

Call for Justice, LLC—United Way 2-1-1 Training Paper

Session 5: Landlord-Tenant Law 101

July 26 and 27, 2012: Larry McDonough, Mid-Minnesota Legal Aid, Minneapolis Office

Featured Speaker's Topic

This month, Larry McDonough, will discuss landlord-tenant law in Minnesota. A question and answer session will follow the presentation.

Basic Concepts in Landlord-Tenant Law

1. Oral and Written Leases

The starting point in landlord-tenant law is that leases can vary between those who have space for rent and those who need the space. Leases can be either **written** or **oral**. Both are binding, but different rights and obligations can attach to each.

A **written lease** can be for any period of time; usually written leases have lengths, or “terms,” of one year, and sometimes longer. There is no statutory requirement for a written lease, but when a lease is in writing, it usually contains some basic elements, such as the length of time (term) the tenancy will run, the amount of security deposit and rent, whether utilities are included or not, the due date for rent, and the process for renewing or terminating the lease. Since the landlord usually prepares a written lease, it will be slanted in the landlord's favor.

Some written leases are month to month leases with no set ending date. In those instances, the landlord or tenant must give a one month (not 30 days') written notice to terminate the lease. Some leases require a longer notice.

Approximately 15% of all leases are “**oral leases**” or “**verbal agreements.**” Oral leases are legal; however, they aren't valid for more than a year, nor can a landlord with 12 or more units have oral leases. An oral lease can be based on an agreed-upon term, but this is rare. More often, there's no discussion about term; in that case, the lease is considered a “tenancy at will,” which means it will run from month to month. In that case, whoever wants to terminate the lease (the landlord or the tenant) must give a one month (not 30 days') written notice before the termination is effective.

The problem with oral leases is that there's nothing for either party to fall back to in the event of a dispute. Both parties can then get into a “he said, she said,” situation.

Regardless of the form of the lease, any lease is a contract that's binding on both parties. Thus, on the landlord's end, the landlord is obligated to ensure that the rental property stays intact (e.g. if there's a fire and the apartment burns down, the tenant isn't obligated to continue paying rent) and remains “habitable” (see below for a discussion re:

habitability/repairs). On the tenant's end, there's the obligation to pay rent in full and on time, and not to trash the rented space, above normal wear and tear. The tenant also has an obligation to move out on time when the lease ends. (A "hold-over" occurs when a tenant stays beyond the lease termination date.)

2. The Covenant of Habitability/Landlord's Obligation for Repairs

A tenant is entitled to live in rental space (room, apartment or home) that is in "reasonable repair," and one which meets local housing codes. In a technical legal sense, this is called the "covenant of habitability," which the courts will imply in every lease, whether it's oral or written. A landlord can't write out of a lease the obligation to provide a warm place to live in the winter or basic plumbing service.

RED FLAG: When it comes to habitability, **there are emergencies and non-emergencies.** For example, an **emergency** is a lack of heat, no power, broken plumbing (including a lack of hot water) or a notice that the leased premises have been condemned by local authorities. In these instances, a caller should be immediately referred to a legal resource. In **non-emergency situations, such as a noisy neighbor,** a tenant has some options which don't necessarily need to involve a lawyer. The key is listening to the complaint and making an educated referral based on the nature of the repair problem.

In the event of a non-emergency repair, tenants can call a housing inspector (many cities have housing inspectors but not all do) or write the landlord about the need for repairs. If repairs haven't been made by (1) the housing inspector's deadline **or** (2) within 14 days after mailing the letter, a tenant can file something called a "rent escrow action," where the tenant pays the rent into the court and asks for a hearing. At the hearing (which will take place within 10-14 days of starting the rent escrow action), the court will consider any evidence about defects or problems with the rented space. The court can order the landlord to make the repairs or reduce the tenant's rent until the repairs are made. Additionally, the court can let the renter arrange for the repairs and then deduct the cost of the repairs from the rent.

It is also possible to file a Conciliation Court (small claims) action where the renter describes the bad living conditions, and asks the court to award back to the tenant some of the rent the tenant previously paid for prior months, as a form of damages. Remember, people appearing in Conciliation Court don't need an attorney. This is more common after the tenant leaves the property, as all the Conciliation Court can do is award money but not order repairs.

It is almost never a good idea to withhold rent because of a repair issue. A landlord can start an eviction proceeding if someone is late in paying rent by just one day. It is far better to pursue a rent escrow action or Conciliation Court action than it is to defend against an eviction action.

