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Landlord Tenant Legislation 1995-1996

A Summary

This summary describes legislation, enacted in the 1995-1996 biennium, relating to landlord tenant law. In general, landlord tenant law is codified in Minnesota Statutes chapter 504 and unlawful detainer law is codified in chapter 566. Tax provisions and criminal law relating to residential rental properties and landlord tenant relations are codified in other chapters of Minnesota Statutes.

For a general overview of landlord tenant law, the attorney general annually prepares a summary of the significant legal rights and obligations of landlords and tenants under Minnesota Statutes, chapters 504 and 566, and case law, which is available to the public.

Kari Koskinen Manager Background Check Act

Background checks; when required. Requires that before an owner hires a residential property manager the owner must, personally or through an authorized representative, request that the superintendent of the bureau of criminal apprehension (BCA) conduct a criminal background check on the manager. Also requires that, by July 1, 1996, owners must request a BCA criminal background check for managers who were hired before July 1, 1995 and are current employees. Permits an owner to satisfy the requirements of this section by obtaining an equivalent background check from a private business or local law enforcement agency.

Procedures; form. Requires the BCA to develop procedures and a form to enable an owner or an owner's authorized representative to request a background check. Requires the BCA to search the criminal justice information system for all managers and to conduct a search of the national criminal records repository for those managers who have

resided in Minnesota for less than five years. Permits owners to request a national check on managers who have resided in Minnesota five years or longer. Authorizes the BCA to exchange fingerprints with the FBI. Requires the BCA to recover the cost of the check through a fee charged to the owner.

Manager's rights. Requires owners to notify managers of their rights, including the right to be informed that an owner will request a background check on the manager, the right to be informed of the BCA's response to the background check and to obtain a copy of the background check report, the right to obtain any record that forms the basis of the report, the right to challenge the accuracy and completeness of any information contained in the report, and the right to be informed whether the manager has been denied employment because of the BCA's response.

Response of the bureau. Requires the BCA to respond to a request for a background check within ten days of its receipt. Requires the BCA to give the owner the state portion of the background check, pending completion of the national check. The BCA's response must indicate whether the manager has been convicted of a background check crime and, if so, must include a description of the crime, the date and jurisdiction of conviction and date of sentence discharge. Immunizes the BCA against any civil or criminal liability based on the accuracy or completeness of records it receives from the FBI for background checks if the BCA acts in good faith.

Owner duties if manager convicted of background check crime. Provides that if the owner learns, through a background check or otherwise, that a manager has been convicted of certain serious background check crimes, the owner may not hire the manager and must terminate the manager's employment if already hired. If the manager has a prior record of certain less serious background check crimes, the ban on manager employment applies for ten years following sentence discharge. A manager hired before July 1, 1995 who has a prior conviction for a background check crime may continue to be employed as a manager if the owner notifies tenants of the manager's criminal record and permits them to terminate their lease within 60 days of the notice. Protects owners from any liability under the employment laws for terminating a manager's employment as required by this section, and permits owners to terminate a manager's tenancy, where applicable.

Penalty. Provides a petty misdemeanor penalty for owners who knowingly fail to comply with the background check requirements.

(Laws 1995, chapter 226, article 4, sections 13 to 18, enacting sections 299C.66 to 299C.71. Effective July 1, 1995.)

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Tenant's Right to Privacy

Entry by landlord. Prohibits an owner or an owner's agent from entering a tenant's premises, except in specified instances, without having a reasonable business for doing so and without making a good faith effort to give prior notice to the tenant. Provides that if the landlord makes a prohibited entry, the tenant may rescind the lease, recover the damage deposit, and receive a maximum \$100 civil penalty.

Reasonable purpose. Provides that a reasonable business purpose includes, but is not limited to

- ▶ showing the unit to prospective tenants
- ▶ showing the unit to a prospective buyer or to an insurance agent
- ▶ performing maintenance work
- ▶ allowing inspections by state, county, or city officials
- ▶ responding to a tenant disturbance within the unit
- ▶ a reasonable belief that the tenant is violating the lease within the unit
- ▶ prearranged housekeeping work in senior housing
- ▶ a reasonable belief that the unit is being occupied by an individual without a legal right to occupy it
- ▶ the tenant has vacated the unit

Exception to notice requirement. Permits an owner to enter without prior notice if the landlord reasonably suspects that immediate entrance is necessary

- ▶ to prevent injury to persons or property
- ▶ to determine a tenant's safety
- ▶ to comply with local ordinances

Entry without tenant's presence. Provides that when entry occurs when the tenant is not present, the landlord must place a written disclosure of the entry in the premises. If the landlord violates this requirement, the tenant is entitled to a maximum \$100 civil penalty per violation.

