



LANDLORD/TENANT OVERVIEW

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Topics:

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- Security Deposits
- Pets and Deposits
- Reasonable Accommodations
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- VAWA Overview
- Eviction Actions
- Abandoned Personal Property
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- Questions?

• The Lease

- A lease is a contract between the owner and the tenant
- It explains the terms and conditions for residing in the unit.
- It is legally binding contract and its terms are enforceable in Court.

- What should be in a lease?
 - Parties
 - Address (premises)
 - Term (month to month, year, etc.)
 - Rent
 - Where to pay rent
 - When to pay rent
 - Who to pay rent to
 - When is it due
 - Notice period
 - How to give notice
 - Right of re-entry
 - Others?

Subsidized/public housing programs – A lease must comply with HUD guidelines, standards and authority.

- There is a model public housing lease.
- Code of Federal Regulations outline specific key lease requirements and contain form leases.

- Main key requirements?

- Lease can only cover rental of a unit and provision of services routinely provided at rental properties (i.e. parking, garage, etc.) – lease does not cover provision of separate special services (i.e. meals programs, health care services, etc.)
- Head of household, spouse and all adult members of a household must sign.
- Lease must include provisions permitting the owner to terminate the lease for drug related-activity.
- Addendums must also comply, and certain addendums are required.
 - Common attachments:
 - Lead based paint disclosure;
 - House rules; and
 - Pet rules.

- What is prohibited in a Public Housing lease?
 - Confessions of judgment;
 - Waivers of landlord liability for negligence;
 - Waiver of legal notice before eviction or money judgment;
 - Waiver of legal proceedings;
 - Waiver of right to appeal; and
 - A provision whereby a tenant pays all attorney fees/costs regardless of outcome.

- Rent changes in public housing?

- Rent changes should be documented.
- Under HUD requirements, any increase in rent must comply with HUD regulations.
- Under HUD, there must be a least a 30 day advanced written notice of a rent increase.
 - A notice for the increase must state:
 - Reasons for increase (such as increased income);
 - And, it should clearly communicate that it revises the rent.

Security Deposits

- Minnesota Statutes § 504B.178 governs Minnesota leases and security deposits.
- A landlord who receives a security deposit is considered a “fiduciary” – meaning a landlord is to safeguard the deposit.
- A deposit bears interest at one percent per annum.

- When does a landlord return the deposit?
 - Generally, within three weeks after termination of the tenancy.
 - Money may be withheld for:
 - Remedy of tenant defaults in payment of rent or other funds due; or
 - To restore the premises to its original condition – ordinary wear and tear excepted.
 - How about HUD?
 - Generally, the HUD standards state that the landlord is to comply with any applicable state and local laws governing the security deposit.

Pets and Deposits

- A landlord can require a pet deposit.
- There is no specific Minnesota statutory authority on pets.
- However, HUD has guidelines for public housing that outline a maximum deposit amount.

Reasonable accommodations overview

- Fair Housing Act (“Act”).
- HUD and the Department of Justice are jointly responsible for enforcing the Fair Housing Act.
- The Act prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status and disability.
- One type of discrimination is a refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling.

- Who is a person with a disability?

- Physical or mental impairment that limits one or more major life activities;
- Individuals who are regarded as having such an impairment; and
- Individuals with a record of such impairment.

- What is an accommodation?

- It is a change, exception or adjustment to a rule, policy, practice, or service that may be needed to provide a person with a disability to have an equal opportunity to use and enjoy a dwelling.

- What information can be requested by a landlord to analyze the accommodation request?
 - Information necessary to verify the person's disability;
 - Information that describes the needed accommodation; and
 - Information that shows the relationship between the disability and the requested accommodation.
 - Keep the information confidential.

- Can a request be denied?

- Yes – provided there is a finding of no disability related need; or
- The accommodation is not reasonable (i.e. it would impose an undue financial and administrative burden on the housing provider, or fundamentally alter the nature of the provider's operations.)

Terminating tenancy

- What does the lease say?
- Is there a lease provision for notice?
- What is the term for notice?
- What is considered a violation of the lease?
- Recommendation is to always adhere to termination criteria consistently and fairly.

Terminating a Tenancy at Will

- Minn. Stat. § 504B.135

(a) A tenancy at will may be terminated by either party by giving notice in writing. The time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less.

(b) If a tenant neglects or refuses to pay rent due on a tenancy at will, the landlord may terminate the tenancy by giving the tenant 14 days notice to quit in writing.

What about public housing?

