



Housing Practice Tip (10/31/2022)

Fees Charged to Tenants

Now that nonpayment of rent is back to being the primary reason for eviction in Minnesota, it's a good time to review fees that landlords can charge to tenants. This practice tip will cover the laws governing fees charged to tenants, the primary types of fees and other things to keep in mind when reviewing ledgers.

Practice Pointer: Always ask to see a ledger and lease when advising on a nonpayment of rent case. Landlords should be able to provide you both at the initial appearance calendar upon request. If not, ask for a continuance. Even if the tenant doesn't dispute that rent is due, it's important to see how much rent is due and what other fees the tenant has incurred with the late rent.

The source of the law for fees: Landlords can charge fees to tenants as long as they are permitted by: (1) Minnesota law and (2) the contract between the landlord and tenant (the lease). Fees must be permissible by both. Minnesota statutory law on housing is found primarily in Minn. Stat. 504B, with fee provisions sprinkled throughout.

For the purpose of this practice tip, fees have been divided into four main groups: (1) late fees, (2) attorney fees, (3) repair/maintenance fees, and (4) other general fees

1. Late Fees:

Late fees are governed by Minn. Stat. §504B.177, which provides that “a landlord of a residential building may not charge a late fee if the rent is paid after the due date, unless the tenant and landlord have **agreed in writing** that a late fee may be imposed.” Minn. Stat. §504B.177(a) (emphasis added). Additionally, “the agreement must specify when the late fee will be imposed.” *Id.* Thus, if a landlord charges a late fee, the lease must include the right to charge a late fee and the date the late fee will be imposed. Many leases will make rent due on the first of the month, but not charge a late fee until after the third or fifth day of each month.

Minnesota law limits late fees to 8% of the overdue rent. *Id.* This late fee may only be imposed once and cannot be calculated cumulatively.¹ The late fee can similarly only be charged based upon the amount of rent that is unpaid. Below are examples of the incorrect and correct way to calculate 8% late fees as set out under Minnesota Law:

¹ For a comprehensive analysis of the issue of cumulative late fees reviewing Minnesota legislative history and the canons of statutory interpretation, see *AGO 430 (Minnesota Attorney General Opinions, 2021)*.

Incorrect Cumulative Calculation of Late Fees

Date	Description	Charge	Credit	Balance
01/01/2022	Rent	\$1000		\$1000
01/06/2022	Late Fee	\$80		\$1080
02/01/2022	Rent	\$1000		\$2080
02/06/22	Late Fee	\$166.40		\$2246.40

Correct Calculation of Late Fees for Late Rent Only Once

Date	Description	Charge	Credit	Balance
01/01/2022	Rent	\$1000		\$1000
01/06/2022	Late Fee 8% of \$1000	\$80		\$1080
02/01/2022	Rent	\$1000		\$2080
02/06/2022	Late Fee 8% of \$1000	\$80		\$2160
03/01/2022	Rent	\$1000		\$3160
03/02/2022	Payment		\$3000	\$160
03/06/2022	Late Fee 8% of \$160	\$12.80		\$172.80

A unique exception under Minnesota law which is not considered a late fee occurs when oral or written leases include a “discount” to the rent amount if it is paid by a certain earlier date. (“For purposes of this paragraph, the ‘due date’ does not include a date, earlier than the date contained in the written or oral lease by which, if the rent is paid, the tenant earns a discount.” Minn. Stat. §504B.177(a))

Other issues to consider regarding late fees:

- If a non-payment case has a *Fritz* defense and rent abatement is awarded by the court, argue a tenant should not be responsible for late fees for the period of habitability issues.
- For manufactured (mobile) home park lot tenancies, fees are limited to certain fees for installation and removal of the home, late rent, pets, maintenance, and security deposits. Minn. Stat. § 327C.03.
- If a tenancy is subsidized under a federal program, additional methods may be available to provide for late fees. See Minn. Stat. §504B.177(b).

2. Attorney’s Fees

In general, landlords can collect attorney fees from tenants in eviction actions where it is permitted by the written lease and Minnesota law does not prohibit it.

