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State of Minnesota

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HOUSE OF REPRESENTATIVES

**EIGHTY-SIXTH
SESSION**

HOUSE FILE No. 2668

February 4, 2010

Authored by Mullery and Kahn

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

March 11, 2010

Committee Recommendation and Adoption of Report:

To Pass as Amended

Read Second Time

1.1 A bill for an act
1.2 relating to landlord and tenant; modifying certain procedures relating to
1.3 expungement; providing procedures relating to the charging and recovery
1.4 of various fees; providing certain rights to tenants of foreclosed properties;
1.5 amending Minnesota Statutes 2008, sections 484.014, subdivision 3, by adding
1.6 a subdivision; 504B.111; 504B.173; 504B.178, subdivision 7; 504B.215,
1.7 subdivision 4; 504B.285, by adding subdivisions; 504B.291, subdivision
1.8 1; 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), if the court finds that the defendant occupied real property that was subject to
1.15 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 4;
1.20 ~~clause (1)~~ 1a or 1b, 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. 5. **Hearing on motion.** (a) If the defendant moves for expungement when the
1.24 eviction case is pending, the court must rule on the motion 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.

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

2.3 (c) The court must make a written ruling on the expungement motion, indicating
2.4 how the case satisfied the statutory requirements for expungement if the motion is granted
2.5 or how the case failed to satisfy the statutory requirements for expungement if the motion
2.6 is denied.

2.7 Sec. 3. Minnesota Statutes 2008, section 504B.111, is amended to read:

2.8 **504B.111 WRITTEN LEASE REQUIRED; PENALTY.**

2.9 (a) A landlord of a residential building with 12 or more residential units must have a
2.10 written lease for each unit rented to a residential tenant. Notwithstanding any other state
2.11 law or city ordinance to the contrary, a landlord may ask for the tenant's full name and
2.12 date of birth on the lease and application. A landlord who fails to provide a lease, as
2.13 required under this section, is guilty of a petty misdemeanor.

2.14 (b) A landlord of a residential building may not charge a late fee if the payment of
2.15 rent is made after the date on which it is due unless the tenant and landlord have agreed
2.16 in writing that a fee may be imposed. In no case may the late fee exceed ... percent of
2.17 the rent payment. Any late fee charged or collected may not be considered to be either
2.18 interest or liquidated damages. For the purposes of this paragraph, the "due date" does
2.19 not include a date earlier than the date contained in the written or oral agreement to lease
2.20 by which, if the rent is paid, the tenant earns a discount.

2.21 Sec. 4. **[504B.118] RECEIPT FOR RENT.**

2.22 A landlord receiving rent or other payments from a tenant by cash must provide a
2.23 written receipt for payment immediately upon receipt if the payment is made in person or
2.24 within three business days if payment is made by other means.

2.25 Sec. 5. **[504B.172] RECOVERY OF COSTS IN ACTION FOR BREACH OF**
2.26 **COVENANTS.**

2.27 Where a residential lease specifies circumstances that entitle a landlord, directly or
2.28 through additional rent, to recover attorney fees and expenses in an action or summary
2.29 proceeding, it shall be implied in law that a tenant is entitled to attorney fees and costs in
2.30 an action or summary proceeding initiated by the tenant or in a successful defense of an
2.31 action or summary proceeding commenced by the landlord against the tenant involving
2.32 the same circumstances.

3.1 Sec. 6. Minnesota Statutes 2008, section 504B.173, is amended to read:

3.2 **504B.173 APPLICANT SCREENING FEE.**

3.3 Subdivision 1. ~~Limit on number of applicant screening fees~~ Limitations. A
3.4 landlord ~~or the landlord's agent~~ may not:

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

3.8 (2) collect or hold a screening fee without giving the applicant a written receipt
3.9 for the fee, which may be incorporated into the application form, upon request of the
3.10 applicant; or

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

3.13 For the purposes of this section, a "landlord" means any person having the right to
3.14 rent or lease any real property and the person's agent.

3.15 Subd. 2. **Return of applicant screening fee.** ~~If the landlord or the landlord's agent~~
3.16 ~~does not perform a personal reference check or does not obtain a consumer credit report~~
3.17 ~~or tenant screening report, the landlord or the landlord's agent shall return any amount~~
3.18 ~~of the screening fee that is not used for those purposes.~~ (a) The landlord must return
3.19 the entire screening fee if:

3.20 (1) the applicant is rejected for any reason not listed in the disclosure required
3.21 under subdivision 3; or

3.22 (2) the prior applicant is offered the unit and agrees to enter into a rental agreement.

