

**A PROPOSED LAW THAT WOULD ALLOW TENANTS WHO DON'T KNOW
WHICH OF TWO "LANDLORDS" IS THE REAL LANDLORD TO PAY THEIR RENT
INTO COURT**

Suppose you are a Minnesota tenant in the sixth month of a one-year lease from January to December at \$600/month and a late fee of \$48 for not paying by the fifth of the month. The lease has no special clauses about building sales. On July 30, someone you've never met says he just bought your building and you should pay your August rent and subsequent rent to him. He seems sincere. What should you do?

If he did buy the building, the law is clear that you should do as he asks. When he bought the building your lease transferred to him and you are now his tenant whether either of you likes it or not. Fisher v. Heller, 174 Minn. 233,236, 219 N.W. 79,80 (1928).

On the other hand, if he is lying and you pay him, you've got a problem. You still owe rent to the proper landlord, the landlord with whom you signed the lease. If you've run out of money, you might get evicted for non payment. Even if you can afford "repaying" the rent, you still are out the \$600 you paid to the new man, money you may never recover.

Sometimes, there is an easy solution. The new man shows you a deed proving purchase, maybe even with proof of filing with the Recorder of Deeds, and when you contact the original landlord she says or even writes you, "Yes, I sold the building. Pay the new man."

Often, however, there is no easy solution. Deeds don't get recorded immediately at the Recorder of Deeds. Original landlords can be hard to reach. Transfers sometimes involve complex deals or deals such as commercial leases that don't get recorded. Old and new claimants have different stories about what sort of transfer has or has not occurred. Transfers occur (or did not occur) via foreclosures or tax forfeitures with unclear dates as to the date of transfer or even the correct transferee in multiparty situations. Etc.

What should the tenant do in one of these unclear situations? There actually is a cumbersome court procedure available under Minnesota Rule of Civil Procedure 67.02¹.

Under this rule, the tenant can pay the rent into court along with a petition explaining the problem and identifying the parties claiming the rent. However, the tenant faces three problems. First, he has to draft his petition from scratch. Second, he has to pay the filing fee and arrange for service of process. Third, he has to spend time in court getting the signing judge to review his petition and enter an order.

Re the first problem, perhaps Legal Aid or other pro bono organizations can supply forms. (In actual fact they don't as of now, but that could change).

The second problem has no good solution. The filing fee for such a case is the full filing fee for a

district court case, currently at least \$299 and slightly more in some counties. Service of process is at least another \$33.10 (postage for a 1-ounce Registered-Mail letter sent to each “landlord” is \$16.55 and personal service is a lot more). In most types of cases, the winner gets a judgment for court costs and disbursements and thus can recover the filing fee and other litigation expenses from the loser. Here, however, there is no loser and not really a winner either. The tenant is simply out the minimum \$333.10 just to pay his \$600 rent.

The third problem has a solution, albeit not a good one – spend a few hours going to court, visiting the signing judge, and going home from court.

Rule 67 is fine for a large company in doubt as to whom to pay a large sum of money. For it, the 333.10 is peanuts and it has lawyers familiar with Rule 67 .

Sometimes there is a semi-solution. If the tenant has a repair problem, he can write both claimants a letter asking for its repair. If the repair is not made in 14 days, the tenant can pay his rent into court in a Rent Escrow action under Minn. Stat. § 504B.385. The filing fee is only about \$70 and the court handles service of process. The court will rule which “landlord” gets the rent. If damages are proven, the tenant will get some of rent back before the correct landlord gets the rest, the court will order repairs to be made, and the tenant should get a judgment for the \$70 filing fee.

However, this process takes at least 14 days to start. In the example, the tenant cannot file his case until August 13 (day 15 after he learns of the new “owner” on July 30 and can write him asking for the repair), but the tenant is subject to eviction for non payment on August 2. Moreover, if there are no needed repairs, this “solution” cannot work at all. Finally, the tenant most likely has to go to court several times (once to file the case and a least once to litigate it).

I propose the following new law – a new “Rent Escrow for Competing Landlords”, call it Minn. Stat. § 504B.386.. Like the current Minn. Stat. § 504B.385, it would have the court administrator serve process by First Class Mail and would have the court administrator draft a form petition allowing the tenant to provide his residential information, the names of the competing “landlords”, the amount of rent needed to be paid, and a brief discussion of the dispute. The tenant would pay his rent to the court administrator who would set a hearing date in the near future (say 7-14 days out as in Minn. Stat. § 504B.385). At the hearing, the competing “landlords” could each try to prove to the judge who is owed the money (assuming the case wasn’t settled ahead of time). The filing fee for all parties should be zero, since the tenant is not trying to “win” anything and can never recover the filing fee and landlords should not have to pay just to get rent.² To guard against the very few mischievous tenants, if it turns out the tenant filed the case without a colorable basis, the tenant could be subject to a penalty such as the penalty in Minn. Stat. § 504B.331, subd. 2(d).

The financial burden on the courts would be small. While these cases come up fairly regularly (I counseled about a tenant every month or two on the issue and I was but one of many tenant-side

attorneys) but their number pales in comparison to the approximately 18,000 housing cases heard annually in Minnesota³. Indeed, the courts might save money. Currently, without a Rent Escrow for Competing Landlords law some tenants don't pay rent to either "landlord" and the "landlord" or "landlords" file an eviction action or the tenant tries the 504B.385 ploy discussed above. In either case, the court ends up handling a more complicated case than a Rent Escrow for Competing Landlords.

In summary, a Rent Escrow for Competing Landlords would reward the most responsible tenants – those that simply want to pay their rent to the correct person and want courts, rather than duels or other unsavory procedures, to decide the dispute.

Notes

1. Minnesota Rule of Civil Procedure reads as follows:

67.02 When No Action is Brought

When money or other personal property in the possession of any person, as bailee or otherwise, is claimed adversely by two or more other persons, and the right thereto as between such claimants is in doubt, the person in possession, though no action is commenced against that person by any of the claimants, may place the property in the custody of the court. The person in possession shall apply to the court of the county in which the property is situated, setting forth by petition the facts which bring the case within the provisions of this rule, and the names and places of residence of all known claimants of such property. If satisfied of the truth of such showing, the court, by order, shall accept custody of the money or other property, and direct that, upon delivery and upon giving notice thereof to all persons interested, personally or by registered mail as prescribed in such order, the petitioner is relieved from further liability on account thereof. This rule shall apply to cases where property held under like conditions is garnished in the hands of the possessor; but in such cases the application shall be made to the court in which the garnishment proceedings are pending.

2. Some existing case types, e.g. most Harassment cases, have a filing fee of zero. Minn. Stat. §609.748, subd. 3a.

3. See <http://www.mncourts.gov/Help-Topics/Data-Requests/Dashboards.aspx>. This website does not separate eviction actions from tenant-initiated cases and just lumps them together under what it calls "Unlawful Detainers". (It is also true that the number of tenant-initiated cases has historically been less than 5% of the number of eviction actions).