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STATE OF MINNESOTA

SENATE

Judiciary Committee
REPORT

COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON SPECIAL PROJECTS

Interim Activities and Recommendations

June 1969 - December 1970

Re:
Housing problems

Proposed bills re

- (A) LANDLORD & TENANT
To prevent retaliatory evictions or rent increases
- (B) Implied warranty
that premises are habitable
- (C) Remedies for tenants
of substandard housing

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I. INTRODUCTION

During the 1969-1971 interim, the Senate Judiciary Subcommittee on Special Projects was assigned the task of investigating the inadequacies of the present landlord and tenant law and exploring possible means of reforming the law in this area. Members of the subcommittee included the following:

Senator Gordon Rosenmeier, Chairman
Senator John T. Davies
Senator William B. Dosland
Senator Harold G. Krieger
Senator Wayne G. Popham

The subcommittee met twice during the interim and at the November 18, 1970 meeting recommended for passage the three bills attached hereto.

II. SUMMARY OF SUBCOMMITTEE ACTIVITY

At the May 8, 1970 meeting, the subcommittee heard testimony concerning the nature and extent of the housing problem in the state with particular emphasis on the inadequacies of the present law relating to landlords and tenants. Additionally, the subcommittee received three proposed bills designed to remedy some of these inadequacies by providing more rights for tenants.

The subcommittee received testimony from the following people: T. J. Halloran, Legal Assistance of Ramsey County; Paul J. Marino, Legal Aid Society of Minneapolis; Sol Jacobs, Deputy Director of Inspections, City of Minneapolis; David M. Feehan, Hennepin County Federation of Settlements; Mrs. Arthur McWatt, Associate Director, St. Paul Urban League; Clayton G. Rein, Minnesota Apartment Association; Alfred A. Albert, Minnesota Apartment Association; Neil Carter, Minnesota Housing Institute; Robert Stein, Professor, University of Minnesota Law School; Camillo De Santis, Pillsbury-Waite Settlement House; and Vigdor Grossman, Minneapolis Civil Rights Department.

Mr. Jacobs indicated that at the present time there is a terrible housing shortage in the metropolitan area, particularly for low income housing. To add to this problem there is relatively little low income housing being built and there hasn't been for several years. Recent statistics show that about 1/3 of the housing in the metropolitan area is over 50 years old.

It has been estimated that there are approximately 20,000 substandard dwelling units in the city of Minneapolis alone. Mr. Jacobs stated that because of financial and personnel limitations, his department is unable to keep up with housing problems in the city. There is no possibility, for example, of their inspecting every multiple dwelling every year. Additional testimony indicated that the conditions described by Mr. Jacobs exist in St. Paul as well.

Mrs. McWatt and Mr. Feehan described some of the conditions and frustrations faced by tenants living in substandard housing, particularly those tenants living in the inner city. Faced with persistent, serious code violations, a tenant may exert little influence over an intransigent landlord. A lease contains no implied covenant of habitability, nor may a tenant withhold rent pending the completion of repairs.

Complaints to code enforcement authorities are often fruitless because of the inadequate staffing of code enforcement agencies, the opportunity for delay of proceedings by the landlord, and the minimal penalties provided for code violations. Oftentimes, it is cheaper for the landlord to pay the fines instead of making the necessary repairs. In effect, the tenant has no legal means to force the landlord to maintain his premises in accordance with reasonable health and safety standards. Furthermore most tenants do not have the alternative of moving into better low cost housing because such housing simply does not exist. Hence, even the doctrine of constructive eviction is of little use to the tenant. Finally, both Mrs. McWatt and Mr. Feehan stated that tenants who complained to their landlords or reported code violations were frequently subjected to retaliatory eviction or rent increases. They both underscored the need to enact legislation of the type contained in the attached proposals in order to provide tenants with some of the rights and protections which they presently lack.

