

CHAPTER 315—H.F.No. 2668

An act relating to real property; landlord and tenant; requiring receipts for cash payments; providing for recovery of attorney fees under certain conditions; modifying procedures for tenant screening fees; providing for imposition of late fees; providing for eviction procedures for tenants of certain foreclosed property; making clarifying, conforming, technical, and other changes to landlord and tenant provisions; amending Minnesota Statutes 2008, sections 484.014, subdivision 3; 504B.173; 504B.178, subdivision 7; 504B.215, subdivision 2a; 504B.271, subdivisions 1, 2; 504B.285, by adding subdivisions; 504B.291, subdivision 1; 504B.365, subdivision 4; Minnesota Statutes 2009 Supplement, section 504B.285, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 504B.

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

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

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

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

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

Sec. 2. **[504B.118] RECEIPT FOR RENT PAID IN CASH.**

A landlord receiving rent or other payments from a tenant in cash must provide a written receipt for payment immediately upon receipt if the payment is made in person, or within three business days if payment in cash is not made in person.

Sec. 3. **[504B.172] RECOVERY OF ATTORNEY FEES.**

If a residential lease specifies an action, circumstances, or an extent to which a landlord, directly, or through additional rent, may recover attorney fees in an action between the landlord and tenant, the tenant is entitled to attorney fees if the tenant prevails in the same type of action, under the same circumstances, and to the same extent as specified in the lease for the landlord.

EFFECTIVE DATE. This section is effective for leases entered into on or after August 1, 2011, and for leases renewed on or after August 1, 2012.

Sec. 4. Minnesota Statutes 2008, section 504B.173, is amended to read:

504B.173 APPLICANT SCREENING FEE.

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

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

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

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

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

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

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

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

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

Subd. 3. **Disclosures to applicant.** ~~If a landlord or the landlord's agent, prior to taking an application~~ accepts an applicant screening fee from a prospective tenant, the landlord must:

(1) disclose ~~on the application form or orally~~ in writing prior to accepting the applicant screening fee:

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

(ii) the criteria on which the decision to rent to the prospective tenant will be based; and

(2) notify the applicant within 14 days of rejecting a rental application, identifying the criteria the applicant failed to meet.

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

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

Sec. 5. **[504B.177] LATE FEES.**

(a) A landlord of a residential building may not charge a late fee if the rent is paid after the due date, unless the tenant and landlord have agreed in writing that a late fee may be imposed. The agreement must specify when the late fee will be imposed. In no case may the late fee exceed eight percent of the overdue rent payment. Any late fee charged or collected is not considered to be either interest or liquidated damages. For purposes of this paragraph, the "due date" does not include a date, earlier than the date contained in the written or oral lease by which, if the rent is paid, the tenant earns a discount.

(b) If a federal statute, regulation, or handbook providing for late fees for a tenancy subsidized under a federal program conflicts with paragraph (a), then the landlord may continue to publish and implement a late payment fee schedule that complies with the federal statute, regulation, or handbook.

EFFECTIVE DATE. This section is effective January 1, 2011, for leases entered into or renewed on or after that date.

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

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

Sec. 7. Minnesota Statutes 2008, section 504B.215, subdivision 2a, is amended to read:

Subd. 2a. **Conditions of separate utility billing to tenant in single-meter buildings.** ~~If the~~ (a) A landlord of a single-metered residential building who bills for utility charges separate from the rent, ~~the following conditions apply:~~

(1) must provide prospective tenants ~~must be provided~~ notice of the total utility cost for the building for each month of the most recent calendar year; ~~and~~

(2) must predetermine and put in writing for all leases an equitable method of apportionment and the frequency of billing by the landlord ~~must be predetermined and put in writing for all leases.~~

(3) must include in the lease ~~must contain~~ a provision that, upon a tenant's request, ~~a~~ the landlord must provide a copy of the actual utility bill for the building along with each apportioned utility bill. Upon a tenant's request, a landlord must also provide past copies of actual utility bills for any period of the tenancy for which the tenant received an apportioned utility bill. Past copies of utility bills must be provided for the preceding two years or from the time the current landlord acquired the building, whichever is most recent; and

~~The landlord of a single-metered residential building who bills separately for utilities~~ (4) may, if the landlord and tenant agree, provide tenants with a lease term of one year or more the option to pay those bills under an annualized budget plan providing for level monthly payments based on a good faith estimate of the annual bill.