RED FLAG: If a caller asks, “I’m thinking of not paying my rent because the landlord won’t fix my plumbing,” we think it best to reply, “I strongly recommend that you talk to an attorney before you hold back any rent.” In this area—which involves a basic need (housing)—people shouldn’t take any chances. Even twenty minutes of advice (which HOME Line or a volunteer lawyer at Housing Court can provide) may make a huge difference in the outcome of a landlord-tenant issue.

3. Shared Utility Meters

Minnesota law governs situations where there are shared utility meters for one or more utilities: water, sewer, natural gas and electricity. Shared meters are common in small structures, like duplexes and triplexes. A landlord must disclose to all tenants that the utility service is shared and then put the utility in the landlord’s name. The landlord then allocates each tenant’s share of the bill under a formula on how to charge the tenant. **If the landlord doesn’t follow the law and formula, the landlord is liable for a \$500 penalty or treble (triple) damages based on the amount the tenant overpaid.**

4. Privacy

Tenant privacy is protected by Minnesota law. **A landlord may enter the leased premises only if the landlord has a reasonable business purpose (such as a repair need) and provides reasonable notice to the tenant.** Notice doesn’t need to be in writing; it can be verbal. There is no requirement that the landlord give 24 hours’ notice—it simply must be an attempt to let the tenant know about the entry. (An attempt is good enough; the landlord can enter even if the attempt to give notice wasn’t successful.)

In the event a landlord violates the tenant’s privacy by either entering for an unlawful reason or by not providing reasonable notice, the tenant can sue in the form of a tenant remedies action in Housing Court. It is not a particularly easy process. The penalty is \$100 per violation.

Landlords can always enter for emergencies.

5. Security Deposits

Security deposits (sometimes called “damage deposits”) are intended to protect the landlord in the event the tenant causes damage to the rented space that goes beyond normal wear and tear. Sometimes there is an additional deposit if the tenant has pets.

A landlord is required to return a security deposit within 21 days of when the lease ends (assuming the tenant has moved out and provided a forwarding address). There are two legal reasons why a tenant would not receive back the full amount of the security deposit: (a) where the tenant still owes rent under the lease or (b) where there is damage to the leased space that goes beyond normal wear and tear. Note: what constitutes “normal wear and tear” is very

subjective and the kind of thing that landlords and tenants argue about in Housing Court all the time.

If a tenant believes their former landlord wrongfully withheld the deposit, the tenant can sue the landlord in Conciliation Court.

Foreclosures

There are many misconceptions about tenant rights where the property is the subject of a foreclosure. In short, most tenants have at least six months, and usually more (assuming the term of the lease extends that far) from the date of a sheriff's sale of the foreclosed property. Additionally, once a new owner takes over the foreclosed property, in most instances, the new owner is obligated to observe the tenant's original lease for at least 90 days.

RED FLAG: With tenants in foreclosed property, they don't need to panic thinking they have to move immediately on the day of a sheriff's sale. However, they do need to be proactive. This is a classic "talk to a lawyer about a legal problem before it becomes a legal emergency" situation. Thus, upon learning about a foreclosure on the leased premises (and the tenant should receive notice of this well in advance of any date on which they must move), the tenant should make an appointment to talk to a lawyer—or at least, call HOME Line. Recall that HOME Line will talk to Minneapolis residents in foreclosed properties free of charge.

Subsidized and Public Housing

We could probably do an entire training session on subsidized housing (and maybe, someday we will), but for our purposes with the session at hand, it is important to understand there are two types of subsidized housing—location-based subsidies and tenant-based subsidies.

A location-based subsidy is one where the apartment complex has a rent structure that is subsidized for the tenants who live there. A government agency (i.e. HUD or a public housing authority) oversees the apartments that are subject to the subsidy. The buildings are commonly called public housing or subsidized housing projects.

A tenant-based subsidy is one that goes with the tenant regardless of where he/she lives. This is commonly called a "Section 8" voucher subsidy, and works in the form of a voucher that the tenant receives from a public housing authority. A landlord isn't obligated to rent to a tenant with a Section 8 voucher. (For landlords, there are a number of regulatory hoops to jump when a Section 8 tenant rents.) Still, the advantage to this kind of subsidy is that the tenant may be able to live closer to relatives or work.

The rules for public and subsidized housing are different than private housing. Legal Aid attorneys are specially trained in advising and representing tenants in public and subsidized housing.