Other people testifying in favor of these proposals indicated that this legislation should not be considered a panacea for the housing problems existing in the state. They stated that such legislation was much needed and would help to alleviate many of the conditions and problems faced by tenants of substandard housing. However, they suggested that this legislation should be coupled with a much broader approach to the housing problem including federal and/or state subsidies to provide the funds necessary to renovate existing housing and to build additional low cost housing. They felt that the housing problem could only be solved by such a comprehensive program including subsidies and remedial legislation.

In addition to the above testimony, Mr. Marino and Mr. Halloran outlined for the subcommittee the features of the three proposed bills. Additionally, Mr. Rein and Mr. Albert, representing the Minnesota Apartment Association, presented several suggested changes in the bills for the subcommittee's consideration. In view of the above testimony, the chairman requested that the subcommittee counsel meet with representatives of tenants' organizations, landlords' associations and other interested parties in an attempt to redraft the original proposals so that they would be acceptable to both tenants and landlords.

Prior to the November 18 subcommittee hearing, the three bills were extensively redrafted in a series of meetings, involving subcommittee counsel and the above mentioned group. The redrafted bills subsequently received the endorsement of the Minnesota Apartment Association, the Minnesota Housing Institute, various tenant organizations, and several other interested organizations.

At the November 18 meeting, the redrafted bills were presented to the subcommittee and were recommended for passage by the subcommittee.

III. SUMMARY OF PROPOSED DRAFT BILLS

A. Bill A, amending Minnesota Statutes, 1969, chapter 566.03 is designed to prevent retaliatory evictions and retaliatory rent increases. Frequently, the response of a landlord to a complaint by a tenant to the authorities concerning code violations is a termination of the tenancy or an increase in rent. The bill provides the burden of proving that the action was in retaliation for the assertion of rights rests with the defendant unless the act occurred within 90 days of an assertion of rights by the defendant, in which case the burden of proof must be carried by the plaintiff.

B. Bill B, amending Minnesota Statutes, 1969, chapter 504, is designed to help tenants force landlords to keep their property in habitable condition. The bill creates an implied warranty of habitability and shifts the duty of repair from the tenant to the landlord. The bill relates only to residential property, and it inserts into every lease of residential property (including month-to-month leases) a provision that the premises are "fit for the use intended by the parties." State law has not required this in the past. This provision would be inserted in all leases and the parties could not agree to waive it.

The bill also obligates the landlord to keep the premises in reasonable repair during the rental period and requires him to comply with applicable health and safety laws. The landlord is specifically exempted from repairing damage done through willful, irresponsible, or negligent conduct on the part of the tenant. This provision may be modified, in leases longer than one year; if the agreement is supported by consideration and set forth in a conspicuous writing.

C. Bill C creates a special summary proceeding whereby a tenant inhabiting a residential structure which contains code violations that materially endanger the health or safety of the tenant may obtain relief. Subsequent to a demand for inspection establishing the code violations and the institution of the proceedings by summons and complaint, the district court may order any of the following relief: an order requiring the owner to remedy the defect; an order permitting the tenant to deduct the cost of such repairs from his rent payments; an order appointing an administrator to act as a receiver, making the necessary repairs from the rent money collected, or abate the rent payments due.

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A bill for an act

relating to landlord and tenant; actions
for the recovery of real estate;
amending Minnesota Statutes 1969,
Section 566.03.

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

Section 1. Minnesota Statutes 1969, Section 566.03, is
amended to read:

566.03 [RECOVERY OF POSSESSION; DEFENSES.] Subdivision

1. When any person holds over lands or tenements after a
sale thereof on an execution or judgment, or on foreclosure
of a mortgage and expiration of the time for redemption, or
after termination of contract to convey the same, or after
termination of the time for which they are demised or let to
him or to the persons under whom he holds possession, or
contrary to the conditions or covenants of the lease or
agreement under which he holds, or after any rent becomes
due according to the terms of such lease or agreement, or
when any tenant at will holds over after the determination
of any such estate by notice to quit, in all such cases the
person entitled to the premises may recover possession
thereof in the manner hereinafter provided.

