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State of Minnesota HOUSE OF REPRESENTATIVES

EIGHTY-SIXTH SESSION

HOUSE FILE No. 2668

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Authored by Mullery

The bill was read for the first time and referred to the Committee on Civil Justice

1.1 A bill for an act
1.2 relating to landlord and tenant; modifying certain procedures related to
1.3 expungement in eviction cases; adding certain residential covenants; specifying
1.4 procedures for handling applicant screening fees; providing certain rights to
1.5 tenants of foreclosed properties; amending Minnesota Statutes 2008, sections
1.6 484.014, subdivision 3, by adding a subdivision; 504B.161, subdivision 1;
1.7 504B.173; 504B.178, subdivision 7; 504B.285, by adding a subdivision;
1.8 Minnesota Statutes 2009 Supplement, section 504B.285, subdivision 1;
1.9 proposing coding for new law in Minnesota Statutes, chapter 504B.

1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. Minnesota Statutes 2008, section 484.014, subdivision 3, is amended to read:

1.12 Subd. 3. Mandatory expungement. The court shall order expungement of an
1.13 eviction case commenced solely on the grounds provided in section 504B.285, subdivision
1.14 1, clause (1) 1a, if the court finds that the defendant occupied real property that was subject
1.15 to contract for deed cancellation or mortgage foreclosure and:

1.16 (1) the time for contract cancellation or foreclosure redemption has expired and the
1.17 defendant vacated the property prior to commencement of the eviction action; or

1.18 (2) the defendant was a tenant during the contract cancellation or foreclosure
1.19 redemption period and did not receive a notice under section 504B.285, subdivision 1,
1.20 clause (1) 1a, to vacate on a date prior to commencement of the eviction case.

1.21 Sec. 2. Minnesota Statutes 2008, section 484.014, is amended by adding a subdivision
1.22 to read:

1.23 Subd. 4. Hearing on motion. If the defendant requests expungement when the
1.24 eviction case is pending, the court shall rule on the request at the hearing on the eviction
1.25 following the ruling on the eviction, unless there is good cause to hear it at a later time. A

2.1 motion to expunge under this subdivision is available exclusively for the eviction case  
2.2 that is pending.

2.3 Sec. 3. Minnesota Statutes 2008, section 504B.161, subdivision 1, is amended to read:

2.4 Subdivision 1. **Requirements.** (a) In every lease or license of residential premises,  
2.5 the landlord or licensor covenants:

2.6 (1) that the premises and all common areas are fit for the use intended by the parties;

2.7 (2) to keep the premises in reasonable repair during the term of the lease or license,  
2.8 except when the disrepair has been caused by the willful, malicious, or irresponsible  
2.9 conduct of the tenant or licensee or a person under the direction or control of the tenant or  
2.10 licensee;

2.11 (3) to make the premises reasonably energy efficient by installing weatherstripping,  
2.12 caulking, storm windows, and storm doors when any such measure will result in energy  
2.13 procurement cost savings, based on current and projected average residential energy costs  
2.14 in Minnesota, that will exceed the cost of implementing that measure, including interest,  
2.15 amortized over the ten-year period following the incurring of the cost; ~~and~~

2.16 (4) to maintain the premises in compliance with the applicable health and safety laws  
2.17 of the state, and of the local units of government where the premises are located during the  
2.18 term of the lease or license, except when violation of the health and safety laws has been  
2.19 caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a  
2.20 person under the direction or control of the tenant or licensee; and

2.21 (5) notwithstanding any other provision of law, to provide the premises with heating  
2.22 facilities that are properly installed, maintained, and functioning, and, from October  
2.23 1 through April 30:

2.24 (i) if the tenant controls the thermostat, the tenant is capable of safely and adequately  
2.25 heating all habitable rooms, including bathrooms, at a minimum temperature of at least 68  
2.26 degrees Fahrenheit measured at a distance of 36 inches above floor level and not closer  
2.27 than 36 inches from any wall; or

2.28 (ii) if the tenant does not control the thermostat, the heating facilities safely and  
2.29 adequately heat all habitable rooms, including bathrooms, at a minimum temperature of  
2.30 at least 68 degrees Fahrenheit measured at a distance of 36 inches above floor level and  
2.31 not closer than 36 inches from any wall.

