



## **Housing Practice Tip (08/18/2023)** **New Landlord/Tenant Laws as of August 1, 2023**

It has been almost three months since the end of a truly historic legislative session in Minnesota. While a great number of the new statutory changes to landlord/tenant laws are going into effect on January 1, 2024, there are a certain number that already are in effect today. Those include (1) a limited right to counsel in public housing breach of lease cases, (2) new laws surrounding the legalization of cannabis, and (3) new laws for sober housing tenants. I have listed and described those laws below:

### **1. Right to Counsel in Public Housing Breach Cases: Minn. Stat. §504B.268.<sup>1</sup>**

Starting August 1, 2023, for the first time state-wide, Minnesota has a statutory right to counsel in housing. The right to counsel is limited to tenants living in public housing and being evicted for breach of lease only. Public housing, while not defined in the statute or elsewhere, is organized under 42 U.S.C.A. § 1437 and 24 C.F.R. Part 966. It exists when government owns the housing, usually in the form of a public housing authority (PHA) or housing and redevelopment authority (HRA). Public housing does not include all subsidized housing, such as Section 8 project-based housing or vouchers. Accordingly, this new right to counsel is expected to apply to less than 100 tenants each year.

The new statute requires (1) a notice of the right to counsel be included on the front page of the complaint, and (2) that the tenant be asked by the court at the initial appearance if they want a court appointed counsel. The court will maintain a list of attorneys qualified to take such cases and compensate those attorneys for their work.<sup>2</sup>

Cases where the right to counsel attaches should be identified and handled by the court immediately. VLN volunteers will not be required or requested to take these cases as part of housing court clinic work. If volunteers see these cases come through in their clinic work, they

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<sup>1</sup> Minnesota session laws have not yet been codified into statute. The language of Minnesota Statute §504B.268 can be found in Minnesota Session Laws - 2023, Regular Session, Chapter 52, at Article 19, §89, Senate F. No. 2909 - <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/52/>.

<sup>2</sup> Id.

should alert the clinic assistant immediately and refer the case back to the court for placement with a court-appointed attorney. If volunteers have questions about whether or not the right to counsel should apply in specific cases, the volunteer should reach out to the VLN staff attorney supporting their work at the housing court clinic that day.

## 2. Cannabis:

Also as of August 1, 2023, legal cannabis use and possession has been expanded in Minnesota, and this has impacted certain landlord/tenant laws. The expanded legalization now includes more high potency marijuana and tetrahydrocannabinol (THC). The expanded parameters of legalized cannabis are listed in Minn. Stat. 342.09,<sup>3</sup> and in general apply to adults 21 years and older and for specific, limited amounts.<sup>4</sup>

### Can landlords limit cannabis use?

This is a bit of an open question. The new laws contain potentially contradictory statements on landlords' ability to restrict cannabis use. On the one hand, the newly enacted laws give property owners the right to prohibit cannabis products on their property. Minn. Stat. §342.09.<sup>5</sup> On the other hand, a new subsection added to Minn. Stat. §504B.171 provides that landlords cannot prohibit tenants from legally possessing cannabis products EXCEPT for smoking and vaping types of uses. Minn. Stat. 504B.171.<sup>6</sup>

To further muddy the water, starting March 1, 2025, landlords of multifamily housing must prohibit the vaping or smoking of cannabis.<sup>7</sup> Also, effective now, landlords may not discriminate against tenants who are enrolled in medical marijuana registry programs, unless

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<sup>3</sup> Minnesota's 2023 Session laws are not yet codified into statute. The language of Minn. Stat. §342 can be found in Minnesota Session Laws - 2023, Regular Session, Chapter 63, at Art. I, §9, House F. No. 100 - <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/63/>.

<sup>4</sup> The rights include "(1) use, possess, or transport cannabis paraphernalia; (2) possess or transport two ounces or less of adult-use cannabis flower in a public place; (3) possess two pounds or less of adult-use cannabis flower in the individual's private residence; (4) possess or transport eight grams or less of adult-use cannabis concentrate; (5) possess or transport edible cannabis products or lower-potency hemp edibles infused with a combined total of 800 milligrams or less of tetrahydrocannabinol; ..." (7) use adult-use cannabis flower and adult-use cannabis products in the following locations:" "(ii) on private property, not generally accessible by the public, unless the individual is explicitly prohibited from consuming cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products on the property by the owner of the property;..." Id.

<sup>5</sup> Id.

