2001

Wait a Minute! Residential Eviction Defense is Much More than "Did You Pay the Rent?"

Lawrence R. McDonough

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WAIT A MINUTE! RESIDENTIAL EVICTION DEFENSE IS MUCH MORE THAN “DID YOU PAY THE RENT?”

Lawrence R. McDonough†

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I. INTRODUCTION

"Unlawful detainer is a civil proceeding, and the only issue for determination is whether the facts alleged in the complaint are true."¹ This often quoted statement by the Minnesota Court of Appeals has lulled many a landlord and tenant, as well as their counsel, into thinking that all eviction cases are simple matters of whether the tenant paid the rent or breached the lease, or failed to vacate after expiration of a lease or proper notice from the landlord. To the contrary, the law of evictions is a complex mixture of state statutes governing evictions and general landlord-tenant relations, the common law of property and contracts, and federal law governing fair housing and public and subsidized housing programs.

This essay will discuss the sources of law governing the residential landlord-tenant relationship and evictions in particular.² It begins with a brief description of the Minnesota statutes that address landlords and tenants, the eviction process, and the types of tenancies. It then continues with a detailed discussion of subject matter jurisdiction, procedural issues, procedural and substantive defenses, post-trial issues, and appeals. While this essay focuses on the law as it affects landlord and tenants in Minnesota, it is representative of how the confluence of several legal sources make the areas of eviction and general landlord-tenant law confusing and challenging, but also distinctive and fascinating.³

II. SUMMARY OF EVICTION ACTIONS AND LANDLORD-TENANT RELATIONSHIPS

A. Statutes and Cases

In 1998, the Minnesota legislature passed a re-codification of

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² While many principles of the common law of landlord and tenant apply equally to residential and commercial tenancies, many of the statutes refer only to residential tenancies.
³ This essay is based on LAWRENCE R. MCDONOUGH, RESIDENTIAL UNLAWFUL DETAINER & EVICTION DEFENSE (8th ed. 2000). Unreported decisions discussed in this essay were compiled for RESIDENTIAL UNLAWFUL DETAINER AND EVICTION DEFENSE. They are available in electronic form from http://www.probono.net/mn and in hard copy from Volunteer Lawyers Network, Ltd., 600 Nicollet Mall, Suite 390A, Minneapolis, MN 55402, (612) 752-6655.
the existing landlord-tenant statutes in chapters 504 and 566 into a new chapter 504A. The legislature delayed the effective date of chapter 504A and the repeal date of chapters 504 and 566 one year to allow for study and comment of the re-codification. The purpose of chapter 504A was to make landlord-tenant laws more accessible to the public by placing them in one chapter, and rewriting them in a more understandable form. A committee of landlord and tenant attorneys reviewed chapter 504A, and proposed in its place chapter 504B, which was an attempt to reach the goals of chapter 504A while better ensuring that the re-codification does not change state law.

In 1999 the legislature passed 504B. It replaces both 504A, which never went into effect, and 504 and 566, which it consolidated. Tenants and landlords should cite to 504B (the current statutes) and either 504 or 566 (the old statutes), since case law up to 1999 cited the old statutes. This essay contains citations to both the new statute and its old counterpart.

As part of the re-codification creating chapter 504B, the term “unlawful detainer” was replaced with “eviction.” This essay will use both terms, often with a cross reference to the other term, since all cases before 1999 used the term “unlawful detainer.”

Many cases interpreting landlord-tenant law are unreported, either at the state district court or court of appeals levels. Since creation of the Minnesota Court of Appeals, most appellate decisions discussing residential landlord-tenant law have been unpublished decisions of the court of appeals, rather than published decisions of the court of appeals or Minnesota Supreme Court. Unpublished decisions of the court of appeals may be of persuasive value, but are not precedent.


5. Id. § 480A.08, subd. 3(c); Dynamic Air, Inc. v. Bloch, 502 N.W.2d 796, 800 (Minn. Ct. App. 1993) The Dynamic Air court noted that the trial court “committed error by relying upon an unpublished [court of appeals] opinion . . . .” The court added that “a party may cite to an unpublished opinion affirming a trial court’s exercise of discretion to persuade a trial court to exercise discretion in the same manner. It is, however, improper to rely on unpublished opinions as binding precedent.” Dynamic Air, Inc., 502 N.W.2d at 800. However, counsel may have an ethical obligation to cite unpublished opinions adverse to counsel’s client if that authority is the only opinion on point in the jurisdiction. M. Johnson, Advisory Opinion Service Update, BENCH & BAR OF MINN., Oct. 1993, at 13.
B. Summary of an Eviction Action

An eviction action is a summary proceeding, created by statute, to allow the landlord or owner of rental property to evict the tenant or possessor of the property.\(^6\) The landlord prepares a complaint, often using a form. The plaintiff files the case with the court administrator, who prepares a summons.\(^7\) The defendant must be served at least seven days before the initial hearing, either by personal or substitute service.\(^8\)

The tenant must answer at the initial hearing.\(^9\) The statute does not state whether the answer must be in writing. Housing court rules specifically do not require a written answer.\(^10\) A written answer may be needed to preserve the record for appeal.\(^11\)

In most courts, the initial hearing serves as an arraignment. If the defendant does not appear, the court will find for the plaintiff and issue a writ of recovery, formerly a writ of restitution.\(^12\) If the defendant appears to contest the action, the court generally will schedule a trial for another day. If the defendant appears and does not contest the action, the court will find for the plaintiff, but might stay issuance of the writ of recovery for seven days.\(^13\) In the fourth and second judicial districts,\(^14\) a housing court referee presides over the arraignment, which could include as many as fifty cases scheduled on the calendar. If a trial is necessary, the referee generally will schedule it for another day. The court may continue the trial for up to six days without consent of the parties; or, in certain circumstances, up to three months for a material witness if a bond is paid.\(^15\) The court has discretion to continue the trial longer in the interests of judicial administration and economy.\(^16\)

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7. Id. § 504B.321.
8. Id. § 504B.351.
9. Id. § 504B.335 (formerly codified at § 566.07).
11. Andrzejek v. Hall, No. C5-88-2134, 1989 WL 32486 (Minn. Ct. App. Apr. 18, 1988) (holding that the issue of trial court’s refusal to allow Defendant to present evidence of cause of disrepair and rent abatement was not preserved for appeal where Defendant did not file an answer, object, or request leave to file answer to conform to evidence).
13. Id. § 504B.345.
14. The fourth and second judicial districts include Hennepin County, with Minneapolis, and Ramsey County, with St. Paul.
16. Rice Park Prop. v. Robins, Kaplan, Miller & Ciresi, 532 N.W.2d 556, 556
The housing court rules provide for discovery. In limited circumstances, the court may require the defendant to post rent or other security as a precondition to a trial or to raising a defense, including: continuance beyond six days for lack of a material witness, a bond to cover rent, which may accrue while the action is pending, retaliatory rent increase defense, payment to the court or the plaintiff of the pre-increase rent, breach of the covenants of habitability defense, payment of withheld rent into court or in escrow, or adequate security which is more suitable, and combined actions for nonpayment of rent and breach of the lease, or no payment unless the court finds that the tenant owes rent.

It is not uncommon for the plaintiff to raise additional issues not pleaded in the complaint at the initial hearing or trial. The court should not hear such additional issues, since the summary nature of the action requires specificity in pleading, and the plaintiff may be entitled to restitution based only upon the unlawful possession alleged in the complaint.

At trial, the plaintiff has the burden of proof by preponderance of the evidence, and the defendant may raise numerous statutory and common law defenses. The parties are entitled to a full trial, and may demand a trial by jury.

(1995) (noting that trial courts have “considerable discretion” to pursue efficient judicial administration and economy).

19. Id. § 504B.285, subd. 3 (formerly codified at § 566.03).
20. Id. § 504B.161 (formerly codified at § 504.18); MINN. GEN. R. PRAC. 608 (2000); Fritz v. Warthen, 298 Minn. 54, 61-62, 213 N.W.2d 339, 343 (1973).
23. Mac-Du Prop. v. LaBresh, 392 N.W.2d 315, 318 (Minn. Ct. App. 1986) (finding that Plaintiff was not entitled to restitution because complaint was based solely on failure to pay rent); Hurt v. Johnston, No. HC-0001053513, at 13 (Minn. Dist. Ct. 4th Dist. Jan. 28, 2000) (order dismissing Plaintiff’s breach of lease claim) (denying landlord’s motion to amend complaint and dismissing action where landlord failed to attach the lease to the complaint to support a claim of breach of lease, and dismissing the landlord’s claims of breach by unsanitary conditions because tenant knew information about the landlord that was required by statute to be disclosed to the tenant was not pled with sufficient specificity).
24. MINN. STAT. § 504B.335 (formerly codified at § 566.07). In Soukup v. Molitor, Plaintiff and Defendant settled an eviction action by agreeing to dismiss
summary nature of the action does not relieve the court of the obligation to find facts specially and state separately its conclusions of law. Failure to include findings usually requires reversal, unless the decision necessarily decides all disputed facts, or the undecided issues are immaterial.  

If the tenant prevails, the landlord may not evict the tenant at this time. If the landlord prevails, the court may immediately issue a writ of recovery or stay issuance of the writ for up to seven days. The landlord then must arrange for the sheriff or police to deliver the writ, which is a 24-hour eviction notice. If the tenant does not move, the landlord must schedule an eviction of the tenant with the sheriff or police. The landlord must store the tenant’s property, either on site or with a storage company, for up to sixty days. Either party may appeal from entry of judgment within ten days of entry of judgment. If a housing court referee heard the case in the second or fourth judicial districts, a party may request district court judge review of the decision.  

An eviction judgment does not prevent the tenant from raising in another action an issue that could have been raised in the eviction action but was not raised, or was raised but later withdrawn; an issue raised in the eviction action, which the court declined to rule on, or issues of title.  

C. Creation of a Landlord-Tenant Relationship  

A landlord-tenant relationship arises when one person occupies the premises owned by another with or without consent, the action, and agreeing that if Defendant defaulted on future rental payments, Plaintiff could apply for a writ of restitution without further court action. **Soukup v. Molitor**, 409 N.W.2d 253, 254-55 (Minn. Ct. App. 1987). Plaintiff later filed another eviction action alleging nonpayment of rent, holding over after notice, and breach of the lease. The trial court entered judgment for Plaintiff without a trial. The court of appeals held that while the agreement may have waived Defendant’s right to a jury trial on the issue of nonpayment of rent, it did not waive his right to a jury trial on all issues.  

27. Id. § 504B.371 (formerly codified at § 566.07).  
29. Steinberg v. Silverman, 186 Minn. 640, 642, 244 N.W. 105, 105-06 (1932).  
in subordination to the other person’s title. The relationship is created by a conveyance of property for a period less than the conveying party has in the premises, in consideration of rent, leaving the landlord a reversionary interest. The term “lease” generally is used to refer to the physical document creating the tenancy, although it is common to refer to a tenancy created by an oral agreement as an “oral lease.” The lease is both a conveyance of the right to possession of real property and a contract creating the terms for the landlord-tenant relationship. Often the term “lease” and “tenancy” are used interchangeably to describe the relationship between the landlord and tenant. The tenant’s interest in the property is a leasehold interest. While an oral or written lease may create a tenancy, operation of law may also create a lease.

D. Types of Private Tenancies

A tenancy for a fixed term also is called a tenancy for years, and can be for any duration. Generally, during the term of the lease, the terms of the agreement cannot be changed without the consent of the parties. The landlord cannot evict the tenant unless the tenant has breached (violated) the lease. The tenant cannot terminate the lease before the end of the term without the landlord’s consent, unless a constructive eviction occurs or the tenant enters the military service and gives written notice to the landlord. If a term lease becomes void under the statute of frauds, the law will imply the creation of a tenancy at will. Upon expiration of an initial term lease, without any action by the parties to renew the lease, the parties’ continuation of the landlord-tenant relationship becomes a month-to-month tenant fee, and cannot be based on the original written lease.

A periodic tenancy is a tenancy made up of an indefinite series of rental periods, which either party may terminate by giving

34. Local Oil Co. v. City of Anoka, 303 Minn. 537, 539, 225 N.W.2d. 849, 851 (1975).
35. Sanford v. Johnson, 24 Minn. 172, 173 (1877).
written notice before the last rental period.\textsuperscript{38} A periodic tenancy also is created where a tenant of urban real estate holds over after expiration of a lease, with a period of the tenancy being the period between payments.\textsuperscript{39} In the most common form, the month-to-month tenancy, written notice must be given before the last month of the tenancy.\textsuperscript{40}

A tenancy at will has an uncertain term, and is created where the parties agree to a tenancy without a fixed term,\textsuperscript{41} where the lease is void,\textsuperscript{42} or where a tenant remains on the property after expiration or termination of the lease (holdover tenant) and continues to pay rent.\textsuperscript{43} Either party may terminate a tenancy at will in the same manner as a periodic tenancy.\textsuperscript{44}

A tenancy at sufferance describes the legal limbo which exists when a tenant holds over after expiration or termination of the lease and the landlord does not accept rent.\textsuperscript{45} It is not a true tenancy because there is no landlord-tenant relationship between the parties, but the landlord must bring an eviction action to evict the tenant.\textsuperscript{46}

\textbf{E. Domestic Partners}

Domestic partners may or may not be in a landlord-tenant relationship, and if not, an eviction action not be an appropriate forum to determine their possessory interests in the property. In \textit{Shustarich v. Fowler},\textsuperscript{47} the plaintiff and defendant first lived in the defendant’s home. Then the plaintiff and defendant moved from her home to a second property, and the parties then living at the

\begin{itemize}
\item \textsuperscript{38} MINN. STAT. § 504B.135 (2000) (formerly codified at § 504.06).
\item \textsuperscript{39} Id. § 504B.141 (formerly codified at § 504.07).
\item \textsuperscript{40} Id. § 504B.135 (formerly codified at § 504.06); Johnson v. Hamm Brewing Co., 213 Minn. 12, 16, 4 N.W.2d 778, 781 (1942); Oesterreicher v. Robertson, 187 Minn. 497, 501, 245 N.W. 825, 826 (1932). \textit{See} Markoe v. Naiditch & Sons, 303 Minn. 6, 7, 226 N.W.2d 289, 290 (1975) (holding that strict compliance is required); Eastman v. Vetter, 57 Minn. 164, 166, 58 N.W. 989, 989-90 (1894) (finding a defective notice void and not effective at end of next month).
\item \textsuperscript{41} Wiedemann v. Brown, 190 Minn. 33, 40-41, 250 N.W. 724, 727 (1933).
\item \textsuperscript{42} Hagen v. Bowers, 182 Minn. 136, 137-38, 233 N.W. 822, 823 (1930).
\item \textsuperscript{43} Paget v. Elec. Eng’g Co., 82 Minn. 244, 246, 84 N.W. 800, 801 (1901).
\item \textsuperscript{44} MINN. STAT. § 504B.135 (2000) (formerly codified at § 504.06).
\item \textsuperscript{45} Wiedemann, 190 Minn. at 40-41, 250 N.W. at 727.
\item \textsuperscript{46} MINN. STAT. § 504B.285 (2000) (formerly codified at § 566.03); \textit{id}. § 504B.301 (formerly codified at § 566.02).
\item \textsuperscript{47} No. UD 1960604520 (Minn. Dist. Ct. 4th Dist. July 5, 1996) (order denying restitution).
\end{itemize}
second property moved to Defendant’s old home. Plaintiff took title to the new property, and Defendant contributed several thousand dollars from the sale of her home to a new roof and appliances. The parties kept separate expenses. After Defendant obtained an order for protection, Plaintiff gave notice and filed an unlawful detainer action. The court concluded that Plaintiff failed to establish a landlord-tenant relationship, Defendant was entitled to assert an interest in the premises, and an unlawful detainer action was a summary remedy inappropriate to try issues of title or to substitute for an action in ejectment, and denied restitution of the premises.  

F. Implied Lease Terms

All oral and written leases include implied statutory covenants of habitability and illegal activity. When the parties have neither a written nor oral agreement of undisputed terms but act as if there is a rental agreement by continuing all the indicia of a landlord-tenant relationship, the court must determine the applicable terms by their actions and the surrounding circumstances. The landlord’s regular acceptance of a specific sum from the tenant based on the tenant’s written offer to pay that sum, and the landlord’s acceptance of it for the following eight months without any written or oral objections to it, establishes the parties’ agreement to rent at that sum. 

A new landlord takes the land with the rights and liabilities which existed between the old landlord and the tenant. The old landlord’s rights and obligations transfer over to the new landlord, if the tenant had notice of the change.

48. See In re Estate of Ericksen, 337 N.W.2d 671 (Minn. 1983). But see Stock v. Beaulieu, No. C1-95-39, at 2-3 (Minn. Dist. Ct. 9th Dist. Mar. 9, 1995) (order granting judgment for Defendant). Domestic partners were in landlord-tenant relationship. Plaintiff retaliated against Defendant for reporting a crime of domestic abuse committed by Plaintiff in which Defendant was the victim. Id.

49. MINN. STAT. § 504B.161 (2000) (formerly codified at § 504.18); id. § 504B.171 (formerly codified at § 504.181).


52. See Snortland v. Olsonowski, 307 Minn. 116, 120, 238 N.W.2d 215, 217-18
G. Statutory Definitions of Landlord and Tenants

Chapter 504B broadly defines the landlord and tenant relationship.

“Residential tenant” means a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, all other regular occupants of that dwelling unit, or a resident of a manufactured home park. 53

“Residential building” means a building used in whole or in part as a dwelling, including single family homes, multiple family units such as apartments, and structures containing both dwelling units and units used for non-dwelling purposes, and includes a manufactured home park. 54

“Landlord” means an owner of real property, a contract for deed vendee, receiver, executor, trustee, lessee, agent, or other person directly or indirectly in control of rental property. 55

Chapter 327C governs rental of lots in manufactured or mobile home parks. 56

H. Public and Subsidized Rental Housing

Tenancies in public and government subsidized housing are a hybrid of traditional periodic and fixed term tenancies. On one hand, the tenancy has an indefinite term without an expiration date. On the other hand, with some exceptions, the landlord cannot terminate the tenancy simply by giving notice; the landlord must have good cause to terminate the tenancy. 57

The tenant’s rent


53. MINN. STAT. § 504B.001, subd. 12 (2000).
54. Id. § 504B.001, subd. 11.
55. Id. § 504B.001, subd. 7.
56. A manufactured home park is land on which two or more occupied manufactured homes are located and where facilities are open for more than three seasons. Id. §§ 327C.01, subd. 5, 327.14, subd. 3. The rental agreement must be in writing and include elements required by statute. Id. § 327C.02, subd. 1. Sixty days notice is required to change any park rules. Id. § 327C.02, subd. 2. However, a rule adopted or amended after a resident initially enters into a rental agreement can be enforced against that resident only if the new or amended rule is reasonable and is not a substantial modification of the original agreement. Id. A park owner may terminate the tenancy only for cause. Id. § 327C.09.
57. See generally HUD HOUSING PROGRAMS; TENANTS’ RIGHTS (National Housing Law Project, 2d ed. 1994 and Supplements); F. FUCHS, INTRODUCTION TO HUD - PUBLIC AND SUBSIDIZED HOUSING PROGRAMS (March 5, 1993).
usually is based on a percentage of the tenant’s adjustable income. There are several categories of public and government subsidized housing, each with somewhat different rules. 

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

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

Third, and similar to the second set of programs discussed above, the Federal Low Income Housing Tax Credit program provides assistance to landlords in connection with the building, renovation, or operation of subsidized housing units. Most tenants may not know that they are in a low income housing tax credit project, because their rent may not be based on their income. The Minnesota Housing Finance Agency (MHFA), as well as redevelopment agencies in Minneapolis and St. Paul, have listings of low income housing tax credit projects. Fourth, some programs provide the tenant with a housing certificate or voucher, which allows the tenant to find a landlord willing to participate in the program. These programs include the Section 8 Existing Housing Certificate and Section 8 Voucher Programs. The housing authority sends a monthly rent subsidy to the landlord and the tenant pays the remaining share of the rent. The landlord may terminate the tenancy for serious or repeated violations of the lease; violation of federal, state, or local law which imposes an obligation on the tenant in connection with occupancy of the unit; or other good cause. Also, the housing authority can terminate the tenancy if the unit is not in compliance with its housing code.
programs, including federal Housing Quality Standards (HQS) for apartment conditions, and the requirement that the landlord notify the Section 8 Office of termination of tenancy and eviction actions.  

I. Special Relationships

Caretakers traditionally were reviewed as occupying the premises incidentally to the caretaker’s employment, and once the landlord terminated the employment, the employee who did not vacate immediately became a trespasser who could be evicted without court process. However, Chapter 504B now includes caretakers in the definition of tenant.

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

III. SUBJECT MATTER JURISDICTION

Self-help evictions are prohibited. The eviction action is a summary proceeding, created by statute, which provides an alternative to the common law ejectment action. The action is

59. See Minneapolis Public Housing Authority, RAFOwners Handbook 6-7, 10 (May 1, 1999).
60. See Lighbody v. Truelsen, 39 Minn. 310, 313, 40 N.W. 67, 68 (1888); Trustees v. Froislie, 37 Minn. 447, 449-50, 35 N.W. 216, 218 (1887).
61. Minn. Stat. § 504B.001 (2000) (formerly codified at § 566.18); see Mountainview Place Apartments v. Ford, No. 94CV1492, at 3-4 (Colo. County Ct. Mar. 24, 1994) (order granting judgment in favor of Defendant) (holding that Section 8 project tenancy was unaffected by employment agreement, and termination of employment was not good cause for eviction).
64. Minn. Stat. § 504B.301 (2000) (formerly codified at § 566.02). See Berg II.
for possession of the premises, and not for damages.\(^{65}\)

Section 504B.285 provides the most common basis for subject matter jurisdiction:

1. Holding over after sale on an execution or judgment, expiration of the redemption period following mortgage foreclosure, or termination of a contract for deed.
2. Holding over after expiration of the term of the lease.
4. Nonpayment of rent.
5. Holding over after termination of the tenancy by notice to quit.

The landlord may combine actions for nonpayment of rent and material lease violations. These claims shall be heard as alternative grounds. The hearing is bifurcated to first cover material violation of the lease, and then nonpayment of rent if the landlord does not prevail on the material lease violation claim. The tenant is not required to pay into court outstanding rent, interest, or costs to defend against the material lease violation claim. If the court reaches the nonpayment of rent claim, the tenant shall be permitted to present defenses. The tenant shall be given up to seven days to pay any rent and costs determined by the court to be due, either into court or to the landlord.\(^{66}\)

The court also has jurisdiction for the claim of unlawfully detaining the premises after having entered unlawfully, forcibly, or peaceably. Unlawful detention includes a seizure on residential rental property of contraband or a controlled substance manufactured, distributed or acquired in violation of Chapter 152 (Prohibited Drugs) and with a retail value of $100 or more, if the tenant does not have a defense.\(^{67}\)

There are some claims which are not appropriate for an eviction action. A tenant cannot bring an eviction action against the landlord who has wrongfully reentered the premises. The tenant’s remedy is provided by the lockout statute.\(^{68}\) A state court


\(^{66}\) Id. § 504B.285, subd. 5 (formerly codified at § 566.03).

\(^{67}\) Id. §§ 504B.301 (formerly codified at § 566.02); id. § 609.5317.