2.32 Nothing in this paragraph preempts or supersedes any ordinance adopted by a  
2.33 municipality that provides for more protective requirements.

2.34 (b) The parties to a lease or license of residential premises may not waive or modify  
2.35 the covenants imposed by this section.

3.1       Sec. 4. **[504B.172] RECOVERY OF COSTS IN ACTION FOR BREACH OF**  
 3.2 **COVENANTS.**

3.3       Where a residential lease provides that in any action or summary proceeding that  
 3.4 a landlord may recover, directly or through additional rent, attorney fees and expenses  
 3.5 incurred as the result of the failure of the tenant to perform any covenant or agreement  
 3.6 contained in the lease, including nonpayment of rent, it shall be implied in law that a  
 3.7 tenant may recover from a landlord in an action or summary proceeding attorney fees and  
 3.8 expenses incurred by the tenant as the result of the failure of the landlord to perform any  
 3.9 covenant or agreement contained in the lease or in the successful defense of any action or  
 3.10 summary proceeding commenced by the landlord against the tenant arising out of the lease.

3.11       Sec. 5. Minnesota Statutes 2008, section 504B.173, is amended to read:

3.12       **504B.173 APPLICANT SCREENING FEE.**

3.13       Subdivision 1. ~~Limit on number of applicant screening fees~~ **Limitations.** (a) For  
 3.14 the purposes of this section, a "landlord" means any person having the right to rent or lease  
 3.15 any real property and the person's agent.

3.16       (b) A landlord or the landlord's agent may not:

3.17       (1) charge an applicant a screening fee when the landlord knows or should have  
 3.18 known that no rental unit is available at that time or will be available within a reasonable  
 3.19 future time;

3.20       (2) collect or hold a screening fee without giving the applicant a written receipt  
 3.21 for the fee;

3.22       (3) use, cash, or deposit a screening fee until all prior applicants have either been  
 3.23 screened and rejected, or offered the unit and declined to enter into a rental agreement; or

3.24       (4) refuse to rent or lease, or refuse to consider renting or leasing, or otherwise deny  
 3.25 to or withhold from any person or group of persons any real property because an applicant  
 3.26 was a successful defendant in an eviction action.

3.27       (c) For the purposes of this subdivision, a "successful defendant in an eviction  
 3.28 action" means a defendant in an action which was dismissed for reasons other than: (i)  
 3.29 a settlement presented to the court; (ii) the defendant's assertion of the right to redeem  
 3.30 the tenancy under section 504B.291, subdivision 1; or (iii) the defendant's abandonment  
 3.31 of the property after the case was commenced but before the court appearance under  
 3.32 section 504B.335, paragraph (a).

3.33       Subd. 2. **Return of applicant screening fee.** ~~If the landlord or the landlord's agent~~  
 3.34 ~~does not perform a personal reference check or does not obtain a consumer credit report or~~  
 3.35 ~~tenant screening report;~~ (a) The landlord ~~or the landlord's agent~~ shall return:

4.1 (1) the entire screening fee if:

4.2 (i) the applicant is rejected for any reason not listed in the disclosure required  
 4.3 under subdivision 3; or

4.4 (ii) a prior applicant is offered the unit and agrees to enter into a rental agreement; or

4.5 (2) any amount of the screening fee that is not used for those the purposes of  
 4.6 performing a personal reference check or obtaining a consumer credit report or tenant  
 4.7 screening report.

4.8 ~~The (b) A form must be provided to the applicant that permits the applicant to choose~~  
 4.9 ~~whether the screening fee may be returned by mail, may be destroyed upon the applicant's~~  
 4.10 ~~request if paid by check, or may be made available for the applicant to retrieve is: (1)~~  
 4.11 ~~returned by mail; (2) destroyed upon the applicant's request, if paid by check; or (3) made~~  
 4.12 ~~available for the applicant to retrieve. If the applicant indicates no choice on the form, the~~  
 4.13 ~~landlord may return the screening fee using any of the options listed in this paragraph.~~

4.14 **Subd. 3. Disclosures to applicant.** (a) A landlord or the landlord's agent, prior to  
 4.15 taking an application fee from a prospective tenant, must disclose on the application  
 4.16 form or orally in writing:

4.17 (1) the name, address, and telephone number of the tenant screening service the  
 4.18 owner will use, unless the owner landlord does not use a tenant screening service; and

4.19 (2) the criteria on which the decision to rent to the perspective tenant will be based.

