



## Changes to Minnesota Landlord-Tenant Law

By: Victoria Johnson

On May 11, 2010, Governor Pawlenty signed off on a bill that reflects the first substantial changes to landlord tenant law in Minnesota in over a decade. The bill is formally known as HF2668, but is more popularly referred to as the “Tenant’s Bill of Rights.” As one might assume from this title, the law contains a number of pro-tenant amendments to existing Minnesota Statutes. It is important to be aware of these changes and their implications for both current and future leasing relationships. Unless otherwise noted, the following changes went into effect August 1, 2010.

- 1. Written Receipt for Cash Payments Required.** HF2668 adds § 504B.118, which requires landlords receiving rent or other payments in cash to provide a written receipt for such payments either (1) immediately, if payment is made in person, or (2) within 3 business days, if payment is not made in person.
- 2. Mandatory Reciprocal Recovery of Attorneys’ Fees.** HF2668 adds § 504B.172. This section applies to residential leases that specify an action, circumstances or an extent to which a landlord may recover attorneys’ fees from a tenant. Applicable provisions may provide for direct recovery of these fees or recovery through additional rent. Where such a provision exists, the *tenant* under that lease will be eligible for recovery of these fees if that tenant prevails in (1) the same type of action, (2) under the same circumstances, and (3) to the same extent as specified in the lease. This revision is effective for leases entered into on or after August 1, 2011 and for leases renewed on or after August 1, 2012.
- 3. Additional Limitations on Applicant Screening Fees.** HF2668 adds clauses 2 and 3 to subd. 1 of § 504B.173. Under clause 2, and upon request by the applicant, a landlord is required to provide an applicant with a written receipt for the fee. This receipt may be incorporated into the application form. Clause 3 prohibits landlords from using, cashing or depositing an applicant screening fee until all prior applicants have either (1) been screened and rejected, or (2) offered the unit and declined.
- 4. Additional Grounds for Return of Applicant Screening Fees.** HF2668 amends § 504B.173, subd. 2 to also require the return of applicant screening fees when (1) the applicant is rejected for any reason *not* listed in the disclosure, and (2) a prior applicant is offered the unit and agrees to enter into a rental agreement. These instances supplement existing language requiring that any portion of the fee not used towards the performance of a personal reference or consumer credit report.
- 5. Additional Disclosure Required Regarding Applicant Screening Fees.** HF2668 amends and adds to § 504B.173, subd. 3. All required disclosures must now be provided in writing before accepting the screening fee. In addition to existing requirements, the landlord must

disclose the criteria on which the decision to rent to the prospective tenant will be based. Additionally, the landlord is now required to notify the applicant within 14 days of rejecting a rental application and specifically identify the criteria the applicant failed to meet.

- 6. Amended Remedies Section for Applicant Screening Fees.** The revised version of this section also amends the language regarding damages for a violation of these requirements. Rather than being liable to the applicant for the application fee, the landlord is now liable for the applicant screening fee. Landlords remain liable for a civil penalty of up to \$100, civil court filing costs and reasonable attorneys' fees. However, HF2668 adds language creating liability for applicants who provide materially false information or omits material information. Such applicants are liable for damages, plus a civil penalty up to \$50, civil court filing costs and reasonable attorneys' fees.
- 7. Limitations on Imposition of Late Fees.** HF2668 adds § 504B.177. Late fees may only be charged if the tenant and landlord have agreed in writing that such a fee may be imposed. This agreement must also specify when such a fee will be charged. Late fees can never exceed 8% of the overdue rent payment. In the event that a federal statute, regulation or handbook conflicts these conditions, the landlord may continue to implement a late payment fee schedule that complies with such other authorities. However, this exception is only applicable if the other authority provides for late fees in a tenancy subsidized under a federal program. This section is effective for leases entered into or renewed on or after January 1, 2011.
- 8. Increased Damages for Bad Faith Retention of a Deposit.** Landlords may now be held liable for up to \$500. The amendment raised this amount from \$200.
- 9. Decrease in Number of Days Landlord Must Retain Abandoned Property.** Landlords are now permitted to sell or otherwise dispose of abandoned property 28 days after (1) actual notice of abandonment, or (2) it reasonably appears that the tenant has abandoned the premises, whichever occurs last. Notice to tenants of the sale of such property may be made by first-class mail, as well as certified mail. Request of return receipt is no longer required. The notice period of 14 days is deemed to begin on the day the notice(s) are deposited in the United States mail.
- 10. Increased Punitive Damages for Failure of Landlord to Comply with Rules Regarding Abandoned Property.** The cap on potential punitive damages has been raised from \$300 to two times the actual damages or \$1000, whichever is greater.
- 11. Rebuttable Presumption of Rent Paid.** There is a rebuttable presumption that rent has been paid if a tenant produces a copy of one or more money orders, or one or more original receipt stubs evidencing the purchase of a money order that (1) reflect the total amount of rent, (2) include a date or dates approximately corresponding with the date rent was due, and (3) in the case of money orders, are made payable to the landlord. Landlords may rebut this presumption by producing a business record indicating that rent was not paid or any other similarly contradictory evidence.