Subd. 2. It shall be a defense to an action for
recovery of premises following the alleged termination of a
tenancy by notice to quit for the defendant to prove by a
fair preponderance of the evidence that:

(1) The alleged termination was intended as a penalty
for the defendant's good faith attempt to secure or enforce
rights under a lease or contract, oral or written, or under
the laws of the state, any of its governmental subdivisions,

1 or of the United States; or

2 (2) The alleged termination was intended as a penalty
3 for the defendant's good faith report to a governmental
4 authority of the plaintiff's violation of any health,
5 safety, housing or building codes or ordinances.

6 If the notice to quit was served within 90 days of the
7 date of any act of the tenant coming within the terms of
8 paragraphs 1 or 2 of this subdivision, the burden of proving
9 that the notice to quit was not served for a retaliatory
10 purpose shall rest with the plaintiff.

11 Subd. 3. In any proceeding for the restitution of
12 premises upon the ground of nonpayment of rent, it shall be
13 a defense thereto if the tenant establishes by a
14 preponderance of the evidence that the plaintiff increased
15 the tenant's rent or decreased the services as a penalty for
16 any lawful act of the tenant as described in subdivision 2,
17 providing that the tenant tender to the court the amount of
18 rent due under his original obligation.

"B"

1 A bill for an act

2 relating to landlords and tenants;
3 creating certain covenants by landlords
4 in all leases with a term of less than
5 one year; amending Minnesota Statutes
6 1969, Chapter 504, by adding a section.

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

8 Section 1. Minnesota Statutes 1969, Chapter 504, is
9 amended by adding a section to read:

10 [504.18] Subdivision 1. In every lease or license of
11 residential premises, whether in writing or parol, the
12 lessor or licensor covenants:

13 (a) That the premises and all common areas are fit for
14 the use intended by the parties.

15 (b) To keep the premises in reasonable repair during
16 the term of the lease or license, and to comply with the
17 applicable health and safety laws of the state and of the
18 local unit of government where the premises are located,
19 except when the disrepair or violation of the applicable
20 health or safety laws has been caused by the willful,
21 malicious, or irresponsible conduct of the lessee or
22 licensee.

23 Subd. 2. The parties to the lease or license may not
24 modify the obligations of subdivision 1(a). The obligations
25 of subdivision 1(b) may be modified by the parties to the
26 lease or license, but only if the agreement to modify is set
27 forth in a conspicuous writing and is supported by a valid
28 consideration.

29 Subd. 3. The provisions of this section shall be
30 liberally construed, and the privilege of a prospective

1 lessee or licensee to inspect the premises before concluding
2 a lease or license shall not defeat his right to have the
3 benefit of the covenants established herein.

4 Subd. 4. The covenants contained in this section shall
5 be in addition to any covenants and conditions imposed by
6 law or ordinance or by the terms of the lease or license.

" C "

1 A bill for an act

2 relating to landlord and tenant;
3 creating remedies for tenants of
4 substandard housing,

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

6 Section 1. [DEFINITIONS.] Subdivision 1. As used in
7 this act, the terms in this section shall have the meanings
8 assigned to them.

9 Subd. 2. "Tenant" means any person who is occupying a
10 dwelling in a building as defined in subdivision 8, under
11 any agreement, lease, or contract, whether oral or written,
12 and for whatever period of time, which requires the payment
13 of moneys as rent for the use of the dwelling unit, and all
14 other regular occupants of such dwelling unit.

15 Subd. 3. "Lessor" means the person, corporation or
16 firm contracting with the tenant for the rental of the
17 dwelling unit or building subject to the provisions of this
18 act.

19 Subd. 4. "Owner" means the owner or owners of the
20 freehold of the premises or lesser estate therein, contract
21 vendee, receiver, executor, trustee, lessee, agent, or any
22 other person, firm or corporation directly or indirectly in
23 control of a dwelling.

24 Subd. 5. "Commercial tenant" means any person paying
25 rent in a building defined in subdivision 8 who is not a
26 tenant, as defined in subdivision 2.