4.20 (b) A landlord may include in the application form a requirement that the applicant  
 4.21 declare whether the applicant does not meet any of the criteria on which a rental decision  
 4.22 will be based.

4.23 **Subd. 3a. Requirements if application is rejected.** A landlord must notify the  
 4.24 applicant within 14 days of rejecting a rental application:

4.25 (1) of the reasons for the rejection, including which criteria the tenant failed to  
 4.26 meet; and

4.27 (2) the name, address, and telephone number of the tenant screening service used  
 4.28 by the landlord.

4.29 **Subd. 4. Remedies.** (a) In addition to any other remedies, a landlord who violates  
 4.30 this section is liable to the applicant for the application fee plus a civil penalty of up to  
 4.31 \$100, civil court filing costs, and reasonable attorney fees incurred to enforce this remedy.

4.32 (b) A violation of subdivision 1, paragraph (b), clause (4), is deemed an unfair  
 4.33 discriminatory practice and, in addition to the remedies available under paragraph (a), an  
 4.34 aggrieved applicant may bring an action in district court seeking redress for the practice.

4.35 **Sec. 6. Minnesota Statutes 2008, section 504B.178, subdivision 7, is amended to read:**

5.1 Subd. 7. **Bad faith retention.** The bad faith retention by a landlord of a deposit,  
 5.2 the interest thereon, or any portion thereof, in violation of this section shall subject the  
 5.3 landlord to punitive damages ~~not to exceed \$200~~ of \$500 for each deposit in addition to  
 5.4 the damages provided in subdivision 4. If the landlord has failed to comply with the  
 5.5 provisions of subdivision 3 or 5, retention of a deposit shall be presumed to be in bad faith  
 5.6 unless the landlord returns the deposit within two weeks after the commencement of  
 5.7 any action for the recovery of the deposit.

5.8 Sec. 7. **[504B.208] RIGHT OF TENANTS IN FORECLOSED PROPERTIES TO**  
 5.9 **TERMINATE LEASE.**

5.10 A tenant may terminate a lease by giving prior notice equal to one rental period  
 5.11 where the property in which the tenant resides:

5.12 (1) is the subject of a foreclosure by advertisement under chapter 580, or foreclosure  
 5.13 by action under chapter 581, and a foreclosure sale has occurred; or

5.14 (2) subject to a cancellation of a contract for deed and within the 60-day cancellation  
 5.15 period provided under section 559.21, subdivision 2a.

5.16 Sec. 8. **[504B.272] DUTY OF LANDLORDS AND TENANTS TO MITIGATE**  
 5.17 **DAMAGES.**

5.18 A landlord or tenant seeking damages for breach of lease must use reasonable  
 5.19 diligence to mitigate damages, including acceptance of a sublessee.

5.20 Sec. 9. Minnesota Statutes 2009 Supplement, section 504B.285, subdivision 1, is  
 5.21 amended to read:

5.22 Subdivision 1. **Grounds.** The person entitled to the premises may recover  
 5.23 possession by eviction when:

5.24 (1) any person holds over real property:

5.25 (i) after a sale of the property on an execution or judgment; or

5.26 (ii) after the expiration of the time for redemption on foreclosure of a mortgage, or  
 5.27 after termination of contract to convey the property; ~~provided that if the person holding~~  
 5.28 ~~the real property after the expiration of the time for redemption or termination was a~~  
 5.29 ~~tenant during the redemption or termination period under a lease of any duration and the~~  
 5.30 ~~lease began after the date the mortgage or contract for deed was executed but prior to the~~  
 5.31 ~~expiration of the time for redemption or termination, and the person has received:~~