Exemption. Exempts tenants and landlords of manufactured home parks from the provisions of this section.

(Laws 1995, chapter 226, article 4, section 21, enacting section 504.183. Effective for oral and written leases entered into or renewed on or after July 1, 1995. Amended by Laws 1996, chapter 367, effective August 1, 1996.)

Standard for Certain Activities to Be Found a Nuisance

Changes the basis for establishing a public nuisance. The prior law required three or more misdemeanor convictions or two or more convictions, one of which is a felony or gross misdemeanor, within a two year period. The new law substitutes for this: two or more separate behavior incidents which violate certain criminal statutes occurring within a twelve month period. Proof of the nuisance exists if each of the elements of the conduct is established by clear and convincing evidence.

Requires that a prosecuting attorney who has reason to believe a nuisance exists and intends to seek abatement of the nuisance, must provide notice to a building owner and other interested persons. The notice must be given by personal service or certified mail. It must

- ▶ specify the kind of nuisance being maintained or permitted
- ▶ summarize the evidence indicating that there is a nuisance, including dates of specific incidents
- ▶ inform the recipient that failure to abate the nuisance or otherwise resolve the matter with the prosecuting attorney within 30 days may result in a suit in district court, which could in turn result in closing the building for a year, or in the case of the tenant, in cancellation of the lease
- ▶ inform the owner of the options in section 617.85 concerning eviction of tenants

Authorizes the owner of a building to assign to the prosecutor the right to bring an action to cancel a lease because of a nuisance maintained by a tenant.

(Laws 1995, chapter 244, sections 26 to 34, amending sections 617.80, 617.81, 617.82, and 617.85. Effective August 1, 1995 and applies to crimes committed on or after that date.)

Single-metered Multiunit Residential Buildings

Requires the owner of a single-metered multiunit residential rental building to be the customer of record with the utility in leasehold contracts entered into after August 1, 1995. Makes violation of this requirement a violation of the lessor's covenant that the premises are fit for the use intended and a violation of the provision governing unlawful termination of utilities (which provides for treble damages up to \$500 and reasonable attorney fees). Prohibits waiver of this requirement.

(Laws 1995, chapter 192, amending section 504.185. Effective for leases entered into on or after August 1, 1995.)

Property Tax Rates

Apartments. Reduces the class rate on apartment property in certain small cities from the current class rate of 3.4 percent to 2.3 percent beginning with taxes payable in 1996 and thereafter. It limits the lower class rate to cities with populations of less than 5,000 that are outside the nine counties contiguous to the seven-county metropolitan area. To qualify, cities must not be within 15 miles of a city with a population over 5,000.

(Laws 1995, chapter 264, article 3, section 10, amending section 273.13, subdivision 25. Effective for taxes payable in 1996 and after.)

Provides that for purposes of determining the homestead and agricultural credit aid (HACA), the 3.4 percent class rate will be used on all apartment property. Therefore, the amount of HACA paid by the state will not increase as a result of the class rate change in section 10 on apartment property. Instead the property tax effect from this change will be shifted to the other taxpayers within the various taxing districts containing this property.

(Laws 1995, chapter 264, article 3, section 11, amending section 273.1398, subdivision 1. Effective for aid payable in 1996.)

Apartment Property Tax Study. Directs the Commissioner of Revenue, with the assistance of the Minnesota Housing Finance Agency, to conduct a statewide study on alternative methods of providing incentives to improve the stock of rental housing. The study must specifically consider the following proposal as if it were in effect for taxes payable in 1998: A two percent class rate for five assessment years on the market value of improvements made to apartment property if:

- (1) the market value of the improvements are at least 20 percent of the total market value of the property, and
- (2) the building is at least 25 years old.

The study should also consider other policy alternatives.

The study must include an analysis of the administrative feasibility, policy implications, state and local fiscal impacts of the specific proposal (mentioned above) as well as the St. Paul and Brooklyn Park rental equity programs. By February 15, 1996 the commissioner shall report the results of the study to the chairs of the House and Senate tax committees.

(Laws 1995, chapter 264, article 3, section 46. Effective June 2, 1995.)

