



PRACTICE TIP

RETALIATORY EVICTION/RETALIATORY RENT INCREASE DEFENSE

Introduction

A landlord's retaliation against a tenant following the tenant's exercise of rights guaranteed by law by either seeking to evict the tenant or by raising the tenant's rent is a serious problem in Minnesota and has been addressed both by the Legislature¹ and very recently by the Minnesota Supreme Court in a landmark decision recognizing a retaliatory eviction defense under common law.²

Statutory Protections against Retaliation

Introduction

Chapter 504B contains several provisions that protect residential tenants against retaliation by landlords. Some address retaliation directly. Others provide rights and remedies to tenants for illegal potentially retaliatory action by their landlords. The statute makes a distinction between eviction actions based upon termination of the tenancy by notice to quit and eviction actions based upon an alleged violation of a lease.

Termination of Tenancy

An otherwise proper notice to terminate a tenancy or lease will be invalid if given for a retaliatory purpose. The statute provides as follows:

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.

¹ Minn. Stat. §§ 504B.221, .225, .231 (unlawful termination of utilities); 504B.285, subd. 2 (retaliatory termination of tenancy by notice to quit), subd. 3 (retaliatory rent increase or decrease in services); 504B.441 (retaliatory eviction, rent increase, or decrease in services) (2018).

² *Central Housing Associates LP v. Olson*, ___N.W.2d___, Slip Op., No. A17-1286 (Minn., June 12, 2019).

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.³

Note that the protections afforded tenants under this provision go beyond good faith reports to government authorities and cover any good faith efforts by tenants to secure or enforce rights under their rental agreements. Note also that the retaliatory purpose need only be part of the landlord's motivation for the termination. And note finally the burden shifting provision.

Rent Increase or Decrease in Services

The above provisions in clauses (1) and (2) are applicable in nonpayment of rent cases, although the look back and burden shifting provision does not apply.

In any proceeding for the recovery of premises upon the ground of nonpayment of rent, it is a defense if the tenant establishes by a preponderance of the evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part for any lawful act of the tenant as described in subdivision 2, providing that the tenant tender to the court or to the plaintiff the amount of rent due and payable under the tenant's original obligation.⁴

Tenant Remedies Actions

In the Tenant Remedies Action statute,⁵ a separate provision applies to retaliation following a tenant's, or a housing related neighborhood organization's complaint of a code violation.⁶ The scope of this provision, which applies in lease violation as well as termination of tenancy cases, was clarified in the *Central Housing* decision, which is discussed in the next section.

Tenant Contacts with Police or other Emergency Assistance

Tenants are protected against eviction actions based upon alleged lease violations if the underlying basis for the alleged violation is conduct involving the tenant's calling the police or other emergency assistance in response to domestic abuse or any other conduct.⁷ A landlord cannot evict a tenant for the good faith exercise this right, even if the exercise of the right interfered with the peaceful enjoyment of the property by the landlord or other tenants. Furthermore, a tenant "may bring a civil action for a violation of this section and recover from the landlord \$250 or actual damages, whichever is greater, and reasonable attorney's fees."⁸

³ Minn. Stat. § 504B.285, subd. 2.

⁴ *Id.*, subd. 3.

⁵ Minn. Stat. §§ 504B.395-471 (2018).

⁶ Minn. Stat. § 504B.441.

⁷ Minn. Stat. § 504B.205, subd. 2 (2018).

⁸ *Id.*, subd. 5.

Utility Termination by Landlords

Landlords are prohibited from interrupting or causing the interruption of electric, heat, gas, or water services provided to tenants, and are liable for statutory damages.⁹ Furthermore, such action would be grounds for an Emergency Tenant Remedies action.¹⁰

Retaliatory Eviction Defense at Common Law

In *Central Housing Associates LP v. Olson*,¹¹ the Minnesota Supreme Court limited the scope of § 504B.441 (retaliation under the Tenant Remedies Action statute) to complaints made to a government official, as contrasted with complaints made directly to a landlord,¹² but at the same time recognized a common-law defense to a landlord's eviction for tenant complaints to the landlord about material violations of state or local law, the statutory covenants of habitability, or the lease.¹³ This common-law defense is modeled on the retaliatory eviction defense set forth in § 504B.285, subdivision 2 (applicable by its terms to only termination of tenancy cases), but is made applicable in breach of lease cases as well:

We hold that, in this case and going forward, tenants have a common-law defense to landlord evictions in retaliation for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease. The tenant has the burden to assert the defense and to prove it by a preponderance of the evidence.¹⁴

Note that there is no look back and burden shifting provision. The *Olson* Court has essentially levelled the playing field for tenants by filling a gap in the statute with a common-law retaliatory eviction defense applicable in eviction actions based upon alleged breach of the lease.

⁹ Minn. Stat. § 504B.221, .225, .231.

¹⁰ Minn. Stat. § 504B.381 (2018).

¹¹ *Central Housing Associates LP v. Olson*, ___N.W.2d___, Slip Op., No. A17-1286 (Minn., June 12, 2019).

¹² *Id.* at 16, 17.

¹³ *Id.* at 18.

¹⁴ *Id.*