ex parte* order.[189] Additionally, an *ex parte* order leaves the adverse party "without benefit of . . . argument or disclosure."[190] Accordingly, an *ex parte* action demanding physical possession of a rental premises is an

subdivision 12, requires a 'residential tenant' to have actual, physical possession of the residential dwelling under a lease or contract.").

185. MINN. STAT. § 645.16 (2017).

186. *Id.* § 645.16(4), (6). The statute provides a non-exhaustive list for discerning legislative intent "when the words of a law are not explicit," including "the occasion and necessity of the law" and "the mischief to be remedied." *Id.* § 645.16 subdiv. 1, (3).

187. MINN. STAT. § 504B.375 subdiv. 1(e) (2017).

188. *Ex parte*, BLACK'S LAW DICTIONARY (10th ed. 2014).

189. MINN. STAT. § 504B.375 subdiv. 3 (2017) ("An order issued under subdivision 1, paragraph (c) . . . is a final order for purposes of appeal."); *accord* State *ex rel.* Norris. v. Dist. Cts. 11th & 1st Jud. Dists., 52 Minn. 283, 290–91, 53 N.W. 1157, 1158 (1893) (holding that a construction company could not appeal an *ex parte* injunction on railroad construction); BLACK'S, *Ex parte*, *supra* note 188 ("[W]ithout notice to, or argument by, anyone having an adverse interest.").

190. MINN. STAT. § 504B.375 subdiv. 1(c) ("If it clearly appears . . . that the exclusion or removal was unlawful, the court shall immediately order that the residential tenant shall have possession of the premises."); *see Norris*, 52 Minn. at 290–91, 53 N.W. at 1158; BLACK'S, *Ex parte*, *supra* note 188.

"extraordinary" measure designed for situations where no sufficient alternative remedy exists.[191] Defendants must receive notification and the chance to be heard with regard to property forfeiture.[192]

Section 504B.375 provides the petitioner with an immediate order to "demand . . . possession [from] the landlord."[193] The statute authorizes the sheriff to "take whatever assistance may be necessary" to restore the premises to the petitioner's physical possession.[194] The legislature likely did not intend to provide such a drastic remedy to a tenant who has alternative relief options.[195]

The *Cocchiarella* case involves the eviction of a prior tenant with physical occupancy.[196] However, section 504B.375 provides no provisions to address the eviction of a prior tenant; one who may be holding over, for example.[197] Conversely, sections 504B.281–.371 provide detailed guidelines for the eviction process.[198] For example, section 504B.365 describes the "[e]xecution of the writ of recovery of premises and order to vacate."[199] The detail and remedies provided show that the legislature intended for sections 504B.281–

191. Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 10.

192. Contos v. Herbst, 278 N.W. 2d 732, 742 (Minn. 1979) ("At a minimum the due process clause requires that deprivation of property be preceded by notice and an opportunity for a hearing appropriate to the case.").

193. MINN. STAT. § 504B.375 subdiv. 1(e).

194. *Id.*

195. MINN. STAT. § 504B.375 subdiv. 5 (explaining that section's purpose is to "provide an additional or summary remedy for [unlawfully excluded] residential tenants"); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 15 ("Persons who claim to have valid leases but are not allowed to move in can maintain claims for breach of contract . . . ."); *see Cocchiarella*, 884 N.W.2d. at 633 (Anderson, J., dissenting) (noting that the parties' dispute was a contract issue); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 10 (stating that utilizing the statute to "resolve a contractual dispute on a summary basis . . . is untrue to the statute's purpose and intent").

196. *Cocchiarella*, 884 N.W.2d at 633 n.4 (Anderson, J., dissenting) ("Although Cocchiarella knew that Driggs still physically occupied the allegedly leased dwelling, Cocchiarella's counsel proposed . . . that the [housing] referee 'enter an order directing . . . that Driggs must vacate the property.'").

197. *See* MINN. STAT. § 504B.375 (leaving issue of evictions unaddressed); *Holding over*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("A tenant's action in continuing to occupy the leased premises after the lease term has expired.").