Evictions

An eviction is a formal court action (sometimes also called an “unlawful detainer” [for the reason that the tenant “detains” the property by living there without the right to do so]) which requires notice to the tenant, service of eviction papers on the tenant (the notice and service of papers can be one in the same thing), and a hearing in front of a Housing Court referee or judge.

Minnesota law allows for evictions due to nonpayment of rent, breach of the lease, the tenant’s failure to leave when the lease has expired or following a notice to terminate a month to month lease, and some limited tenant actions (such as possessing illegal drugs on the property, having an unauthorized pet or damaging the property).

Generally, evictions take two to three weeks to accomplish—from the time of initial filing to when a sheriff’s deputy might remove the tenant from the leased premises. **A tenant should always appear in Housing Court for the eviction hearing since the tenant has the right to ask for an additional seven days to find another place to live.**

A landlord cannot simply say, “You need to leave,” and consider that a legal eviction. Without a court order directing a tenant to vacate the leased premises, there is no eviction. Even with such an order, a landlord can’t force a tenant to leave the leased premises. Instead, only a deputy sheriff (with the eviction order in hand) can do that.

RED FLAG: Approximately 90% of all evictions filed in Minnesota are for non-payment of rent. Attorney advice is critical in all evictions, as there are many defenses which may be available to the tenant, even when it appears to be a simple rent case. An attorney can negotiate with the landlord to give the tenant more time to secure an alternative living space. Additionally, an attorney may be able to work out some suitable resolution of the dispute, including a deal that the eviction won’t go on the tenant’s record (see “Expungements” below). Thus, it is good to refer all callers facing eviction to an attorney or landlord-tenant advice line.

1. Defenses to Evictions

There are a number of defenses to eviction actions. There are some procedural defenses, such as where the landlord improperly serves the tenant with eviction papers. Additionally, landlord companies must be registered with the Secretary of State and in some cities the property must be licensed. If the tenant proves a procedural defense to the eviction proceeding, the eviction action will be dismissed and the landlord will need to start the eviction action all over again.

In the event of nonpayment of rent, the tenant can appear and show that, in fact, the rent has been paid via receipts or cancelled checks. Other rent defenses include habitability and illegal shared meters (discussed above), excessive late fees, and receipt of partial payments. Additionally, if rent is actually due, the tenant can pay everything owed into the court, a procedure known as “redemption”—and the landlord is legally bound to accept rent money paid into court. However, the redemption would require the tenant to also pay late fees of no more than 8% of what is owed, the court costs the landlord incurred to file the eviction proceeding (now \$322), and other fees. For most tenants, this may be too much of a financial burden.

In a breach of lease case, the main issues are what the lease says, what the tenant or guests did, and if the conduct violates the lease. Defenses can include waiver of violations by accepting rent, and the landlord’s failure to accommodate the tenant’s disability. If the landlord claims illegal drugs on the property, it is a defense that the tenant did not know or have reason to know that someone else brought drugs onto the property.

A “holding over” case arises when the tenant fails to move after the lease expires or after a notice to terminate a month to month lease expires. Defenses include retaliation (discussed below), improper notice, and waiver of the notice by accepting rent following the move out date. Tenants in foreclosed properties have additional rights.

In public and subsidized housing evictions, there are more rules concerning procedural, rent, breach of lease, and holding over defenses.

2. Landlord Retaliation

“Retaliation” occurs when a landlord takes some action (usually an eviction proceeding) against the tenant because the tenant sought to exercise some right under the lease or under the law. For example, a tenant who complains about the landlord’s failure to repair the leased premises cannot be evicted because the landlord considers the tenant a “complainer.” Similarly, the landlord can’t issue a notice to vacate the premises (a notice to vacate advises the tenant the lease isn’t going to be renewed) or reduce services to the tenant (such as shutting off lighting to an adjacent garage) as a way of getting back at the tenant. Finally, a landlord can’t increase rent in retaliation for the tenant engaging in a protected activity.

As a practical matter, a landlord can attempt to engage in less clear, but as equally harassing, actions. In that event, we’re back to he said/she said.

A tenant cannot be retaliated against for making emergency assistance (police, fire, ambulance) calls.

3. Lockouts

Under no circumstance is a landlord entitled to change the locks or otherwise prevent the tenant from entering the leased premises. If the landlord takes such actions, he/she can be subject to criminal prosecution. Also, the tenant can file a case in Housing Court and ask the referee or judge to order the landlord to allow the tenant back to the property to live, or to retrieve personal property. The court also can award penalties.

