



July 2023 Tip of the Month

The New 504B Statute: What Every Lawyer Should Know About the Recent Legislative Changes to Landlord/Tenant Law in Minnesota

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It's a bold claim – claiming that I know what every lawyer should know about the new landlord/tenant laws in Minnesota. Spoiler: I really don't know what YOU need to know. But, I would like to share with all VLN volunteers, staff and partners what I see as some of the more significant changes to Minn. Stat. 504B that came out of the Minnesota Legislature this year.¹

Two important points before jumping into a discussion of the changes: First, the actual language of the changes is available in the omnibus bill [here](#). I've paraphrased the best I can, but you'll ultimately want to consult the language of the law to get the finer details. Second, most of the provisions below come into effect on January 1, 2024. So, there is some time to plan and prepare, but we shouldn't delay.

With that said; let's get to it.

14-Day Pre-eviction Notice: (amending Minn. Stat. 504B.321)

Starting with complaints filed on or after January 1, 2024, landlords anywhere in Minnesota must provide tenants with at least a 14-day pre-eviction notice prior to bringing an eviction for nonpayment of rent, including nonpayment of any other financial obligation in violation of the lease (such as unpaid utilities or insurance). The notice must be personally delivered or sent by first class mail, and it must be attached to the complaint. The court "shall" dismiss the action without prejudice if the notice is not attached.

The statute goes on to provide great specificity about the content of the notice. It states that the notice must include the total amount due, an accounting for the amount due, the name and address

¹ For more in-depth information and discussion, Homeline will be doing [bi-weekly virtual trainings](#) on specific sections of the new law throughout the summer and fall. I encourage lawyers who are interested in more information to plan to attend some of these trainings! Larry McDonough's Poverty Law [website](#) also is an important resource for all things landlord/tenant law in Minnesota.

of the person authorized to receive payments, and specific language on potential sources of legal and financial assistance.

Of note, this 14-day notice period is only a statutory minimum. The statute expressly gives local governments permission to create longer notice periods. Also, of great benefit to tenants, the statute now states that a 14-day notice letter constitutes verification of emergency for emergency rental assistance purposes. This significant change gives tenants and financial aid providers more time to arrange financial assistance if the parties seek to settle or redeem the tenancy.

Limited Right to Counsel in Housing: (adding Minn. Stat. 504B.268)

There is now a right to counsel for public housing tenants who are being evicted for breach of lease. The provision is significant because it the first time a right to counsel in housing has been enshrined under Minnesota statute. This law is to come into effect on August 1, 2023. The statute also sets for qualifications and provisions for compensation. Any attorneys potentially interested in doing this type of work for the court should contact their district court and find out how to get signed up to be assigned these cases.

Limitations on Crime Free Lease Provisions: (amending Minn. Stat. 504B.171)

Crime free lease provisions have been popping up in various municipalities. These provisions give the landlord the ability to evict tenants for criminal behavior, including behavior of their household members or guests. The issue of the crime free lease provisions is that they can be written and enforced very broadly, sometimes being used to evict tenants for behavior of guests or household members which do not directly involve the tenancy.

The new provision provides clear boundaries on how crime free lease provisions may be written and enforced. It limits enforcement to behavior occurring on the premises unless “(1) the conduct would constitute a crime of violence against another tenant, the tenant’s guest, the landlord, or the landlord’s employees, regardless of whether a charge was brought or a conviction obtained, or (2) the conduct results in a conviction of a crime of violence against a person unrelated to the premises.”

Eviction Expungement: (amending Minn. Stat.484.014)

Eviction expungement has received it’s long overdue, very necessary overhaul. Historically, there have been three types of expungements: mandatory, discretionary, and inherent authority. Mandatory and discretionary expungement were based in Minn. Stat. 484.014, and inherent authority was taken from case law (*State v. C.A.*, 304 N.W.2d 353 (Minn. 1981)) and later arguably incorporated into statute (Minn. Stat. 504B.345). The new statute reduces the three types to two and incorporates them in one statutory location.

a. Mandatory expungement:

Historically, only two small subsets of eviction cases, dealing with foreclosure and contract for deed evictions, were considered mandatory expungements in Minnesota. With this legislative session, the list has been greatly increased. The following eviction expungements are now mandatory, without the need for a motion filed by either party, when:

1. The eviction is based upon contract for deed or mortgage foreclosure and the tenant vacated prior to the eviction action or did not receive proper notice to vacate,
2. The tenant wins,
3. The case is dismissed for any reason,
4. The parties agree to the expungement,
5. The eviction order is older than 3 years, or
6. By motion of the tenant if the parties settled the case and the tenant satisfied the terms of the settlement.

b. Discretionary expungement

Previously, discretionary expungement was a three-part test, requiring the tenant to prove that there was (1) an error in fact or law in the underlying case and that eviction is (2) clearly within the interests of justice and (3) not outweighed by the public's interest in knowing about the record. Minn. Stat. 474.014, subd. 2. Inherent authority granted expungement if prongs two- and three of the three-part test were met. *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981); Minn. Stat. 504B.345.