- Many HUD leases require cause for nonrenewal or expiration/termination of the lease.
- Therefore, termination can be for:
 - Material noncompliance
 - Substantial lease violations;
 - Fraud;
 - Repeated minor violations (i.e. smoking, noise, housekeeping, etc.);
 - Nonpayment of rent;
 - Drug and criminal activity; and/or
 - Other good cause.

What should be in a public housing termination notice?

- Must give written notice.
- Notice must be accessible to a tenant with a disability.
- Notice must include the following:
 - State the specific date the occupancy will be terminated;
 - State the reasons for the termination with good detail;
 - Advise the tenant that staying in the unit after the termination date will result in a court action – at which the tenant can present a defense;
 - Advise the tenant that they have 10 days to discuss the termination of the tenancy with the owner;
 - Advise a tenant with a disability that they can request an accommodation to participate in a hearing process; and

- Notice must be served:
 - First class mail,
 - Delivery of the notice to an adult person, or placing under the door or affixing on the door.
 - Service is effective upon mailing and delivery.

- If the notice is for nonpayment of rent, the notice must contain the amount due and the date of the computation.

- **Important** – any resulting eviction action must be based on the allegations in the notice – so, make the notice detailed, and include everything.

- VAWA - Violence Against Women and Justice Department Reauthorization Act of 2005 Lease Addendum (VAWA) (form HUD-91067)
 - VAWA applies in certain federally assisted housing (i.e. public housing, Section 8 vouchers).
 - Minnesota also has a statutory protection for termination of a lease through Minn. Stat. § 504B.206 – This would apply to private housing.
 - In public housing, owners must attach a HUD-approved lease addendum to each existing or new lease that outlines the VAWA protections.
 - The addendum must be signed by all tenants required to sign the lease.

○ Protections?

- An incident or incidents of actual or threatened domestic violence, dating violence or stalking will not be construed as serious or repeated violations of the lease by the victim or threatened victim or other “good cause” for terminating the tenancy.
- Criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of a tenant’s household or any guest or other person under the tenant’s control, shall not be cause for termination of the victim, if the tenant or immediate family member of the tenant is the victim.

- Lease Bifurcation.
 - Assistance may be terminated or a lease “bifurcated” in order to remove an offending household member from the home. This action is taken while allowing the victim, who is a tenant or lawful occupant, to remain.
 - Owners must keep in mind that eviction of or the termination action against the individual must be in accordance with the procedures prescribed by federal, state and local law.
 - In the event that one household member is removed from the unit because of engaging in acts of domestic violence, dating violence or stalking against another household member, an interim recertification should be processed reflecting the change in household composition.

Eviction Actions

- Eviction actions are filed in the County Court.
- They are “summary proceedings” that are actions to recover possession (i.e. no damage claims, not an action for the rent, etc.).
- A complaint is filed that outlines the lease violations.
- The court issues a summons with a hearing date.
- The summons is returned to the landlord’s attorney for service.

- The summons and complaint go to the sheriff and/or a private process server.
- Service (via personal delivery or post) should occur 7 days prior to the first appearance hearing.
- There is a first hearing – generally a time for a tenant to appear and allege a defense.
- It is then set for a trial.
- Trials are generally by court – meaning a judge/referee acts as the fact finder.
- It is a district court trial, so the rules of evidence apply.
- The landlord presents its case first – tenant then responds.

- Ultimately there will be a decision:
 - Is there an order for a writ of recovery?
 - Is there an order for dismissal?
 - What is an order for a writ of recovery?
 - It is an order that authorizes the court to issue a writ of recovery?
 - The landlord must request the writ.
 - What is a writ of recovery?
 - The writ is an order to the sheriff to remove the tenants.

- The writ is given to the sheriff. The sheriff serves the writ.
- The writ generally gives a tenant 24 hours to vacate with all belongings.
- If the tenant does not vacate, the sheriff will go to the unit to physically remove them and do an inventory.
- Statute (Minn. Stat. § 504B.365) requires written advance notice to the tenant of the “kick out”.

504B.365 EXECUTION OF THE WRIT OF RECOVERY OF PREMISES AND ORDER TO VACATE.

Subdivision 1. **General.**

- (a) The officer who holds the order to vacate shall execute it by demanding that the defendant, if found in the county, any adult member of the defendant's family who is occupying the premises, or any other person in charge, relinquish possession and leave, taking family and all personal property from the premises within 24 hours.
- (b) If the defendant fails to comply with the demand, then the officer shall bring, if necessary, the force of the county and any necessary assistance, at the cost of the plaintiff. The officer shall remove the defendant, family, and all personal property from the premises and place the plaintiff in possession.