(b) By September 30 of each year, a landlord of a single-metered residential building who bills for gas and electric utility charges separate from rent ~~shall~~ must inform tenants in writing of the possible availability of energy assistance from the low income home energy assistance program. The information must contain the toll-free telephone number of the administering agency.

(c) A failure by the landlord to comply with this subdivision is a violation of sections 504B.161, subdivision 1, clause (1), and 504B.221.

Sec. 8. Minnesota Statutes 2008, section 504B.271, subdivision 1, is amended to read:

Subdivision 1. **Abandoned property.** (a) If a tenant abandons rented premises, the landlord may take possession of the tenant's personal property remaining on the premises, and shall store and care for the property. The landlord has a claim against the tenant for reasonable costs and expenses incurred in removing the tenant's property and in storing and caring for the property.

(b) The landlord may sell or otherwise dispose of the property ~~60~~ 28 days after the landlord receives actual notice of the abandonment, or ~~60~~ 28 days after it reasonably appears to the landlord that the tenant has abandoned the premises, whichever occurs last, ~~and~~.

(c) The landlord may apply a reasonable amount of the proceeds of ~~the~~ a sale to the removal, care, and storage costs and expenses or to any claims authorized pursuant to section 504B.178, subdivision 3, paragraphs (a) and (b). Any remaining proceeds of any sale shall be paid to the tenant upon written demand.

(d) Prior to ~~the~~ a sale, the landlord shall make reasonable efforts to notify the tenant of the sale at least 14 days prior to the sale, by personal service in writing or sending written notification of the sale by first-class and certified mail, return receipt requested, to the tenant's last known address or usual place of abode, if known by the landlord, and by posting notice of the sale in a conspicuous place on the premises ~~for~~ at least two weeks prior to the sale. If notification by mail is used, the 14-day period shall be deemed to start on the day the notices are deposited in the United States mail.

Sec. 9. Minnesota Statutes 2008, section 504B.271, subdivision 2, is amended to read:

Subd. 2. **Landlord's punitive damages.** If a landlord, an agent, or other person acting under the landlord's direction or control, in possession of a tenant's personal property, fails to allow the tenant to retake possession of the property within 24 hours after written demand by the tenant or the tenant's duly authorized representative or within 48 hours, exclusive of weekends and holidays, after written demand by the tenant or a duly authorized representative when the landlord, the landlord's agent or person acting under the landlord's direction or control has removed and stored the personal property in accordance with subdivision 1 in a location other than the premises, the tenant shall recover from the landlord punitive damages in an amount not to exceed \$300 twice the actual damages or \$1,000, whichever is greater, in addition to actual damages and reasonable attorney's fees.

In determining the amount of punitive damages the court shall consider (1) the nature and value of the property; (2) the effect the deprivation of the property has had on the tenant; (3) if the landlord, an agent, or other person acting under the landlord's direction or control unlawfully took possession of the tenant's property; and (4) if the landlord, an agent, or other person under the landlord's direction or control acted in bad faith in failing to allow the tenant to retake possession of the property.

The provisions of this subdivision do not apply to personal property which has been sold or otherwise disposed of by the landlord in accordance with subdivision 1, or to landlords who are housing authorities, created, or authorized to be created by sections 469.001 to 469.047, and their agents and employees, in possession of a tenant's personal property, except that housing authorities must allow the tenant to retake possession of the property in accordance with this subdivision.