198. MINN. STAT. §§ 504B.281–.371 (2017) (providing instruction for landlords in dealing with eviction issues).

199. MINN. STAT. § 504B.365 (2017).

.371, not section 504B.375, to authorize the eviction of tenants who were currently occupying a rental property.[200]

The eviction instructions in section 504B.365 provide the occupying tenant with a twenty-four-hour notice to vacate the premises.[201] In contrast, section 504B.375's *ex parte* order demands that the current occupant immediately vacate the premises without notice.[202] Despite the consequences that awaited Driggs, the majority opinion does not mention the effect of the statute's "extraordinary nature" on the party currently occupying the premises.[203] Thus, the court's failure to address Driggs's occupancy of the unit illustrates the majority's lack of careful consideration concerning the *ex parte* order.[204]

2. *Requiring a "Residential Tenant" Under Section 504B.375 to Physically Occupy the Premises Does Not Conflict with Chapter 504B's Other Sections*

The majority stated that requiring Cocchiarella to physically occupy the premises to bring an unlawful exclusion petition conflicted with chapter 504B's other sections.[205] Section 504B.395 uses the term "residential tenant" to describe the procedure by which a tenant may obtain "relief in cases of emergency involving the

200. *Compare* MINN. STAT. §§ 504B.281–.371 ("Eviction Actions"), *with* MINN. STAT. §§ 504B.375–.371 (2017) ("Resident Tenant Actions").

201. MINN. STAT. § 504B.365 subdiv. 1(a) ("The officer who holds the order to vacate shall execute it by demanding that the defendant . . . relinquish possession and leave . . . the premises within 24 hours.").

202. *See* MINN. STAT. § 504B.375 subdiv. 1(c), (e) (providing that "the court shall immediately order that the residential tenant have possession of the premises" and the sheriff shall "execute the order immediately").

203. *See Cocchiarella*, 884 N.W.2d. at 623 (stating twice that Driggs delayed Cocchiarella's move-in so that he could "remove his belongings," while failing to address the consequences of the *ex parte* order on Driggs); *id.* at 633 (Anderson, J., dissenting) ("Given the extraordinary nature of this relief, the legislature limited the remedies to dispossessed tenants who were actually '*occupying*' a residential unit by physical presence or control—and not those who merely claim a present legal right of occupancy under a disputed lease agreement.").

204. *See id.* at 632 (Anderson, J., dissenting) (noting that when a lease's move-in date has not yet arrived, "a previous tenant is often legally occupying the dwelling . . . ").

205. *See* MINN. STAT. § 504B.395 subdiv. 1(1) (2017); *Cocchiarella*, 884 N.W.2d at 627 (proposing that a tenant who discovers a lack of running water or some other "severe housing code violation" would be ineligible to seek a remedy under section 504B.395 if a court utilized Driggs's definition of "residential tenant").

loss of running water, hot water, heat, electricity, sanitary facilities, or other essential services."[206] The court presented section 504B.395, concerning procedure for landlord-tenant actions, as an example of legislative intent in conflict with Driggs's "residential tenant" definition.[207] Yet, the court did not attempt to claim that Driggs denied Cocchiarella any of the "essential services" listed in section 504B.395.[208]

Cocchiarella's ineligibility to recover under section 504B.375 on unlawful exclusions did not prevent her from obtaining relief through other measures.[209] Section 504B.375 states that its purpose is "to provide an *additional* and *summary* remedy for residential tenants unlawfully excluded or removed from rental property."[210] Moreover, a leaseholder who is ineligible for relief under section 504B.375 has alternate remedies available,[211] including a breach of contract claim.[212]

The inclusion of a "tenant" in section 504B.231 and a "residential tenant" in section 504B.375 indicates the legislature's intended distinctive purposes for each section.[213] The two terms' distinguishing statutory definitions demonstrate that the legislature did not intend for all sections of chapter 504B to apply to lease

206. MINN. STAT. § 504B.395 subdiv. 1(1).

207. *See Cocchiarella*, 884 N.W.2d. at 627.

208. *See* MINN. STAT. § 504B.395 subdiv. 1(1); MINN. STAT. § 504B.381 subdiv. 1 (2017); *Cocchiarella*, 884 N.W.2d. at 627.

209. *Cocchiarella*, 870 N.W.2d at 107–08 ("Neither the housing court referee nor the district court judge stated a that a claim for damages under section 504B.231 is viable only if a tenant has prevailed on a claim for possession under section 504B.375.").

210. MINN. STAT. § 504B.375 subdiv. 5 (2017) (emphasis added).

211. *See* MINN. STAT. § 504B.231 (2017). Section 504B.231, "Damages for Ouster," provides "treble damages or $500, whichever is greater, and reasonable attorney's fees." *Id.*

212. MINN. STAT. § 504B.375 subdiv. 5 (stating the "additional" nature of the statute's provisions); *see Cocchiarella*, 884 N.W.2d. at 633 (Anderson, J., dissenting) ("The circumstances of this case, which essentially presents a contract dispute, are better suited for other, less extraordinary legal avenues, such as a civil suit for specific performance of a contract, in which both parties may be heard."); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 15 ("Persons who claim to have valid leases but are not allowed to move in can maintain claims for breach of contract and, perhaps, seek specific performance.").