\(^{68}\) Id. § 504B.375 (formerly codified at § 566.175). See Berg v. Wiley, 303 Minn. 247, 250-51, 226 N.W.2d 904, 906-07 (1975) [hereinafter Berg I].
does not have jurisdiction over an eviction action involving the right of an enrolled member of an Indian tribe to possession of property held in trust for Indians by the United States.\footnote{White Earth Hous. & Redevelopment Auth. v. J.F., No. C8-91-224, at 1-2 (Minn. Dist. Ct. 9th Dist. Feb. 5, 1992) (order granting motion to dismiss); All Mission Indian Hous. Auth. v. Silvas, 680 F. Supp. 330 (C.D. Cal. 1987); 28 U.S.C. § 1360(b) (2001).}

In \textit{Rice Park Properties v. Robins, Kaplan, Miller \& Ciresi},\footnote{532 N.W.2d 556 (Minn. 1995).} the Minnesota Supreme Court decision reversed the court of appeals and affirmed the district court decision to stay an eviction action pending final disposition of a related and earlier filed declaratory judgment action commenced by the tenant.\footnote{Id.} The court’s jurisdiction is limited to determining present possessory rights of the parties, and that the trial court cannot exceed its jurisdiction by ruling on prospective issues, such as a future rent increase.\footnote{Eagan E. Ltd. P’ship v. Powers Investigations, Inc., 554 N.W. 2d 621, 621 (Minn. Ct. App. 1996).}

\section*{IV. DEFENSES TO EVICTION}

In municipal or county court, the court did not have jurisdiction to hear questions of title or equitable defenses.\footnote{Dahlberg v. Young, 231 Minn. 60, 67-68, 42 N.W.2d 570, 576 (1950).} However, the defendant could commence a separate action in district court and seek to enjoin prosecution of the eviction (unlawful detainer) action,\footnote{William Weisman Holding Co. v. Miller, 152 Minn. 330, 332, 188 N.W. 732, 733 (1922).} or remove the action to district court.\footnote{Albright v. Henry, 285 Minn. 452, 460, 174 N.W.2d 106, 110 (1970).} Unification of trial courts in the district court should have altered the above limitation.\footnote{Sternaman v. Hall, 411 N.W.2d 18, 19 n.1 (Minn. Ct. App. 1987).} But subsequent decisions have affirmed the rule, even though the rule probably was based on the jurisdictional limits of municipal and county courts, rather than an inherent jurisdictional
limitation for eviction (unlawful detainer) actions.\textsuperscript{77}

There is some confusion over whether the defendant can litigate the plaintiff’s compliance with procedural requirements of mortgage foreclosure and contract for deed cancellation statutes. The defendant clearly may raise non-compliance with statutory notice and service requirements for mortgage foreclosure and contract for deed cancellation.\textsuperscript{78} The defendant is precluded from raising ultimate legal or equitable defenses in an eviction (unlawful detainer) action.\textsuperscript{79}

\textbf{A. Lack of Personal Jurisdiction Due to Improper Service}

The summons and complaint shall be served not less than seven (7) nor more than fourteen (14) days before the initial court appearance.\textsuperscript{80} The time period excludes the date of service but includes the date of the initial hearing. Section 504B.331 provides for the methods of service: (1) by delivery to the defendants; (2) if the defendants cannot be found in the county, substituted service by delivery at the defendant’s residence, to a family member or other person of suitable age and discretion residing at the defendant’s residence; or (3) by mail and posting, if service has been attempted at least twice on different days, with at least one of the attempts between 6:00 p.m. and 10:00 p.m., and the plaintiff or counsel files an affidavit (a) stating that the defendant cannot be found, or the affiant believes that the defendant is not in the state, and (b) that a copy of the summons has been mailed to the defendant at the defendant’s last address.

\begin{itemize}
\item \textsuperscript{78} MINN. STAT. § 559.21 (2000); Enga v. Felland, 264 Minn. 67, 70-71, 117 N.W.2d 787, 789-90 (1962).
\item \textsuperscript{79} In \textit{Dahlberg v. Young}, 231 Minn. 60, 67-68, 42 N.W.2d 570, 576 (1950), the Minnesota Supreme Court made the distinction between the claim that an instrument is voidable as an equitable issue, while the claim that an instrument is void as not an equitable issue, concluding that the claim of fraud involved whether the instrument was voidable, thus it was an equitable issue that could not be raised in an unlawful detainer action. The defendant could assert that challenging compliance with procedural requirements was not an equitable issue, since it involved a determination of whether the contract for deed cancellation or mortgage foreclosure was void, rather than voidable.
\item \textsuperscript{80} MINN. STAT. §§ 504B.321 (2000) (formerly codified at § 566.05); id. § 504B.331 (formerly codified at § 566.06).
\item \textsuperscript{81} \textit{Id.} § 645.15; Township Bd. v. Lewis, 305 Minn. 488, 490-92, 234 N.W.2d 815, 817-18 (1975).
\end{itemize}
known to the plaintiff. The summons may be served by any person not named a party to the action. If the defendant is confined to a state institution, the chief executive officer at the institution must also be served. Strict compliance with service requirements is a precondition to personal jurisdiction.

General services defenses include (1) service less than seven (7) days before the initial hearing, (2) service on Sunday and legal holidays, and (3) service by a named plaintiff.

Substituted service on non-defendant defenses include (1) the defendant could be found in the county, (2) service on a person who does not reside with the defendant, (3) service on a person who is not of suitable age and discretion, and (4) service not at

83. Id. at 4.03(a).
85. Minn. Stat. § 504B.331(a)-(b) (2000) (formerly codified at § 566.06); Judge v. Rio Hot Prop., Inc., No. UD-1981202903 (Minn. Dist. Ct. 4th Dist. July 7, 1999) (order dismissing unlawful detainer action) (involving situation where service was less than seven days before the hearing).
87. Minn. R. Civ. P. 4.02 (2000); Williams v. McCrimmon, No. UD-1991207535 (Minn. Dist. Ct. 4th Dist. Dec. 17, 1999) (order dismissing action) (holding that service was improper by delivery to a person of suitable age and discretion, who lived in Iowa and was only a temporary guest of the tenant, where Plaintiff made service). In Hedlund v. Potter, No. C3-91-1542 (Minn. Dist. Ct. 10th Dist. Dec. 31, 1991) (order dismissing unlawful detainer action), the caretaker for the landlord served the tenant with the summons and complaint. The caretaker had signed the lease, and was authorized to sign leases, collect rent, maintain the premises, and receive service of process on behalf of the landlord under Minnesota Rule 4.03. The court held that service was improper.
89. Murray v. Murray, 159 Minn. 111, 113-14, 198 N.W. 307, 308 (1924). The status of a person being a resident is somewhere between something more permanent as in domicile, and something less permanent as in a visitor. O'Sell v. Peterson, 505 N.W.2d 870, 872 (Minn. Ct. App. 1999) (holding service on Defendant’s fourteen-year-old stepson who stayed with Defendant during regular and planned noncustodial visitation was service on a resident, and discussing cases in Minnesota and other states). But see Williams, No. UD-1991207535 (order dismissing unlawful detainer action) (holding that improper service by delivery to a person of suitable age and discretion who lived in Iowa and was only a temporary guest of the tenant was improper, where service on the tenant was made by the Plaintiff).
90. Minneapolis Pub. Hous. Auth. v. Kline, No. UD-1930712506 (Minn. Dist. Ct. 4th Dist. Aug. 5, 1993) (order dismissing Plaintiff’s action) (granting motion to quash writ where service was on child who did not reside on the premises); Joiner
the defendant’s residence.91

Improper substitute service by mail and posting defenses include (1) the defendant could be found in the county,92 (2) personal service was not attempted twice on different days, with at least one attempt between 6:00 p.m. and 10:00 p.m.,93 (3) the summons was mailed but not posted, or posted but not mailed,94 and (4) the plaintiff posted the summons before mailing the summons and filing the affidavit of mailing, rather than mailing the summons, filing the affidavit, and then posting the summons.95

B. Failure of the Plaintiff to Satisfy Preconditions to Recovery of the Property

1. Entitlement to Possession

The plaintiff must prove entitlement to recovery of the property.96 The action may be commenced only by the person entitled to the premises,97 or the authorized management company v. Harris, No. UD-1930712506 (Minn. Dist. Ct. 4th Dist. July 23, 1993) (order dismissing Plaintiff’s action) (dismissing for service on thirteen-year-old child who suffered from attention deficit disorder, and where affidavit of service that did not identify the person receiving service was improper).


92. Berrybill v. Healey, 89 Minn. 444, 446, 95 N.W. 314, 316 (1903).


96. A landlord who files bankruptcy, listing the premises as part of the bankruptcy estate, relinquishes control of the premises to the bankruptcy court, and does not have the right to file an eviction (unlawful detainer) action until the bankruptcy court abandons the property. Grandco Mgmt. v. Wielding, No. UD-1921202525 (Minn. Dist. Ct. 4th Dist. Dec. 16, 1993) (decision and order). In Mattice v. Judge, No. UD-1990504519 (Minn. Dist. Ct. 4th Dist. May 19, 1999) (order granting motion to dismiss), the plaintiff was a purchaser on a purchase agreement for the property, but there had been no closing on the purchase agreement, the seller had not yet conveyed a deed to the plaintiff, and the purchase agreement did not otherwise entitle the plaintiff to possession of the property prior to closing on the purchase agreement. The court concluded that the plaintiff was not entitled to current possession of the property.

97. MINN. STAT. § 504B.285, subd. 1 (2000) (formerly codified at § 566.03).
or agent for the owner of the premises. A power of authority signed by a person other than the principal must be notarized.

2. Landlord Disclosure of Address

The landlord cannot maintain an eviction (unlawful detainer) action if the names and addresses of the authorized manager of the premises and the owner or agent authorized to accept service are not disclosed as required by the statute, and such information is not known by the tenant at least thirty days before the issuance of the summons. The landlord also must plead compliance with the statute. A post office box does not comply with the statute, since it is not an address and not a place where the plaintiff can be personally served. Similarly, the landlord’s use of a commercial mailbox service, while appearing to be a street address, is not a proper address because the landlord could not be personally served there. Some local ordinances require a landlord who does not live in the local area to maintain a contact person who resides in the area. Failure to comply with such ordinances may be a violation of section 504B.181.

98. Id. § 481.02, subd. 3(13); Johnson v. Robertson, No. UD-193072254 (Minn. Dist. Ct. 4th Dist. Aug. 4, 1993) (order dismissing action) (involving situation where Plaintiff’s agent appeared without written authorization).


100. MINN. STAT. § 504B.181 (2000) (formerly codified at § 504.22); Haage v. Strong, No. UD-1911206527 (Minn. Dist. Ct. 4th Dist. Dec. 20, 1991) (order dismissing unlawful detainer action) (dismissing for landlord’s failure to give oral or written notice of his address).


104. See MINNEAPOLIS, MINN., CODE § 244.1840 (2001) (within sixteen-county metropolitan area); BROOKLYN CENTER, MINN., CODE § 12-904 (2001) (within metropolitan counties).

3. Trade Name Registration

Persons conducting a business under an assumed trade name must register the name with and disclose the name of the principals to the Secretary of State. An assumed name is a name which does not set forth the true name of every person interested in the business. The terms “person” and “true name” are defined broadly. A person conducting a business in violation of the statutes may not commence or defend against a civil action based upon contracts or transactions of the business before a certificate has been filed. All proceedings must be stayed until the certificate is filed. If the opposing party prevails in the action, the opposing party also shall be entitled to tax $250 in costs, in addition to other statutory costs. If the opposing party does not prevail in the action, the opposing party shall be entitled to deduct $250 from the judgment otherwise recoverable. 

4. Failure to State the Facts That Authorize Recovery of The Premises

The plaintiff must plead in the complaint “the facts which authorize the recovery of possession.” The complaint must set forth a legally sufficient claim for relief. The statute appears to require more than mere notice pleading used in other civil actions. This is consistent with the summary nature of eviction actions, where the defendant has little time to prepare a defense.


106. MINN. STAT. § 333.01 (2000).

107. Id. § 333.001, subds. 2, 3.

108. Id. § 333.06; Solar IV P’ship v. Sederstrom, No. UD-1980812534 (Minn. Dist. Ct. 4th Dist. Sep. 3, 1998) (order awarding relief) (awarding $250 in costs where Plaintiff registered its trade name but operated under another trade name, which was not registered); Cent. Manor Apartments v. Beckman, Nos. UD-1980609509, UD-1980513525 (Minn. Dist. Ct. 4th Dist. Aug. 6, 1998) (order denying claim for relief) (awarding tenant a setoff of $500 where landlord commenced two successive unlawful detainer actions without registering its trade name).


111. MINN. R. CIV. P. 8.01 (2000).
and possibly no opportunity for discovery. Pleading “the facts which authorize recovery” of the premises should require more than mere conclusory statements. For example, rather than state that the tenant breached the lease, the complaint should specifically allege the facts which lead to the conclusion of breach of the lease.¹¹²

5. Unauthorized Practice of Law

An authorized management company or agent may commence and conduct the action in its own name or on behalf of the owner of the property.¹¹³ The tenant or landlord may be represented by a person who is not a licensed attorney.¹¹⁴ However, except for a nonprofit corporation, a person who is not a licensed attorney-at-law shall not charge or collect a separate fee for services in representing a party.¹¹⁵ Some for profit businesses represent plaintiffs in actions and charge a separate fee for such representation. The defendant should move to dismiss the action.¹¹⁶ Corporations, limited partnerships, and limited liability companies must be represented by an attorney.¹¹⁷

¹¹² Hurt v. Johnston, No. HC-000103513 (Minn. Dist. Ct. 4th Dist. Jan. 14, 2000) (order dismissing Plaintiff’s breach of lease claim) (denying landlord’s motion to amend complaint and dismissing action where landlord failed to attach the lease to the complaint to support a claim of breach of lease, and the landlord’s claims of breach by unsanitary conditions, in that tenant knew information about the landlord required by statute to be disclosed to the tenant, were not pled with sufficient specificity); Westfalls Hous. Ltd. P’ship v. Scheer, No. C8-93-227 (Minn. Dist. Ct. 5th Dist. Nov. 30, 1993) (order granting motion for summary judgment) (dismissing for alleging only that Defendant had broken terms of lease, and termination of lease due to infraction notices).

¹¹³ Minn. Stat. § 481.02, subd. 3(12) (2000).

¹¹⁴ Id. § 481.02, subd. 3(13); see Letter from Honorable Thomas F. Haeg, 4th District Housing Court Referee, to Sherry Coates (July 13, 1994).

¹¹⁵ § 481.02, subd. 3(13).

¹¹⁶ In re Admin. of Hous. Ct. Div., C4-90-11340 (Minn. Dist. Ct. 2nd Dist. June 9, 1995) (order mandating cease and desist from unlawful detainer actions) (holding person and company that admitted that a non-attorney, non-managing agent collected fees for filing and maintaining unlawful detainer actions were prohibited from filing and maintaining such actions).

6. Failure to Follow Hennepin and Ramsey County Housing Court Rules

Housing court rules provide that in an action for holding over after termination of the lease, the plaintiff must attach a copy of the termination notice, if any, to the complaint or provide it to the defendant or defendant’s counsel at the initial appearance, unless the plaintiff does not possess a copy of the notice, or if the defendant acknowledges receipt of the notice at the hearing. Similarly, if the action is for breach of the lease, the plaintiff must attach a copy of the lease, if any, to the complaint or provide it to the defendant or defendant’s counsel at the initial appearance unless the plaintiff does not possess a copy of it. Failure to comply can result in dismissal. The plaintiff must also file the affidavit of service by 3:00 p.m. three business days before the hearing, or the matter may be stricken.

7. Failure to Provide Defendant With a Copy of the Lease Before Commencement of the Action

The landlord must provide a copy of the lease to the tenant. In actions to enforce a written lease, except for nonpayment of rent, disturbing the peace, malicious destruction of property, or violation of the state drug covenant, failure to provide a copy of the lease is a defense. A signed acknowledgment by the tenant of receipt is prima facie evidence of receipt. The landlord may overcome the defense by establishing that the tenant had actual knowledge of the provision. Some local ordinances also require the landlord to give the tenant a copy of the lease.

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Defendant’s Summary Judgment Motion) (basing decision upon landlord’s failure to give proper notice); Remas Prop. v. Student, No. UD-1940705517 (Minn. Dist. Ct. 4th Dist. July 19, 1994) (order granting motion to dismiss) (dismissing for failure to properly execute Power of Authority).

118 MINN. R. GEN. PRAC. 604(d) (2000).


122 MINNEAPOLIS, MINN., CODE § 244.280 (2001) requires the landlord to give the tenant a copy of the lease within five days after it is signed by both parties.
8. **Section 8 Existing Housing Certificate and Voucher Programs: Failure to Give Notice to the Public Housing Authority**

Under the Section 8 Existing Housing Certificate and Voucher Programs, “[t]he owner must give the HA [housing authority] a copy of any owner eviction notice to the tenant.” If the owner fails to give such notice to the housing authority, the action must be dismissed.

9. **Bankruptcy**

A landlord may not use an eviction (unlawful detainer) action to terminate the interest in a lease to property of a tenant who has filed a bankruptcy action, without first obtaining relief from the automatic stay. A landlord who files bankruptcy listing the premises as part of the bankruptcy estate relinquishes control of the premises to the bankruptcy court, and does not have the right to file an eviction action until the bankruptcy court abandons the property.

10. **Action or Claim is Premature**

When the complaint alleges an act that has not yet occurred, such as nonpayment of future rent or fees or failing to move at expiration of a notice period that has not yet expired, the action or claim should be dismissed as being premature or not ripe. The court should consider only present possessory interests of the parties.

123. 24 C.F.R. § 982.310(e)(2)(ii) (2000). “Owner eviction notice means notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action.” Id. § 982.310(e)(2)(i).


127. Eagan E. Ltd. P’ship v. Powers Investigations, Inc., 554 N.W.2d 621, 622 (Minn. Ct. App. 1996) (finding that trial court’s jurisdiction was limited to determining present possessory rights of the parties, and that the trial court exceeded its jurisdiction by ruling on prospective rent increase and attorney’s fee issues); Walters v. Demmings, No. UD-1990916517 (Minn. Dist. Ct. 4th Dist. Nov. 15, 1999) (order rescheduling for compliance hearing) (dismissing landlord’s notice to quit claim as premature, as the action was filed before the effective date.
11. Filing Case in Violation of Consumer Fraud Order

On occasion courts have found landlords fraudulently filing and prosecuting eviction and other actions in violation of state consumer protection laws, and have ordered the landlords to obtain judge approval before filing new actions.\textsuperscript{128}

C. Nonpayment of Rent Defenses

1. Breach of the Covenants of Habitability

Implied in every oral and written residential lease are three covenants or obligations of the landlord: (1) that the premises and all common areas are fit for the use intended by the parties, (2) to keep the premises in reasonable repair, except where the disrepair was caused by the willful, malicious or irresponsible conduct of the tenant or tenant’s agent, and (3) to maintain the premises in compliance with applicable state and local housing maintenance, health, and safety laws, except where the violation was caused by the willful, malicious, or irresponsible conduct of the tenant or tenant’s agent.\textsuperscript{129} The statute is to be liberally construed. The covenants of habitability and the covenant to pay rent are mutual and dependant, and all or part of the rent is not due when the landlord has breached the covenants. The defendant may raise breach of the covenants as a defense to an action for nonpayment of rent.\textsuperscript{130}

The parties may not waive or modify the covenants.\textsuperscript{131} While

\textsuperscript{128} Amsler v. Pouliot, No. UD-1970908519 (Minn. Dist. Ct. 4th Dist. Sep. 24, 1997) (order requiring the chief judge’s permission before filing unlawful detainer actions) (ordering landlord to obtain judge approval when his wife files cases on properties in which he maintains an interest).

\textsuperscript{129} MINN. STAT. § 504B.161, subd. 1 (2000) (formerly codified at § 504.18). Included in “health and safety laws” are the weather-stripping, caulking, storm window, and storm door energy efficiency standards for rental property contained, and fire extinguisher and smoke detector installation requirements. \textit{Id.} §§ 216C.27, subd. 1; 216C.30, subd. 5; 299F.361; 299F.362.

\textsuperscript{130} Fritz v. Warthen, 298 Minn. 54, 57-58, 213 N.W.2d 339, 341-42 (1973).

\textsuperscript{131} MINN. STAT. § 504B.161, subd. 1 (2000) (formerly codified at § 504.18); Greevers v. Greevers, No. UD-1950628506 (Minn. Dist. Ct. 4th Dist. July 24, 1995) (order rescheduling for compliance hearing) (finding there was no existence of an agreement by the tenant to reside in condemnable or uninhabitable premises, and that such an agreement would be contrary to public policy and in violation of state law).
the tenant may agree in writing to perform special repairs or maintenance if the agreement is supported by adequate consideration, the agreement does not waive the covenants. The tenant’s pre-rental inspection of the premises does not defeat the covenants.  A lease term stating that the tenant accepts the premises as being in excellent condition is void and contrary to public policy, where the condition of the premises violates the covenants.  

The court may require the tenant to pay withheld rent into court pending a trial on the defense. The court has the discretion to consider the circumstances in determining whether the tenant must deposit rent with the court. Where the premises have been condemned or are in condemnable condition, the defendant should be allowed to move for summary judgment without prepayment of back rent, since the value of the premises is

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133. Coleman v. Kopet, No. UD-1000211534 (Minn. Dist. Ct. 4th Dist. Mar. 8, 2000) (order granting judgment for Defendants). Adequate consideration to shift the obligation for repairs from the landlord to the tenant must be fair and reasonable under the circumstances. Id. The landlord failed to prove adequate consideration, so the landlord was responsible for making all repairs, and rent abatement of $2,925 over ten months (32%) covered by rent paid into court and credits against future rent.
134. Fritz, 298 Minn. at 61-62, 213 N.W.2d at 343 (holding that the trial court shall order the defendant to provide security in one of three ways: (1) pay into court rent to be withheld and any future rent withheld, (2) deposit such rents in escrow subject to appropriate terms and conditions, or (3) provide adequate security if such is more suitable under the circumstances). The Fritz court based the need for payment of rent or security on its concern that the plaintiff may need the rent to pay for expenses of the premises during the eviction action, and if the plaintiff prevails, the plaintiff would be harmed if the rent could not be collected and the action delayed eviction of the defendant. Id.; see MINN. GEN. R. PRAC. 608 (2000).
135. In Grandco Mgmt. v. Moore, No. UD-1920727536 (Minn. Dist. Ct. 4th Dist. Aug. 15, 1992) (order vacating portion of previous order), the referee ordered the tenant to deposit withheld rent into court, and allowing a writ of restitution to issue by default if she did not. The tenant requested judge review of the order. Id. The court concluded that the tenant’s affidavit and exhibits demonstrated the substantial likelihood of success on the merits of her defense under the covenants of habitability, the tenant was without funds and unable to make the payment ordered by the referee, and the tenant’s lack of funds was in part a direct result of the flood of other circumstances which gave rise to her defense. Id. The court concluded that no deposit was appropriate as security for the landlord, and ordered that the referee’s order be vacated regarding the deposit with the court. Id.
In some cases the court will accept a guarantee of payment of rent by an agency in lieu of payment of rent into court. Generally, if the court orders the tenant to pay rent into court and the tenant does not, the court will allow the landlord to order a writ of restitution.