Rental Tax Equity

St. Paul Rental Equity Program. Extends the St. Paul rental equity program for one more year (i.e. for taxes payable in 1996). It uses the remaining amount of the \$1 million that was appropriated in 1994 for this project. Approximately one-half of the amount appropriated was not spent. In addition it requires that for taxes payable in 1996, in order to qualify for reimbursement under this program, the property must be in need of repairs, and the repairs must be made.

(Laws 1995, chapter 264, article 3, section 38, amending Laws 1994, chapter 587, article 5, section 27. Effective June 2, 1995.)

Brooklyn Park Rental Equity Pilot Project. Establishes a rental tax equity program for Brooklyn Park for taxes payable in 1996 only to owners of privately owned residential rental property that is more than ten years old, including single-family, duplexes, triplexes and apartments.

To be eligible for the credit, repairs on the property must be necessary and the landlord must make the repairs before receiving the credit. Provides for the city to establish guidelines for the program. Requires life or safety hazards to be reported and acted on. The city must limit the number of qualifying properties so that the total credit will not exceed \$350,000.

The tax credit is equal to the difference between (1) the tax on the property and (2) the tax that would be payable if the property were classified as homestead. In the case of multiple units, the first \$72,000 of market value (i.e. which receives the one percent homestead class rate) will be applied to the parcel as a whole. Requires the city to report on the program to the legislature by January 15, 1997.

(Laws 1995, chapter 264, article 3, section 43. Effective for taxes payable in 1996 only.)

Property Tax Refunds. Provides that a renter in a unit receiving a tax credit under the Brooklyn Park or St. Paul rental tax equity program is eligible to receive a property tax

refund amount based upon 20 percent of gross rent paid as taxes, rather than on the property taxes actually paid on the unit.

(Laws 1995, chapter 264, article 3, sections 44 and 45. Effective June 2, 1996, and after local approval. This section applies only to property taxes payable in 1996.)

Certificate of Rent Paid

Makes the building owner ultimately responsible for issuing the certificates, and imposes the penalty on negligent as well as intentional failures, absent a showing of reasonable cause. By way of background, if an apartment owner fails to give a certificate of rent constituting property tax to a renter, the Department of Revenue may assess a \$100 penalty for each failure. However, this penalty has been very difficult to sustain. The law was unclear as to whether the owner or the managing agent was responsible for issuing the certificates. Also, in order to impose the penalty, the failure had to be done "knowingly." This lack of a certain and definite penalty led to increasing numbers of renters complaining that they were not being issued certificates.

(Laws 1995, chapter 264, article 11, section 8, amending section 289A.60, subdivision 12. Effective for certificates of rent paid required after June 1, 1995.)

Leases, Unlawful Detainer

Permits a landlord to ask for the tenant's full name and date of birth on an application and written lease. Effective August 1, 1996 and applies to leases entered into, modified, or renewed on or after that date.

Adds "purchase" to the list of prohibited activities on the common area and curtilage in the statutory covenant not to allow drugs on residential rental property. Effective August 1, 1996 and applies to leases entered into, modified, or renewed on or after that date.

Requires a tenant screening service report to include the full name and date of birth of the prospective tenant if included in the court file and the specific basis for the court's decision, when available. Requires the same information in any court file or summary listing that the court provides relating to individuals. Effective August 1, 1996.

Requires the court to indicate on the court file or any summary prepared by the court, the specific basis for the court's decision in an unlawful detainer action. Requires, at a minimum, that distinctions be made between decisions based on nonpayment of rent, a violation of the covenants not to allow drugs or other covenants under statute or contract,

and a tenant's counterclaim for possession in an action under the tenant's remedies statutes. Effective August 1, 1996.

Requires an unlawful detainer complaint to give the full name and date of birth of the tenant against whom the action is brought unless it is not known. Permits an action to be filed without the information. Effective August 1, 1996 and applies to any unlawful detainer action brought against a tenant whose tenancy begins, or whose lease is renewed or modified, on or after that date.

(Laws 1996, chapter 328, sections 3 to 8, amending sections 504.012, 504.181, 504.30, and 566.05. Effective dates as indicated above.)

Tenant Security Deposit Interest Rate

Provides for tenant security deposits held by landlords to bear simple noncompounded interest at the rate of three percent per year until May 1, 1999, and four percent after that. Provides that the interest rate increase to four percent be reviewed by the legislature in 1998. Repeals the 1992 law that required the 1996 Legislature to review the interest rate.

(Laws 1996, chapter 357, amending section 504.20. Effective March 22, 1996.)