213. *Compare* MINN. STAT. § 504B.231(a) (employing the term "tenant"), *with* MINN. STAT. § 504B.001 subdiv. 12 (2017) (employing the term "residential tenant").

holders in every phase of tenancy.[214] Accordingly, the court of appeals ruled that Cocchiarella was a "tenant" under 504B.231 and remanded her claim for bad faith damages to the district court.[215] Because Cocchiarella's lack of physical occupancy did not prevent her from obtaining relief under chapter 504B, the lower courts' interpretation of "residential tenant" did not conflict with chapter 504B as a whole.[216]

3. Section 504B.375, Subdivision 1(b)(2)'s Requirement for No Writ of Recovery Assumes That an Ousted "Residential Tenant" Previously Maintained Physical Occupancy

To file a claim for unlawful removal or exclusion, a "residential tenant," under section 504B.375 must demonstrate that no writ of recovery was issued and executed.[217] In Hennepin County, Minnesota, a writ of recovery orders the sheriff "to compel someone to *vacate* certain specifically described premises" and to "*move the person out*, by force, if necessary."[218] Additionally, the Minnesota Practice Series writ of recovery form orders the sheriff to "cause [the tenant] to be immediately *removed* from the premises."[219]

In submitting her first verified petition for possession, Cocchiarella requested an order to allow her to "immediately move back into the property," despite the undisputed fact that she "had

214. *See* MINN. STAT. § 504B.001 subdiv. 12; MINN. STAT. § 504B.231(a); *see also Cocchiarella*, 884 N.W.2d. at 632 (Anderson, J., dissenting) (stating that because legal possession does not begin before the lease's move-in date, even a "residential tenant" under the majority's definition "must wait until the move-in date . . . to allege a housing code violation").

215. *Cocchiarella*, 870 N.W.2d at 108.; *see* MINN. STAT. § 504B.231(a) (utilizing the term "tenant").

216. *See Cocchiarella*, 870 N.W.2d at 108.

217. MINN. STAT. § 504B.375 subdiv. 1(b) ("The residential tenant shall present a verified petition . . . 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 . . . .").

218. *Writ of Recovery of Premises and Order to Vacate*, EXPERTGLOSSARY, http://www.expertglossary.com/law/definition/writ-of-recovery-of-premises-and-order-to-vacate (last visited Aug. 27, 2017) (emphasis added); *see Vacate*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2016) ("To cease to occupy (a lodging or place); leave: *vacate an apartment.*" (emphasis added)).

219. RICHARD S. GILLMAN, MINNESOTA PRACTICE SERIES, METHODS OF PRACTICE § 54.73 (3d ed. 2016) (emphasis added).

never moved in to begin with."[220] Cocchiarella's error in completing the lockout petition may reflect her inaccurate understanding of section 504B.375's purpose.[221] The inclusion of 504B.375's requirement that no writ of recovery exists against the tenant speaks to the legislature's assumption that only tenants with physical possession would seek to recover possession after an unlawful removal or exclusion.[222]

4. The Court's Definition of "Residential Tenant" Opposed the Legislature's Purposes

Section 504B.375's statutory purpose is to discourage sudden and unjust lockouts.[223] Granting Cocchiarella physical possession of the premises would require evicting Driggs from the unit.[224] Evicting Driggs from Unit 3, under section 504B.375, would force a tenant

220. Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 13 n.9; *see* Verified Petition for Possession of Residential Rental Property Following Unlawful Removal or Exclusion, Minnesota Judicial Branch (2015), [hereinafter Verified Lockout Petition], http://www.mncourts.gov/mncourtsgov/media/CourtForms/HOU702.pdf?ext=.pdf. This boilerplate form provides several options from which a petitioner may "ask the court to order one or more" directives to the defendant or county sheriff. *Id.*

221. *See* Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 13 n.9 (stating that Cocchiarella filed two Verified Petitions, the first which requested an order allowing Cocchiarella to "move *back* in the property" (emphasis added)); Verified Lockout Petition, *supra* note 220.

222. Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 8 ("Plainly, this certification is directed at those who were actually physically occupying the premises in some fashion before they were removed or excluded from the premises.").