The defendant has the burden of proving a violation of the covenants. Useful evidence includes reports and/or testimony of housing, health, fire, and energy inspectors; pictures; items from the premises; utilities and other bills; and lay witnesses. Tenants often submit inspection reports in habitability cases. While such documents probably comply with the public records exception to the hearsay rule, they still must be authenticated or be self-authenticating. The tenant need not prove notice to the landlord of violations of the covenants. It is not uncommon for

136. Brown v. Austin, No. UD-1000203527 (Minn. Dist. Ct. 4th Dist. Feb. 16, 2000) (order denying Defendant’s motion to dismiss) (since the tenant’s habitability defense was based on a notice of intent to condemn the property, the court would not require the tenants to deposit any rent into court).

137. Larson v. Bonacci, No. UD-970506542 (Minn. Dist. Ct. 4th Dist. Jun. 19, 1997) (order granting rent abatement) (involving guarantee of payment from Economic Assistance Department); Hemraj v. Hicks, No. UD-1970306508 (Minn. Dist. Ct. 4th Dist. Apr. 8, 1997) (order granting judgment for Plaintiff) (accepting agency guarantee of payment of the remainder by April 10 where trial was scheduled for March 28 and tenant paid half of rent into court).


139. Air quality conditions in housing which adversely affect tenant health should violate the covenants of habitability. See Denise Grady, *Perseverance is Key to a Good Life with Asthma*, N.Y. TIMES SCIENCE (Oct. 19, 1999); Sheryl Gay Stolberg, *Poor Fight Baffling Surge in Asthma*, N.Y. TIMES, NATIONAL, Oct. 18, 1999. Inadequate housing may have a significant impact on the children who live in it. Substandard housing is linked with increased asthma attacks, anemia, house fires, burns from exposed home radiators, and lost IQ points due to lead poisoning. *There’s No Place Like Home: How America’s Housing Crisis Threatens Our Children*, Boston Medical Center Housing America, at http://www.irc.org/housingamerica.


141. Gerald Snyder Rental Ass’n v. Bello, No. UD-1950117553, at 1 (Minn. Dist. Ct. 4th Dist. Mar. 15, 1995) (order affirming previous order) (declaring upon judge’s review of referee’s decision that tenant need not give written notice to the landlord of violations of covenants of habitability, regardless of provisions in the written lease); McNair v. Doub, No. UD-1960708524, at 5 (Minn. Dist. Ct. 4th Dist. Aug. 12, 1996) (order granting judgment for Plaintiff) (finding that lease did not require tenant who gave oral notice of disrepair to give written notice). The requirement for tenant remedies and rent escrow actions that the landlord
courts to take a first-hand view of the property. The district court may inspect the property, as long as it does not gather its own evidence.\textsuperscript{142}

Neither the covenants of habitability nor the Minnesota appellate courts have clearly stated what standard should be used to measure damages for violation of the covenants of habitability. The “percentage reduction in the use and enjoyment” formula is most appropriate. Under this formula, the rent is abated by a percentage amount equal to the percentage reduction in the use and enjoyment which the trier of fact determines to have been caused by the defects. “Because of the cost and impracticability of using expert testimony to establish rental value in a habitability case, the percentage reduction formula measure appears to be the one most commonly adopted in cases which have actually set damages.”\textsuperscript{143} The Tenants’ Remedies Act incorporates this standard by authorizing the court to “find the extent to which any uncorrected violations impair the tenant’s use and enjoyment of the premises contracted for and order the rent abated accordingly.”\textsuperscript{144} Minnesota trial courts generally have applied the reduced use and enjoyment standard in summary proceedings such as eviction actions.\textsuperscript{145} Where the premises have been condemned as uninhabitable or are condemnable, the present value is zero and no rent is due to the landlord.\textsuperscript{146} Unfortunately, it is not uncommon for the


\textsuperscript{144} MINN. STAT. § 504B.395 (2000).


\textsuperscript{146} Love v. Amsler, No. 87-14719 (Minn. Dist. Ct. 4th Dist. July 14, 1988) (decision and order), aff’d 441 N.W.2d 555 (Minn. Ct. App. 1989) (finding complete rent abatement for inhabitable apartment); Zeman v. Smith, Nos. UD-1840504512, UD-1840605520, at 5-6 (Henn. County Mun. Ct., July 11, 1984) (order granting unlawful detainer action for Defendant) (finding that tenant owes no rent for period prior to condemnation where premises were in condemnable condition); Hamre v. Wu, No. 797483, at 7 (Minn. Dist. Ct. 4th Dist. Jan. 26, 1983)
court to place an arbitrary limit on how far back in time the tenant can seek rent abatement. 147 Some courts have chosen not to limit retroactive rent abatement. 148 The only limitation on the rent abatement claim should be the six-year statute of limitations for claims under a contract or statute. 149 Any shorter limitation on the claim requires the tenant to litigate similar issues in two separate cases.

Courts often award both retroactive rent abatement and prospective rent abatement until the landlord complies with the covenants, sometimes with a compliance hearing scheduled, and with other relief where appropriate. 150 Some courts have increased rent abatement over time when the landlord fails to comply with court orders. 151 Since the covenants of habitability are implied into all oral and written leases, a violation of the covenants of habitability may give rise to consequential damages. The tenant may recover such consequential damages as, at the time of the making of the lease, the parties could reasonably have contemplated would result from a breach. 152 Where the tenant litigates

(order reversing municipal court order) (involving three judge appellate panel). If a landlord, agent, or person acting under the landlord’s direction or control rents out residential housing after the premises were condemned or declared unfit for human habitation, the landlord is liable to the tenant for actual damages and an amount equal to three times the amount of all money collected from the tenant, including rent and security deposits, after the date of condemnation or declaration, plus costs and attorney’s fees. Minn. Stat. § 504B.204(a) (2000) (formerly codified at § 504.245). The provisions of the statute may not be waived.

147. Larson v. Bonacci, No. UD-970506542 (Minn. Dist. Ct. 4th Dist. Jun. 18, 1997) (order granting rent abatement) (finding rent abatement claim was limited to current lease, going back five months).

148. Larson v. Anderson, No. C9-96-416 (Minn. Dist. Ct. 9th Dist. Oct. 11 & Nov. 8, 1996) (decision and order) (rent abatement of $6,910 over five years for failing to repair discharge of raw sewage on the premises; landlord’s notice to quit was in retaliation for tenant’s complaint to health department).

149. Minn. Stat. § 541.05 (2000).

150. Cedar Assoc. v. Curtis, No. UD-1970108508 (Minn. Dist. Ct. 4th Dist. May 20, 1997) (order granting rent abatement) (involving retroactive and prospective rent abatement, tenant to continue paying abated rent into court, court will release money to landlord only after verification of completion of repairs); Barger v. Behler, No. UD-1970116527, at 4 (Minn. Dist. Ct. 4th Dist. Jan. 30, 1997) (order granting rent abatement) (involving a current and prospective rent abatement where landlord was ordered to fully clean tenant’s apartment, and court directed to release rent to landlord only after verification of cleaning).


152. Poppen v. Wadleigh, 235 Minn. 400, 405, 51 N.W.2d 75, 78 (1952) (commercial lease lost profits); Force Bros. v. Gottwald, 149 Minn. 268, 272-75,
and prevails on the issue of habitability violations, the landlord
should not be awarded costs. 153

Rent escrow actions and eviction (unlawful detainer) actions
which involve the same parties must be consolidated and heard on
the dates scheduled for the eviction (unlawful detainer) action. 154
Consolidating actions also may allow the court to grant relief
beyond what it would do in the eviction action. 155

Landlords may have tort liability related to housing repair
problems. In Bills v. Willow Run I Apartments, 156 the Minnesota
Supreme Court held that an owner is not negligent per se for a
violation of the uniform building code, unless the owner knew or
should have known of the violation, the owner failed to take
reasonable steps to remedy the violation, the injury suffered was
the kind the code was intended to prevent, and the violation was
the proximate cause of the injury. While the collateral estoppel
effect of eviction litigation is limited, 157 tenants should make a
record in appropriate cases that the tenant is not litigating nor
waiving a potential tort claim. 158

183 N.W. 356, 359 (1921) (lost profits); Romer v. Topel, 414 N.W.2d 787, 788
(Minn. Ct. App. 1987), review denied (transportation and stabling of horses at
another location following collapse of a barn); Leshoure v. O’Brian, No. UD-
01000303900, at 9 (Minn. Dist. Ct. 4th Dist. May 17, 2000) (rent escrow action:
monthly rent abatement of $300 out of $850 (35%) for $3,600 over one year; $250
in consequential damages).

153. Lynch v. Hart, No. UD-1960610529, at 4 (Minn. Dist. Ct. 4th Dist. June 27,
1996) (order granting rent abatement) (holding that tenants not assessed costs
because they proved covenant of habitability violations).


(Minn. Dist. Ct. 4th Dist. Mar. 8, 2000) (order dismissing eviction action)
(involving consolidated eviction and rent escrow actions where landlord failed to
prove statutory notice to quit, notice to increase rent given November 1 was not
effective to increase rent December 1, presumption of retaliation applied to a rent
increase notice with the landlord failing to prove a non-retaliatory purpose,
habitability rent abatement of $800 over four months (38%), tenant awarded $300
in civil penalties for landlord visits without notice in which he was rude toward the
tenant and her daughter, landlord ordered to make repairs with tenants
authorized to make repairs and submit bills for court approval, landlord
restrained from harassing tenant and household members with landlord allowed
to enter only to make repairs with written twenty-four-hours notice, tenants
awarded costs, disbursements and attorney’s fees).

156. 547 N.W.2d 693 (Minn. 1996).

157. See supra notes 29-31.

158. In Judge v. Rio Hot Properties, Inc., Nos. UD-1981202903, UD-1981005518,
and UD-1981105522 (Minn. Dist. Ct. 4th Dist. Dec. 18, 1998) (orders dismissing
unlawful detainer action), the court made no findings or conclusions on tenant’s
potential tort claims as they did not litigate them in the summary proceeding.

http://open.mitchellhamline.edu/wmlr/vol28/iss1/8

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2. **Lack of a Rental License**

Some cities require landlords to have rent licenses in order to rent out property. Some courts have concluded that the landlord’s failure to obtain the rental license warranted a suspension for collection of rent until compliance. Other courts have dismissed the action for failure to obtain a license.

3. **Breach of an Express Covenant Which Creates a Condition Precedent to Payment of Rent**

In *Mac-Du Properties v. LaBresh*, a commercial lease provided that rent shall begin thirty days after the city granted an occupancy permit to the tenant and the landlord completed improvements, and that the lease was written and accepted by the parties subject to the city approving the occupancy by the tenant. The landlord did not complete the improvements, the city did not issue the permit, the tenant did not pay the rent, and the landlord filed an eviction action for nonpayment of rent. On appeal the court held that the lease created a condition precedent to the tenant’s obligation to pay rent and that the tenant did not owe rent.

4. **Notices to Increase Rent or Fees**

If the lease does not provide for increasing the rent, the landlord may not increase the rent until the lease expires, unless the tenant agrees to an increase. If the lease provides for increasing the rent with notice, the landlord must comply with the notice provision. In a month-to-month lease, the landlord should give

160. *Brown v. Owens*, No. UD-1940726506, at 6 (Minn. Dist. Ct. 4th Dist. Aug. 18, 1994) (order denying Plaintiff’s claim) (prohibiting the landlord from demanding or collecting rent from the tenant until the landlord complied with the licensing requirements). In *Peterson v. Pearson*, UD-2951204800 (Minn. Dist. Ct. 4th Dist. Feb. 12, 1996) (order allowing Defendant to redeem premises), the court ordered rent abatement until the landlord registered property under the Brooklyn Park licensing ordinance. In *Niskanen v. Fielder*, C9-96-600751, at 1 (Minn. Dist. Ct. 6th Dist. May 23, 1996) (decision and order), the court held that the landlord had entered into an illegal contract by renting unlicensed property in Duluth and could not profit from her wrongdoing.
162. *Id* at 319.
notice of the rent increase at least one month before the rent increase. Since rent often is the most significant element of the lease, increasing the rent is equivalent to terminating the present lease and entering into a new lease with a higher rent, and termination of a month-to-month lease requires written notice before the last month of the tenancy.\(^{164}\)

In a mobile home lot lease, the landlord must give sixty (60) days written notice of the rent increase, and may increase the rent only twice in any twelve (12) month period.\(^{165}\) The rent also may not be increased to pay any court or government imposed civil or criminal penalty.\(^{166}\) Only reasonable rent increases may be enforced against existing tenants.\(^{167}\)

The landlord also can waive a notice to increase rent. In *First National Realty v. Gumm*, the landlord increased the rent effective November 1, but continued to accept rent at the old amount from November through April. The court concluded that the landlord waived the right to evict the tenant for failure to pay the difference between the old rent and the new rent by continuing to accept the old amount of rent without demanding the new amount.\(^{168}\)

A landlord may not enforce a retaliatory rent increase notice. The defendant must tender to the court or the plaintiff the amount of rent due before the increase, and prove by a preponderance of the evidence that (1) the defendant, in good faith attempted to secure or enforce the defendant’s rights under the lease or federal, state, or local laws; or reported the plaintiff’s violation of any health, safety, housing, or building code or ordinance to a governmental authority, and (2) the plaintiff increased the rent or decreased service as a penalty in whole or in part for the

\(^{164}\) Grider v. Hardin, No. UD-1980501520 (Minn. Dist. Ct. 4th Dist. May 19, 1998) (decision and order denying Plaintiff’s petition for unlawful detainer with prejudice) (holding that there was no change in rent or late fees where landlord failed to give written notice); Minneapolis Pub. Hous. Auth. v. Papasodora, No. UD-1960611515 (Minn. Dist. Ct. 4th Dist. Jul. 17, 1996) (decision and order) (stating that public housing notice mailed February 29 could not be received in February and was untimely for an April 1 rent increase, and void notice could not be a basis for a future rent increase).

\(^{165}\) *Minn. Stat.*, § 327C.06 (2000).

\(^{166}\) *Id.* § 327C.06, subd. 2.

\(^{167}\) *Id.* § 327C.02, subd. 2; Pilgrim v. Crescent Lake Mobile Colony, 582 So.2d 649, 651-52 (Fla. Ct. App. 1991) (stating that rent increase fifteen to fifty-five percent above fair market rent with deteriorated conditions was unconscionable).

defendant’s protected activity.\textsuperscript{169} Some local ordinances also include protection against retaliation.\textsuperscript{170} If the defendant proves a retaliatory rent increase, the rent would remain at the pre-increase amount.\textsuperscript{171}

5. Late Fees and Other Fees

Some leases provide for an additional fee to be paid if the rent is not paid by a certain date. Some leases provide for a flat fee, while others provide for a daily fee. In leases, fees based upon a breach of the lease must be in the form of liquidated damages,\textsuperscript{172} and not an unenforceable penalty.\textsuperscript{173} Generally, liquidated damages serve as a reasonable forecast of general damages resulting from a breach.\textsuperscript{174} The controlling factor is whether the

\textsuperscript{169} MINN. STAT. § 504B.285, subd. 3 (2000) (formerly codified at § 566.03). Proving retaliation under § 504B.285 may be difficult. However, if the defendant is the only tenant who has made complaints and the only tenant whose rent was increased, a case could be made for retaliation. Proving retaliation under MINN. STAT. § 504B.441 (2000) (formerly codified at § 566.28) is considerably easier. While § 504B.285, subd. 3 does not create a presumption of retaliation in certain cases, § 504B.441 does include a presumption of retaliation if the landlord tries to evict the tenant, increase the tenant’s obligations or decrease services to the tenant within ninety days after the tenant files a complaint about a violation of a code, a violation of the covenants of habitability, or a violation of the lease. In Smith v. Brinkman, No. HC-1000124900 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2000) (decision and order dismissing eviction action), in consolidated eviction and rent escrow actions, the court held that the presumption of retaliation applied to a rent increase notice with the landlord failing to prove a non-retaliatory purpose, citing MINN. STAT. § 504B.441.

\textsuperscript{170} MINNEAPOLIS, MINN., CODE § 244.80 (2000) provides a presumption of retaliation where the landlord attempts to terminate the tenancy after the tenant complains to the inspection agency, or the tenant of City sues the landlord over housing conditions. \textit{Id.} The presumption has no time limit.

\textsuperscript{171} Line v. Reynolds, No. UD-1960612512 (Minn. Dist. Ct. 4th Dist. Aug. 12, 1996) (decision and order for defendant occupants and for rent abatement) ( consolidated eviction and rent escrow actions; tenant proved that proposed twenty-one percent rent increase was in retaliation for tenant’s complaints of repair needs, and landlord did not prove that the rent increase was based on other factors); Lundstrom v. Colglazier, No. UD-1960524502 (Minn. Dist. Ct. 4th Dist. Jun. 17, 1996) (stating that tenants proved that landlord’s proposed rent increase was in retaliation for complaints about repairs).

\textsuperscript{172} Local 34 State, County & Mun. Employees v. County of Hennepin, 310 Minn. 283, 288, 246 N.W.2d 41, 44 (1976) (stating that because the issue of damages was not raised at trial, it may not be considered on appeal however the objection to the clause appears to be without merit).


amount agreed upon is reasonable or unreasonable in light of the contract as a whole, the nature of the damages contemplated, and the surrounding circumstances, and not the intention of the parties nor their expression of intention. Where actual damages cannot be measured, liquidated damages not manifestly disproportionate to actual damages are enforceable. Where actual damages are susceptible of definite measurement, an amount greatly disproportionate is an unenforceable penalty. The actual damages for late payment of rent may be measured without difficulty: the legal rate of interest plus the actual costs caused by the late payment. Liquidated damages cannot be recovered if they are not provided for in the lease. Minnesota courts have found certain late fee provisions to be unenforceable penalties. Like other lease provisions, late fees can be waived.


176. Gorco, 256 Minn. at 482-83, 99 N.W.2d at 75.


178. Cook v. Finch, 19 Minn. 407, 413, 19 Minn. (Gil.) 350, 358 (1872).

179. Cherrier v. Harper, No. UD-1940113508, at 2 (Minn. Dist. Ct. 4th Dist. Feb. 4, 1994) (decision and order for Plaintiff and writ of restitution issued subject to Defendant’s right of redemption) (stating that late charge of $15 if rent was more than one day late and $20 after two days was an unenforceable penalty); Central Cnty. Hous. Trust v. Anderson, No. UD-1900611534 at 3 (Minn. Dist. Ct. 4th Dist. July 6, 1990) (order denying Plaintiff’s unlawful detainer action) (stating that $20 late fee bore no relation to cost of landlord’s preparation of form notice and slipping the notice under the tenant’s door, triggering the tenant’s prompt action in paying the rent, where government subsidized housing involved); Larson v. Cooper, No. UD-1880209557, at 8 (Minn. Dist. Ct. 4th Dist. Mar. 21, 1988) (order abating Defendant’s rent because of breach in covenant of habitability) (stating that $10 per day late fee was an unenforceable penalty). But see 606 Vandalia P’ship v. JLT Mobil Bldg. Ltd. P’ship, No. CS-99-1725 (Minn. Ct. App. Apr. 25, 2000) (affirming district court conclusions that commercial late fee was a proper liquidated damage and not an unenforceable penalty or unconscionable provision).

180. Chaska Vill. Townhouses & Lifestyle, Inc. v. Edberg, No. 91-27365, at 3 (Minn. Dist. Ct. 1st Dist. Apr. 1, 1991) (order denying Plaintiff’s unlawful detainer action) (deciding that Plaintiff induced Defendant to believe that late rental payments would continue to be accepted without consequences).

181. Cent. Manor Apartments v. Beckman, No. UD-1980513525, at 3 (Minn. Dist. Ct. 4th Dist. May 27, 1998) (order denying Plaintiff’s unlawful detainer action) (“When a tenant withholds rent due to habitability issues which are then proven by the tenant, fees for late payment of rent are not due for the month a
Rules for late fees in public and subsidized housing vary from program to program.  

6. Public and Government Subsidized Housing

Notice requirements vary depending on the program. In government subsidized housing projects and public housing the landlord must give written notice before commencement of an eviction (unlawful detainer) action for nonpayment of rent. Even if the tenant did not pay the rent, the tenant may argue that nonpayment of rent is simply a *prima facie* cause for termination of the lease, and that the tenant may rebut the showing that nonpayment was occasioned by circumstances beyond the tenant’s control, the tenant notified the landlord of this, and the tenant made a diligent effort to pay when the tenant was able.

In the Section 8 Existing Housing Certificate and Voucher Programs, the landlord may not require the tenant to pay tenant withheld rent. Assessing a late fee would frustrate the tenant’s right to withhold rent to remedy habitability problems, and is contrary to public policy.”).  

182. In most government subsidized housing projects, the landlord may not evict the tenant for not paying late fees. HUD HANDBOOK NO. 4350.3, ¶ 4-15(d) (1992). This provision does not apply to Section 202 Elderly Handicap Housing Projects receiving Section 8 or Rent Supplement assistance. In the two subsidized housing project programs not covered by HUD Handbook No. 4350.3, the Section 8 Moderate Rehabilitation and Project-Based Certificate Assistance Program, the regulations do not provide for late fees or other charges in addition to rent. 24 C.F.R. §§ 882.401, -.403-.405, -.405,-.405 (2000). In the Section 8 Existing Housing Certificate and Voucher Programs, the regulations only provide for late fees payable by the housing authority for late subsidy payments, and do not provide for tenant late fees. *Id.* § 982.451. In public housing, the fees must be reasonable. *Id.* § 966.4(b)(3). In mobile home park lot tenancies, the arrearage may not include any fees other than those specified in the statute. M I N N. S T AT. §§ 327C.03 (certain fees for installation and removal of the home, late rent, pets, maintenance, and security deposits); 327C.10, subd. 1 (stating that a violation of § 327C.03 is a valid defense for the failure to pay rent) (2000). See Hedlund v. Davis, No. C1-91-1687 (Minn. Dist. Ct. 10th Dist. Dec. 31, 1991) (order denying Plaintiff’s eviction action and fee request) (involving improper maintenance charges because no written notice was provided, pursuant to the lease); Allison v. Sherburne County Mobile Home Park, 475 N.W.2d 501, 503 (Minn. Ct. App. 1991) (stating that park owner may charge electricity service fee identical to fee residents would have to pay to public utility, even if the fee exceeds the cost to the park owner).

183. See infra notes 277-97 and accompanying text.

additional fees or rents not approved by the housing authority.\textsuperscript{185}
Since the tenant is only responsible for the tenant’s share of the
rent, the landlord may not recover from the tenant government
subsidies withheld by the housing authority for the landlord’s
failure to keep the apartment in reasonable repair.\textsuperscript{186}

In public and subsidized housing projects where the landlord
calculates the tenant’s rent based upon the tenant’s income, the
landlord may not evict the tenant based on improper rent
assessments by the landlord.\textsuperscript{187}

7. Waiver of Rent Due by Accepting Partial Payment

The landlord and tenant can agree only in writing that partial
payment of rent, accepted by the landlord before issuance of the

\textsuperscript{185} Hwang v. Jones, No. UD-1960319526 (Minn. Dist. Ct. 4th Dist. Apr. 4.
1996) (order granting termination of Section 8 tenancy) (involving Section 8
certificate where landlord cannot charge any rent, extra deposit, extra fees, or
other extra costs not approved in writing by the public housing authority).

