



## Housing Practice Tip (11.23.2021)

### Holdover Evictions and Notice to Vacate Rules

On October 12, 2021, the protections in Minnesota's eviction moratorium [Phase Out statute](#) ended except for tenants who are being evicted for non-payment of rent and have a pending Rent Help MN or other authorized application. This means that landlords may now end tenancies upon proper legal notice to tenants, which include a notice to vacate (or lease termination) given within the proper notice period. If the tenant does not leave by the date given in the notice to vacate, a landlord can file a holdover eviction. This tip is an update for our volunteers as we expect to be seeing many more holdover evictions in the coming months.

#### I. Definitions:

A holdover eviction is an eviction where a tenant stays longer than their legal permission to do so. It provides a list of situations in which a tenant's permission to rent a property has been rescinded, including staying past the time provided in the lease or a proper notice to vacate.

A notice to vacate (or lease termination notice) is a letter to end the lease.

- It can be given by either tenant or landlord.
- It must be in WRITING to end any periodic lease including oral leases.
- It must state the DATE when the tenancy is to end.
- The amount of notice required to end a lease depends on the type of lease and the length of the rent period (see below).

A fixed term lease is a lease with a defined start date and ending date, generally for six months to a year.

A periodic lease is a lease where the rent period begins on the day rent is due and lasts until next period when rent is due. Periodic leases tend to be weekly or monthly.

A month-to-month lease is a form of periodic lease in which the landlord rents to the tenant for one month at a time. In Minnesota, when a term lease expires and the lease is silent as to what happens next, a month-to-month periodic tenancy is assumed.

A tenancy at will is a tenancy in which the tenant holds possession by permission of the landlord but without a fixed ending date. Minn. Stat. §504B.001, subd. 13.

#### II. Proper notice to vacate:

The timeframe required for a notice to vacate depends on the type of lease and tenancy.

- Written lease: Minn. Stat. §504B.147, subd. 2 & 3.

- The lease provisions on ending the lease control. CLOSELY read the written lease because it will set out notice periods and ending of lease. If the lease requires a two-month notice period, then a two-month notice period must be given.
- No written lease OR a fixed term lease that has converted to a month-to-month lease:
  - Notice must be written and given at least one month and one day before move-out date. Ex: If a party wants to end the lease on November 30, notice must have been given on or before October 31.
- Tenancy at will: Minn. Stat. §504B.135.
  - Notice period must be at least as long as an interval between the time rent is due OR three months, whichever is less.
  - 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-day notice to quit in writing.

If these rules are not followed, then the notice to vacate by a landlord is not proper. A tenant does not have to leave until proper notice is given. This is a strong defense in a holdover eviction.

### **III. A few more important follow-up points:**

- If defending a hold over eviction on the basis of improper notice, it is important that the tenant continue to pay rent as set out in the lease. Failure to pay rent could lead to an eviction for non-payment of rent.
- If the landlord has accepted rent for a time after the notice to vacate date, this may invalidate the landlord's notice to vacate. See *King v. Durkee-Atwood, Co.*, 148 N.W. 297, 298 (1914) (waiver of tenant's notice); *Pappas v. Stark*, 142 N.W. 1042, 1047 (1913) (waiver of landlord's notice).
  - Landlords may argue, however, that acceptance of rent does not necessarily mean an intent to waive notice. See *MCDA v. Powell*, 352 N.W.2d 532, 534 (Minn. Ct. App. 1984). In response, a tenant could argue the acceptance of rent creates a **rebuttable presumption** of an intention to waive the termination notice, since it is inconsistent with terminating a tenancy. See [http://povertylaw.homestead.com/files/Reading/Residential\\_Eviction\\_Defense\\_in\\_Minnesota.htm#VI.F.4](http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#VI.F.4)