- (c) If the defendant cannot be found in the county, and there is no person in charge of the premises, then the officer shall enter the premises, breaking in if necessary, and remove and store the personal property of the defendant at a place designated by the plaintiff as provided in subdivision 3.
- (d) The order may also be executed by a licensed police officer or community crime prevention licensed police officer.

Subdivision 2. Priority; execution of priority order.

An officer shall give priority to the execution, under this section, of any order to vacate that is based on an eviction action under section 504B.171, or on the basis that the defendant is causing a nuisance or seriously endangers the safety of other residents, their property, or the plaintiff's property.

Subdivision 3. **Removal and storage of property.**

- (a) If the defendant's personal property is to be stored in a place other than the premises, the officer shall remove all personal property of the defendant at the expense of the plaintiff.
- (b) The defendant must make immediate payment for all expenses of removing personal property from the premises. If the defendant fails or refuses to do so, the plaintiff has a lien on all the personal property for the reasonable costs and expenses incurred in removing, caring for, storing, and transporting it to a suitable storage place.
- (c) The plaintiff may enforce the lien by detaining the personal property until paid. If no payment has been made for 60 days after the execution of the order to vacate, the plaintiff may hold a public sale as provided in sections 514.18 to 514.22.

(d) If the defendant's personal property is to be stored on the premises, the officer shall enter the premises, breaking in if necessary, and the plaintiff may remove the defendant's personal property. Section 504B.271 applies to personal property removed under this paragraph. The plaintiff must prepare an inventory and mail a copy of the inventory to the defendant's last known address or, if the defendant has provided a different address, to the address provided. The inventory must be prepared, signed, and dated in the presence of the officer and must include the following:

(1) a list of the items of personal property and a description of their condition;

(2) the date, the signature of the plaintiff or the plaintiff's agent, and the name and telephone number of a person authorized to release the personal property; and

(3) the name and badge number of the officer.

- (e) The officer must retain a copy of the inventory.
- (f) The plaintiff is responsible for the proper removal, storage, and care of the defendant's personal property and is liable for damages for loss of or injury to it caused by the plaintiff's failure to exercise the same care that a reasonably careful person would exercise under similar circumstances.
- (g) The plaintiff shall notify the defendant of the date and approximate time the officer is scheduled to remove the defendant, family, and personal property from the premises. The notice must be sent by first class mail. In addition, the plaintiff must make a good faith effort to notify the defendant by telephone. The notice must be mailed as soon as the information regarding the date and approximate time the officer is scheduled to enforce the order is known to the plaintiff, except that the scheduling of the officer to enforce the order need not be delayed because of the notice requirement. The notice must inform the defendant that the defendant and the defendant's personal property will be removed from the premises if the defendant has not vacated the premises by the time specified in the notice.

Personal Property Left at Premises

- There is a statutory process that must be followed.
- See Minn. Stat. § 504B.271, Subd. 1:

Subdivision 1. **Abandoned property.**

- (a) If a tenant abandons rented premises, the landlord may take possession of the tenant's personal property remaining on the premises, and shall store and care for the property. The landlord has a claim against the tenant for reasonable costs and expenses incurred in removing the tenant's property and in storing and caring for the property.
- (b) The landlord may sell or otherwise dispose of the property 28 days after the landlord receives actual notice of the abandonment, or 28 days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs last.

- (c) The landlord may apply a reasonable amount of the proceeds of a sale to the removal, care, and storage costs and expenses or to any claims authorized pursuant to section 504B.178, subdivision 3, paragraphs (a) and (b). Any remaining proceeds of any sale shall be paid to the tenant upon written demand.
- (d) Prior to a sale, the landlord shall make reasonable efforts to notify the tenant of the sale at least 14 days prior to the sale, by personal service in writing or sending written notification of the sale by first class and certified mail to the tenant's last known address or usual place of abode, if known by the landlord, and by posting notice of the sale in a conspicuous place on the premises at least two weeks prior to the sale. If notification by mail is used, the 14-day period shall be deemed to start on the day the notices are deposited in the United States mail.

- Another point, during the 28 day storage period, a landlord must allow a tenant to retake possession of the personal property within 24 hours after a written demand by the tenant (if stored on site), and 48 hours (if stored off site).
- Don't deny this. There are punitive damage possibilities.

Expungement

- Having an eviction on a public record can be detrimental to renting another apartment down the line.
- Minn. Stat. § 484.014 outlines the expungement process.
- It can be requested at an eviction action hearing.
- However, most likely, it will have to be done via motion after the hearing.

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