\textsuperscript{186} 24 C.F.R. §§ 982.310(b), .451(b)(4); Mattson v. Harmon, No. UD-
1961203552, at 7-9 (Minn. Dist. Ct. 4th Dist. Jan. 29, 1997) (order granting
Plaintiff’s judgment for restitution of the premises subject to tenant’s right to
redeem) (holding tenant not responsible for rent subsidy withheld by housing
authority which is not due to tenant’s conduct; landlord cannot require tenant to
pay full rent or evict tenant for failing to pay full rent, and landlord bound by
housing authority’s reinstatement of contract); Wiley v. Flax, No. UD-1961107516,
at 2 (Minn. Dist. Ct. 4th Dist. Nov. 25, 1996) (order denying Plaintiff’s unlawful
detainer action) (stating landlord only could enforce Section 8 approved lease,
and could not enforce contradictory private lease for a higher rent or a
subsequent side agreement for still higher rent and change in responsibility for
utilities).

\textsuperscript{187} HUD HANDBOOK NO. 4350.3, Chs. 3, 5; Innsbruck Ltd. P’ship v. Askvig,
No. C5-95-0604, at 6-7 (Minn. Dist. Ct. 3rd Dist. Apr. 19, 1995) (order granting
Defendant tenant possession) (finding that tenant did not under-report income
and paid too little rent, since tenant could pool income and expenses from both
10th Dist. Sep. 14, 1998) (order dismissing Plaintiff’s unlawful detainer action),
the subsidized housing project sent a letter to the tenant retroactively terminating
the subsidy, claiming that another person was living with her in violation of the
lease. \textit{Id.} at 3. The tenant claimed that the person was a guest and not a resident,
and provided documentation. \textit{Id.} at 2. The landlord did not give the required ten
day notice to remove the subsidy, or the thirty day notice to terminate the lease.
\textit{Id.} at 4. The court concluded that the landlord had not proven that the tenant
violated the lease, the landlord failed to comply with regulations in increasing the
tenant’s rent, and failure to provide proper notice prevented the landlord from
removing the tenant’s rent subsidy. \textit{Id.} The court dismissed the action and
ordered that the landlord immediately reinstate the tenant’s rent subsidy, and that
if the subsidy was not available, the landlord must credit the tenant’s rent in the
same amount. \textit{Id.}
order for the writ of restitution, may be applied to the balance due and does not waive the landlord’s action for possession based on nonpayment of rent. Acceptance of a partial payment of rent without a written agreement waives the eviction action based on the remaining rent due. A provision in a lease purporting to be a non-waiver clause might not cover part payment of rent.

8. When and How Much Rent is Due

The plaintiff must prove that rent is due by the preponderance of the evidence. Where the landlord claims rent due, the tenant claims rent was paid, and the landlord has no business records to support the claim, the landlord may not have proven that the rent is due. Where the parties have agreed to a rent credit, the court should enforce the credit. The parties may agree to rent payments in installments. Where the lease and the custom of the parties do not indicate when the rent is due, the rent may not be

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188. Minn. Stat. § 504B.291, subd. 1(c) (2000).
190. Wirth Cos. v. Victor, No. UD-1931108551, at 2 (Minn. Dist. Ct. 4th Dist. Nov. 30, 1993) (order dismissing the plaintiff’s unlawful detainer action) (finding that a landlord may satisfy the requirement for a written agreement stating that part payment of rent does not waive eviction with a provision in the lease, but a non-waiver clause directed at non-financial breaches does not include part payment of rent).
192. Ricke v. Villebrun, No. UD-1961112566, at 2-3 (Minn. Dist. Ct. 4th Dist. Dec. 5, 1996) (order denying unlawful detainer action and awarding Defendant rent abatement) (concluding that landlord did not prove rent was due by a preponderance of the evidence where landlord failed to provide business records).
due until the end of the term. When the parties have neither a written nor oral agreement of undisputed terms but act as if there is a rental agreement by continuing all the indicia of a landlord-tenant relationship, the court must determine the applicable terms by their actions and the surrounding circumstances. The landlord’s regular acceptance of a specific sum from the tenant based on the tenant’s written offer to pay that sum, and the landlord’s acceptance of it for the following eight months without any written or oral objections to it, establishes the parties’ agreement to rent at that sum.

9. Utilities

Utilities and other charges may be considered rent, entitling defendant to redeem the premises by paying the amount due. Where the landlord claims that the tenant owes money on utility bills, but the account was in the landlord’s name and the landlord has not given the tenant copies of the bills, the court should order the landlord to give the tenant the bills, and give the tenant time to make arrangements to pay them.

Landlords generally must be the customer of record and responsible bill payer for shared meters, in which utility services are provided to a residential building with a single meter providing service to an individual unit and all or parts of the common areas or other units. The landlord must advise the utility provider about the status of the building. This requirement may not be waived by contract or other method. The statute does not require the landlord to contract and pay for utility service provided to each residential unit through separate meters which accurately measure

Before the year 2000, a landlord using shared meters who wanted to shift the burden of paying for utilities to the tenant had two options: (1) calculate past usage and factor it into the rent, or (2) install separate and accurate meters. The landlord could not simply pay the utility bill and then rebill the tenant. In 2000 the Minnesota Legislature revised Section 504B.215 to allow a landlord in narrowly prescribed circumstances to apportion a shared meter bill among residential tenants. Shared meters are common in duplex units. Even where there are meters for each unit, one meter may be covering the common areas.

199. Minn. Stat. § 504B.215, subd. 2 (2000) (formerly codified at § 504.185). The landlord’s failure to comply with the statute is a violation of the covenant of habitability in section 504B.161, subd. 1(a) (2000) (formerly codified at § 504.18), and section 504B.221 (2000) (formerly codified at § 504.26). Id. The reference to the covenants of habitability should make it clear that a tenant is entitled to rent abatement when the tenant is forced to pay for utility service through a single meter which does not reflect the use in the tenant’s apartment. Amsler v. Wright, No. UD-1960502510, at 8 (Minn. Dist. Ct. 4th Dist. May 30, 1996) (order granting possession to Defendant tenant) (finding landlord responsible for all utilities services that do not separately and accurately measure the tenant’s sole use of utilities).


201. 2000 Minn. Laws, ch. 268 (codified as amended at Minn. Stat. § 504B.215 (2000)). The revision became effective August 1, 2000, and is retroactive to August 1, 1995, only for leases that already included a provision for apportioning shared meter utility charges where no judicial or administrative court had rendered a decision. The amended statute provides the conditions under which a landlord of a single-metered residential building may apportion bills among tenants. The landlord must provide prospective tenants with notice of the total utility cost for the building for each month of the most recent calendar year. The landlord must state in writing an equitable method of apportionment and the frequency billing by the landlord. The lease must contain a provision that upon a tenant’s request, the landlord must provide a copy of the actual utility bill for the building along with each apportioned utility bill. Upon a tenant’s request, the landlord must also provide past copies of actual utility bills for any period of the tenancy for which the tenant received an apportioned utility bill for the proceeding two years or the period since the landlord acquired the building, whichever is less. The landlord and tenant may agree to use a lease term of one year or more with the option to pay bills under an annualized budget plan providing for level monthly payments based on a good faith estimate of the annual bill. By September 30 of each year, the landlord must inform tenants in writing of the possible availability of energy assistance, including the toll-free telephone number of the administering agency. Minn. Stat. § 504B.215, subd. 2a (2000).

A landlord may not unlawfully terminate or interrupt utility service to the tenant.\footnote{In Washington \textit{v.} Okoiye, the court consolidated eviction and emergency tenant remedies actions, and awarded $100 for rent abatement for water shutoff and $500 in utility termination damages, among other abatements.\footnote{No. UD-1981029901, at 4 (Minn. Dist. Ct. 4th Dist. Oct. 8, 1999) (order denying unlawful detainer action); see also Okoiye \textit{v.} Washington, No. UD-1981029901, at 4 (Minn. Dist. Ct. 4th Dist. Nov. 20, 1998).}} A tenant can seek rent abatement for the tenant’s payment of utility or essential services owed by the landlord where the utility threatens service termination. When a municipality or company supplying home heating oil, propane, natural gas, electricity, or water to residential housing has disconnected service or has given notice to disconnect service because the landlord who has contracted for the service has failed to pay for it, the tenant may pay to have the service reconnected. Before paying for the service, the tenant must give the landlord or landlord’s agent oral or written notice of the tenant’s intent to pay the bill after forty-eight hours, or a shorter period if reasonable under the circumstances, if the owner does not pay for the service. If the notice is oral, the tenant must mail or deliver written notice within twenty-four hours after giving the oral notice. If natural gas, electricity, or water have been discontinued or if the landlord has not paid the bill after notice by the tenant, the tenant may pay the outstanding bill for the most recent billing period if the company or municipality will restore the service for at least one billing period. If home heating oil or propane has been discontinued or if the landlord has not paid the bill after the tenant’s notice, the tenant may order and pay for one month’s supply of a proper grade and quality of oil or propane. The tenant’s payment to the company or municipality is considered payment of rent to the landlord, and the tenant may deduct the payment to the company or municipality from the next rent payment to the landlord.\footnote{Minn. Stat. § 504B.215, subd. 3 (2000) (formerly codified at § 504.185); Minn. Stat. § 504B.221 (2000) (formerly codified at § 504.26). Remedies may include an order for restoration of service, rent abatement, statutory damages of the greater of treble actual damages or $500, and attorney fees.}} City ordinances also may allow the
10. Redemption

An eviction action based upon nonpayment of rent is equivalent to a demand for rent. “The tenant may, at any time before possession has been delivered, redeem the tenancy and be restored to possession by paying to the landlord or court the amount of the rent that is in arrears, with interest, bringing to costs of the action, and an attorney’s fee not to exceed $5, and by performing any other covenants of the lease.” The statute restricts the landlord’s right to restitution of the premises. The right of redemption exists “until a court has issued an order dispos- sweeping the tenant and permitting reentry by the landlord,” or meaning until the court signs the order restoring the premises to the landlord. Waiver of the right of redemption requires clear

Moore v. Shelly, No. UD-1980619500 (Minn. Dist. Ct. 4th Dist. July 8, 1998) (order denying unlawful detainer action) (providing credit against rent for tenant payment after notice of $1,086 for water and gas services). The tenant’s rights under the statute do not apply to conditions caused by the willful, malicious, or negligent conduct of the tenant or tenant’s agent; may not be waived or modified; and are an addition to and do not limit other rights available to the tenant, including the right to damages. MN. STAT. § 504B.215, subd. 4.

206. MINNEAPOLIS, MINN., CODE § 244.590 (2001).

207. MINN. STAT. § 504B.291, subd. 1 (2000) (formerly codified at § 504.02).


209. Id. at 397, 211 N.W.2d at 894.


The court may permit a tenant who wants to redeem and has already paid or brought into court all of the rent in arrears, but is unable to pay the statutory interest, attorney’s fees and costs, to pay these additional amounts in the period when the court otherwise stays issuance of the writ of recovery, MINN. STAT. § 504B.291, subd. 1(b) (2000) (formerly codified at § 504.02). The court also may deny restitution of the premises, conditioned on the defendant’s payment of the arrearage within a specific time. In 614 Co., the court affirmed trial court orders allowing commercial tenant one month to pay amounts in default. 614 Co., 297 Minn. at 396, 211 N.W.2d at 893, affirming First and Secondary Interlocutory Orders, No. 204678 (Minn. Dist. Ct. 2d Dist. Apr. 22 and July 9, 1972). See Schaapveld v. Crump, No. UD-1951011528, at 5-6 (Minn. Dist. Ct. 4th Dist. Oct. 31, 1995) (order denying unlawful detainer and abating rent) (providing assurance of payment, given one month to pay portion of rent due, and tenant given two weeks from date of hearing to pay balance).

If the court allows the tenant to redeem but the tenant fails to do so, the
and convincing evidence of such intent so as to override judicial abhorrence of forfeiture.\footnote{211} A lease requirement waiving the tenant’s right to the eviction (unlawful detainer) process and the right to redeem the premises is void as a violation of public policy.\footnote{212}

A separate statute governs redemption in mobile home park lot rentals. The tenant may redeem only twice in any twelve-month period, unless the tenant pays the landlord’s actual reasonable

court can consider whether the tenant made a good faith effort. In \textit{Huntington Place v. Scott}, No. UD-1980409509, at 3-4 (Minn. Dist. Ct. 4th Dist. Apr. 30, 1998) (partial transcript), the court ordered the tenant to pay rent that day. The tenant contacted county emergency assistance that day, which agreed to make payment but did not accomplish it that day. The court concluded that the tenant made a good faith effort to redeem, and in fact redeemed, and ordered the judgment and writ vacated. \textit{Id.}

The redemption statute limits attorney fees not exceeding $5. \textsc{Minn. Stat.} \textsc{§ 504B.291, subd. 1(a)} (2000) (formerly codified at \textsc{§ 504.02}). In a commercial case where the lease provided for attorney’s fees in an action based upon breach of the lease, the trial court’s denial of restitution conditioned upon payment of rent, interest, and attorney’s fees was upheld. \textit{614 Co., 297 Minn. at 398-99, 211 N.W.2d at 894}. However, in \textit{Cheyenne Land Co. v. Wilde}, the court of appeals affirmed the trial court’s decision that the statutory limitation of $5 in attorney’s fees governs residential cases. \textit{463 N.W.2d 539 (Minn. Ct. App. 1990)}; \textit{Cityview Coop. v. Marshall, No. C6-99-968, 2000 WL 16334 (Minn. Ct. App. Jan. 11, 2000)} (holding that $5 attorney’s fee limit applied to cooperative which chose landlord-tenant law to govern the relationship and the eviction action as a remedy).

The right to redeem may be limited in month-to-month tenancies. In \textit{University Community Prop. v. New Riverside Cafe}, the Minnesota Supreme Court held that the right of redemption was unavailable to periodic tenants, including month-to-month tenants. \textit{268 N.W.2d 573 (Minn. 1978)}; \textit{see also} \textit{Birk v. Lane, 354 N.W.2d 594, 596-98 (Minn. Ct. App. 1984)}. However, \textit{New Riverside Cafe} should be read narrowly and not applied to residential tenancies. In \textit{New Riverside Cafe}, the tenancy was a commercial tenancy. \textit{268 N.W.2d at 574}. The plaintiff served a fourteen day notice under \textsc{Minn. Stat.} \textsc{§ 504B.135} (2000) (formerly adopted at \textsc{§ 504.06}), and thus the defendant could have paid the rent during this period. \textit{New Riverside Cafe, 268 N.W.2d at 574}. Usually, the summons and complaint is the first notice that the defendant receives and it serves as a demand for rent. \textsc{Minn. Stat.} \textsc{§ 504B.291} (2000) (formerly codified at \textsc{§ 504.02}). The Defendants attempted redemption after the trial. \textit{New Riverside Cafe, 268 N.W.2d at 574}. In \textit{Stevens Court v. Steinberg}, Nos. UD-92932, UD-92480, UD-92483 (Henn. Cty. Mun. Ct., Aug. 30, 1978), the court distinguished \textit{New Riverside Cafe} on the above grounds, noting that the supreme court did not intend to disenfranchise the majority of tenants in the state. \textit{Id.}

\footnote{211} \textit{614 Co., 297 Minn. at 398, 211 N.W.2d at 894}; \textit{Soukup v. Molitor, 409 N.W.2d 253, 256-57 (Minn. Ct. App. 1987)}.

\footnote{212} \textit{Duling Optical Corp. v. First Union Mgmt., Inc., No. C5-95-2718 (Minn. Ct. App. Aug. 13, 1996)}. 

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attorney’s fees for each additional redemption. 213

11. Violation of Tenant Privacy and Security

A landlord may enter the tenant’s premises only for a reasonable business purpose and after making a good faith effort to give the tenant reasonable notice under the circumstances. 214 A tenant may not waive, and the landlord may not require the tenant to waive, the tenant’s right to prior notice. 215 The statute sets out several reasonable business purposes for landlord entry, 216 and several exceptions to the notice requirement. 217 If the landlord substantially violates the statute, the tenant may use a tenants’ remedies action or emergency tenants’ remedies action to enforce the statute and ask for a rent reduction, full rescission of the lease, recovery of any damage deposit less amounts retained under the damage deposit statute, and up to a $100 civil penalty. 218 The statute does not provide for enforcement through an eviction (unlawful detainer) action defense. 219 However, the tenant can raise the issue when an eviction action is consolidated with a rent escrow or tenant remedies action. 220 Some local ordinances contain

213. MINN. STAT. § 327C.11, subd. 1 (2000). In Kjellbergs, Inc. v. Herrera, No. CX-98-0363 (Minn. Dist. Ct. 10th Dist. Mar. 11, 1998) (decision and order), the mobile home park lot owner brought an eviction action for nonpayment of rent. The tenant, who did not speak English and was unfamiliar with the court system, waited in the hallway for his case to be called and defaulted. Id. The tenant moved to vacate the default judgment. The landlord claimed that, as a month-to-month tenant, the tenant did not have the right to redeem, so the motion should be denied, Id. (citing New Riverside Cafe, 268 N.W.2d 573). The court concluded that the tenant defaulted due to excusable neglect, and that the tenant had the right to redeem the property. Id. The court distinguished New Riverside Cafe, noting that the New Riverside Cafe court concluded that redemption would be negligible in a month-to-month tenancy at will as the lease could be terminated on one month’s notice, while in this case, the landlord could terminate the lease only for cause and with proper notice. Id.
214. MINN. STAT § 504B.221, subd. 2 (2000).
215. Id.
216. Id. § 504B.211, subd. 3.
217. Id. § 504B.211, subd. 4.
218. Id. § 504B.211, subd. 6 (referencing §§ 504B, 386, 395).
219. MINN. STAT. § 504B.211, subd. 2 (2000) (formerly codified at § 504.183).
220. Smith v. Brinkman, No. HC-1000124900, at 4 (Minn. Dist. Ct. 4th Dist. Mar. 9, 2000) (order dismissing the eviction action). In consolidated eviction and rent escrow actions, the court awarded $300 in civil penalties for landlord visits without notice in which he was rude toward the tenant and her daughter; landlord restrained from harassing tenant and household members with landlord allowed to enter only to make repairs with written twenty-four hour notice. Tenants awarded costs, disbursements and attorney’s fees. Id.
similar protections.  

12. Landlords’ Actual, or Acquiescence in, Unlawful Activities

In 1997 the drug covenant which then only applied to tenants was expanded to cover landlords as well as tenants. Now, both the tenant and the landlord, as well as the licensor and licensee, covenant that neither will (1) unlawfully allow illegal drugs on the premises, the common area or curtilage, (2) allow prostitution or prostitution-related activity to occur in the premises, common area or curtilage, or (3) allow the unlawful use or possession of certain firearms in the premises, common area, or curtilage. The parties also covenant that the common area and curtilage will not be used by them or persons acting under their control to carry out activities in violation of illegal drug laws. While the tenant can enforce the covenant in a tenant remedies, rent escrow, or emergency action, a landlord’s violation of the covenant may give rise to defenses in nonpayment of rent cases.

221. See, e.g., MINNEAPOLIS, MINN., CODE § 244.285 (2001).
222. MINN. STAT. § 504.181 (2000), amended by 1997 Minn. Laws, ch. 239, Art. 12, § 4 (currently codified at § 504B.171). Neither of the drug covenants is violated if someone other than one of these parties possesses or allows illegal drugs on the property, unless the party knew or had reason to know of the activity. The Legislature did not extend this part of the statute to the prostitution and firearms covenants. It is unclear whether that was intention or a drafting oversight. However, the fact that each of the covenants uses the word “allow” suggests that the test for liability is whether the party was directly involved or acquiesced in the conduct of others.
223. In a nonpayment of rent case, the tenant should have the remedy of rent abatement that is available for a landlord’s violation of the only other implied lease covenants, the covenants of habitability under section 504B.161 (formerly codified at § 504.18). The covenants are similar in that they deal with basic issues of safety and security. The Legislature has created the same enforcement mechanisms for them in the tenant remedies statutes, which also are part of the eviction chapter. Even before full extension of the covenants to landlords, the tenant could claim that the landlord’s failure to remove unlawful activities from the building violated the tenant’s right to quiet enjoyment. Ricke v. Villebrun, No. UD-196112566, at 4-5 (Minn. Dist. Ct. 4th Dist. Dec. 5, 1996) (order denying Plaintiff’s unlawful detainer action and awarding Defendant a rent abatement) (stating every lease contains right of quiet enjoyment, landlord’s failure to remove known risk created by illegal drug activity violated covenant of quiet enjoyment, and landlord ordered to notify court of immediate and continuing steps to enforce right to quiet enjoyment and tenants may pay rent into court if landlord does not).
13. Fair Debt Collection Practices Act Defenses

An eviction action “is equivalent to a demand for the rent and a reentry upon the property” and gives rise to the tenant’s right to redeem the property. The Fair Debt Collection Practices Act (FDCPA), applies to some eviction actions for nonpayment of rent. The Act applies to debt collectors, including attorneys who regularly engage in debt collection, collection agencies, creditors collecting for third parties, and creditors collecting under the name of another, but do not include an officer or employee of the creditor collecting in the name of the creditor. While the Act does not apply to landlords, their employees, or managing agents for landlords, it does apply to attorneys who regularly engage in debt collection, and landlord agents who do not manage the property and regularly collect debts or commence eviction actions for nonpayment of rent. If the debt collector’s initial communication is a written notice for nonpayment of rent, as opposed to a pleading for nonpayment of rent, the notice must state what is often called the “mini-Miranda warning”: “that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.” Section 1692g(a) adds:

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing . . . .

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; [and]

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector . . . .

226. Id. § 1692a(6).
227. Id. § 1692c(11).
If the debt collector’s initial communication is a pleading for nonpayment of rent, the “mini-Miranda warning” does not apply, but the Section 1692g(a) notice and protections still apply. If within thirty days of receiving the required notice, the consumer disputes the debt or requests verification of the debt or the name of the original creditor, the collector must stop collection activity until the information is provided in writing.\textsuperscript{228} Violation of the Act can create liability for actual damages, additional damages up to $1,000, and costs and attorney fees.\textsuperscript{229}

While the Act has been applied to eviction cases outside Minnesota, there are no reported Minnesota decisions on the issue.\textsuperscript{230} In Minnesota, most nonpayment of rent eviction actions do not require notice before commencing the action, and few landlords voluntarily give such notice. However, notice is required in most public and subsidized housing programs, and in mobile home park lot tenancies. Violations of the Act in the required pre-commencement notice should result in dismissal, as in the New York cases, as the notice violates federal law. In eviction actions where no advance notice is given, the court also should dismiss the action if the plaintiff does not provide the Section 1692g(a) notice. Where the plaintiff complies with the notice provisions, if the tenant disputes the debt or requests verification of the debt or the name of the original creditor, the court should continue the hearing until the information is provided in writing. In most cases, it should take the collector little time to supply the information.

\Large{14. Joint Liability Only if Provided in Lease}

Many housing attorneys, including the author, have interpreted state law as requiring joint liability among co-tenants.