RED FLAG: Tenants who are locked out of the leased premises can call the police.

4. Expungements

Many callers may not understand that court filings which seek evictions become a part of the tenant's rental history record for at least seven years. By law, tenant screening companies are not supposed to report an eviction record after seven years, but the court record of the eviction (which anyone can find on-line or at the clerk's office) lasts forever. Of course, the fact that a tenant has been the subject of a past eviction proceeding could cause a prospective landlord to pass on the tenant's application. Assuming no other illegal factor is part of that decision (such as the tenant's race, gender or sexual orientation), the landlord's decision not to rent to a previously-evicted tenant is legal.

A tenant can ask the court to remove, or "expunge," the record of a past eviction. This is not an automatic procedure, and the vast majority of requests for expungement are denied. In order to convince a court to expunge a public record like an eviction proceeding, the court must be convinced that the landlord did not have a sufficient basis in fact or law for the original eviction. Almost every eviction case has some basis, but the standard for expungement is if the basis was legally sufficient. For instance, if the tenant owed rent but the landlord had not kept the property in reasonable repair, the tenant might be able to get an expungement because the landlord was not entitled to all of the rent.

Even if the tenant wins on the eviction action, there's a record of the *filing* with the clerk of court. With a successful expungement, the court would expunge the record of an eviction proceeding ever having been *filed*. The tenant also would need to notify the tenant screening agencies of the expungement, and then the agencies must expunge their records as well.

Note: even with an expungement, a landlord is free to give references for a tenant. That, of course, gets us back to he said/she said.

Legal Resources for Landlord-Tenant Issues

There are a variety of legal resources for tenants, and some even for moderate income landlords. These fall into the categories of legal advice hotlines, legal clinics, and full legal (attorney) representation resources.

1. Legal Advice Hotlines

The Primary Legal Advice Referral is HOME Line (612-728-5767)(<http://www.homelinemn.org/minneapolis/>) provides advice to tenants state-wide. They don't charge for that advice except to tenants in Minneapolis. (Note: HOME Line will not charge if a Minneapolis tenant is affected by a land foreclosure.) For all other advice to Minneapolis tenants, HOME Line charges \$25/20 minutes; \$75/hr. On its website, HOME Line also advises that it prefers to meet Minneapolis tenants face-to-face; the website offers the ability to schedule the appointment on-line.

HOME Line rarely, if ever, appears in court on behalf of a client. For the most part, they are advice only.

2. Legal Clinics

The Housing Court Project (at the Hennepin County Government Center, 300 6th Street S. Minneapolis) is for Hennepin County residents. This is a walk-in clinic for legal advice on evictions, lease violations, repair problems, emergency repairs, lock-outs, and expungements. NOTE: The Housing Court Project is for advice only; referrals to attorneys for full representation are possible. Eligibility: Hennepin County tenants whose incomes are at or below 300% of the Federal Poverty Guidelines may use this service. Landlords who have incomes at or below 300% of the FPG may also use this service, but they must live in the rental property and be named as the owner on the deed.

Ramsey County Housing and Conciliation Court Self-Help Center

Frequency: Tuesdays 1 p.m. to 4 p.m.

Location: Ramsey County Law Library
15 Kellogg Blvd. W., 18th Floor
St. Paul, MN 55102

Details: Free legal consultations provided by volunteer attorneys on first-come, first-served basis. Sign-up for consultations starts at 12:00 p.m.

Contact: 651-266-8391

Community Action Partnership of Suburban Hennepin Legal Services Clinic (in partnership with Volunteer Lawyer's Network)

Frequency: 2nd Friday of Every Month from 9 a.m. to 11 a.m.

Location: 8800 Highway 7, Suite 401
St. Louis Park, MN 55426

Details: Walk-ins welcome, appointments recommended. Clinics provide low-income clients the opportunity to speak with a volunteer attorney about legal questions and obtain information about going to court.

CAPSH Foreclosure Prevention Specialists are also available at each clinic to address foreclosure specific questions.

Contact: Call Cheryl, 952-697-1333

Community Action Partnership of Suburban Hennepin Legal Services Clinic (in partnership with Volunteer Lawyer's Network)

Frequency: 4th Monday of Every Month from 12 p.m. to 2 p.m.

Location: MIRA

7145 Harriet Ave

Richfield, MN 55423

Details: Clinics provide low-income clients the opportunity to speak with a volunteer attorney about legal questions and obtain information about going to court. Spanish speaker will be on site. CAPSH Foreclosure Prevention Specialists are also available at each clinic to address foreclosure specific questions.