**12. Damages for Landlord Violation of Separate Utility Billing Conditions.** A landlord of a single-metered residential building who bills for utility charges separate from the rent and fails to abide by the pre-existing conditions, is now explicitly in violation of two separate provisions: (1) Covenants of Landlord or Licensor § 504B.161, subd. 1, clause 1 and (2) Unlawful Termination of Utilities § 504B.221. The consequence of this additional language is that such a landlord has statutorily violated his covenant that the premises and all common areas are fit for the use intended by the parties, and is liable for those damages imposed upon an unlawful termination of utilities. The stipulated damages are treble damages or \$500, whichever is greater, and reasonable attorneys' fees. These remedies are not exhaustive.

**13. Temporarily Amended Notice Requirements for Eviction Actions.** HF2668 amends § 504B.285, subd. 1 by creating additional conditions for eviction actions taken between now and December 31, 2012 for foreclosed properties or properties subject to a contract for deed. Actions commenced on or after January 1, 2013 are subject to the law as previously written, but which is now contained in § 504B.285, subd. 1c. The temporary revised law distinguishes between holdover tenants in foreclosed properties and those in properties subject to a contract for deed. Further, some tenants may be entitled to occupy the premises until the end of the lease period. Just as before, the tenant's rights are conditional upon (1) their payment of rent and abiding by terms of the lease, and (2) their presence on the property as a tenant during the termination period under a lease of any duration. An eligible lease must have begun after the date the mortgage was entered into or that the contract for deed was executed, but before the expiration of the time for termination.

Holdover tenants in foreclosed properties are now entitled to 90 days (3 months) written notice to vacate, which extends the notice period by 1 month. This notice must be given no sooner than the date of the expiration of the time for redemption and can be effective no sooner than 90 days after this date. Notice could previously be provided 1 month prior to the date of expiration *or* at the date of expiration. But if given at the date of expiration, the sender was required to promise to hold the tenant harmless for breaching the lease in the event the mortgage was redeemed or the contract for deed was reinstated. The hold harmless language is not required in the revised statute.

Tenants under a "bone fide lease" or whose tenancies are subject to § 8 of the United States Housing Act of 1937 may continue to occupy the premises until the end of that lease. Such tenants are also entitled to 90 days (3 months) written notice to vacate, which can be effective no sooner than the date the lease ends. The only exception to this rule is if the purchaser or immediate successor in interest intends to use the property as their primary residence. In that case, the tenant must receive written notice as provided above: at least 90 days, given no sooner than the date of expiration and effective no sooner than 90 days after that date. A "bona fide lease" is defined as one where (1) the mortgagor (or its child, spouse or parent) is not the tenant, (2) the lease or tenancy is the result of an arm's-length transaction, *and* (3) the agreed upon rent is not substantially less than fair market value or the rent is either reduced or subsidized by a federal, state or local subsidy.

For properties subject to a contract for deed, the law remains the same as before, but from now until December 31, 2012, it is contained in § 504B.285, subd. 1b. As of January 1, 2013, the laws for eviction actions in foreclosed properties and contracts for deed merge once more under subd. 1c, and are identical to the laws in place prior to this revision.

*This article is not intended as legal advice but rather to make you aware of changes to the Minnesota Landlord-Tenant Law. I encourage you to contact an attorney to answer any questions you may have.*