\textsuperscript{228} Id. § 1692g(b).
\textsuperscript{229} Id. § 1692k(a).
\textsuperscript{230} In \textit{Romea v. Heiberger & Assocs.}, the landlord’s attorneys gave the state required nonpayment of rent notice and then commenced an eviction action. 163 F.3d 111, 116 (2d Cir. 1998). The tenant sued in federal court in New York, challenging the notice under the Act. The attorneys moved to dismiss. The district court denied the motion, holding that the FDCPA applied to the attorney’s letter. The Second Circuit affirmed, holding that back rent was “debt” within meaning of FDCPA, the notice was a “communication” to collect a debt, within meaning of FDCPA, and the attorneys were acting as “debt collectors” for FDCPA purposes. \textit{Id.}

That may not be the case. The statute states:

Every person in possession of land out of which any rent is due, whether it was originally demised in fee, or for any other estate of freehold or for any term of years, shall be liable for the amount or proportion of rent due from the land in possession, although it be only a part of the land originally demised. Such rent may be recovered in a civil action, and the deed, demise, or other instrument showing the provisions of the lease may be used in evidence by either party to prove the amount due from the defendant. Nothing herein contained shall deprive landlords of any other legal remedy for the recovery of rent, whether secured to them by their leases or provided by law.\textsuperscript{231}

The case law indicates that the statute, which was based on a Massachusetts statute, did not create new liability between tenants and landlord, but did protect the landlord from losing the right to collect rent where the tenant assigned his/her interest to two or more persons.\textsuperscript{232} Under Minnesota Statute section 504B.311, (1) each tenant or assignee is liable only for the reasonable value of her physical share of the property, unless the lease creates joint liability, and (2) each tenant or assignee is liable only for the time he occupies the property, unless the lease creates liability past the date occupancy ends.\textsuperscript{233}

\section{D. Holding Over After Notice to Quit Defenses}

\subsection{1. Improper Notice to Quit}

A tenant can terminate a month-to-month tenancy by giving written notice before the last month of the tenancy.\textsuperscript{234} Notice must be served (and received) before the first day of the month in which the tenancy is to terminate.\textsuperscript{235} The notice must state a termination
date before rent is due. If the notice states the date on which rent is due, then the tenancy would start another month, and would not be terminated.236 Strict compliance is required.237 A defective notice is void, and does not become effective at the end of the next month.

Term leases may provide for notice to terminate the lease before the end of the term. Failure to give the notice requires dismissal.238 Some leases do not grant the landlord the right to terminate the lease by notice without cause.239

When there is a tenancy for property that has changed ownership following a contract for deed cancellation or mortgage foreclosure, termination of the tenancy requires one month written notice. The tenant must be given one month’s written notice (1) to vacate no sooner than one month after the date the redemption or termination period expires, or (2) to vacate no later than the date when the redemption or termination period expires. If the second option requiring the earlier vacate date is chosen, the notice must state that the sender of the notice will hold the tenant harmless if the tenant breaches the lease by vacating before the end of the redemption period and the mortgage is subsequently redeemed.240

12, 1999) (decision and order) (finding notice must be actually received before October 1 to terminate lease at the end of October, and also finding notice to quit sent by registered mail on September 29 resulting in failed deliveries on October 1 and October 6 was untimely).

236. See Osterreicher, 187 Minn. at 501, 245 N.W. at 826.


239. Osuji v. Coleman, No. HC-01991118524, at 2 (Minn. Dist. Ct. 4th Dist. Nov. 30, 1999) (order dismissing action) (involving situation where landlord failed to provide written notice as required by the lease, and failed to abide by the terms of the notice).


241. MINN. STAT. § 504B.285, subd. 1(1) (iii) (B) (2000) (formerly codified at § 566.03). In Brosko v. Principal Mut. Life Ins. Co., the court held that persons who began occupying foreclosed property beginning late in the redemption period were not tenants of the bank at the end of the redemption period. 533 N.W.2d 656, 658-59 (Minn. Ct. App. 1995). The court stated that the mortgagor does not have the power to create a tenancy in the redemption period that extends beyond the redemption period, after which any tenant of the mortgagor becomes a trespasser. Id. at 658. The court noted that the person did not have a lease, did not pay rent for the last half year, knew foreclosure was taking place and they would have to move, knew the end of the redemption period, was served with process by substitute service, did not attend the hearing, then later contacted the

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2. Retaliatory Eviction

Minnesota statute section 504B.285, subdivision 2 states:
Retaliatory Defense. It is a defense to an action for recovery of premises following the alleged termination of a tenancy by notice to quit for the defendant to prove by a fair preponderance of the evidence that:
(1) the alleged termination was intended in whole or part as a penalty for the defendant’s good faith attempt to secure or enforce rights under a lease or contract, oral or written, under the laws of the state or any of its governmental subdivisions, or of the United States; or
(2) the alleged termination was intended in whole or part as a penalty for the defendant’s good faith report to a governmental authority of the plaintiff’s violation of a health, safety, housing, or building code or ordinance.

If the notice to quit was served within 90 days of the date of an act of the tenant coming within the terms of clause (1) or (2) the burden of proving that the notice to quit was not served in whole or part for a retaliatory purpose shall rest with the plaintiff.

bank’s attorney to ask when she had to leave, giving the bank its first notice of her presence on the property, and did not attempt to reopen the eviction action, but rather sued after execution of the writ of restitution. Id. at 659. The broad holding limits application of the statute to persons who began renting from the mortgagor before the foreclosure sale, giving no protection to the large number of persons who rent from mortgagors during the redemption period. Webster Bank v. Occhipinti, No. CV-970059147S, 1998 WL 846105, at *5 (Conn. Super. Ct. Nov. 20, 1998) (holding that federal Section 8 law preempted state mortgage foreclosure law, which provided that foreclosure terminated the interest of the tenant of the mortgagor. Thus, the foreclosing mortgagee or the purchaser at the foreclosure sale could terminate the Section 8 lease only in accordance with the Section 8 statutes and regulations).

242. MN. STAT. §§ 504B.285, subd. 1(1)(iii)(B) (formerly codified at § 566.03); 327C.12 (2000). Similarly, § 504B.441 (formerly codified at § 566.28) states:
A residential tenant may not be evicted, nor may the residential tenant’s obligations under a lease be increased or the services decreased, if the eviction or increase of obligations or decrease of services is intended as a penalty for the residential tenant’s or housing-related neighborhood organization’s complaint of a violation. The burden of providing otherwise is on the landlord if the eviction or increase of obligations or decrease of services occurs within 90 days after filing the complaint, unless the court finds that the complaint was not made in good faith. After 90 days the burden of proof is on the residential tenant.

Id. Residents of manufactured or mobile home park lots have similar protections.
The leading case interpreting the retaliation provisions of Minnesota Statute section 566.03, the predecessor of Minnesota Statute section 504B.285, is Parkin v. Fitzgerald. After reviewing standards applied in other jurisdictions, the court adopted a standard for trial courts to use in determining whether a landlord had satisfied the burden of proving a non-retaliatory purpose:

A landlord must establish by a fair preponderance of the evidence a substantial non-retaliatory reason for the eviction, arising at or within a reasonably short time before service of the notice to quit. A non-retaliatory reason is a reason wholly unrelated and unmotivated by any good-faith activity on the part of the tenant protected by the statute (e.g., nonpayment of rent, other material breach of covenant, continuing damage to premises by tenants, or removal of housing unit from market for a sound business reason). Such a standard will give full protection to tenants and will enhance the legislative policy of liberal construction of statutory covenants to ensure adequate housing.

The court added, “even a legitimate business purpose must be closely examined to ensure that it is not contrived or colored in any way by the tenants’ protected activities.” Where the landlord establishes a substantial non-retaliatory purpose, the tenant should have an opportunity to rebut this by showing that the allegedly non-retaliatory purpose was actually a pretext used as a cover for retaliation.

3. Waiver of Notice

There is disagreement over when payment and acceptance of rent waives a notice to quit. Landlords argue that acceptance of

244. Id. at 430-31, 240 N.W.2d at 832-33 (citations omitted, emphasis added).
245. Id. at 430, 240 N.W.2d at 832. See Walters v. Demmings, No. C4-01-2, 2001 WL 641753 (Minn. Ct. App. June 12, 2001) (order rescheduling for compliance hearing) (reversing eviction where the landlord raised a purpose in the closing argument, not while he was under oath as a witness). The trial court required the tenant to prove retaliation even through the tenant had enforced rights within ninety days of the notice to vacate, and the landlord only made the conclusory statement that the rent was below market value and he was losing money on the property, but offered no details or documentary support for that conclusion. Id. See also City View Apartments v. Sanchez, No. C2-00-313, 2000 WL 1064897, at *3 (Minn. Ct. App. Aug. 1, 2000) (decision and order) (reversing and remanding the trial court judgment for the landlord, where the trial court’s order did not reflect analysis of the Parkin standard, and did not contain the requisite findings of fact).
rent does not necessarily manifest the intent to waive notice.\textsuperscript{247} Tenants argue that the payment and acceptance of rent constitutes unconditional waiver of a notice to quit.\textsuperscript{248} Landlords have had mixed results in avoiding the waiver defense by not cashing rent payments and then arguing that they had not accepted rent.\textsuperscript{249} In public and subsidized housing, the landlord’s acceptance of the government subsidy, or housing assistance payment (HAP), does not waive the notice.\textsuperscript{250} In mobile home park lot tenancies, acceptance of rent (1) after notice of violations or repeated serious violations of park rules or certain laws, or notice of park improvements or closure, does not waive the notice,\textsuperscript{251} or (2) for a period after expiration of a \textit{final} notice to quit waives the notice, unless the parties agree otherwise in writing.

\begin{itemize}
\item \textsuperscript{247} MCDA v. Powell, 352 N.W.2d 532, 534 (Minn. Ct. App. 1984) (citing Arcade Inv., Co. v. Gieriet, 99 Minn. 277, 279, 109 N.W. 250, 252 (1906)).
\item \textsuperscript{248} King v. Durkee-Atwood, Co., 127 Minn. 452, 455, 148 N.W. 297, 298 (1914) (regarding waiver of tenant’s notice); Pappas v. Stark, 123 Minn. 81, 83, 142 N.W. 1042, 1047 (1913) (regarding waiver of landlord’s notice); Linden Corp. v. Simard, No. 3-87-1599, 1988 WL 87503, at 3-4 (Minn. Ct. App. Feb. 9, 1988) (order reversing unlawful detainer writ of restitution) (analyzing waiver of notice, but citing waiver of breach cases; while it is questionable whether receipt of a check without cashing it constitutes waiver, receipt of a money order or cash constitutes waiver of notice). None of these cases discusses a requirement to show intent.
\item \textsuperscript{249} Carriage House Apartments v. Stewart, No. UD-1970107501, at 8-9 (Minn. Dist. Ct. 4th Dist. May 13, 1997) (order granting Plaintiff restitution) (stating that there is no waiver of notice or breach where landlord received but did not cash, deposit, or return money orders for rent; landlord instructed agents to not accept rent on the tenant’s account; and landlord alleged tenant started a fire at the apartment). But see Aadland v. Jackson, No. UD-1991101616, at 2 (Minn. Dist. Ct. 4th Dist. Nov. 19, 1999) (order dismissing Plaintiff’s complaint) (deciding that landlord’s retention of November rent without cashing it waived notice to quit effective October 31, as the landlord exercised dominion and control over the funds to the prejudice of the tenant).
\item \textsuperscript{250} Westminster Corp. v. Anderson, 536 N.W.2d 340, 342-43 (Minn. Ct. App. 1995). Where the landlord accepts the tenant’s rent, regardless of whether the landlord accepted the HAP, waiver has occurred, according to Westminster Corp., and the private housing waiver decisions.
\item \textsuperscript{251} MINN. STAT. § 327C.11, subd. 2 (2000). In \textit{Lea v. Pieper}, 345 N.W.2d 267, 271 (Minn. Ct. App. 1984), the court held that rent received before expiration of the notice to quit, but covering a period extending beyond the expiration date, waived the notice. It appears that where a notice of violations includes a notice to vacate, it will be treated as a \textit{final} notice for purposes of waiver. See Rainbow Terrace, Inc. v. Hutchens, 557 N.W.2d 618, 620 (Minn. Ct. App. 1997) (deciding that (1) MINN. STAT. ch. 327C applies to mobile home park lot tenancies, regardless of whether the parties have a written lease, (2) acceptance of rent after expiration of a notice to vacate waived the notice, and (3) notice to quit was invalid because it did not state the reason for termination, depriving the tenants of...
If a landlord gives a second notice to quit, the landlord automatically waives the right to proceed under the first notice. If the landlord subsequently agrees to a continuance of possession of the premises, as in executing a new lease, the landlord waives the effect of the notice.

A landlord also may waive a notice by demanding subsequent rent in an eviction action. An eviction action based upon nonpayment of rent "is equivalent to a demand for rent..." Generally, the defendant can redeem by paying the rent, interest, costs, $5 in attorney’s fees, and performing other lease covenants, until the court issues an order dispossessing the tenant and permitting reentry by the landlord. An eviction action based upon both notice to quit and nonpayment of rent accrued after the notice creates the right to redeem the tenancy, and redemption waives the notice to quit. In 1993, the Minnesota Legislature amended the redemption statute to allow landlords to alternatively plead nonpayment of rent and breach of lease claims. The statute did not authorize pleading alternatively nonpayment of rent and holding over after notice to quit. While the Legislature originally considered a bill that would have allowed landlords to plead nonpayment of rent and claims on other grounds, the final statute limited alternative pleading to nonpayment of rent to only breach of lease. Based on the statute, legislative history and case law, the landlord’s claim of nonpayment of rent along with holding over after notice grants the tenant the right to redeem the tenancy.

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255. Id.


257. Minn. Stat. §§ 504.02 (currently codified at § 504B.291); 504B.285, subd. 5 (formerly codified at § 566.03).


and waive the notice.\textsuperscript{260} 

4. Discrimination

Discrimination on the basis of the tenant’s status as a member of a protected class is a defense to an eviction action.\textsuperscript{261} The claim may be analyzed within the confines of the retaliatory eviction statute.\textsuperscript{262} The defendant’s “protected activity” is enforcement of the right to rent the premises without illegal discrimination.\textsuperscript{263} If the notice to quit is served within ninety days of the defendant’s protected activity, the plaintiff must establish by a fair preponderance of the evidence a substantial non-retaliatory purpose, arising at or shortly before the notice to quit, which is wholly unrelated to and unmotivated by the defendant’s protected activity.\textsuperscript{264} The defendant should have the right to rebut the allegedly non-retaliatory purpose by showing it actually was a pretext used as a cover for discrimination.\textsuperscript{265}

5. Mobile Home Park Lot Tenancies

The tenancy may be terminated by the landlord only for cause. Different notices are required, depending on the reason for the termination.\textsuperscript{266}

\begin{thebibliography}{10}
\bibitem{261} Barnes v. Weis Mgmt. Co., 347 N.W.2d 519, 522 (Minn. Ct. App. 1984); see Ellis v. Minneapolis Comm’n on Civil Rights, 319 N.W.2d 702, 704 (Minn. 1982).
\bibitem{262} \textsc{Minn. Stat.} § 504B.285, subd. 2 (2000) (formerly codified at § 566.03).
\bibitem{263} Barnes, 347 N.W.2d at 522.
\bibitem{264} \textit{Id.} at 521-22 (quoting Parkin v. Fitzgerald, 307 Minn. 423, 240 N.W.2d 823-33 (1976)).
\bibitem{265} \textit{Id.} at 522. Tenants and tenants’ counsel should carefully consider whether they can adequately prove discrimination in the limited time available to prepare for an eviction (unlawful detainer) trial, since unsuccessful prosecution of the discrimination defense may preclude a subsequent discrimination lawsuit or administrative complaint with the United States Department of Housing and Urban Development, Minnesota Human Rights Department, or Minneapolis Civil Rights Department. \textsc{See} Ellis v. Minneapolis Comm’n on Civil Rights, 319 N.W.2d 702, 704 (Minn. 1982).
\bibitem{266} \textsc{Minn. Stat.} § 327C.09 (2000). \textsc{See infra} notes 344-50 and accompanying text.
\end{thebibliography}
6. Public and Government Subsidized Housing

Notice requirements vary depending on the programs, but where the landlord is required to give notice, it must be written notice before commencement of an eviction action in all cases, even nonpayment of rent. Also, good cause is required in most cases. Section 8 Existing Housing Certificate and Voucher Programs have the least regulated pre-eviction process.267 Eviction of the tenant does not require termination of the tenant’s rent subsidy. The tenant may be able to retain the subsidy and look for housing with another landlord who is willing to contract to receive the housing subsidy. However, the subsidy administrator, often called a Section 8 office or public housing authority, might try to terminate the tenant’s subsidy for the same reasons as the landlord tried to evict the tenant. These reasons can include failure to supply certain information to the housing authority, serious or repeated violation of the lease, drug-related or violent criminal activity, housing assistance fraud, and owing monies to the housing authority.268 If the housing authority decides to terminate the tenant’s housing subsidy, the housing authority must give written notice to the tenant and the right to contest the termination at an informal hearing.269

In Carter v. Olmstead County Housing and Redevelopment Authority, the court of appeals closely reviewed the lay hearing officer’s determination to terminate the Section 8 voucher, and concluded that the findings were insufficient and that they failed to mention or explain the basis for failing to credit evidence in support of the tenant’s claim, and that the housing authority failed to prove substantial evidence to sustain the termination.270


269. Id. § 982.555.

HUD-subsidized projects or apartment buildings are more regulated, and include the right to a pre-eviction notice and meeting. The Rural Housing and Community Development Service (RHCDS) subsidizes projects and apartment buildings in rural areas. RHCDS projects are the most regulated of the privately owned and federally subsidized rental housing. State law also


271. Most HUD-subsidized projects or apartment buildings are regulated by HUD Handbook No. 4350.3. The notice to vacate must state that the tenancy is terminated on a specific date, state the reasons for the eviction with sufficient specificity so as to enable the tenant to prepare a defense, advise the tenant that if a judicial action for eviction is instituted the tenant may present a defense, and advise the tenant that if a judicial proceeding is instituted, the tenant may present a defense. The landlord may not rely on any grounds which are different from the reasons set forth in the termination letter, except that the landlord had no knowledge at the time the termination letter was sent. 24 C.F.R. § 247.6(b) (2000). Moderate rehabilitation projects are subsidized by HUD but are covered by the handbook. The landlord must serve the tenant a written notice of lease termination stating the date the tenancy shall terminate and the reasons for termination with enough specificity to enable the tenant to prepare a defense, and advise the tenant that if a judicial proceeding is instituted, the tenant may present a defense. The landlord may not rely on any grounds which are different from the reasons set forth in the notice. The complaint in the eviction (unlawful detainer) action may not rely on any grounds which are different from the reasons set forth in the notice. The landlord must give a notice of lease violation before issuing a lease termination notice. The notice must state all of the following: (1) the relevant provisions in the lease, (2) the grounds of the lease violation with sufficient detail, (3) that the tenant would be expected to correct the lease violation, (4) the deadline for correcting the lease violation, (5) that the tenant could informally meet with the landlord to resolve the problem before the deadline, (6) that if the violation was not corrected by the deadline, the landlord could file an eviction action, and (7) the tenant could defend the eviction in court. Id. § B. If the tenant does not correct the violation, the landlord must give the tenant written notice to end the lease. The notice must state the grounds for termination with sufficient detail, and the location and regular office hours when the tenant could review the landlord’s file and copy information from it. The landlord must send a copy of the notice to the RHCDS district office. Id. §§ C-D.

Landlords participating in the program must comply with the statutory and
provides for a pre-eviction notice in subsidized housing.\textsuperscript{273} Public housing has the most highly regulated eviction procedure.\textsuperscript{274} Most public and subsidized housing programs allow the tenant to terminate the tenancy with a notice to quit. If the tenant voluntarily gave such notice or is coerced into doing so and then withdraws or revokes the notice, the landlord may have to comply with the eviction notice requirements rather than simply rely on the tenant’s notice to quit.\textsuperscript{275}

regulated requirements of the program. Hoglund-Hall v. Kleinschmidt, 381 N.W.2d 889, 895 (Minn. Ct. App. 1986). In Hoglund-Hall, the court of appeals reversed the district court decision for eviction of the tenant under the predecessor to the RHCS, the Farmers Home Administration (FmHA). The court held that while the district court’s finding that the tenant’s occupancy threatened the safety of other tenants and management was not clearly erroneous, the landlord’s failure to follow the notice requirements of the program required reversal. The court concluded that the federal requirements applied, even if they were not included in the lease.

\textsuperscript{273} Under state law, the subsidized housing owner must give the tenant a one year notice for (1) expiration of the Section 8 contract, (2) owner termination or non-renewal of a Section 8 contract or mortgage, (3) owner prepayment of a mortgage that would terminate federal housing use restrictions, or (4) owner termination of a housing subsidy program. The owner must give the notice at commencement of the lease if any of these events would occur in less than a year. MINN. STAT. § 504B.255 (2000) (formerly codified at § 504.32). In Douglas v. Sparby, No. C8-96-601471 (Minn. Dist. Ct. 6th Dist. Sep. 10, 1996) (decision and order), the parties entered into a Section 8 certificate lease in 1994 which, consistent with regulations in effect at the time, provided for an endless lease which could be terminated only for good cause. The landlord issued a termination notice without cause for eviction. Id. The court held that the landlord must provide a year termination notice required by MINN. STAT. § 504.32 (now § 504B.255) to terminate or not renew the lease. Id.

\textsuperscript{274} The public housing authority (PHA) may not evict the tenant without cause. 24 C.F.R. § 966.4(l)(2). The PHA must give a written lease termination notice. Id. § 966.4(l)(3)(i). The landlord must give either thirty days notice, fourteen days notice for nonpayment of rent, or a reasonable time for a health or safety threat. In most cases the notice must offer a grievance procedure. Id. § 966.4(l)(3)(iii). The public housing authority can bypass the grievance process where the eviction was for criminal activity or drug-related criminal activity; HUD has determined that an eviction case meets HUD requirements for due process, which HUD has certified. Id. §§ 966.4(l)(3)(v), 966.4(m). The grievance process includes an informal conference. Id. § 966.54; Dial v. Star City Pub. Hous. Auth., 648 S.W.2d 806, 807 (Ark. Ct. App. 1983), and informal hearing. 24 C.F.R. §§ 966.55-966.57; Edgecomb v. Hous. Auth. of Vernon, 824 F. Supp. 312, 313 (D. Conn. 1993).

