

SENATE FILE 125/ HOUSE FILE 495 (2019)¹

The Real-World Problems

Section 1 - Leases with an unknown apartment

The genesis of Section 1 of the bill is leases that don't require the landlord to assign a specific unit to the tenant until she shows up on the first day of occupancy². A fair number of residential leases, mostly in college neighborhoods, do this. This leaves the tenant³ in the untenable position of being unable to know what she is renting or even the ability to inspect the unit for its condition or location and views.

Section 2 - Leases that short the tenant in the last month

The genesis of Section 2 of the bill is leases ending in the middle of a month. Most leases involve equal monthly rent payments with each payment covering one calendar month and residential tenants generally expect their leases to do that.

However, no law requires this. A fair number of residential leases, again mostly in college neighborhoods, "short" the tenant in the final month. Typically these leases involve equal rent payments on the first of each month and except for the last month the payment covers the entire month, but in the last month the tenant is required to move out mid month (say on the 20th of the month). This surprises a lot of tenants, especially those with leases having the mid-month clause buried in the lease. They scramble to deal with where to live during that period (10-11 days in the example); also, having spent "all" their rent money on the first of the month, they have no money budgeted for the end period.

What the Bill Does – Allows such leases but requires disclosure

Section 1 requires the lease to specify the unit in buildings of at least twelve residential units.

Section 1 modifies Minn. Stat. § 504B.111, which already requires a written lease in buildings with at least twelve residential units. The bill adds a sentence reading "The written lease must identify the specific unit the residential tenant will occupy before the residential tenant signs the lease."

Section 2 requires disclosure of a short month and any proration of rent on the first lease page of the lease

Sections 2 creates a new Minn. Stat. § 504B.146, which requires that [a] all written residential leases must state an end date; and [b] "the lease must indicate the amount of the prorated rent, if applicable." The disclosures must be on the first page of the written lease.

Possible Pitfalls In the Bill

Section 1 raises two concerns

First, it is unclear why the bill limits the specification requirement to bigger buildings. The problem for the tenant who is assigned a crappy unit is the same in a building of 100 or 12 or 11 or 4 or even 2 units. When originally enacted Minn. Stat. § 504B.111 was designed to regulate larger landlords and thus was limited to larger buildings.⁴ Using it as the vehicle for the unit-specification requirement is a bit odd.

Second, the last sentence of Minn. Stat. § 504B.111 reads “A landlord who fails to provide a lease, as required under this section, is guilty of a petty misdemeanor.” This requires police intervention to enforce the law. Probably the tenant who signed a contract without a specified unit could declare the contract illegal and thus void,⁵ but it would be better if bill had a clear enforcement tool or tools the tenant could use.

Section 2 raises four concerns

First, it is unclear why the bill is limited to written leases. Perhaps the sponsor of the bill meant to require mid-month-ending leases to be written but it doesn't say that, and oral leases for buildings under twelve residential units are lawful.

Second, the disclosures need not be conspicuous. Miniprint on page one of the lease would qualify. The disclosure should have to be conspicuous (see Minn. Stat. § 504B.161, subd. 2, and Minn. Stat. § 504B.175, subd. 2 for two good examples of language).

Third, there is no enforcement mechanism other than the implication that such a lease is illegal and thus voidable by the tenant, but this does the tenant little good. The tenant's problem is the problem he faces in a last and partial month. Does he unilaterally declare the rent prorated? Or the lease to run to the end of the month? Or just lump it as if the statute did not exist? At the least, the statute will create lawsuits with no obvious outcome.

Fourth, the bill appears to disallow tenancies at will, leases that have no stated end date (including the very common “month to month” leases). Most of these leases require notice directed to the last day of a calendar month, but as drafted the bill simply disallows them. I doubt the bill's sponsors intend that.

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Notes

1. Both bills are available on the legislature's excellent web site, <https://www.leg.state.mn.us/>
2. The bill refers to such an agreement as a “lease”. Technically, it is a contract but not a lease when signed since no specific real estate is rented and thus there is no space over which the

landlord is ceding control. *Seabloom v. Krier*, 219 Minn. 362, 367, 18 N.W.2d 88, 91 (1945). Instead it becomes a lease when the unit is assigned. Likely a court would interpret “lease” in the bill to include such a contract even before a specific unit is assigned.

3. Again, until the unit is assigned, arguably the party in question is not a “tenant” since a “tenant” must have the present legal right to occupy a unit. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 625-626 (Minn. 2016). However, it is when she becomes a true “tenant” that she might find out that her assigned unit is in disrepair or looks out over a ventilation shaft or worse.

4. The main proponent of 1993 Minn. Laws ch. 317, s. 1, now codified at Minn. Stat. § 504B.111 was the late Senator Marlene Luther. She was concerned by amateur hour in the management of two huge apartment complexes, Century Court North and Century Court Northwest, in her district. I personally remember these complexes operating with oral leases and tenant records that literally consisted of notes about rent payment on a stack of 3" x 5" cards. Luther was trying to help the city better regulate these complexes.

5. E.g., *Solomon v. Dreschler*, 4 Minn. R. 278, 4 Gilfillan 197 (1860) (generally, illegal contracts are void or voidable).