223. *See* MINN. STAT. § 504B.375 subdivs. 1(e), 23(1)–(3) (2017) (listing the statute's negative consequences for a landlord who unlawfully removes or excludes a tenant, including: demanding immediate relinquishment of the property, requiring the landlord to obtain dissolution or modification of the order through a written motion and notice, and stating the order's finality); *see also Cocchirella*, 884 N.W.2d at 633 (Anderson, J., dissenting) ("Given the extraordinary nature of this relief, the legislature limited the remedies to dispossessed tenants who were actually "*occupying*" a residential unit by physical presence or control—and not those who merely claim a present legal right of occupancy under a disputed lease agreement.").

224. *Cocchiarella*, 884 N.W.2d. at 623 (noting that when viewing the units, Cocchiarella "noticed that Driggs had personal property inside of Unit 3—–the unit at issue here"); *id.* (stating that Driggs's property would still be located inside Unit 3 for "a couple of days" after Cocchiarella and Drigg's last verbal communication on February 10, 2014).

out of their property to allow a non-occupying tenant to gain possession over the premises.[225]

No evidence exists that Cocchiarella was desperate for housing or that Driggs prevented Cocchiarella from accessing her belongings.[226] Cocchiarella's having a "roommate" suggests that Cocchiarella had a place to live during this time.[227] Additionally, Cocchiarella continued to leave and return to the unit, "expect[ing] to move in."[228] Moreover, Cocchiarella made no mention of homelessness, lack of storage space for possessions, or any other situation requiring immediate resolution.[229]

Conversely, the court's decision threatened Driggs's personal property and possibly his residence by granting Cocchiarella physical possession of the unit.[230] While the facts do not prove that Driggs was residing in the unit, Driggs possessed a unit key and stored his personal property there.[231] Accordingly, Driggs, not Cocchiarella, was the party "occupying" the premises.[232] The absence of statutory provisions concerning third parties demonstrates the legislature's

225. *See id.* (noting that Cocchiarella "did not hold a key or otherwise physically occupy the premises").

226. *See Cocchiarella*, 884 N.W.2d. at 623*;* Brief for HOME Line as Amicus Curiae Supp. Appellant at 9, Cocchiarella v. Driggs, 884 N.W.2d 621 (Minn. 2016) (No. A14-1876) [hereinafter Brief for HOME Line] (stating that victims of unlawful residential housing exclusion may experience homelessness and a resulting lack of storage for personal property).

227. *See Cocchiarella*, 884 N.W.2d. at 623 (stating that Cocchiarella met Driggs with "her roommate, 'J.B.,'" who did not mention wanting to rent the new unit with Cocchiarella).

228. *Id.*

229. *Id.*

230. *See* MINN. STAT. § 504B.375 subdiv. 1(e) (2017) (directing the sheriff to "take whatever assistance may be necessary . . . [to] place the residential tenant in possession of the premises").

231. *Cocchiarella*, 884 N.W.2d. at 623 (stating that Driggs "had personal property inside of Unit 3" and that Driggs's "belongings" were in the unit, but not clarifying if Driggs lived in the unit).

231. *See id.* (stating that Cocchiarella insisted that Driggs provide her with the unit's keys).

232. *See* MINN. STAT. § 504B.001 subdiv. 12 (2017) (defining a "residential tenant" under section 504B.375 as "a person who is occupying" the premises); Place v. St. Paul Title Ins. & Tr. Co., 67 Minn. 126, 129, 69 N.W. 706, 707 (1897) (determining that the tenancy in a title insurance policy "was that which [had] arisen through occupation" and did not include the plaintiffs who "were not the owners . . . nor [who] were [ ] in possession").

intent to address only two parties.[233] The court opposed section 504B.375's purpose by labeling Cocchiarella the "residential tenant" of Unit 3 while Driggs physically occupied the premises.[234] Accordingly, when remanded, the court of appeals granted Cocchiarella appropriate relief within the statute's legislative intent.[235] In contrast, the Minnesota Supreme Court failed to appropriately apply the legislature's intent by determining that she satisfied the requirements of a "residential tenant" under section 504B.375.[236]

C. Applying Section 504B.375 to Tenants Without Physical Possession Creates Policy and Enforcement Concerns

A state's legislature determines its public policy, and courts must not intrude on that function.[237] Citizens should direct concerns about a statute to the legislature, not the courts.[238] Perhaps the Minnesota Supreme Court hoped that the *Cocchiarella* ruling would prevent landlords from taking deposit money and rent from multiple tenants for the same property.[239] Although addressing this

233. *See* MINN. STAT. § 504B.375 subdiv. 1(e); *see also* Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 13 (stating that the scenario of a tenant with legal possession petitioning for physical possession of a property in which a current tenant is residing is "not just a theoretical or remote risk").