<sup>6</sup> Minnesota session laws are not yet codified into statute. The new language in Minn. Stat. §504B.171 is available at Minnesota Session Laws - 2023, Regular Session, Chapter 52, at Art. 6, §55, Senate F. No. 2909 - <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/52/>.

<sup>7</sup> Id. at Art. 1, §57.

required by federal law or regulations or would result in a loss of monetary or licensing benefit from the federal regulations. Minn. Stat. §342.57.<sup>8</sup>

The legislature may try to clarify or resolve some of these apparent inconsistencies in future legislative sessions, or these inconsistencies may be left to the courts to interpret.

### **What can a tenant do if someone else’s cannabis use is bothersome?**

If a landlord has taken steps to limit cannabis possession and use and has failed to enforce those limits, “a person who is injuriously affected or whose personal enjoyment is lessened” may bring a civil action seeking injunctive relief and a civil penalty of \$500 or actual damages, whichever is greater.<sup>9</sup>

If a landlord has done nothing to restrict cannabis possession and use on its property, nuisance use of cannabis is prohibited none-the-less. Nuisance use is defined as, “Any use of adult-use cannabis flower which is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property... .” Minn. Stat. §342.82, Subd. 2(b).<sup>10</sup> Persons who are “injuriously affected or whose personal enjoyment is lessened” by the nuisance use may assert a civil claim for relief, which may include an injunction and the person’s actual damages or a \$250 civil penalty, whichever is larger. Minn. Stat. §342.82, Subd. 2(a)<sup>11</sup>

### **What if a tenant has an old eviction based upon cannabis use?**

With the legalization of cannabis, certain past evictions based on cannabis use and possession qualify for mandatory expungement starting August 1, 2023. The evictions that qualify for mandatory expungement are those that were based under Minn. Stat. 504B.171 and now qualify for criminal record expungement under Minn. Stat. §609A.055, or were based on breach of lease solely on the possession of marijuana or THC. Minn. Stat. §484.014.<sup>12</sup>

## **3. Sober Home Evictions and Property Rights: Minn. Stat. §254B.181.<sup>13</sup>**

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<sup>8</sup> Minnesota Session Laws - 2023, Regular Session, Chapter 63, Art. 1, §58 - <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/63/>.

<sup>9</sup> Id. at Art. 1, §74.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Minnesota Session Laws - 2023, Regular Session, Chapter 52, at Article 6, §54, Senate F. No. 2909 - <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/52/>.

<sup>13</sup> Minnesota Session laws have not yet been codified into statute. The language of Minn. Stat. §254B can be found in Minnesota Session Laws - 2023, Regular Session, Chapter 61, Senate F. No. 2934

- <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/61/>.

August 1, 2023 is also the effective date for many new laws surrounding tenants in sober homes. Any attorney encountering a case where a client is living in a sober house should carefully review these new statutes.

Sober houses are now statutorily defined in Minn. Stat. 254B.01, subd. 10.<sup>14</sup> Sober houses must have written policies regarding evictions. Minn. Stat. 254B.181, subd. 1(3).<sup>15</sup> If a sober home resident has left behind personal property at the house, the sober home must attempt to return the personal property to the former resident by contacting the emergency contacts they have on file for the resident.<sup>16</sup> Unlike most other situations where landlords need only hold onto property for 28 days, sober homes must hold onto property for 60 days if the resident did not collect it during discharge.<sup>17</sup>

Sober homes may prohibit the possession and use of cannabis flower, products, lower potency hemp edibles and hemp derived products.<sup>18</sup>

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<sup>14</sup> Minn. Stat. 254B.01, subd. 10 defines a sober home as “a cooperative living residence, a room and board residence, an apartment, or any other living accommodation that: (1) provides temporary housing to persons with substance use disorders; (2) stipulates that residents must abstain from using alcohol or other illicit drugs or substances not prescribed by a physician; (3) charges a fee for living there; (4) does not provide counseling or treatment services to residents; (5) promotes sustained recovery from substance use disorders; and (6) follows the sober living guidelines published by the federal Substance Abuse and Mental Health Services Administration.” Id. at Art. 4, §8.

<sup>15</sup> Id. at Art. 4, §14.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Minnesota Session Laws - 2023, Regular Session, Chapter 52, at Article 6, §56, Senate F. No. 2909 - <https://www.revisor.mn.gov/laws/2023/0/Session+Law/Chapter/52/>.