Sec. 10. Minnesota Statutes 2009 Supplement, section 504B.285, subdivision 1, is amended to read:

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

(1) any person holds over real property:

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

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

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

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

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

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

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

Subd. 1a. **Grounds when the person holding over is a tenant in a foreclosed property.** (a) For any eviction action commenced on or before December 31, 2012, where the person holding the real property after the expiration of the time for redemption on foreclosure of a mortgage was a tenant during the redemption period under a lease of any

duration, and the lease began after the date the mortgage was executed, but prior to the expiration of the time for redemption, the immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the date of the expiration of the time for redemption, and effective no sooner than 90 days after the date of the expiration of the time for redemption, provided that the tenant pays the rent and abides by all terms of the lease.

(b) For any eviction action commenced on or before December 31, 2012, where the term of a bona fide lease extends more than 90 days beyond the date of the expiration of the time for redemption, the immediate successor in interest must allow the tenant to occupy the premises until the end of the remaining term of the lease, and provide at least 90 days' written notice to vacate, effective no sooner than the date the lease expires, provided that the tenant pays the rent and abides by all terms of the lease, except if the immediate successor in interest or an immediate subsequent bona fide purchaser will occupy the unit as the primary residence, the immediate successor in interest must provide at least 90 days' written notice to vacate, given no sooner than the date of the expiration of the time for redemption, effective no sooner than 90 days after the date of the expiration of the time for redemption, provided that the tenant pays the rent and abides by all terms of the lease.

For purposes of this section, a "bona fide lease" means:

- (1) the mortgagor or the child, spouse, or parent of the mortgagor is not the tenant;
- (2) the lease or tenancy was the result of an arm's-length transaction; and
- (3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized by a federal, state, or local subsidy.

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

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

Subd. 1b. Grounds when the person holding over is a tenant in a property subject to a contract for deed. For any eviction action commenced on or before December 31, 2012, the person entitled to the premises may recover possession by eviction when any person holds over real property after termination of contract to convey the property, provided that if the person holding the real property after the expiration of the time for termination was a tenant during the termination period under a lease of any duration and the lease began after the date the contract for deed was executed but prior to the expiration of the time for termination, and the person has received:

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

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

Sec. 13. Minnesota Statutes 2008, section 504B.285, is amended by adding a subdivision to read:

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

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

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

Sec. 14. Minnesota Statutes 2008, section 504B.291, subdivision 1, is amended to read:

Subdivision 1. **Action to recover.** (a) A landlord may bring an eviction action for nonpayment of rent irrespective of whether the lease contains a right of reentry clause. Such an eviction action is equivalent to a demand for the rent. There is a rebuttable presumption that the rent has been paid if the tenant produces a copy or copies of one or more money orders or produces one or more original receipt stubs evidencing the purchase of a money order, if the documents: (i) total the amount of the rent; (ii) include a date or dates approximately corresponding with the date rent was due; and (iii) in the case of copies of money orders, are made payable to the landlord. This presumption is rebutted if the landlord produces a business record that shows that the tenant has not paid the rent. The landlord is not precluded from introducing other evidence that rebuts this presumption. In such an action, unless the landlord has also sought to evict the tenant by alleging a material violation of the lease under section 504B.285, subdivision 5, the tenant may, at any time before possession has been delivered, redeem the tenancy and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, costs of the action, and an attorney's fee not to exceed \$5, and by performing any other covenants of the lease.

(b) If the tenant has paid to the landlord or brought into court the amount of rent in arrears but is unable to pay the interest, costs of the action, and attorney's fees required by paragraph (a), the court may permit the tenant to pay these amounts into court and be

restored to possession within the same period of time, if any, for which the court stays the issuance of the order to vacate under section 504B.345.

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

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

Sec. 15. Minnesota Statutes 2008, section 504B.365, subdivision 4, is amended to read:

Subd. 4. ~~Second and Fourth Judicial Districts~~ **Motions concerning removal or storage of personal property.** ~~In the Second and Fourth Judicial Districts, the housing calendar consolidation project~~ The court hearing the eviction action shall retain jurisdiction in matters relating to removal of personal property under this section. If the plaintiff refuses to return the property after proper demand is made as provided in section 504B.271, the court shall enter an order requiring the plaintiff to return the property to the defendant and awarding reasonable expenses including attorney fees to the defendant.

Presented to the governor May 7, 2010

Signed by the governor May 11, 2010, 11:17 a.m.