One place Minnesota law limits the collection of attorney fees is a redemption pursuant to Minn. Stat. 504B.291, Subd. 1. Through redemption, a tenant in a nonpayment of rent case “may, at any time before possession has been delivered, redeem the tenancy and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, costs of the action, and an attorney’s fee not to exceed \$5.” Here, a tenant need not pay more than \$5 in attorney fees to redeem. Nonetheless, this does not mean that attorney’s fees may no longer be owed by the tenant. This simply means that landlords cannot stop a tenant from redeeming by charging more than

\$5 of attorney's fees. If additional attorney's fees are allowed in the written lease, those may be owed /by the tenant and may be added to the ledger for the tenant.²

Of note with regard to attorney's fees, Minn. Stat. 504B.172 allows tenants to recover attorney's fees if the lease was written such that the landlord can collect fees and the tenant "prevailed in the same type of action, under the same circumstances, and to the same extent as specific in the lease for the landlord."

3. Repair/Maintenance Fees:

Some landlords will try to charge tenants fees for maintenance or repair work. These fees are most often illegal. Minn. Stat. 504B.161 prohibits a landlord from waiving or modifying its duty under the four covenants of habitability. This means that a landlord cannot charge a tenant for repairs to keep the unit (1) fit for the intended use, (2) in reasonable repair, (3) reasonably energy efficient and (4) up to code. There are a few exceptions to this rule. There are two common exceptions to this prohibition to charge for repairs.

The first exception is for repairs and code violations due to the "willful, malicious or irresponsible conduct of the tenant or a licensee or a person under the direction or control of the tenant or licensee." Id. at Subd. 1(1)&(2). If the landlord is able to show this is the case, the landlord may charge the tenant for repairs caused by such conduct.

The second exception allows the landlord and tenant to agree that the tenant will perform repairs or maintenance, "but only if the agreement is supported by adequate consideration and set for in a conspicuous writing." Minn. Stat. § 504B.161 subd. 2. Adequate consideration commonly is a decrease in the amount of rent paid by the tenant. This most commonly occurs in a lease where the tenant agrees to shovel snow or mow grass for a reduction in the overall amount of rent owed. The lease or writing must clearly state what compensation is to be received (e.g. \$100/month less for rent) for what action (grass mowing).

4. Other fees:

Certain other fees may be billed to tenants but must be set out in a tenant's written lease. For example, pet fees, garage fees, set-up fees, month to month fees, smoking fees, etc.... These fees may be for services provided by the landlord or for alleged violations of the lease.

For these and other unique fees assessed on a ledger and in the written lease, the first step is to analyze whether the fee is attached to a reasonable prediction of damages a landlord would have because of a tenant. A fee is not allowed to be a penalty. Instead, the fee must be compensatory. *Gorco Const. Co. v. Stein*, 99 NW2d 69 (Minn. 1959).

² At the same time, a new eviction action is not allowed for non-payment of those attorney's fees. *ACC OP Univ Commons LLC v Rodriguez*, 906 NW2d 509,512 (Minn. App. 2017)("an eviction for nonpayment of rent may not be based on nonpayment of attorney fees. Furthermore, permitting landlords to evict tenants for nonpayment of attorney fees incurred in a previous eviction action would plunge tenants into a potentially endless eviction loop in which timely rent payments could still lead to eviction proceedings, which would in turn generate additional attorney fees.").

Fees in a lease may also be contested under contract law when applicable. These areas of contract law will need to be analyzed further in each individual case. However, here are some of the areas to consider if you are looking at a lease with fees to contest.

Fees in violation of statutes: Lease provisions which waive or modify the provisions of certain statutes under Minn. Stat. Chap. 504B are void and unenforceable. [Here is an example of a list of statutes to consider.](#)

Unconscionable lease provisions: 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. *Zontelli and Sons, Inc. v. City of Washwauk*, 353 N.W.2d 600, 604 (Minn. Ct. App. 1984)(rev'd on other grounds, 373 N.W.2d 744 (Minn. 1985)).

Adhesion contracts: An adhesion contract is drafted unilaterally by a business and forced upon an unwilling and often unknowing public for services that cannot readily be obtained elsewhere. *Schlobohm v. Spa Petite, Inc.* 326 N.W.2d 920, 924 (Minn. 1982). It generally is not bargained for but is imposed on the public for a necessary service on a "take it or leave it" basis. However, a printed form contract offered on a "take it or leave it" basis alone does not establish an adhesion contract. *Id.*