234. *See Cocchiarella*, 884 N.W.2d at 633 (Anderson, J., dissenting) ("The lockout statute is designed . . . for residential tenants who are dispossessed (e.g., locked out) of the homes that they actually occupied.").

235. *See Cocchiarella*, 870 N.W.2d 103, 107–08 (finding that the district court erred by not "addressing and resolving Cocchiarella's claim for damages under section 504B.231," but "did not err by dismissing Cocchiarella's claim for possession pursuant to section 504B.375.").

236. *See Cocchiarella*, 884 N.W.2d at 633 (Anderson, J., dissenting) ("[T]he lockout statute is inapplicable to Cocchiarella, who was never 'occupying' the residential dwelling.").

237. *See* Goins v. W. Grp., 635 N.W.2d 717, 723 (Minn. 2001) ("[T]he obligation of the judiciary in construing legislation is to give meaning to words accorded by common experience and understanding, to go beyond the parameters of a legislative enactment would amount to an intrusion upon the policy-making function of the legislature."); *see also* Mattson v. Flynn, 216 Minn. 354, 363, 13 N.W.2d 11, 16 (1944) ("Practical construction is not conclusive or binding upon the courts . . . if it is erroneous or does not carry out the intention of the legislature, or where the construction extends or modifies the provisions of the statute.").

238. *See* In re Welfare of M.L.M., 813 N.W.2d 26, 35 (Minn. 2012) (quoting Irongate Enters., Inc. v. Cty. of St. Louis, 736 N.W.2d 326, 331 (Minn. 2007)).

239. *See Cocchiarella*, 884 N.W.2d at 622 (noting that after receiving a security

problem should be a priority,[240] the courtroom is not the place to fill voids in statutory law.[241] Manipulating a statute's interpretation can lead to results that the legislature never intended.[242] Accordingly, courts may interpret a legislature's intent by considering "the consequences of a particular interpretation."[243] However, courts may not interpret statutes to achieve desirable results that "conflict with the expressed will of the legislature."[244]

1. Cocchiarella's Holding Generates Unprecedented Policy Concerns

The court failed to recognize the impact of applying section 504B.375 to a tenant who never physically occupied a rental premises.[245] Nor did the majority's opinion emphasize the policy

deposit and the first month's rent from Cocchiarella, Driggs refused to "deliver physical possession of the premises to her"); *see also* Brief for HOME Line, *supra* note 226, at 9 (stating that every year, HOME Line receives calls from renters whose landlords have locked them out after the renters have signed a lease and not yet moved in); Lawrence McDonough, Pro Bono Counsel, Dorsey and Whitney, LLP, Address to the Washington County Bar Association: Residential Landlord and Tenant
Law: Tips From Over 30 Years in the Trenches 41 (Dec. 14, 2016) (PowerPointpresen
tation), https://www.washcolib.org/DocumentCenter/View/497) [hereinafter McDonough, Tips] ("This is a common practice among slumlords who take rent and deposits from several tenants for the same unit with the expectation that excluded tenants will not take action.").

240. *See* Brief for HOME Line, *supra* note 226, at 9 (listing challenges that unlawfully excluded tenants face including: "interruption[s] in [the moving] process," uncertainty surrounding the tenants' living situations, storage of personal belongings, and potential homelessness).

241. *See* McNeice v. City of Minneapolis, 250 Minn. 142, 147, 84 N.W.2d 232, 236–27 (1957) (stating that acknowledging gambling as a valid social concern did not allow the court to interpret a statute to ban pinball machines as gambling devices); *see also Mattson*, 216 Minn. at 363, 13 N.W.2d at 16 ("[The] public policy of a state is for the legislature to determine and not the courts.").

242. *See* MINN. STAT. § 645.16(6) (2017). *See generally McNeice*, 250 Minn. 142, at 147, 84 N.W.2d at 236–27 (1957).

243. MINN. STAT. § 645.16(6) (2017).

244. *McNeice*, 250 Minn. at 147, 84 N.W.2d at 236–37 ("It is not for the court to encroach upon the legislative field by an interpretation which would in effect rewrite a statute so as to accomplish a result which might be desirable and at the same time conflict with the expressed will of the legislature.").