3. Full Legal Representation and Advice by Attorneys

The Primary Referral is Mid-Minnesota Legal Aid (formerly the Legal Aid Society of Minneapolis), 430 1st Avenue North, Suite 300 (612-334-5970) (<http://www.midmnlegla.org>).

Will provide legal representation to tenants at 125% of FPG or less. Legal Aid lawyers also staff the Housing Court Project. Note: the above phone number is a central intake also for **Central Minnesota Legal Services**, which also provides full representation for tenants. Neither agency can provide representation in all cases. Attorneys review the cases and either provide representation or give advice depending on availability.

Another primary referral is the Volunteer Lawyers Network, 612-752-6677 (www.volunteerlawyersnetwork.org).

Southern Minnesota Regional Legal Services (651-222-4731) (<http://www.smrls.org/>) provides two types of tenant assistance. Their staff attorneys will handle evictions/UD and repair actions. They serve Ramsey, Washington, Dakota, Carver and Scott Counties for this emergency-type service. On Tuesday evenings, volunteer attorneys meet with previously-screened clients to deal with non-emergency needs like security deposits. The volunteer attorneys only serve Ramsey County residents.

The fallback referral for callers outside Minneapolis is HOME Line. The fallback referral for callers in Minneapolis is the Housing Court Project.

Emergency referrals (e.g. evictions): go to the Housing Court Project in Hennepin; the HOME Line otherwise.

A possible referral for callers with some means (who want full representation but won't be eligible for Legal Aid due to income) is the RCBA Modest Means Program, (651-224-1775)(email: ars@ramseybar.org). The RCBA Modest Means Program is available in Hennepin and Ramsey Counties with service available in other metro-area counties if clients are able to travel. Clients must have total household income between 125% and 250% of poverty guidelines (for a family of four, this range is \$28,813 to about \$57,600). Certain expenses, like child support and medical expense, are subtracted from income when calculating financial eligibility. RCBA staff will explain the case to the attorney and will set up a date and time for an appointment. **This service is not free.** There is a **\$20 referral fee**, which the caller is responsible for paying either by credit card at the time of scheduling or by check or cash at the initial consultation. **All attorneys work at a rate of \$55.00 per hour, with a \$600 initial retainer fee.** There is no charge from the attorney during the initial 30 minute consultation. The caller is encouraged to discuss fees individually with the attorney at the initial consultation.

Other Resources

Remember that **LawHelpMN.org** has various fact sheets on tenant rights. Callers can go to <http://lawhelpmn.org/MN/index.cfm>.

Housing Link will help tenants searching for housing. <http://www.housinglink.org/Home.aspx?>

Referral Help for Zoey

Zoey has limited legal options here. Obviously, Gus Ignorit isn't a very good landlord. He violated Minnesota law by sending a repair person to Zoey's apartment without giving her notice. Additionally, there's no question that Gus is obligated to fix or replace the air conditioners. The problem is that air conditioning (unlike heat) isn't a legal requirement for an apartment. Thus, the AC problems are not a reason to break the lease or to hold back rent.

Zoey's best course is to go to the Housing Court Project at the courthouse in downtown Minneapolis. There, she'll get advice on how to conduct a rent escrow action. Otherwise, if she holds back the rent, she's subject to an eviction.

If she did a rent escrow action, she could throw in a claim about the privacy violation with the young repair person showing up without notice.

While it may be good for Zoey to move to a new apartment eventually, she needs to watch the rules about her Section 8 housing voucher; it would violate the Section 8 rules if she left before the end of the first year of her lease. Also, the 'burbs have bad landlords, too.

This Month's Tips

1. Since landlord-tenant needs are by far the largest type of calls 2-1-1 receives, we've taken the time to explain a number of legal concepts here. Most of the Housing Court process is geared to self-represented people. However, if the landlord has an attorney and the tenant doesn't, the deck obviously is stacked against the tenant. Thus, it's always important—especially in eviction proceedings where the risk of shelter loss exists—to advise callers to seek out legal advice and not simply go at it alone.
2. HOME Line is going to be available for all non-Minneapolis residents, and this should be a fallback referral at all times.
3. Minneapolis residents may have difficulty engaging HOME Line at \$75/hr, but remember they can buy 20 minute increments at \$25/per 20 minutes. This is the equivalent of two pizzas and a six pack of pop—money well spent.

Let us know if you have questions. Thanks!

Ellie and Jillian
Call for Justice, LLC