27 Subd. 6. "Person" means a natural person, corporation,
28 partnership or unincorporated association.

29 Subd. 7. "Violation" means the violation of any statute

1 county or city health, housing, building, fire prevention,
2 or housing maintenance code which materially endangers the
3 health or safety of the tenants of the building involved.

4 Subd. 8. "Building" means any building used in whole
5 or in part as a dwelling, including single family homes,
6 multiple family units such as apartments, and structures
7 containing both dwelling units and units used for
8 nondwelling purposes.

9 Subd. 9. "Inspector" means the person charged by the
10 council or other governing body for the political
11 subdivision in which a building is situated, with the
12 responsibility of enforcing provisions of local law, the
13 breach of which could constitute a violation as defined in
14 subdivision 7, or if no such person, the county health
15 officer or the chairman of the board of county
16 commissioners.

17 Sec. 2. [DEMAND FOR INSPECTION.] Where an inspection
18 of a building has been made upon demand by a tenant, the
19 lessor and complaining tenant shall be informed in writing
20 by the inspector of any violations discovered and the period
21 of time in which to correct such violations. Where such an
22 inspection was made, no action shall be brought pursuant to
23 this act, except on expiration of the time thus granted,
24 without satisfactory repairs being accomplished unless the
25 tenant shall allege such time is excessive.

26 Sec. 3. [SPECIAL PROCEEDING.] Subdivision 1. An
27 action may be brought in district court by any tenant of a
28 building in which a violation, as defined in subdivision 7

1 of section 1, is alleged to exist, or by any state, county
2 or local department, or authority, charged with the
3 enforcement of codes relating to health, housing, or
4 building maintenance.

5 Subd. 2. The place of hearing of the action authorized
6 by this section shall be within the county in which the
7 building alleged to contain violations is located.

8 Subd. 3. The action shall be commenced by service of a
9 complaint and summons, which summons may be issued only by a
10 Judge or clerk of the court.

11 Subd. 4. The complaint shall:

12 (1) allege material facts showing that there exists in
13 the building a violation or violations, and

14 (2) state the relief sought, and list the rents due
15 each month from each dwelling unit within the building, if
16 known, and

17 (3) be accompanied by a copy of the official report of
18 inspection by any department of health, housing or
19 buildings, if such a report exists, certified by the
20 custodian of records of such department stating:

21 (a) when and by whom the building concerned was
22 inspected,

23 (b) what violations were recorded, and

24 (c) that notice of the violation has been given to the
25 building owner, or

26 (4) be accompanied by a statement that a request for
27 inspection was made to the appropriate state, county or
28 municipal department and demand made upon the owner to

1 correct the alleged violation.

2 Sec. 4. [SUMMONS.] Subdivision 1. Upon receipt of the
3 complaint, the clerk of court shall prepare a summons. Said
4 summons shall:

5 (1) specify the time and place of the hearing to be
6 held on the complaint, which hearing shall be not less than
7 three or more than ten days after receipt of the complaint
8 by the clerk, and

9 (2) state that if at that time a defense is not
10 interposed and established by the defendant, judgment may be
11 entered for the relief requested and authorized by this act.

12 Subd. 2. The summons and complaint shall be served
13 upon the plaintiff's lessor or his agent at least three and
14 not more than ten days before the time at which the
15 complaint is to be heard. Service shall be by personal
16 service upon the defendant pursuant to the Minnesota rules
17 of civil procedure except that if such service cannot be
18 made with due diligence, service may be made by affixing a
19 copy of the summons and complaint prominently to the
20 building involved, and mailing at the same time a copy of
21 the summons and complaint by certified mail to the last
22 known address of the defendant.

23 Sec. 5. [ANSWER.] At or before the time when the
24 petition is to be heard, the defendant may answer in
25 writing. Defenses not set out in a written answer must be
26 orally pleaded at the hearing prior to the taking of any
27 testimony. No delays in the date of hearing shall be
28 granted to allow time to prepare a written answer or reply

1 except with the consent of all parties.