245. *See Cocchiarella*, 884 N.W.2d at 622–28 (making no mention of the absence of previous cases concerning 504B.375's application to non-occupying tenants); *id.* at 633 (Anderson J., dissenting) (noting the original nature of the court's decision); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 5 ("[No] Minnesota court has

issues raised by *Cocchiarella*, despite ample concerns voiced from community members on both sides.[246] For example, an amicus curiae brief supporting Cocchiarella stated that each year, landlords refuse to allow tenants who have signed a lease to physically occupy a rental premises.[247] In contract, an amicus brief supporting Driggs expressed concern that landlords would have to "house a person who may have gained possession by fraud" and "incur the expense of an eviction action to remove a person who was not a tenant to begin with."[248] Nonetheless, the court's opinion is silent on these conflicting, yet critical issues.[249]

The difficulties the residential rental community currently faces did not exist before the *Cocchiarella* decision.[250] Now, any person claiming to have an oral lease could obtain an *ex parte* order under section 504B.375 to obtain "immediate possession of the premises."[251] Although a statutory void exists in this area of landlord-tenant law, *Cocchiarella* incorrectly applied section 504B.375 by offering no leeway for situations delaying a tenant's occupancy that are beyond a landlord's control.[252] This creates a situation which the

applied [the lockout statute] where the tenant never once physically occupied the premises.").

246. *See Cocchiarella*, 884 N.W.2d at 627 (failing to mention policy concerns beyond the requirement that a "residential tenant" must physically occupy the property "is unreasonable" due to potential "conflicts with other provisions of chapter 504B"); *id.* at 632 (Anderson, J., dissenting) (discussing "policy matter[s]"); Brief for HOME Line, *supra* note 226, at 11 ("[P]ublic policy also favors an interpretation of the term 'occupying,' as used within the definition of 'residential tenant.'"); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 9 (addressing *Cocchiarella*'s and HOME Line's policy arguments).

247. Brief for HOME Line, *supra* note 226, at 9.

248. Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 10.

249. *See Cocchiarella*, 884 N.W.2d at 628 (reversing the dismissal of the petition and remanding the case to housing court without addressing policy concerns).

250. *Cocchiarella*, 884 N.W.2d at 632 (Anderson, J., dissenting) ("[The] court's decision introduces a host of potential problems."); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 12 (stating Cocchiarella's broad interpretation of section 504B.375 "would also raise a host of practical concerns for landlords").

251. *See* MINN. STAT. § 504B.375 subdiv. 1(b) (2017) (stating a tenant may immediately occupy the property if the tenant (1) submits a petition or affidavit that "describes the premises and the landlord;" (2) "specifically states . . . that the exclusion or removal was unlawful;" and (3) "asks for possession"); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 12 (noting a tenant need only fulfill easily-met conditions under section 504B.375 to gain physical possession of a rental property).

252. *See* MINN. STAT. § 645.16(6) (2017); MINN. STAT. § 504B.375 subdiv. 1(c) ("[T]he court shall immediately order that the residential tenant have possession of

legislature never intended.[253] The *Cocchiarella* decision has generated an entirely new class of public policy issues.[254]

2. *Cocchiarella's Decision Produces Complex Practical Concerns with Potentially Disastrous Results*

Because the lockout statute applies to tenants who are physically occupying their homes, section 504B.375 lacks provisions addressing more than two parties.[255] Yet, the *Cocchiarella* decision permits a previous tenant to lose possession of their home without notice.[256] For example, a tenant without keys or a move-in date may successfully petition a Minnesota court to have a previous tenant who is holding over summarily evicted from their home. [257] Although the *Cocchiarella* case involves only two parties, Driggs is both a landlord and pre-existing tenant.[258] The majority's decision does not address

the premises" without including exceptions for circumstances beyond the landlord's control); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 12 ("[T]he statute provides no exception for . . . circumstances . . . beyond the landlord's control.").

253. *See id.*

254. Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 12.

255. *See* MINN. STAT. § 504B.375 (describing only actions concerning the residential tenant and the landlord); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 14 ("The statute solves these practical problems by requiring that the person seeking to recover immediate possession establish actual, physical occupancy . . . ."); *see also Cocchiarella*, 884 N.W.2d at 633 (Anderson, J., dissenting) ("An actual-possession approach avoids the threat of simultaneous occupancy because only one party has standing to bring a lockout petition based on current, physical possession of the residential dwelling.").