3.23 (b) If the landlord or the landlord's agent does not perform a personal reference
3.24 check or does not obtain a consumer credit report or tenant screening report, the landlord
3.25 must return any amount of the screening fee that is not used for those purposes.

3.26 (c) The screening fee may be returned by mail, may be destroyed upon the applicant's
3.27 request if paid by check, or may be made available for the applicant to retrieve.

3.28 Subd. 3. **Disclosures to applicant.** ~~(a) If a landlord or the landlord's agent, prior~~
3.29 ~~to taking~~ takes an application fee from a prospective tenant, the landlord must disclose
3.30 ~~on the application form or orally~~ in writing prior to taking the application fee:

3.31 (1) the name, address, and telephone number of the tenant screening service the
3.32 ~~owner~~ landlord will use, unless the ~~owner~~ landlord does not use a tenant screening service;
3.33 and

3.34 (2) the criteria on which the decision to rent to the prospective tenant will be based.

3.35 (b) A landlord may include in the application form a requirement that the applicant
3.36 declare whether the applicant does not meet any of the disclosed criteria.

4.1 (c) A landlord must notify the applicant within 14 days of rejecting a rental
4.2 application which criteria the tenant failed to meet.

4.3 Subd. 4. **Remedies.** (a) In addition to any other remedies, a landlord who violates
4.4 this section is liable to the applicant for the application fee plus a civil penalty of up to
4.5 \$100, civil court filing costs, and reasonable attorney fees incurred to enforce this remedy.

4.6 (b) A prospective tenant who provides materially false information on the application
4.7 or omits material information requested is liable to the landlord for damages, plus a civil
4.8 penalty of up to \$500, civil court filing costs, and reasonable attorney fees.

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

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

4.17 Sec. 8. Minnesota Statutes 2008, section 504B.215, subdivision 4, is amended to read:

4.18 Subd. 4. **Limitations; waiver prohibited; rights as additional.** (a) The tenant
4.19 rights under this section:

4.20 (1) do not extend to conditions caused by the willful, malicious, or negligent conduct
4.21 of the tenant or of a person under the tenant's direction or control;

4.22 (2) may not be waived or modified; and

4.23 (3) are in addition to and do not limit other rights which may be available to the
4.24 tenant in law or equity, including the right to damages and the right to restoration of
4.25 possession of the premises under section 504B.291.

4.26 (b) A landlord who violates subdivision 2a is liable to the tenant for treble damages
4.27 or \$500, whichever is greater, plus reasonable attorney fees.

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

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

4.32 (1) any person holds over real property:

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

5.1 (ii) after the expiration of the time for redemption on foreclosure of a mortgage, or
5.2 after termination of contract to convey the property, ~~provided that if the person holding~~
5.3 ~~the real property after the expiration of the time for redemption or termination was a~~
5.4 ~~tenant during the redemption or termination period under a lease of any duration and the~~
5.5 ~~lease began after the date the mortgage or contract for deed was executed but prior to the~~
5.6 ~~expiration of the time for redemption or termination, and the person has received;~~

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

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

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

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

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

5.22 Subd. 1a. **Grounds when the person holding over is a tenant in a foreclosed**
5.23 **property.** (a) For any eviction action commenced on or before December 31, 2012,
5.24 where the person holding the real property after the expiration of the time for redemption
5.25 on foreclosure of a mortgage was a tenant during the redemption period under a lease of
5.26 any duration, and the lease began after the date the mortgage was executed but prior to
5.27 the expiration of the time for redemption, the successor in interest must provide at least
5.28 90 days' written notice to vacate, given no sooner than the date of the expiration of the
5.29 time for redemption or termination and effective no sooner than 90 days after the date
5.30 of the expiration of the time for redemption, provided that the tenant pays the rent and
5.31 abides by all terms of the lease.

5.32 (b) For any eviction action commenced on or before December 31, 2012, where the
5.33 term of a bona fide lease extends more than 90 days beyond the date of the expiration of
5.34 the time for redemption, the immediate successor in interest must allow the tenant to
5.35 occupy the premises until the end of the remaining term of the lease and provide at least 90

6.1 days' written notice to vacate, effective no sooner than the date the lease expires, provided
6.2 that the tenant pays the rent and abides by all terms of the lease, except if the immediate
6.3 successor in interest or an immediate subsequent bona fide purchaser will occupy the unit
6.4 as the primary residence, the immediate successor in interest must provide at least 90 days'
6.5 written notice to vacate, given no earlier than the date of the expiration of the time for
6.6 redemption, effective no sooner than 90 days after the date of the expiration of the time
6.7 for redemption provided that the tenant pays the rent and abides by all terms of the lease,
6.8 provided that the tenant pays the rent and abides by all terms of the lease.