\textsuperscript{275} In Dakota County HRA v. Blackwell, No. C7-98-1763, 1999 WL 262088 (Minn. Ct. App. May 4, 1999), \textit{rev’d}, 602 N.W.2d 243 (Minn. 1999), the tenant requested an extension of a lease termination date by half a month, to which the landlord agreed. Before the date passed, the tenant rescinded the agreement, and the landlord filed an eviction action. The trial court held that the tenant did not violate her lease, but awarded the landlord specific performance for her failure to
7. Contract for Deed Cancellation and Mortgage Foreclosure

When there is a tenancy for property that has changed ownership following a contract for deed cancellation or mortgage foreclosure, termination of the tenancy requires one month written notice. The contract for deed vendee can defend against an eviction action brought by the vendor by claiming that the vendor did not follow the service and notice requirements for cancellation of the contract. Technical errors by the vendor in canceling the contract for deed or by the vendee in attempting to cure the default might not be held against the party making the error. A contract for deed vendee may establish waiver of the cancellation notice on the grounds of acceptance of payments, where the vendee shows that the vendor had full knowledge of the facts, full knowledge of applicable legal rights, and an intention to relinquish these rights. The mortgagee also must comply with the service

move. Id. On appeal, the court of appeals affirmed, concluding that there was consideration for the agreement. Id. The court rejected tenant claims of mistake, unconscionability, and public policy, and held that specific performance was an appropriate remedy. Id. Judge Foley argued in dissent that specific performance rendering the tenant homeless ignored equity. Id. The Minnesota Supreme Court reversed in Dakota County HRA v. Blackwell, 602 N.W.2d 243, 245 (Minn. 1999), concluding that the district court abused its discretion in awarding specific performance. Id. The court noted that a party does not have an automatic right to specific performance for breach of contract, and the district court must balance the equities and determine whether the equitable remedy is appropriate. The court added that its decision was limited to the facts presented. Id. See Hoglund-Hall v. Kleinschmidt, 381 N.W.2d 889, 895 (Minn. Ct. App. 1986) (holding that tenant’s notice to quit was not an effective waiver of rights, and subsequent letter stating tenants would remain placed burden back on landlord to restart federally regulated eviction process).

276. See supra note 251.


278. In Olsen v. Stevens, No. CX-97-1827, 1998 WL 147879 (Minn. Ct. App. Mar. 31, 1998), the defendant in a contract for deed eviction action claimed the cancellation notice was improper in that it included more money than was due. Id. The court noted that it must determine whether the contract for deed was properly canceled. Id. The court noted that absent a showing of prejudice, discrepancies in a cancellation notice will not automatically render it ineffective. Id. The court noted that the defendant did not attempt to tender any amount due under the contract, but had they tendered the amounts they conceded were owed and Plaintiff had rejected the tender, the defendant could possibly have claimed prejudicial error. Id.

and notice requirements for mortgage foreclosure.  

8. Tenant Revocation of Tenant’s Notice to Quit

Tenants should be able to revoke the tenant’s notice to quit, where the tenant and landlord did not make an oral or written contract for the tenant to move, and where the landlord has not relied on the notice to the landlord’s detriment.

9. Uniform Relocation Act

The Uniform Relocation Act provides for additional notice to tenants where they are to be displaced as a result of receipt of state or federal monies. In *Project for Pride in Living, Inc. v. McCoy*, the owner obtained a loan with the Minnesota Housing Finance Agency for purchase and rehabilitation of the property. The owner then gave a thirty day notice to quit without alleging good cause for the termination. The tenant did not receive any notices for noncompliance with her lease during her tenancy. The housing court concluded that the Uniform Relocation Act applied

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280. Comerica Mortgage Corp. v. Gaddy, No. UD-1950223514, at 3 (Minn. Dist. Ct. 4th Dist. Mar. 24, 1995) (order granting judgment of restitution) (finding mortgagor did not prove that service of the notice of foreclosure sale was insufficient). In *WMC Mortgage Corp. v. Graham*, No. UD-01990415520, at 1 (Minn. Dist. Ct. 4th Dist. Apr. 29, 1999), the defendant asserted that the plaintiff mortgage company did not comply with the foreclosure notice service statute. *Id.* at 1. The plaintiff moved for summary judgment, arguing that the sheriff’s certificate of sale was *prima facie* evidence of Plaintiff’s title to the property, and that Defendant’s answer raised a title or equitable matter outside the scope of an unlawful detainer. *Id.* The court denied Plaintiff’s motion, concluding that the same rules should apply for contract for deed cancellations and mortgage foreclosures, and that Defendants in either case may raise as a defense the plaintiff’s failure to comply with statutory requirements for cancellation for foreclosure. *Id.* at 2-3. If the defect renders it void, noting that lack of service is fatal to foreclosure proceedings. *Id.* at 3.


283. *Id.* at 1.

284. *Id.*

285. *Id.* at 2.
since the owner executed a loan involving federal and state monies, and that the thirty day notice to quit without cause violated the ninety day notice requirement and the requirement of cause for eviction. 286

E. Breach of Lease Defenses

1. No Right of Reentry Clause in the Lease

The landlord may not recover possession of the premises in an eviction (unlawful detainer) action based upon alleged breaches of an oral or written lease, where the lease does not provide for the landlord’s right to reenter and retake possession upon breach. 287 The requirement of having a right of reentry clause to commence an eviction action for breach of lease was confused by the unpublished decision in C & T Properties v. McCallister, 288 in which the court of appeals held that a right of reentry clause was not a precondition for an action for breach of lease, concluding that a phrase in MINN. STAT. § 566.03 (currently codified at § 504B.285) essentially overruled earlier case law. 289 The statute sets forth various grounds for subject matter jurisdiction in eviction actions, and following the section on retaliation, states “nothing contained herein shall limit the right of the lessor pursuant to the provisions of subdivision 1 [basis for subject matter jurisdiction] to terminate a tenancy for a violation of the tenant of a lawful, material provision of a lease or contract.” However, read in the context of the entire statute, the provision was intended to indicate that the anti-retaliation provision of the statute would not limit the right of the landlord to evict a tenant for a violation of the lease. 290

289. Id. at *1-2.
290. There is no indication that the Legislature intended to reverse Bauer in its re-codification of landlord-tenant statutes in Chapter 504B. To the contrary, the comments of the drafting committee and testimony before the Legislature indicated that the drafters intended Bauer to remain good law. See Letter from Paul Birnberg, Staff Attorney, Community Action for Suburban Hennepin, to Lawrence McDonough and Mike Vraa, Legal Aid Society (Jan. 15, 1998) (on file with Lawrence McDonough).
courts have continued to follow the earlier case law.  

2. Implied Modification of the Lease or Waiver of Lease Provisions 

In absence of an express verbal agreement, subsequent acts and conducts of the parties may establish an implied waiver or modification of a lease term. In Northview Villa v. Gresens, the tenants lived in a mobile home park for over five years with their cats. Other tenants in the park also had pets. The tenants testified that they discussed a “no pet” rule with the park manager, and said that they would lease the premises only if they could keep their cats. The managers were aware that the tenants had cats, but continued to accept rent from the tenants without asking them to remove their cats, and without seeking to enforce the “no pet” rule for five years. The court concluded that the trial court did not err in finding that this course of conduct established a waiver to the “no pet” rule.

3. Unilateral Modification of the Lease

A party may not enforce a unilateral modification of the lease. In Commonwealth Terrace Cooperative Inc. v. Jassim, the landlord unilaterally changed the term of the lease from seven years to five years. The housing court held that the landlord could not make

291. Lowe v. Cotton, No. UD-01990924515, at 1 (Minn. Dist. Ct. 4th Dist. Oct. 7, 1999 (order dismissing breach of lease claim) (involving situation where there was no written lease, parties recently entered into a written agreement that Defendant would not have a pet but the memo did not include a right of reentry); D & D Real Estate Inv. v. Hughes, No. UD-1990311505, at 2 (Minn. Dist. Ct. 4th Dist. Mar. 30, 1999) (order dismissing breach of lease claim) (involving situation where there was no convincing evidence that the oral lease contained a right of re-entry clause).


294. Id.; See Kostakes v. Daly, 246 Minn. 312, 318, 75 N.W.2d 191, 195 (1956) (holding landlord could not enforce non-assignment provision where landlord knew of assignment and investment by assignee of large sum of money in the property but took no action for three months); Garakani v. Five Lakes Centre, I.LLC, No. C7-96-673, 1996 WL 636213, at *1 (Minn. Ct. App. Nov. 5, 1996) (concluding that the parties did not modify, by their conduct, a notice requirement in the lease where lease contained clear notice and non-waiver clauses and past conduct did not indicate the lease would not be formally enforced).

such a material change in the lease without the consent of the tenants. The consideration originally given for a lease cannot serve as consideration for new terms subsequently added to the lease. Where no consideration is apparent on the face of the agreement, the party relying on it must prove consideration.

4. Waiver of Breaches by Acceptance of Rent.

Generally, a tenant’s breach of a rental agreement is waived by the landlord’s subsequent acceptance of rent with knowledge of the breach. The landlord’s intent is irrelevant. In public and subsidized housing, the landlord’s acceptance of the government subsidy, or housing assistance payment (HAP), does not constitute waiver. The exceptions to the waiver rule are where the breach is of a lease provision which is part of the consideration and not merely incidental nor collateral to the character of the occupancy, or where the lease contains an enforceable non-waiver clause. If the landlord can prove ongoing lease violations

299. Westminster Corp., 536 N.W.2d at 343. Where the landlord accepts the tenant’s rent, regardless of whether the landlord accepted the HAP, waiver has occurred, under Westminster Corp., and the private housing waiver decisions. In St. Cloud Hous. & Redevelopment Auth. v. Slayton, No. C9-98-1671, at 10-11 (Minn. Dist. Ct. 10th Dist. Nov. 3, 1998) (order denying Plaintiff’s request for restitution), the trial court concluded that the PHA’s acceptance of rent from the tenant in a private agency along with the PHA’s recertification and renewal of the lease constituted waiver of lease violations. The court distinguished Westminster Corp. as it involved whether housing subsidies from a PHA were rent, holding that said subsidies were not rent and acceptance of them did not constitute waiver. Id. While in this action, the payments were from a private entity, simply making rent payments on behalf of the tenants. Id. at 9-10.
300. Cent. Union Trust Co. of New York v. Blank, 168 Minn. 312, 316, 210 N.W. 34, 36 (1926) (finding no waiver when breach of nonpayment of taxes where payment was in lieu of additional rent: no waiver); Priordale Mall Inv., 411 N.W.2d at 585 (finding waiver where lease provisions did not expressly related to real consideration).
301. MCDA v. Powell, 352 N.W.2d 532, 533-34 (Minn. Ct. App. 1984); Priordale Mall Investors, 411 N.W.2d at 585. However, there are two types of clauses in leases
which also are current lease violations, acceptance of rent might not waive the breach claim.  

5. Discrimination

Discrimination in housing is prohibited under federal and state law, and some ordinances. The discrimination defense can be raised in a breach of lease case, where the landlord is enforcing the lease provision only against members of the protected class, or enforces a lease provision that only applies to members of a protected class. In Zeman v. West, the landlord required recipients of government benefits to have the government tender their rent to the landlord, while not requiring other tenants to have their rent sent directly to the landlord from their income. The tenant did not tender her rent because she was concerned about repairs.

commonly called non-waiver clauses, but only one type may serve as a non-waiver clause for the purposes of the waiver of breach defense. A clause that protects the landlord from waiver of past breaches by acceptance of rent may be enforceable. However, a clause which states that acceptance of rent following breach of the lease shall not constitute a waiver of a subsequent breach does not protect the landlord from waiver of past breaches. Id. at 584-85; Buckeye Realty Co. v. Elias, No. CX-91-0697, at 6-7 (Minn. Dist. Ct. 10th Dist. Aug. 6 1991) (order denying Plaintiff’s eviction action) (finding an election of remedies clause was not an express non-waiver clause and did not protect landlord from waiver of past breaches by acceptance of rent). A lease provision stating that acceptance of rent does not waive rental payment obligations is not a non-waiver of breach clause. Plymouth Ave. Town Houses & Apartments v. Toussaint, No. UD-1980707535, at 1 (Minn. Dist. Ct. 4th Dist. Jul. 27, 1998) (order dismissing unlawful detainer action) (finding lease provision stating that acceptance of rent does not waive rental payment obligations was not a non-waiver of breach clause, and dismissing for waiver of breach).


303. Fair Housing Act, 42 U.S.C. § 3604 (2001) (stating that protected classes include race, color, religion, sex, affectional preference, familial status, disability, and national origin); MINN. STAT. § 363.03 (2000) (setting forth the Minnesota Human Rights Act and federal protected classes plus receipt of public assistance); MINNEAPOLIS, MINN. CODE § 139.40 (2001) (setting forth the Minneapolis Civil Rights Ordinance and state protected classes).


305. Id.

306. Id.
The landlord issued a notice to quit allegedly based on not tendering rent and not paying the entire security deposit. The trial court held that the lease provision violated the state discrimination statute and that the landlord failed to rebut defendant’s *prima facie* case of discrimination.

6. Reasonable Accommodation of Disabilities

Until recently, the analysis of a landlord’s affirmative obligation to reasonably accommodate the disability of the tenant was limited to landlords receiving federal financial assistance. However, recent amendments to the Fair Housing Act extend the obligation to reasonably accommodate disabilities to private landlords. The Minnesota Human Rights Act also makes it unlawful to discriminate in housing on the basis of disability. Examples of a landlord’s failure to reasonably accommodate a tenant with disabilities include: failure to arrange for chore services to help a tenant prepare for spraying her apartment, insisting that the tenant clean up her apartment while she was physically unable to do so, failing to forebear from eviction in order to give the tenant an opportunity to pursue a program or treatment that could mitigate further violations of the lease, failure to make minor modifications in the lease or rules to accommodate the tenant’s disability, and proceeding with eviction where the tenant

307. *Id.*

308. *Id.;* see Hegenes Prop. v. Reed, No. UD-4920624902, at 3-4 (Minn. Dist. Ct. 4th Dist. Aug. 7, 1992) (order granting judgment for Defendant) (stating that landlord could not evict tenant, a single parent with three children, for allegedly violating lease provision prohibiting an adult from supervising more than two children at the swimming pool, and provision discriminated on basis of marital and family status in violation state and federal law). *See supra* note 273.


311. MINN. STAT. § 363.03, subds. 2, 2a (2000).


had cured the violation. 316

7. Public and Government Subsidized Housing

Landlords participating in public and government subsidized housing programs must comply with the statutory and regulatory requirements of the program. Most of the programs require material lease violations or good cause for eviction related to the tenant’s conduct. 317 While whether a claimed lease violation constitutes a material violation or good cause for eviction, many decisions have discussed and applied these standards to individual facts. 318 Landlords often allege a series of unrelated minor lease breach of lease by tenant for keeping a cat as an appropriate doctor-prescribed accommodation).


317. See supra notes 275-295 and accompanying text.

318. Alterations: Berry v. Lane, Nos. UD-1980629502 and UD-1980603900, at 3-4 (Minn. Dist. Ct. 4th Dist. July 22, 1998) (order denying Plaintiff’s unlawful detainer action) (holding that landlord did not prove breaches of the lease to warrant termination, where tenant brought pets to the property to deal with mice but removed the pets at the landlord’s request, removed a refrigerator which did not work and replaced it, and the tenants and her children caused de minimis damage to the property);

Assault and threats: Hoglund-Hall v. Kleinschmidt, 381 N.W.2d 889, 891-93 (finding that tenant assaulted and threatened others);

Cure: Minneapolis Pub. Hous. Auth. v. Otto, No. UD-1970326517, at 4 (Minn. Dist. Ct. 4th Dist. May 9, 1997) (order granting possession to Defendant tenant) (finding no good cause for eviction where tenant got rid of the dog and denied access to the guests who offended other tenants in public housing situation);

Damage: Carriage House Apartments v. Stewart, No. UD-1970107501, at 9-10 (Minn. Dist. Ct. 4th Dist. May 13, 1997) (order granting Plaintiff restitution of the premises) (finding good cause for eviction from a subsidized project where tenant poured gasoline on clothing, started a fire, and obstructed the response to the fire, and finding no good cause where a tenant allowed an unauthorized resident to live with her, in subsidized project case); Teamster Retiree Hous. of Minneapolis, Inc. v. Goldstein, No. UD-1960919514, at 7 (Minn. Dist. Ct. 4th Dist. Oct. 21, 1996) (order permitting tenant to remain in possession) (finding the damages caused by the tenant were minor, the tenant agreed to fix them, the landlord could have made repairs and assessed cost to the tenant, some problems were not caused by the tenant, and some storage problems were not hazardous);

Deposit: Northgate Hous. Ltd. v. McLeod, No. S0441-94 GnC (Vt. Sup. Ct. Chittenden County Jan. 24, 1995) (finding no serious or repeated lease violations where landlord waived or did not prove tenant did not pay deposit five years earlier, finding allegations of damaging apartment, disturbing tenants, staling
mulch, and abandoning lumber were not proven but would not have been sufficient; and finding fiancée was not an unauthorized resident following landlord’s improper denial of his addition to the lease);

Failure to prove violation: Minneapolis Pub. Hous. Auth. v. Brown, No. UD-1960306523, at 3 (Minn. Dist. Ct. 4th Dist. May 16, 1996) (order granting possession to Defendant tenant) (finding landlord did not prove that tenant engaged in drug-related criminal activity on or near the premises);


Housekeeping: Johnson v. Bostic, UD-1951205504, at 6 (Minn. Dist. Ct. 4th Dist. Feb. 12, 1996) (order denying Plaintiff’s unlawful detainer action) (stating that housekeeping problems and noise from tenant in Section 8 certificate housing did not amount to good cause);

Identification: Bethune Assocs. v. Davis, No. C8-95-705, 1995 WL 619794, at *1-2 (Minn. Ct. App. Oct. 24, 1995 (holding that a subsidized project, with no material lease violation or repeated violations where tenant did not show identification to security guard upon request, and tenant defended himself when attacked by security guard);

Invalid lease provision: Johnson v. Bostic, No. 1950508539 (Minn. Dist. Ct. 4th Dist. June 5, 1995) (order dismissing Plaintiff’s unlawful detainer action) (citing a case with a Section 8 certificate/voucher, holding that landlord did not prove tenant did not shovel snow, provision prohibiting young boy and girl from sharing bedroom was invalid, neighbor disturbed by normal noise of small children);

Noise and disturbances: Hegenes Prop. v. Reed, No. UD-4920624902, at 4 (Minn. Dist. Ct. 4th Dist. Aug. 7, 1992) (order denying Plaintiff’s eviction action) (deciding that a tenant’s disturbance of other tenant on one occasion and violation of city code on one other occasion did not constitute serious or repeated violations of the lease);

Late fees: Cent. Cmty. Hous. Trust v. Anderson, No. UD-1900611534, at 3 (Minn. Dist. Ct. 4th Dist. July 6, 1990) (order denying Plaintiff’s motion to evict) (holding that a $20 late fee bore no relation to cost of landlord’s preparation of form notice and slipping the notice under the tenant’s door, triggering the tenant’s prompt action in paying the rent);

Recertification: St. Cloud Hous. & Redevelopment Auth. v. Slayton, No. C9-98-1671, at 6-9 (Minn. Dist. Ct. 10th Dist. Nov. 3, 1998) (order denying Plaintiff’s request for restitution of the premises) (citing case where the Public Housing Authority accepted the tenant’s late recertification, PHA did not prove that the tenant’s daughter’s babysitting job away from the premises constituted operation of a daycare business on the premises, the repayment agreement between the parties over back rent did not provide for eviction as a consequence for nonpayment or late payment, and the PHA’s acceptance of rent from the tenant in a private agency along with the PHA’s recertification and renewal of the lease constituted waiver of lease violations);

Rent: Horning Prop. v. Wang, No. C3-98-1211 (Minn. Dist. Ct. 10th Dist. June 23, 1998) (order dismissing Plaintiff’s unlawful detainer action) (holding on a Rural Housing and Community Development Service Subsidized Housing Project, no lease violation where the tenant tendered but the landlord refused April rent, so this event did not support the eviction notice; tenant legally resided on the property during her incarceration so as to not breach the lease); Hous. Auth. of St. Louis County v. Boone, 747 S.W.2d 311, 316 (Mo. Ct. App. 1988)
violations to support eviction. The lease violations should be material and not *de minimis*, and they need to be related to be repeated. The court should look closely at the evidence supporting each allegation to determine whether they support eviction. The trial court must make a specific finding on whether

(stating that in public housing, tenant not at fault for nonpayment of rent where the Public Housing Authority failed to adjust the rent in accordance with changing circumstances);

Self-defense: Bethune Assocs. v. Davis, No. C8-95-705, 1995 WL 619794, at *2 (Minn. Ct. App. Oct. 24, 1995) (citing a subsidized project case, with no material lease violation or repeated violations where tenant did not show identification to security guard upon request, and tenant defended himself when attacked by security guard);

Temporary absence: Hous. & Redevelopment Auth. of Winona v. Fedorko, C4-94-884, 1994 WL 654525 (Minn. Ct. App. Nov. 22, 1994) (remanding a public housing case for further findings, and implying that eviction was not supported where tenant temporarily moved to a nursing home while litigating state’s refusal to approve his personal care attendant);

Termination of tenant’s employment: Mountainview Place Apartments v. Ford, No. 94CV1492, at 3 (Colo. County Ct. Mar. 24, 1994) (decision and order) (stating that Section 8 project tenancy was unaffected by employment agreement, and termination of employment was not good cause for eviction);

Unauthorized resident: Buckeye Reality Co., v. Elias, No. CX-91-0697 (Minn. Dist. Ct. 10th Dist. Aug. 6, 1991) (minor housekeeping violations and occupancy by unauthorized persons who left the premises after verbal notice from the landlord probably did not constitute material noncompliance with the lease or other good cause); MPHA v. Rozas, C0-95-956, 1996 WL 5780 (Minn. Ct. App. Jan. 9, 1996) (substance abuse and unauthorized resident).

319. In *Teamster Retiree Hous. of Minneapolis, Inc. v. Goldstein*, No. UD-1960919514 (Minn. Dist. Ct. 4th Dist. Oct. 21, 1996) (decision and order entering judgment for the defendant), the landlord of a Section 8 New Construction and section 202 Elderly or Handicapped housing project sought to evict the tenant for various alleged lease violations. *Id.* The court held that under 24 C.F.R. section 247.3, the landlord could evict the tenant only for substantial lease violations or material minor violations. The court concluded that the landlord had not met this standard. *Id.* at 5. Judge Gallant stated where the damages caused by the tenant were minor, the tenant agreed to fix them, the landlord could have made repairs and assessed cost to the tenant, some problems were not caused by the tenant, and some storage problems were not hazardous. The court noted that these disputes could and should be resolved by greater cooperation, better communication or mediation, but the tenant should not be evicted for these kinds of disputes. *Id.* mem. at 7; *see also* Waimanalo Vill. Residents’ Corp. v. Young, 956 P.2d 1285, 1300 (Haw. Ct. App. 1998) (holding that *material noncompliance* requires more than a handful of minor incidents that occur over a short span of time, further the tenant must receive notice that the conduct is disturbing neighbors); Mid N. Mgmt., Inc. v. Heinzerlooth, 246-49, 599 N.E.2d 568, 572-74 (1992) (stating that only a material violation of lease may result in eviction provided there is evidence the tenant received notice of the violation); Common Bond Hous. v. Beier, UD-1951204625 (Minn. Dist. Ct. 4th Dist. Feb. 23, 1996) (concluding that a pre-eviction termination notice is required).

320. Bloomington Assocs. v. Wade, No. UD-1990706521, mem. at 9-10 (Minn.
the landlord met the standard of eviction required by the lease and regulations.

Most programs have regulations which deal specifically with claims of criminal activity by tenants and third parties. In public housing, the Cranston-Gonzalez National Affordable Housing Act of 1990 amended the eviction statues for Public Housing programs to require leases which state as follows:

[A]ny criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off such premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of the tenancy.