256. *See* MINN. STAT. § 504B.375 subdiv. 1(c) (providing a petitioning tenant with immediate "possession of the premises"); *see also Cocchiarella*, 884 N.W.2d at 633 n.4 (Anderson, J., dissenting) ("Had the [housing] referee agreed to such an order, Driggs would have been summarily evicted from his own dwelling."); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 14 (noting that permitting a non-occupying tenant to recover under section 504B.375 would allow Driggs to be removed "from his own home in a summary proceeding").

257. *See* MINN. STAT. § 504B.375 subdiv. 1(c) (requiring a petitioner only to present a "verified petition" to grant the petitioner "possession of the premises"); *Cocchiarella*, 884 N.W.2d. at 624–25 (recognizing that Cocchiarella did not "hold a key or otherwise physically occupy the premises"); *id.* at 632 (Anderson, J., dissenting) ("[B]efore the move-in date, a previous tenant is often still legally occupying the dwelling, despite the execution of a lease agreement with a new prospective tenant that includes a future move-in date.").

258. *Cocchiarella*, 884 N.W.2d. at 622–23 (acknowledging that Driggs had the authority to rent the unit to Cocchiarella and that Driggs kept "personal property"

the scenario of a tenant with physical possession of a property facing a sheriff with an *ex parte* order from a tenant who claims legal possession of the property.[259] Thus, the majority's interpretation of "residential tenant" produces "potential simultaneous 'occupancy' disputes."[260]

Similarly, the *Cocchiarella* decision provides an avenue for landlords to evict existing tenants by manipulating the language of section 504B.375.[261] Now, a landlord could utilize the *Cocchiarella* decision to petition the court to summarily evict a current occupying tenant.[262] Because the statute does not require notice, the tenant with physical possession may be unaware of the action and fail to contest the petition.[263] Consequently, the court issuing the *ex parte*

and "his belongings" in the unit).

259. *See* MINN. STAT. § 504B.375 subdiv. 1(e) (describing the methods by which the sheriff is to procure possession from the landlord); *Cocchiarella*, 884 N.W.2d at 627–28 (summarizing the primary reasons for the Court's decision without addressing the potential for simultaneous occupancies); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 13 (stating that "the statute would have provided no guidance to the sheriff" if the district court had given Cocchiarella possession of the unit).

260. *Cocchiarella*, 884 N.W.2d at 633 (Anderson, J., dissenting) ("[T]he mere requirement of 'the present legal possession' . . . introduces a host of potential problems."); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 13 ("[T]his case demonstrates the confusion that will arise if tenants who have 'legal' but not 'physical' occupancy may file lockout petitions.").

261. *See* MINN. STAT. § 504B.375 subdiv. 1(a) ("A residential tenant to whom this section applies may recover possession of the premises as described in paragraphs (b) to (e)."); *Cocchiarella*, 884 N.W.2d at 633 (Anderson, J., dissenting) (wondering if two tenants claiming legal possession of the same property could now petition the court at the same time for summary possession of the property); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 13 (noting that "[a] petitioner who cannot take physical possession of a unit because the prior tenant is holding over most certainly will argue that . . . the petitioner is entitled to relief" even though the petitioner has "never taken possession"); RESTATEMENT (SECOND) OF PROPERTY: LANDLORD AND TENANTS § 14.1 (AM. LAW. INST. 1977) (stating that although "both the landlord and an incoming tenant should have standing to bring the summary process . . . against the holdover," the applicable statute is one for "forcible detainer" requiring notice to holdover tenant).

262. *See* MINN. STAT. § 504B.375 subdiv. 1(b)–(c) (describing the petitioning process and the court's authority to order an *ex parte* order based if it "clearly appears . . . that the exclusion or removal was unlawful"); *Cocchiarella*, 884 N.W.2d at 633 n.4 (stating that "there is no reason why" a tenant with a legal right of occupancy "must present physical evidence such as possession of the keys or placement of items within the premises to exercise her legal rights").