The new discretionary expungement statute has been amended to exclude the first prong, which required a showing of error in fact or law, and thus codifying inherent authority expungement. Now, discretionary expungement will rely only upon a tenant being able to convince a judge of the second two factors: that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record.

Evictions Nonpublic until Judgment: (amending Minn. Stat. 504B.321)

The new 504B statutes also provide a statement that eviction cases are not public until there has been a final judgment. There is an exception for parties in the case and licensed attorneys who are assisting parties in the case, allowing them to view the court filings to do their work. (Thus, our housing court clinic work in Anoka, Hennepin and Ramsey Counties can continue). The exact method in which the case records will be visible to some and not others, however, is forthcoming.

Limitations of Payments into Court to go to Trial: (amending Minn. Stat. 504B.335(e))

On a personal note, one of the relatively accepted legal principles that really bothered me was the fact that tenants could be required to pay into court all the rent a landlord alleged to be owed before raising certain defenses. This legal principle had the effect of barring tenants from raising defenses simply based on ability to pay – even if the amount of rent was disputed. And it happened. A lot. With this statutory change, courts have clear discretion in what a tenant can be required to pay into court and clear limits. The new law states that the judicial officer should consider the “totality of the circumstances” but may not exceed the amount of rent that would be owed during the pendency of the action, and not including rent owed prior to the action.

24-hour notice to enter: (amending Minn. Stat. 504B.211, subd.2)

Landlords have always had the right to enter a rental unit with proper notice. Previously, the statute was vague as to how much prior notice must be given. Now, the statute states that a landlord must make a “good faith effort to give the residential tenant reasonable notice under the circumstances of not less than 24 hours...” The landlord and tenant may agree to less notice, but a landlord cannot

require that a tenant agree to less notice as a condition of a lease. The penalty for each entry without proper notice has been increased from \$100 to \$500.

Emergency Tenant Remedies Action (ETRA) expanded: (amending Minn. Stat. 504B.381, subd. 1)

ETRA historically have only been permitted for “loss of running water, hot water, heat, electricity, sanitary facilities or other essential services or facilities the landlord is responsible for providing.” ETAs have been expanded to now also include license revocation or condemnation, serious infestations, non-functioning refrigerators, non-functioning air conditioners (if included in the lease), non-functioning elevators (if included in the lease), any conditions that pose a serious and negative impact on health and safety, or other essential services or facilities.

Other significant changes/clarifications:

I will finish off with a laundry list of additional changes/clarifications. Please note that even this last list does not capture all the changes. Again, my hope for this tip is to give an overview of changes and encourage you to reach out and ask questions (or start doing housing law volunteer work!) if you are interested in learning more.

- Language stating that trials need not be set within 6 days unless all parties agree otherwise has been repealed. Minn. Stat. 504B.341. New language now provides court with discretion on when to set a trial. Minn. Stat. 504B.335.
- Landlords cannot require the devocalization or declawing of pets. Minn. Stat. 504B.114.
- Landlords must disclose all non-optional fees to tenants on the first page of the lease and in any advertisement. Minn. Stat. 504B.120.
- Rental units must be maintained at 68 degrees Fahrenheit from October – April unless a utility company requires it to be less. Minn. Stat. 504B.161.
- Landlords must provide tenants with an opportunity to have an initial inspection upon move-in and final inspection upon move out. The move-out inspection must be done at least 5 days prior of moving out, and the purpose of the move-out inspection is to allow the tenant an opportunity to remedy any identified deficiencies. Minn. Stat. 504B.182.
- Tenants may use letters of guarantee from government or qualified non-profit organizations for the purposes of redemption in a non-payment of rent eviction. Minn. Stat. 504B.291, subd. 1.
- Tenants now have a right to terminate their lease for certain medical reasons. Minn. Stat. 504B.266.
- Where a lease is longer than 10 months, landlords must wait at least 6 months from the expiration of the current lease before requiring tenants to sign a new lease. Minn. Stat. 144.