2 Sec. 6. [DEFENSES.] It shall be a sufficient defense
3 to the complaint that the defendant establish that:

4 (1) the violation or violations alleged in the
5 complaint do not in fact exist or that the violation or
6 violations have been removed or remedied, or

7 (2) such violations have been caused by the willful,
8 malicious, or irresponsible conduct of a complaining tenant
9 or anyone under his direction or control, or

10 (3) that any tenant of the building has unreasonably
11 refused entry to the owner or his agent to a portion of the
12 premises for the purposes of correcting such violation, and
13 such effort to correct was made in good faith.

14 Sec. 7. [HEARING.] When issues of fact are raised,
15 they shall be tried by the court without a jury at the time
16 when issue is joined. The court may grant a postponement of
17 such trial on its own motion or at the request of any party
18 if it should determine that such postponement is necessary
19 to enable any party to procure necessary witnesses, or
20 evidence, but no such postponement shall be for more than
21 six days except by consent of all appearing parties.

22 Sec. 8. [JUDGMENT.] Upon finding the complaint proved,
23 the court may, in its discretion:

24 (1) order the owner to immediately remedy the violation
25 or violations found by the court to exist if the court is
26 satisfied that corrective action will be undertaken
27 promptly, or

28 (2) order the tenant to remedy the violation or

1 violations found by the court to exist and deduct the cost
2 thereof from his rent subject to such terms as the court
3 determines to be just, or

4 (3) (a) appoint an administrator with powers as set out
5 in section 12, and

6 (b) direct that rents due:

7 (1) on and from the day of entry of judgment, in the
8 case of petitioning tenants, and

9 (2) on and from the day of service of the judgment on
10 all other tenants and commercial tenants of the building, if
11 there be any, shall be deposited with the administrator
12 appointed by the court, and

13 (c) direct that the administrator use the rents
14 collected for the purpose of remedying the violations found
15 to exist by the court, paying the debt service, ^{and} or providing
16 the services necessary to the ordinary operation and
17 maintenance of the building which the owner is obligated to
18 provide but which he fails or refuses to provide, or

19 (4) find the extent to which any uncorrected violations
20 impair the tenants' use and enjoyment of the premises
21 contracted for and order the rent therefor abated
22 accordingly. Should the court choose to enter judgment
23 under this paragraph the parties shall be informed and the
24 court shall find the amount by which the rent shall be
25 abated, and

26 (5) grant such other relief as to the court may seem
27 just and proper.

28 Sec. 9. [SERVICE OF JUDGMENT.] A copy of the judgment

1 shall be personally served on every tenant and commercial
2 tenant of the building whose obligations will be affected by
3 the judgment. If personal service cannot be had with due
4 diligence, service may be had by posting a notice of the
5 judgment on the entrance door of the tenant's dwelling or
6 commercial tenant's unit and by mailing a copy of the
7 judgment to such tenant or commercial tenant by certified
8 mail.

9 Sec. 10. [OWNER'S RIGHT TO COLLECT RENT SUSPENDED.]
10 When an administrator has been appointed pursuant to
11 paragraph (3) of section 8, any right of the owner to rent
12 moneys from the time of judgment or service of judgment as
13 set out in section 9 shall be void and unenforceable until
14 the administration is terminated.

15 Sec. 11. [EVICTION PROCEEDINGS BY OWNER LIMITED.] A
16 tenant may not be evicted, nor may his obligations under his
17 rental agreement be increased nor the services decreased, if
18 the eviction or increase of obligations or decrease of
19 services is intended as a penalty for the tenant's complaint
20 of a code violation. The burden of proving otherwise shall
21 be on the owner if said eviction or increase of obligations
22 or decrease of services occurs within 90 days after the
23 filing of the complaint, unless it is found that the
24 complaint was not made in good faith. After 90 days the
25 burden of proof shall be on the tenant.