263. *See* MINN. STAT. § 504B.375 subdiv. 1(c), (e) (stating that "the court shall

order may not even realize that a third party is occupying the premises.[264] Thus, the *Cocchiarella* decision may invite absurd outcomes from statutory misapplication.[265]

Finally, the court's interpretation of section 504.375 fails to guide law enforcement officers in situations involving a third party.[266] In the *Cocchiarella* case, the court offered no instructions to the sheriff as to "what to do with Driggs."[267] Requiring law enforcement officers to summarily evict a current occupant contradicts current landlord-tenant law.[268] Thus, a situation "better suited" for a contract dispute potentially compromises law enforcement's ability to carry out their orders.[269]

immediately" order the petitioner to "have possession of the premises" and that "the sheriff shall execute the order immediately by making a demand for possession"); *see also Cocchiarella*, 884 N.W.2d at 633 n.4 (Anderson, J., dissenting) (noting that Driggs had "no opportunity to respond before the order was issued"); BLACK'S, *Ex parte*, *supra* note 188 (stating twice that the action is "without notice" and that the action is "usu. [sic] for temporary or emergency relief").

264. *See* MINN. STAT. § 504B.375 subdiv. 1(e) ("[If a] 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."); *see also* Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 12 ("What becomes of the existing tenant?").

265. *See* MINN. STAT. § 645.17(1) (2017) ("[T]he courts may be guided by the . . . presumptions [that] the legislature does not intend a result that is absurd, impossible of execution, or unreasonable"); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 17 (stating that correctly interpreting the legislature's language in section 504B.375 does not "create absurd results").

266. *See* MINN. STAT. § 504B.375 subdiv. 1(e) (containing no instructions to a sheriff addressing the management of a third-party currently residing in the property).

267. Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 13 (predicting confusion for law enforcement if a court "granted Cocchiarella's petition" because although the statute states the "officer shall take whatever assistance may be necessary [to] immediately place the residential tenant in possession of the premises," the statute does not provide the sheriff with authority to evict an existing tenant).

268. *See* MINN. STAT. § 504B. 365 subdiv. 1(a) (2017) (instructing the sheriff to provide twenty-four hours for a tenant to vacate in a writ of recovery order); UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 4.207 ("A landlord may not recover or take possession of the dwelling unit by action or otherwise . . . except in case of abandonment, surrender, or as permitted by this Act.").

269. *Cocchiarella*, 884 N.W.2d at 633 (Anderson, J., dissenting); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 13–14 (noting the "extreme" nature of Cocchiarella's counsel's "propos[al] that the housing court referee 'enter an order directing specific performance . . . that Mr. Driggs must vacate the property.'").

V. CONCLUSION

Cocchiarella addressed the issue of whether an individual who held a present legal right of possession, but did not have a key or reside in the premises, was a "residential tenant" under section 504B.375.[270] The court ruled that a lease applicant who had never occupied a rental premises could bring an unlawful exclusion petition under section 504B.375 because she qualified as a "residential tenant" under section 504B.001.[271]

The majority rejected the lower courts' solid reasoning and failed to properly utilize the canons of statutory interpretation.[272] Additionally, the majority claimed to address chapter 504B as whole, while incorrectly interpreting the statute's reasonable legislative intent.[273] Finally, although the majority's holding attempted to address a valid public policy concern, the court misapplied section 504B.375.[274]

The *Cocchiarella* decision allows a court to issue an *ex parte* order requiring a physical occupant of a premises to vacate the property in favor of a tenant claiming only legal possession.[275] The court's failure to provide guidance for *Cocchiarella*'s potential consequences will likely create confusion and frustration for Minnesota's landlords, tenants, sheriffs, and courts going forward.[276]

270. *Cocchiarella*, 884 N.W.2d. at 625.

271. *Id.* at 626.

272. *Cocchiarella*, 884 N.W.2d at 628; *id.* at 631 (Anderson, J., dissenting) ("[T]he context is which this word appears shows that a common and ordinary meaning is intended.").

273. *See* MINN. STAT. § 504B.375 subdiv. 5 (2017); *Cocchiarella*, 884 N.W.2d at 627 ("[U]pon the effective date of a lease agreement, a tenant has a right to bring an unlawful removal or exclusion petition under Minn. Stat. § 504B.375, subd. 12 [sic].").

274. *See* McDonough, Tips, *supra* note 239, at 41 (presenting the issue of landlords taking tenants' deposit money and then refusing to allow tenants to move in).

275. *See* MINN. STAT. § 504B.375; *Cocchiarella*, 884 N.W.2d at 622–33 (Anderson, J., dissenting) ("Minnesota's lockout statute . . . is appropriate only for the extraordinary circumstances the statute was intended to protect."); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 12.

276. *See* MINN. STAT. § 645.16(6) (2017); *Cocchiarella*, 884 N.W.2d at 633 (Anderson, J., dissenting); Brief for Minn. Multi Hous. Ass'n, *supra* note 84, at 13 (maintaining that these concerns are "not just a theoretical or remote risk").