24 C.F.R. § 966.4(f)(12). The regulations also provide for housing authority discretion.

The legislative history calls for eviction protection for innocent family members. However, the Minnesota Supreme Court held

Dist. Ct. 4th Dist. Aug. 19, 1999) (decision and order) (stating in HUD-subsidized project eviction action, court individually analyzed each of the lease violation allegations, concluding that most were the fault and responsibility of other tenants or persons on the property not connected with the tenant; two remaining violations concerning noise and a children’s curfew violations were separate minor violations which were not repeated; action dismissed, judgment entered for tenant, and costs and disbursements awarded to tenant).

322. 42 U.S.C. § 1437d(h)(6). The federal regulation is somewhat different, providing that the lease: assure that the tenant, any member of the household, a guest, or another person under the tenant’s control, shall not engage in: (A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA’s public housing premises by other residents or employees of the PHA, or (B) Any drug-related criminal activity on or near such premises. Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit.

323. S. REP. NO. 316, 101st Cong., 2d Sess. 179 (1990), reprinted in 1990 U.S.C.C.A.N. 5763, 5941 (emphasis added). This provision makes criminal activity grounds for eviction of public housing tenants if that action is appropriate in light of all of the facts and circumstances . . . . This section would make it clear that criminal activity, including drug-related criminal activity, can be cause for eviction only if it adversely affects the health, safety, and quiet enjoyment of the premises. The Committee anticipates that each case will be judged on its individual merits and will require the wise exercise of humane judgment by the PHA [public housing authority] and the eviction court. For instance, eviction would not be the appropriate course if the tenant had no knowledge of the criminal activities of his/her guests or had taken
in *Minneapolis Public Housing Authority v. Lor* \(^{324}\) that the public housing authority and not the courts should consider “external circumstances.” The court then went on to conclude as a matter of law that the tenant had materially breached the lease, essentially holding her strictly liable for her son’s activity, reversing both the trial court and the court of appeals. \(^{325}\) Contrary to the *Lor* decision, the legislation, regulations, and legislative history support an analysis of whether the elements of claim have been met: (1) whether there was criminal activity, \(^{326}\) (2) a threat caused by the criminal activity to health, safety, or peaceful enjoyment of the premises by other tenants, (3) the location of the criminal activity as relates to security on and enjoyment of the premises, \(^{327}\) and (4) whether the criminal activity was engaged in by a public housing tenant, member of the tenant’s household, or guest or other

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\(^{324}\) 591 N.W.2d 700 (Minn. 1999).

\(^{325}\) Id. at 704.

\(^{326}\) *In Hous. and Redevelopment Auth. of Duluth, Inc. v. Adams*, No. C7-99-601573 (Minn. Dist. Ct. 6th Dist. Sep. 13, 1999) (decision and order), the court concluded that since a crime is conduct prohibited by statute and for which the actor may be sentenced to imprisonment with or without a fine under *Minn. Stat.* § 609.02, subd. 1, municipal ordinance violations are not crimes because ordinances are not state statutes, and statutory petty misdemeanors are not crimes because of the limitation on sentencing. *Id.* at 4-5. The court dismissed the action where petty misdemeanor drug charges against the tenant were dismissed, and the tenant pled guilty to an amended charge of assault under a municipal ordinance. *Id.* at 3. The court added that there was no serious or repeated violation of a material term of the lease where the arrest took place one mile away from the premises, and the event did not constitute criminal activity. *Id.* at 5. *See Minneapolis Pub. Hous. Auth. v. Henry*, No. UD-1970122503 (Minn. Dist. Ct. 4th Dist. May 23, 1997) (decision and order) (affirming referee decision that elderly tenant did not violate state drug covenant where police found trace amount of drugs and paraphernalia with no evidence of the tenant’s involvement or knowledge of drug activity, and holding that recovery of drug paraphernalia, without more, does not establish drug-related criminal activity).

person within the tenant’s control. Cases involving drug-related activity are regulated by state statute, as well as the federal statute and regulations.

While Lor specifically only applies to public housing, it may be applied to Section 8 certificates and vouchers as well, given the similar statutory and regulatory provisions, as well as the legislative history ignored by the Lor court. Still, as with public housing, a proper analysis would be whether the activity meets all of the


329. See infra notes 356-61 and accompanying text.

330. 24 C.F.R. § 982.310(c). The Cranston-Gonzalez National Affordable Housing Act of 1990 amended the eviction statutes for Section 8 Existing Housing Certificate and Voucher subsidized housing programs to require leases which state as follows:

[A]ny criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenant, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.

42 U.S.C. § 1437f(d)(1)(B)(iii). The committee report discussed the assumptions underlying the new lease provision requirement for Section 8 Existing Housing Certificate and Voucher housing:

Termination of tenancy.—The bill includes language to permit evictions from Section 8 Existing Housing for criminal activity, including drug-related criminal activity. It is based on a similar provision contained in the Anti-Drug Abuse Act of 1988 governing public housing leases . . . . The Committee assumes that if the tenant had no knowledge of the criminal activity or took reasonable steps to prevent it, then good cause to evict the innocent family members would not exist.


Any of the following types of criminal activity by the tenant, any member of the household, a guest or another person under the tenant’s control shall be cause for termination of tenancy: (1) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises by other residents; (2) Any criminal activity that threatens the health, safety or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or (3) Any drug-related criminal activity on or near the premises.
elements of the regulations: any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants; any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises; or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant’s household, or any guest or other person under the tenant’s control.  

Similar regulations govern HUD subsidized projects, while more tenant protections are included in the Rural Housing and Community Development Service regulations.

8. Mobile Home Park Lot Tenancies

The tenancy may be terminated by the landlord only for the reasons specified by statute. Defenses include inadequate notice period, the notice did not specify the reasons for termination,

331. See Am. Apartment Mgmt. Co. v. Phillips, 653 N.E.2d 834, 840-41 (Ill. App. Ct. 1995) (affirming dismissal of Section 8 certificate by holding provision under federal regulation governing conduct of “a guest or other person under the tenant’s control” was ambiguous, concluding that the guest must be under the tenant’s control; tenant did not have knowledge of drug-related criminal activity of one-time guest); Diversified Realty Group, Inc. v. Davis, 628 N.E.2d 1081, 1084 (Ill. App. Ct. 1993) (finding “materiality” and “good cause” provisions of the federally assisted lease precluded the landlord from evicting the tenant where the facts indicated that the tenant was without any knowledge or fault for her guest’s criminal conduct); Henry v. Wild Pines Apartments, 359 S.E.2d 237, 238 (Ga. Ct. App. 1987) (reversing an eviction of tenant based upon uninvited and unknown person firing a gun).


334. MINN. STAT. § 327C.09 (2000): nonpayment of rent following ten days’ written notice; violation of mobile home ordinances, rules and laws, following a reasonable time after written notice of noncompliance; rule violations, after failure to cure following thirty days’ written notice; endangerment or substantial annoyance after notice; repeated serious violations of the lease or certain laws, following written notice and warning and continued violation; material misstatement in the application, if termination occurs within one year of when the tenant first paid rent; improvement of the park, after ninety days’ written notice; and park or lot closing, after nine months’ written notice, but relocation within the lot may be permitted in certain circumstances.


336. Hedlund v. Potter, No. C3-91-1383, 1-2 (Minn. Dist. Ct. 10th Dist. Oct. 22, 1991) (order dismissing Plaintiff’s unlawful detainer action) (finding generalized notice that was not specific as to time, date or nature of lease or rule violation and did not provide required time to remedy the conduct was not sufficient).
the rule is unreasonable, \[^{337}\] the rule constitutes a substantial modification of the original lease or rules, \[^{338}\] improper notice to adopt or amend a rule, \[^{339}\] and the tenant cured the violation. \[^{340}\]

9. Unconscionable Lease Term

A contract is unconscionable where no decent, fair-minded person would view the result of its enforcement without being possessed with a profound sense of injustice. \[^{341}\] In other words, a contract is unconscionable if it is "such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other." \[^{342}\] Unconscionability is a question of law. \[^{343}\] The party alleging unconscionability must show it had no meaningful choice but to accept the contract term as offered, and that the term is unreasonably favorable to the other party. \[^{344}\] The trial court should consider the contract terms and the circumstances. An unconscionable lease term is unenforceable. \[^{345}\]

\[^{337}\] MINN. STAT. §§ 327C.10, subd. 3, 327C.01, subd. 8 (2000); Lea, 345 N.W.2d at 271-72; Northview Villa M.H.P. v. Henderson, No. C2-90-13460, at 5 (Minn. Dist. Ct. 10th Dist. Apr. 24, 1991) (decision and order) (finding Plaintiff’s no pet rule was a reasonable rule).

\[^{338}\] MINN. STAT. §§ 327C.02, subd. 2, 327C.01, subd. 11 (2000); Lemke v. Van Ness, 436 N.W.2d 784, 787 (Minn. Ct. App. 1989) (finding lease required the landlord to repair damage from ordinary wear and tear, new rule which required the tenants to make such repairs was a substantial modification of the lease, and unenforceable).

\[^{339}\] MINN. STAT. § 327C.02, subd. 2 (2000); Hedlund v. Davis, No. C1-91-1687, at 3 (Minn. Dist. Ct. 10th Dist. Dec. 31, 1991) (order denying Plaintiff’s request for eviction) (finding landlord’s request for additional fees was improper because there was no notice informing the tenants that such charges could be imposed under the rental agreement).


\[^{341}\] Zontelli & Sons, Inc. v. City of Washwauk, 353 N.W.2d 600, 604-05 (Minn. Ct. App. 1984), rev’d on other grounds, 373 N.W.2d 744 (Minn. 1985).


\[^{345}\] Pickerign v. Pasco Mkgt. Inc., 303 Minn. 442, 446, 228 N.W.2d 562, 565 (1975) (finding lease provisions to be unconscionable, and stating in dictum that thirty day notice to service station operator); In re Estate of Hoffbeck, 415 N.W.2d at 449; Johnson v. Bostic, No. 1956508539, at 2-3 (Minn. Dist. Ct. 4th Dist. June 5, 1995) (decision and order awarding possession to Defendant) (finding a provision
10. Allegations of Unlawful Activity

When first required by statute, the tenant covenanted that the tenant will not unlawfully allow controlled substances in the premises, and that common areas will not be used by the tenant or others under the tenant’s control to carry out activities that are a violation of controlled substances laws. In 1997, the drug covenant was expanded to cover other types of unlawful activity, and to cover landlords as well as tenants. Now, both the tenant and the landlord, as well as the licensor and licensee, covenant that neither will: (1) unlawfully allow illegal drugs on the premises, the common area or curtilage, (2) allow prostitution or prostitution-related activity to occur in the premises, common area or curtilage, or (3) allow the unlawful use or possession of certain firearms in the premises, common area, or curtilage. Both parties also covenant that the common area and curtilage will not be used by them or persons acting under their control to carry out activities in violation of illegal drug laws. Neither of the drug covenants are violated if someone other than one of these parties possesses or allows illegal drugs on the property, unless the party knew or had reason to know of the activity.

A breach of the covenant voids the lessee’s right to possession of the premises, but all other provisions of the lease remain in effect until the lease is terminated by the terms of the lease or operation of law. The parties may not waive nor modify the covenant. The landlord may assign to the county attorney the right to bring the action.

346. MINN. STAT. § 504.181 (currently codified at § 504B.171, subd. 1(2)). The Legislature did not extend this part of the statute to the prostitution and firearms covenants. It is unclear whether that was intention or a drafting oversight. However, the fact that each of the covenants uses the word “allow” suggests that the test for liability is whether the party was directly involved or acquiesced in the conduct of others.

347. Id. In Minneapolis Pub. Hous. Auth. v. Folger, No. UD-1971114532, at 5 (Minn. Dist. Ct. 4th Dist. Jan. 23, 1998) (order and memorandum denying Plaintiff’s motion to set aside trial court order), the tenant’s guest consumed drugs and died of an overdose while the tenant was sleeping. The court concluded that the public housing authority did not prove that the tenant violated the lease, as the tenant did not “allow” his guest to use drugs or engage in criminal activity, and the tenant did not violate MINN. STAT. § 504.181 (currently codified at § 504B.171) because the tenant did not know or have reason to know of his guest’s prohibited activity. The decision was affirmed on judge review (Minn. Dist. Ct. 4th
Minnesota Supreme Court affirmed as not clearly erroneous the trial court’s ruling in a negligence action that blood alcohol tests would be excluded because the driver’s consent was not knowingly given. However, the court stated that “We do not pass on the question of the use of blood samples in civil litigation where there has been no consent to the taking of the blood.”

While it is difficult to make firm conclusions based on these cases, it appears that the tenant has the strongest argument for excluding improperly obtained evidence in a public housing eviction, where the government is the landlord, another branch of the government obtained the evidence, and the branches may well have worked together.

Dist. Apr. 13, 1998) (order and mem.). See Minneapolis Pub. Hous. Auth. v. Jivens, No. UD-1920720559 (Minn. Dist. Ct. 4th Dist. Sept. 9, 1992) (order and memorandum entering judgment for Defendant) (involving public housing where tenant not responsible for illegal drugs on the premises brought by a person who was on the premises without the tenant’s knowledge or consent, but with the consent of a guest of the tenant).

A seizure of contraband or a controlled substance manufactured, distributed or acquired in violation of controlled substances statutes and with a retail value of at least $100 also constitutes unlawful detention by the tenant. MINN. STAT. §§ 504B.301, 609.5317, ch. 152 (2001).

In cases alleging criminal activity, an issue can be whether evidence allegedly obtained improperly by the police should be admitted in a civil proceeding. While there is little authority specifically involving eviction actions, there is authority governing other civil proceedings. In State Patrol v. State, D.P.S., the court of appeals held that the exclusionary rule applied to a labor arbitration proceedings involving the possible loss of a job. 437 N.W.2d 670, 676-77 (Minn. Ct. App. 1989). The court noted:

The primary purpose, if not the sole purpose, of the exclusionary rule is to deter future unlawful police conduct. To give effect to this deterrence function, we cannot allow one government agency to use the fruits of unlawful conduct by another branch of the same agency to obtain an employee’s dismissal. Furthermore, the loss of a job is a very severe sanction which warrants special condition. We agree with Judge J. Skelly Wright of the Court of Appeals for the District of Columbia, who wrote: “It would seem wholly at odds with our traditions to allow the admission of evidence illegally seized by Government agents in discharge proceedings, which the Court has analogized to proceedings that “involve the imposition of criminal sanctions . . . .”

Id. at 676 (quoting Powell v. Zuckert, 366 F.2d 634, 640 (D.C. Cir. 1966).

348. 264 N.W.2d 651, 652 n.1 (Minn. 1978).

11. The Breach is Not Material

In an eviction action alleging breach of lease, the landlord must prove a material breach or substantial failure in performance. To determine present possessory rights, it is necessary to determine not only the truth of the allegations in the complaint, but also whether the plaintiff demonstrates a “material” breach of the lease agreement.

12. Cure

In a public housing case, the court of appeals held that the landlord’s right of action is complete upon the tenant’s breach of the lease, and subsequent remedial action cannot nullify the violation. More recently, the court of appeals may have indicated some rethinking of this bar. After summarizing the defendant’s cure argument, the court stated that “[the defendant] removed the boxes creating the fire hazard prior to the time of hearing and thus therefore redeemed her tenancy.” The district courts appear willing to allow the tenant to cure the lease violation in some circumstances.


351. Cloverdale, 580 N.W.2d at 49. See Amsler v. Harris, No. UD-1990826901, at 4 (Minn. Dist. Ct. 4th Dist. Sep. 20, 1999) (decision and order denying landlord’s motion for removal) (holding that tenant did not breach material term of lease where provision on occupancy limit was an afterthought to the entire lease, was not in the body of the agreement, and was not initiated by the parties); D & D Real Estate Inv. v. Hughes, No. UD-1990311505, at 2 (Minn. Dist. Ct. 4th Dist. Mar. 30, 1999) (decision and order dismissing complaint) (involving no convincing evidence as to the dollar amount of damage to a door to determine whether damage was material or de minimis, and the landlord failed to prove that the tenant or one of her guests damaged the door where the tenant claimed damage was caused by a burglar).

352. Minneapolis Cmty. Dev. Agency v. Smallwood, 379 N.W.2d 554, 556 (Minn. Ct. App. 1985), petition for rev. denied, (Minn. Feb. 19, 1986). The Smallwood Court relied upon First Minnesota Trust Co. v. Lancaster Corp., 185 Minn. 121, 131, 240 N.W. 459, 464 (1931), which followed earlier decisions and held that in a nonpayment of rent case, the landlord’s right of action is complete upon the default in payment of rent, eliminating the need for a right of reentry clause in the lease.

353. Schuett Inv. Co. v. Anderson, 386 N.W.2d 249, 252 (Minn. Ct. App. 1986). However, the court decided the case based upon the landlord’s failure to accommodate the defendant’s disability. Id. at 253.

13. Tenant Guest and Trespass Rules

Some landlords have created trespass lists, under which the landlord seeks to exclude from the premises persons whose names are contained on the list. In a tenancy, it is the tenant who has been given possession which is exclusive even against the landlord, with the only exceptions being the landlord’s right to enter the premises to demand rent or make repairs, or exceptions provided by the lease. It is the tenant who decides who may visit the tenant. The landlord does not have the right to exclude guests of the tenant without a court order.

14. Eviction for Emergency Police Calls

A landlord may not bar or limit a tenant’s right to call for police or emergency assistance in response to domestic abuse or any other conduct; or impose a penalty on a tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct. A tenant may not waive this right, and the landlord may not require the tenant to waive the right. While the statute does not refer to eviction actions, the prohibition against landlord-imposed penalties on tenants for making emergency calls

356. State v. Hoyt, 304 N.W.2d 884 (Minn. 1981) (reversing a conviction for trespass where guest had claim of right to visit nursing home resident after administrator revoked her privilege to enter the premises); State v. Holiday, 585 N.W. 2d 68, 70-71 (Minn. Ct. App. 1998) (holding that since the tenant is the lawful possessor of the property, the police or the housing authority can only serve as agents for the tenant, and since the tenant could not exclude a person from all properties of the public housing authority, neither could the police or the public housing authority as an agent for the tenant).
357. MINN. STAT. § 504B.205, subd. 2(1)-(2) (2000) (formerly codified at § 504.215).
358. Id. at subd. 2(2)(b). Local ordinances that require eviction or penalize a landlord in response to tenant calls for police or emergency assistance are preempted. Id. at subd. 3(1)-(2). A tenant may bring a civil action for violation of the statute for the greater of $250 or actual damages, and reasonable attorney fees. Id. at subd. 5. The Attorney General also can investigate and prosecute violations of the statute. Id. at subd. 6.
should allow the tenant to defend eviction actions where the landlord claims a right of eviction because of emergency calls, or where the tenant claims that the landlord’s notice to quit is based upon the tenant’s emergency calls.

15. Eviction of One Tenant But Not the Other

The court has been divided over whether it has the power to evict one tenant but not the other. In *Steven Scott Management, Inc. v. Scott*, the court of appeals affirmed the finding that the victim had not committed a material violation of the lease, as there was no evidence of any annoyance or danger to other residents. However, the court reversed the trial court as to the assailant, concluding that a finding that he violated the lease was sufficient to compel issuance of an order against him. Each tenant may have to be a party. However, the argument for eviction of only one tenant was

359. In *Real Estate Equities, Inc. v. Schmidt*, No. CX-00-297, at 4 (Minn. Dist. Ct. 10th Dist. Mar. 14, 2000) (decision and order dismissing Plaintiff’s claim), the tenant was assaulted on the property both before and after she obtained a restraining order, leading her to call the police. Id. at 2. The landlord sent a letter stating it would terminate the tenancy based on late payment of rent, damage to the property, and police calls to the unit. Id. at 2-3. The parties then executed an agreement to vacate. Id. at 3. The court concluded that the termination letter and the resulting agreement violated § 504B.205, rendering the agreement void as contrary to public policy. Id. at 3-4; see also *Haukos-Lund Partnership v. Borjon*, No. C3-98-632, at 6 (Minn. Dist. Ct. 1st Dist. Oct. 30, 1998) (decision and order dismissing landlord’s claim to evict) (finding in favor of mobile home park lot tenant, where the landlord sought to evict the tenant for calling the police to respond to a domestic abuse situation); *Berry v. Lane*, Nos. UD-1980629502 and UD-1980603900, at 2-4 (Minn. Dist. Ct. 4th Dist. July 22, 1998) (finding that landlord asserted numerous 911 calls to the property but could not prove the reasons for the calls, while the tenant asserted the calls were initiated by her for her children’s protection; held that landlord could not limit tenant’s rights to call for emergency assistance).


361. *Id.*; see *United States v. 121 Nostrand Avenue*, 760 F.Supp. 1015, 1032-33 (E.D.N.Y. 1991) (removing adult grandchild who sold drugs from public housing apartment under federal drug forfeiture statute, while allowing grandmother and other household members to remain because she lacked knowledge of drug activity); *Housing Authority Cannot Evict Innocent Family Member Because of the Primary Leaseholder’s Criminal Activity*, 23 CLEARINGHOUSE REV. 322 (1989) (citing Akron Metro. Hous. Auth. v. Rice, No. 88-CV-04013 (Ohio Mun. Ct., Akron, June 22, 1988) (holding there was no just cause for the eviction of the common-law wife and children of the primary leaseholder who was convicted of involuntary manslaughter because they were not involved in the stabbing incident, and involving situation where court could enter judgment in eviction against one household member but not against the rest of the family, who were innocent)).

rejected in *Phillips Neighborhood Housing Trust v. Brown*.\(^{365}\)

16. Other Defenses

Upon expiration of an initial term lease, without any action by the parties to renew the lease, the parties’ continuation of the landlord-tenant relationship becomes a month-to-month tenant fee, and cannot be based on the original written lease.\(^{364}\) Generally, a party who has breached a contract cannot sue on the basis of the other party’s subsequent breach of the contract.\(^{365}\) Since forfeitures are not favored, lease provisions that result in forfeiture are to be strictly construed, and will not be enforced when great injustice would be done and the party seeking forfeiture is adequately protected.\(^{366}\)

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\(^{363}\) 564 N.W.2d 573, 575 (Minn. Ct. App. 1997) (affirming eviction of entire household when one co-tenant violated the lease by engaging in illegal drug activity).


\(^{365}\) MTS Co. v. Taiga Corp., 365 N.W.2d 321, 327 (Minn. Ct. App. 1985) (holding that a landlord could not seek a remedy against the subtenant, where the landlord was still breaching the agreement at the time of trial, and the subtenant’s breach of the agreement directly resulted from the landlord’s initial breach of the agreement); Carlson Real Estate Co. v. Soltan, 549 N.W.2d 376, 379-80 (Minn. Ct. App. 1996) (affirming an eviction judgment for the commercial landlord where the landlord’s breach was not a direct cause or justification for the tenant’s breach).