6.1 ~~(A) at least two months' written notice to vacate no sooner than one month after the~~  
 6.2 ~~expiration of the time for redemption or termination, provided that the tenant pays the~~  
 6.3 ~~rent and abides by all terms of the lease; or~~

6.4 ~~(B) at least two months' written notice to vacate no later than the date of the~~  
 6.5 ~~expiration of the time for redemption or termination, which notice shall also state that the~~  
 6.6 ~~sender will hold the tenant harmless for breaching the lease by vacating the premises if the~~  
 6.7 ~~mortgage is redeemed or the contract is reinstated;~~

6.8 (2) any person holds over real property after termination of the time for which  
 6.9 it is demised or leased to that person or to the persons under whom that person holds  
 6.10 possession, contrary to the conditions or covenants of the lease or agreement under which  
 6.11 that person holds, or after any rent becomes due according to the terms of such lease or  
 6.12 agreement; or

6.13 (3) any tenant at will holds over after the termination of the tenancy by notice to quit.

6.14 Sec. 10. Minnesota Statutes 2008, section 504B.285, is amended by adding a  
 6.15 subdivision to read:

6.16 Subd. 1a. **Grounds when the person holding over is a tenant in a foreclosed**  
 6.17 **property.** (a) For any eviction action commenced on or before December 31, 2012, where  
 6.18 the person holding the real property after the expiration of the time for redemption or  
 6.19 termination was a tenant during the redemption or termination period under a lease of any  
 6.20 duration, and the lease began after the date the mortgage or contract for deed was executed  
 6.21 but prior to the expiration of the time for redemption or termination, the successor in  
 6.22 interest must provide at least 90 days' written notice to vacate, given no sooner than the  
 6.23 date of the expiration of the time for redemption or termination and effective no sooner  
 6.24 than 90 days after the date of the expiration of the time for redemption or termination.

6.25 (b) For any eviction action commenced on or before December 31, 2012, when the  
 6.26 lease term extends more than 90 days beyond the date of the expiration of the time for  
 6.27 redemption or termination, the immediate successor in interest must allow the tenant to  
 6.28 occupy the premises until the end of the remaining term of the lease and provide at least 90  
 6.29 days' written notice to vacate, effective no sooner than the date the lease expires, except:

6.30 (1) if the immediate successor in interest or an immediate subsequent bona fide  
 6.31 purchaser will occupy the unit as the primary residence, the immediate successor in  
 6.32 interest must provide at least 90 days' written notice to vacate, given no earlier than the  
 6.33 date of the expiration of the time for redemption or termination, effective no sooner than  
 6.34 90 days after the date of the expiration of the time for termination or redemption; or

7.1 (2) in the case of a tenancy subject to Section 8 of the United States Housing Act  
7.2 of 1937, as amended, if the immediate successor in interest will occupy the unit as the  
7.3 primary residence, the immediate successor must provide at least 90 days' written notice  
7.4 to vacate, given no earlier than the date of the expiration of the time for redemption or  
7.5 termination, effective no sooner than 90 days after the date of the expiration of the time  
7.6 for termination or redemption.

7.7 (c) For any eviction action commenced on or after January 1, 2013, the person  
7.8 entitled to the premises may recover possession by eviction when any person holds over  
7.9 real property after the expiration of the time for redemption on foreclosure of a mortgage,  
7.10 or after termination of contract to convey the property, provided that if the person holding  
7.11 the real property after the expiration of the time for redemption or termination was a  
7.12 tenant during the redemption or termination period under a lease of any duration, and the  
7.13 lease began after the date the mortgage or contract for deed was executed but prior to the  
7.14 expiration of the time for redemption or termination, the person holding the premises  
7.15 has received:

7.16 (1) at least two months' written notice to vacate no sooner than one month after the  
7.17 expiration of the time for redemption or termination, provided that the tenant pays the  
7.18 rent and abides by all terms of the lease; or

7.19 (2) at least two months' written notice to vacate no later than the date of the  
7.20 expiration of the time for redemption or termination, which notice shall also state that the  
7.21 sender will hold the tenant harmless for breaching the lease by vacating the premises if the  
7.22 mortgage is redeemed or the contract is reinstated.