26 Sec. 12. [ADMINISTRATOR.] Subdivision 1. The
27 administrator may be any person, other than an owner of the
28 building involved, including a tenant of the building or a

1 tenant association that, in the court's opinion, is
2 qualified to administer the funds to be collected. If a
3 state, county, or local agency is authorized by statute,
4 ordinance or regulation to provide persons to act as
5 administrators under this section, the court shall appoint
6 such persons as administrators to the extent they are
7 available.

8 Subd. 2. Such person shall post bond as the court may
9 require before assuming the position of administrator,
10 except that in a building of less than four dwelling units,
11 the court may waive the requirement of bond if it appoints a
12 tenant as administrator. Administrators appointed from
13 governmental agencies shall not be required to give bond.

14 Subd. 3. The court may allow a reasonable amount for
15 the services of administrators, and the expense of the
16 administration from any rent moneys.

17 Subd. 4. The administrator shall be empowered to

18 (1) collect rents from tenants and commercial tenants,
19 evict tenants and commercial tenants for nonpayment of rent
20 or other cause, rent vacant dwelling units on a month to
21 month basis, rent vacant commercial units with the consent
22 of the lessor, and exercise all other powers necessary and
23 appropriate to carry out the purposes of this act;

24 (2) contract for the necessary materials, labor and
25 services to remedy the violation or violations found by the
26 court to exist, and make disbursements for payment therefor
27 from funds available for the purpose;

28 (3) provide any services to the tenants which the owner

1 is obligated to provide but which he refuses or fails to
2 provide, and to make disbursements for payment thereof from
3 funds available for the purpose.

4 Subd. 5. At any time during the administration the
5 administrator, or any party, may petition the court after
6 notice to all parties for an order terminating the
7 administration on the ground that the funds available to the
8 administrator are insufficient to effect the prompt remedy
9 of the violations. Upon finding the petition proved the
10 court shall terminate the administration and proceed to
11 judgment pursuant to the provisions of paragraph (4) of
12 section 8.

13 Sec. 13. [REMOVAL OF ADMINISTRATOR.] Subdivision 1.
14 The administrator may, upon notice to all parties, petition
15 the court to be relieved of his duties, setting forth his
16 reasons therefor. The court may, in its discretion, grant
17 such petition and discharge the administrator upon approval
18 of his accounts.

19 Subd. 2. Any party may, upon notice to the
20 administrator and all other parties, petition the court to
21 remove the administrator. Upon good cause shown, the court
22 shall order the administrator removed and direct him to
23 deliver to the court forthwith an accounting of his
24 administration. The court may make any other order
25 necessary and appropriate under the circumstances.

26 Subd. 3. In the event the administrator is removed,
27 the court shall appoint a new administrator in accordance
28 with the provisions of section 12, giving all parties an

1 opportunity to be heard on the matter of the appointment.

2 Sec. 14. [TERMINATION OF ADMINISTRATION.] Subdivision

3 1. The administration shall be terminated upon the
4 occurrence of one of the following:

5 (1) the securing of certification from the appropriate
6 governmental agency that the violations found by the court
7 to exist at the time of judgment have been remedied; or

8 (2) an order pursuant to subdivision 5 of section 12.

9 Subd. 2. Upon the occurrence of any of the conditions
10 for termination in subdivision 1, the administrator shall:

11 (1) submit to the court an accounting of receipts and
12 disbursements of his administration together with copies of
13 all bills, receipts and other memoranda pertaining to all
14 transactions reflected therein, and, where appropriate, a
15 certification, by an appropriate governmental agency, that
16 the violations found by the court to exist at the time of
17 judgment have been remedied; and

18 (2) comply with any other order the court shall make as
19 a condition of discharge.

20 Subd. 3. Upon approval by the court of the
21 administrator's accounts and compliance by the administrator
22 with any other order the court may make as a condition of
23 discharge, the court shall discharge the administrator from
24 any further responsibilities pursuant to this act.

25 Sec. 15. [WAIVER PROHIBITED.] Any provision, whether
26 oral or written, of any lease or other agreement whereby any
27 provision of this act is waived by a tenant shall be deemed
28 contrary to public policy and shall be void.