6.9 For the purposes of this section, a bona fide lease means a lease where:

6.10 (1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract
6.11 is not the tenant;

6.12 (2) the lease or tenancy was the result of an arms-length transaction; and

6.13 (3) the lease or tenancy requires the receipt of rent that is not substantially less than
6.14 fair market rent for the property.

6.15 (c) For any eviction action commenced on or before December 31, 2012, in the case
6.16 of a tenancy subject to Section 8 of the United States Housing Act of 1937, as amended,
6.17 where the term of the lease extends more than 90 days beyond the date of the expiration
6.18 of the time for redemption, the immediate successor in interest must allow the tenant to
6.19 occupy the premises until the end of the remaining term of the lease and provide at least
6.20 90 days' written notice to vacate, effective no sooner than the date the lease expires,
6.21 provided that the tenant pays the rent and abides by all terms of the lease, except if
6.22 the immediate successor in interest will occupy the unit as the primary residence, the
6.23 immediate successor must provide at least 90 days' written notice to vacate, given no
6.24 earlier than the date of the expiration of the time for redemption, effective no sooner than
6.25 90 days after the date of the expiration of the time for redemption, provided that the tenant
6.26 pays the rent and abides by all terms of the lease.

6.27 Sec. 11. Minnesota Statutes 2008, section 504B.285, is amended by adding a
6.28 subdivision to read:

6.29 Subd. 1b. **Grounds when the person holding over is a tenant in a foreclosed**
6.30 **property subject to a contract for deed.** For any eviction action commenced on or
6.31 before December 31, 2012, where the person holding the real property after the expiration
6.32 of the time for termination of a contract to convey the property was a tenant during the
6.33 termination period under a lease of any duration, and the lease began after the contract for
6.34 deed was executed but prior to the expiration of the time for termination, the successor in
6.35 interest must provide at least 60 days' written notice to vacate, given no sooner than the

7.1 date of the expiration of the time for termination and effective no sooner than 60 days after
7.2 the date of the expiration of the time for termination, provided that the tenant pays the
7.3 rent and abides by all terms of the lease.

7.4 Sec. 12. Minnesota Statutes 2008, section 504B.285, is amended by adding a
7.5 subdivision to read:

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

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

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

7.22 Sec. 13. Minnesota Statutes 2008, section 504B.291, subdivision 1, is amended to read:

7.23 Subdivision 1. **Action to recover.** (a) A landlord may bring an eviction action for
7.24 nonpayment of rent irrespective of whether the lease contains a right of reentry clause.
7.25 Such an eviction action is equivalent to a demand for the rent. There shall be a rebuttable
7.26 presumption that the rent has been paid if the tenant produces receipts or equivalent
7.27 documents evidencing purchase of one or more money orders, bank checks, or cashier's
7.28 checks, or a combination of money orders, bank checks, or cashier's checks totaling the
7.29 amount of the rent, with a date or dates approximately corresponding with the date the
7.30 rent was due. In such an action, unless the landlord has also sought to evict the tenant
7.31 by alleging a material violation of the lease under section 504B.285, subdivision 5, the
7.32 tenant may, at any time before possession has been delivered, redeem the tenancy and be
7.33 restored to possession by paying to the landlord or bringing to court the amount of the

8.1 rent that is in arrears, with interest, costs of the action, and an attorney's fee not to exceed
8.2 \$5, and by performing any other covenants of the lease.

8.3 (b) If the tenant has paid to the landlord or brought into court the amount of rent in
8.4 arrears but is unable to pay the interest, costs of the action, and attorney's fees required
8.5 by paragraph (a), the court may permit the tenant to pay these amounts into court and be
8.6 restored to possession within the same period of time, if any, for which the court stays the
8.7 issuance of the order to vacate under section 504B.345.

8.8 (c) Prior to or after commencement of an action to recover possession for
8.9 nonpayment of rent, the parties may agree only in writing that partial payment of rent in
8.10 arrears which is accepted by the landlord prior to issuance of the order granting restitution
8.11 of the premises pursuant to section 504B.345 may be applied to the balance due and does
8.12 not waive the landlord's action to recover possession of the premises for nonpayment of
8.13 rent.

8.14 (d) Rental payments under this subdivision must first be applied to rent claimed as
8.15 due in the complaint from prior rental periods before applying any payment toward rent
8.16 claimed in the complaint for the current rental period, unless the court finds that under the
8.17 circumstances the claim for rent from prior rental periods has been waived.