V. POST TRIAL ISSUES

A. Eviction by Enforcement of the Writ of Recovery

If the court or jury finds for the plaintiff, the court shall issue a writ of recovery, formerly called a writ of restitution. The court shall stay the writ for a reasonable period not exceeding seven days, where the defendant shows immediate restitution of the premises would work a substantial hardship upon the defendant or the defendant’s family. In cases where the landlord proved violations of the illegal drug covenant, or that the tenant has caused a nuisance or has seriously endangered the safety of other residents, their property, or the landlord’s property, the court may not stay issuance of the writ.\(^\text{367}\) In mobile home park lot tenancies the court may issue a conditional writ of restitution, which allows the home to remain on the lot for sixty days for an in-park sale, orders the resident household to vacate the park within a reasonable period not to exceed seven days, and orders the park owner to notify any secured parties known to the park owner.\(^\text{368}\)

The landlord must bring the writ to the sheriff or police for service on the defendant.\(^\text{369}\) If the defendant does not comply with the demand, the landlord will have to arrange for the sheriff or police to return to the premises and remove the defendant, defendant’s family, and their personal property. There are two

\(^{367}\) MINN. STAT. § 504B.345 (2000) (formerly codified at § 566.09).

\(^{368}\) Id. § 327C.11, subd. 4. The resident household must move out of the park, comply with all rules relating to home and lot maintenance, and pay all rent and utility charges owed to the park owner on time. The writ becomes unconditional and absolute by court order, if the resident violates the above obligations and the park owner moves the court for such relief, following three (3) days’ written notice, or sixty-one days after issuance of the conditional writ. Id.

\(^{369}\) Id. § 504B.365 (formerly codified at § 566.17). Often, the landlord will have to schedule service on a later date. Some sheriffs or police require the landlord not only to prepay the sheriff or police for service, but to arrange for a bonded moving company to remove and store the tenant’s possessions if they will be stored in a place other than the premises. The sheriff or police will serve the writ on the defendant, any adult member of the defendant’s family holding possession of the premises, or any other person in charge of the premise. The sheriff or police will demand that the defendant and the defendant’s family vacate the premises and remove their personal property within twenty-four hours. In cases where the landlord prevails on claims of violations of the illegal drug covenant, or that the tenant caused a nuisance or seriously endangered the safety of other residents, their property, or the landlord’s property, execution of the writ receive priority. Id.
alternatives for removing and storing the tenant’s property.\textsuperscript{370} Housing courts in the Fourth and Second Districts (Hennepin and Ramsey counties) retain jurisdiction in eviction actions to decide disputes concerning removal of property following execution of the writ of restitution.\textsuperscript{371}

Unless the premises have been abandoned, a plaintiff or

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370. When property is to be stored in a place other than the premises, the sheriff or police shall remove the property at the plaintiff's expense. Often the sheriff or police will require the plaintiff to use a bonded moving company. The plaintiff shall have a lien upon the personal property only for the reasonable costs and expenses incurred from removing and storing the property. The plaintiff may retain possession of the personal property until payment. If the defendant does not pay such costs and expenses within sixty days after execution of the writ, the plaintiff may enforce the lien by holding a sale. \textit{Id. §§ 514.18–22, 504B.365} (formerly codified at § 566.17). \textit{See} Lang v. Terpstra, No. UD-1940207512 (Minn. Dist. Ct. 4th Dist. June 12, 1994) (decision and order granting Defendant’s motion to enjoin) (notice of sale under section 504.24 (currently codified at § 504B.271) did not amount to election of remedies precluding storage company from enforcing lien under section 514.18 et seq, but notice did not comply with section 514.21 requirement of publication).

When property is to be stored on the premises, the plaintiff must send written notice to the defendant of the date and approximate time when the sheriff or police is scheduled to execute the writ. The notice must inform the defendants that they and their property will be removed if they do not vacate by the date and time stated in the notice. The notice must be mailed as soon as the plaintiff knows of the date and time for execution. The plaintiff also must attempt in good faith to notify the defendant by telephone. After the sheriff or police enters the premises, the plaintiff may remove the property. In the officer’s presence, the plaintiff must prepare, sign and date an inventory, which includes a listing of the items of personal property and description of their condition; the date, signature of the plaintiff or plaintiff’s agent, and the name and telephone member of the person authorized to release the property; and the name and badge number of the officer. The officer shall retain a copy of the inventory. The plaintiff must mail a copy of the inventory to an address provided by the defendant, or to the defendant’s last known address. The plaintiff is responsible for proper removal, storage, and care of the property, and is liable for damages for loss of or injury to the property caused by a failure to exercise care as a reasonably careful person would exercise under the circumstances. \textit{Minn. Stat. § 504B.365} (2000) (formerly codified at § 566.17). The abandoned property statute, \textit{Minn. Stat. § 504B.271} (2000) (formerly codified at § 504.24), governs storage and return of the property. The landlord must store the property for sixty days. The landlord must notify the tenant at least fourteen days before sale of the property. The landlord has only a claim, and not a lien, for the reasonable removal and storage costs. \textit{Id.; City View v. Brooks, No. UD-1950907539, at 2} (Minn. Dist. Ct. 4th Dist. Nov. 13, 1995) (decision and order holding that landlord return Plaintiff’s property) (holding that landlord may not hold property to force payment of back rent). If the landlord fails to allow the tenant to take possession of the property within twenty-four hours of the tenant’s written demand, exclusive of weekends and holidays, the landlord is liable for punitive damages up to $300.

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plaintiff’s agent who enters the premises and removes the defendant’s property in violation of the statute is guilty of a misdemeanor for wrongful ouster and is liable to the tenant up to treble damages or $500, whichever is greater, and reasonable attorney’s fees.\textsuperscript{372} Where the tenant was wrongfully evicted, the landlord must bear the expenses of removal, storage, and return of the tenant’s personal property.\textsuperscript{373}

If the landlord accepts payment of rent and/or rent arrearages after receiving judgment for restitution of the premises, the landlord may waive the right to execute the writ. By accepting payment of arrearages, the landlord is allowing the tenant to redeem.\textsuperscript{374}

B. Motions

1. Motions in Anticipation of Appeal

It no longer is necessary to bring a motion for new trial or other post trial motion to preserve issues on appeal in an eviction action.\textsuperscript{375} After judgment is rendered for the plaintiff, if the

\textsuperscript{372} Id.


\textsuperscript{374} Central Brooklyn Urban Dev. Corp. v. Copeland, 471 N.Y.S.2d 989, 993 (Civ. Ct., Kings County, 1984) (government subsidized housing, payment of government subsidy after issuance of writ waives the writ). In Connelly v. Lewis, No. C8-96-426, at 2 (Minn. Dist. Ct. 9th Dist. Aug. 21, 1996) (order dismissing case), the landlord filed an eviction action for nonpayment of rent for May, and obtained a default judgment. The tenants paid rent to the landlord for May, June and July. In August, the landlord sought and obtained a writ of restitution. On the tenant's motion, the court first ordered an emergency stay of enforcement of the writ of restitution, and later vacated the writ and dismissed the case, based on the tenant’s argument that the landlord waived the right to restitution by accepting rent for the month in question and for later months, and that the rent transactions created a new tenancy between the parties.

\textsuperscript{375} Scroggins v. Solchaga, 552 N.W.2d 248 (Minn. Ct. App. 1996); Minneapolis Pub. Hous. Auth. v. Greene, 463 N.W.2d 558, 560 (Minn. Ct. App. 1990). There is some question whether the court may entertain a motion for a new trial. In Stock v. Beaulieu, No. C4-95-989 (Minn. Ct. App. May 9, 1995) (decision and order dismissing Plaintiff’s unlawful detainer action), the court granted a writ of prohibition precluding the district court from enforcing an order granting a new trial. The court concluded that the eviction statute’s creation of a summary proceeding did not contemplate a new trial, and that the petitioner would not be able to attack the order for a new trial on appeal from the decision in the second trial. The court did not discuss whether the grounds for new trial
defendant or the defendant’s attorney states to the court the intention to appeal, the writ shall not issue for twenty-four hours after judgment. \(^{376}\) Where the tenant appeals after the writ has been issued, the court shall give the appealing defendant a certificate of appeal, which when served upon the sheriff or police, shall stay further execution of the writ. \(^{377}\)

For most tenants, appeal will be pointless unless the tenant can retain possession of the premises pending appeal. Cost and supersedeas bonds affect the tenant’s right to retain possession. The cost bond is to cover payment of all costs and disbursements awarded against the appellant, or $500. Prior to filing the notice of appeal, the appellant may move the trial court for an order waiving or reducing the required bond or deposit. The respondent may waive the bond. \(^{378}\) No bond is required when the trial court finds that the appellant is indigent, and that in the interest of the appellant’s right to appeal, the bond shall not be required. \(^{379}\)

The supersedeas bond is to protect the respondent from loss during the appeal. “[T]he condition of the bond shall be the payment of the value of the use and occupation of the property from the time of the appeal until the delivery of possession of the property if the judgment is affirmed and the undertaking that the appellant shall not commit or suffer the commission of any waste on the property while it remains in the appellant’s possession during the pendency of the appeal.” \(^{380}\)

Since most tenants cannot had merit. The dissent asserted that the statute does not deprive the district court of its authority under Minn. R. Civ. P. 60.02(f) (2000) to grant a new trial in the interest of justice.

376. The exception is (1) “In an action on a lease”, based upon holding over after expiration of the lease or termination of the lease by notice to quit, and (2) “[t]he Plaintiff give a bond conditioned to pay all [of the Defendant’s] costs and damages [if . . . the judgment of restitution is reversed and a new trial ordered].” Minn. Stat. § 504B.371, subd. 7 (2000) (formerly codified at § 566.11).

377. The exception is “where judgment for restitution has been entered on a lease” in an action for holding over after expiration of the lease or termination of the lease by notice to quit. Id. § 504B.371 (formerly codified at § 566.13).

378. Id. § 504B.371 (formerly codified at § 566.13).

379. Minn. R. Civ. App. P. 107, subd. 1; Minn. Stat. § 504B.371 (2000) (formerly codified at § 566.12). Additionally, under the in forma pauperis statute, § 563.01, subd. 3, the court shall allow appeal without prepayment of costs and security if the court finds that the action is not frivolous and the appellants affidavit is in proper form and not untrue.

380. Minn. R. Civ. App. P. 108.01, subd. 5 (2000); Minn. Stat. § 504B.371, subd. 3 (2000) (formerly codified at § 566.12) states that the appealing defendant may remain in possession of the premises, and execution of the writ shall be stayed, if the defendant pays a cost bond and “pay all rents and other damages” of
afford to pay up front all of the anticipated rent accruing during appeal or a bond to cover such rent, the tenant should be allowed to pay the rent each month as it accrues.\textsuperscript{381} Payment of past rent allegedly owed should not be included in the bond. In government subsidized housing, the bond should cover only the tenant’s share of the rent.\textsuperscript{382} The tenant is obligated only to pay rent which would come due during the appeal, rather than rent that was allegedly due before the appeal.\textsuperscript{384} If the district court sets the bond in an excessive amount, the tenant should file the appeal and make a motion to the court of appeals to reduce the amount.\textsuperscript{384}

2. Motion to Vacate Judgment and Stay or Quash the Writ of Restitution

The court has authority to entertain a motion to vacate a judgment in an eviction action, either under either the court’s inherent power to review its own action,\textsuperscript{385} or by rule.\textsuperscript{386} Where the court lacks personal jurisdiction over the defendant due to inadequate service, a judgment entered by default must be vacated unconditionally.\textsuperscript{387} No showing of a meritorious defense is necessary.\textsuperscript{388} The court may vacate a judgment and writ obtained by the plaintiff during the appeal. The exception is “in an action on a lease”, based upon holding over after expiration of the lease or termination of the lease by notice to quit, “[t]he Plaintiff gives a bond conditioned to pay all [of the Defendant’s] costs and damages [if] . . . the judgment of restitution is reversed and a new trial ordered.”\textit{Id.} at subd. 7. In the limited cases where this exception applies, it is inconsistent with MINN. R. CIV. APP. P. 108.01, subd. 5.

\begin{enumerate}
\item Buddhu v. Ellis, No. UD-1880908580 (Minn. Dist. Ct. 4th Dist. Sept. 30, 1988) (supplemental order mandating that Defendant post bond).
\item Phillips Neighborhood Hous. Trust v. Brown, No. UD-1960705508 (Minn. Dist. Ct. 4th Dist. Nov. 26, 1996) (order approving motion for expungement of unlawful detainer) (denying landlord’s motion for pre-judge review of rents not accepted by the landlord; tenant ordered to pay rent into court as it comes due); Thompson v. Gates, No. UD-197011509 (Minn. Dist. Ct. 4th Dist. Feb. 28, 1997) (order for review) (ordering tenant to pay rent as it came due into court, rather than alleged past due rent).
\item Sisto v. Hous. and Redevelopment Auth., 258 Minn. 391, 395, 104 N.W.2d 529, 532 (1960).
\item Itaska County v. Ralph, 144 Minn. 446, 449, 175 N.W. 899, 900 (1920); Crosby v. Farmer, 39 Minn. 305, 309, 40 N.W. 71, 73 (1888).
\item MINN. R. CIV. P. 60.02 (2000); Wong Kong Har Wun Sun Ass’n v. Chin, No. C8-87-2439 (Minn. Ct. App. Apr. 12, 1988) (holding that trial court abused discretion in refusing to vacate default eviction judgment due to mistake).
\item Lange v. Johnson, 295 Minn. 320, 323, 240 N.W.2d 205, 208 (1973).
\item Hengel v. Hyatt, 312 Minn. 317, 318, 252 N.W.2d 105, 106, (1977);
\end{enumerate}
the landlord claiming that the tenant violated a settlement agreement, where the tenant substantially complied, or the landlord did not.\footnote{389}

3. Motion for Costs, Disbursements, and Attorney Fees

The prevailing party is entitled to disbursements and $200 in costs.\footnote{390} Tenants only began requesting costs recently, with costs being awarded regularly when requested.\footnote{391} The appellate courts have inconsistently ruled on whether attorney’s fees may be awarded in eviction (unlawful detainer) actions. In \textit{Duling Optical Corp. v. First Union Management, Inc.}, the court of appeals affirmed the district court’s conclusion in a separate damages action that it lacked jurisdiction to award attorney’s fees for separate eviction actions, since the issue of attorney’s fees should have been decided in the eviction actions.\footnote{392} However, in \textit{Eagan East Ltd. Partnership v. Powers Investigations, Inc.}, the trial court ruled that the tenant was not entitled to attorney’s fees under the lease. On appeal, the court of appeals held that the trial court’s jurisdiction was limited to determining present possessory rights of the parties, and that the trial court exceeded its jurisdiction by ruling on attorney’s fee...
Consolidation of the eviction action with a tenant-initiated case, such as a rent escrow, tenant remedies, lockout, or emergency relief action, would give rise to attorney fees.

4. Motion to Seal or Expunge Court Records

In some circumstances, the court may consider sealing or expunging the eviction court records. The benefit for the tenant is keeping court records out of the reach of tenant screening agencies, since many landlords will not rent to tenants who have even one case on their record, regardless of the outcome. Until the recent passage of an expungement statute, the issue was one of common law, based on the court’s inherent power to control court functions.

In 1999, the Minnesota Legislature provided the procedures for expungement in Minnesota Statute section 484.014. It defines “expungement” as the removal of evidence of the court file’s existence from the publicly accessible records. It defines “eviction case” as an action brought under the eviction statutes, and “court file” as the court file created when an eviction case is filed.

393. 554 N.W.2d 621, 621 (Minn. Ct. App. 1996).
396. Player v. King, UD-1960306541, at 2 (Minn. Dist. Ct. 4th Dist. Apr. 3 & May 2, 1996) (decision and order) (holding that the dismissed companion eviction action records be sealed in an Emergency Tenant’s Remedies and Lockout Action, at compliance hearing). See Phillips Neighborhood Hous. Trust v. Brown, No. UD-1960705508 (Minn. Dist. Ct. 4th Dist. Mar. 2, 1998)(decision and order approving the parties’ joint motion for expungement) (expunging name of tenant on joint motion of parties where the landlord prevailed in action for breach of lease by the co-tenant, there was no question that the tenant seeking expungement was not at fault for the breach); Central Manor Apartments v. Beckman, Nos. UD-198060509, UD-198051525 (Minn. Dist. Ct. 4th Dist. July 29, 1998) (decision and order denying Plaintiff’s complaint) (stating that the ends of justice would be best served by expunging a second eviction action where landlord could have sought relief by motion in first eviction action). See generally State v. C.A., 304 N.W.2d 355 (Minn. 1981); State v. T.M.B., 590 N.W.2d 809 (Minn. Ct. App. 1999) (stating that courts may exercise their inherent authority to issue expungement orders affecting court records, and the judiciary may not order expungement of criminal records maintained by executive branch agencies absent evidence of an injustice resulting from an abuse of discretion in the performance of an executive function).
397. MINN. STAT. § 484.014 (1999).
398. Id.
with the court. The statute provides for discretionary expungement: “[t]he court may order expungement of an eviction case court file only upon motion of a defendant and decision by the court, if the court finds that the plaintiff’s case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case, that expungement is clearly in the interests of justice, and those interests are not outweighed by the public’s interest in knowing about the record.”

In the Fourth District (Hennepin County), the housing court has scheduled a monthly calendar for expungement motions for the second Wednesday of the month at 1:30 p.m. Motions must be filed and served on the opposing party at least ten days before the hearing. However, on some occasions the court will grant an expungement at the same time that it dismisses an eviction action. Tenants should ask for expungement as part of the request for relief in an eviction action. The court either will consider it at the time it determines the outcome of the case, or may require the tenant to bring a separate motion on the monthly calendar.

Occasionally court personnel may be reluctant to expunge a court file where there is a settlement agreement setting out actions or events that will occur in the future. The tenant should ask the court to order that expungement occur immediately. This is especially important during a period in which the tenant is seeking

399. Id.
400. Id.; Minneapolis Pub. Hous. Auth. v. Dixon, No. HC-000121514 (Minn. Dist. Ct. 4th Dist. May 12, 2000) (order granting expungement) (involving situation where landlord and tenant agreed that a co-tenant, and not the tenant, was the culpable party for lease violations; tenant’s name, but not co-tenant’s name, removed from caption and computerized records); Lowe v. Wilson, HC000107530 (Minn. Dist. Ct. 4th Dist. Apr. 12, 2000) (order granting expungement) (involving situation where Defendant had a strong case of retaliation, even though there was no trial due to the parties’ settlement); Bratton v. Cobb, No. HC-000222514 (Minn. Dist. Ct. 4th Dist. Apr. 12, 2000) (order granting expungement) (involving short service); Brinkman v. Smith, No. HC-1000202517 (Minn. Dist. Ct. 4th Dist. May 10 and Mar. 9, 2000) (order granting expungement) (involving situation where tenant prevailed on claims of improper and retaliatory notices, habitability, and privacy violations, and harassment); Osuji v. Coleman, No. HC-1991118524 (Minn. Dist. Ct. 4th Dist. Dec. 10, 1999) (order granting expungement) (involving situation where tenant prevailed on motion to dismiss action where landlord failed to provide notice and opportunity to cure required by the lease); Coker v. Hulsey, No. UD-1991101520 (Minn. Dist. Ct. 4th Dist. Nov. 15, 1999) (order granting expungement) (involving situation where Plaintiff alleged false facts in complaint about delivery of notice to vacate, and timely notice had not been given).
new housing. Some court administrators have questioned whether expungement applies to public access computer records as well as hard files. The statute defines “expungement” as the removal of evidence of the court file’s existence from the publicly accessible records, which should include electronic records as well as paper records.

VI. JUDGE REVIEW OF HOUSING COURT REFEREE DECISIONS

A party not in default may seek judge review of referee decisions by serving and filing a notice of review within ten days after the referee orally announces the recommended decision in court, or within thirteen days after service by mail of the written order as adopted by a judge, whichever occurs first. The judge’s review shall be based upon the record established before the referee. The notice of review does not stay entry of judgment nor vacate a judgment if already entered, unless the petitioner requests and the referee orders a bond, payments in lieu of a bond, or waiver of a bond or payments.

Landlords sometimes argue at judge review that the tenant should have to pay into court rent which was withheld, in dispute, or not accepted by the landlord to avoid waiver, in order to have the right to judge review. The tenant is obligated only to pay rent which would come due during the appeal, rather than rent that was allegedly due before the appeal.

401. Viking Prop. of Minn., LLC v. Wesley, Nos. UD-1990714563 and UD-1990709901 (Minn. Dist. Ct. 4th Dist. Aug. 11, 1999) (order holding action to be expunged) (holding expungement immediately upon filing of order where eviction action was erroneously filed due to mistake or confusion).

402. MINN. STAT. § 484.014 (2000); Minneapolis Pub. Hous. Auth. v. Dixon, No. HC-000121514 (Minn. Dist. Ct. 4th Dist. May 12, 2000) (order granting expungement) (holding expungement where landlord and tenant agreed that a co-tenant, and not the tenant, was the culpable party for lease violations; tenant’s name, but not co-tenant’s name, removed from caption and computerized records).

403. MINN. R. GEN. PRACT. 611(a) (2000); Connelly v. Schiff, No. HC-1000121514 (Minn. Dist. Ct. 4th Dist. May 23, 2000) (order denying review) (involving situation where order filed 11 days after oral announcement of decision).

404. In Butler v. Cohns, No. C2-96-6599 (Minn. Dist. Ct. 2d Dist. Oct. 22, 1996), on a request for judge review, the court noted that MINN. R. CIV. P. 53.05 (b) governed its scope of review, and that the court must accept the facts found by the referee unless clearly erroneous, but questions of law are reviewed in de novo.


The petitioner must request a transcript from the referee’s court reporter within one day after the notice of review is filed. The petitioner must make satisfactory arrangements for payment with the court reporter, or arrangement for payment in forma pauperis. The transcript must be provided within five business days after its purchase by the petitioner. It appears that the parties have the option of directly appealing from entry of judgment following the decision of the referee, or seeking judge review of the referee’s decision and then appealing from entry of judgment following the judge’s decision on review.

VII. APPEAL

The time period for appeal is ten days. However, if the eviction action is consolidated with a emergency relief action, rent escrow action, or a tenant remedies action, the appeal period would be sixty days following adjudication of both actions and entry of judgment. The appeal lies from entry of judgment. While the Minnesota Supreme Court was willing to hear cases not appealed from entry of judgment by discretionary review before creation of the court of appeals, the court of appeals was not. To avoid dismissal of the appeal as moot, the tenant must seek to remain in possession of the property during the appeal, or not vacate voluntarily.
VIII. CONCLUSION

While an eviction case can be as simple as whether the tenant paid the rent or breached the lease, or failed to vacate after expiration of a lease or proper notice from the landlord, making that assumption can lead a landlord to misjudge the likelihood of success, and lead a tenant to forgo the enforcement of rights. Only by fully understanding the mixture of state statutes, common law of property and contracts, and federal law, can counsel for landlords and tenants adequately advise and represent such clients.

App. Dec. 8, 1998) (dismissing as moot where commercial tenant appealed from a judgment of restitution, paid rent and posted a cost bond to suspend execution of the landlord’s writ of restitution during the appeal, but voluntarily vacated the premises at the end of the lease term and did not exercise its unilateral option to renew the lease); Lanthier v. Michaelson, 394 N.W.2d 245, 246 (Minn. Ct. App. 1986) (dismissing as moot where tenant appealed but vacated the apartment without posting the bond or paying rent into court); Scroggins v. Solchaga, 552 N.W.2d 248, 252-53 (Minn. Ct. App. 1996) (allowing appeal where removal of the tenant from the property by executing the writ, and distinguishing Lanthier on the issue of whether the tenant voluntarily moves or is forced to move by execution of the writ).