

ADULT CHILDREN WHO WON'T LEAVE (AND OTHER LICENSEE-LICENSOR DISPUTES)

Suppose you are the parent of Harmon, an adult son who has been living in your house with your permission for quite a long while. He has his own bedroom where he keeps good number of possessions – a bed, clothes, TV, etc. He is not paying any rent or otherwise providing any consideration for the space. Figuring it is time for him to move on with his life and provide for himself, you ask him to leave. He refuses. What can you legally do? May you lock him out? Will the police arrest him for trespass if you ask them to? Can you file an eviction action (in slang, an “unlawful detainer action”) and use housing court to remove him?

If Harmon were a tenant, the answer would be easy. Use an eviction action if he does not leave after proper notice. Eviction actions are relatively simple cases and are heard within two weeks of being filed.

However, Harmon is not a tenant because he is not paying for his space. Minn. Stat. § 504B.001, subd. 12 defines a "Residential tenant" as “a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, all other regular occupants of that dwelling unit, or a resident of a manufactured home park.” Harmon isn't a resident of a manufactured home park¹. He isn't a “regular occupant of that dwelling unit” because that phrase means the roommate of a tenant, which he isn't. Broszko v. Principal Mut. Life Ins. Co., 533 NW 2d 656, 659 (Minn. App. 1995 (1995)² (“other regular occupants’ attaches tenant status to persons who live in a dwelling unit subject to a valid agreement, lease, or contract, in addition to the lessee or renter. The most common beneficiaries of this clause are children of lessees or renters”). And Harmon doesn't pay rent.³

Instead, Harmon is a licensee. A licensee is someone who is neither a tenant of a landlord nor has title to the occupied area but does have permission to use the area. Lee v. Regents of the University of Minnesota, 672 N.W.2d 366 (Minn. App. 2003). A licensee has a status between a tenant and a mere social guest. *Id.* at 374 (“a ‘guest’ is a person who is entertained or to whom hospitality is extended”).⁴

The Lee court held that once a licensee is given “reasonable notice” to vacate and still doesn't vacate, she may be locked out. This remedy has two shortcomings. First, sometimes the Harmons of the world can show they did provide consideration – perhaps they paid the electric bill or provided some service like helping an infirm parent with chores – in return for occupancy. If Harmon is locked out and proves in court that he was actually a tenant, his parents are subject to a hefty penalty of triple damages (e.g. triple Harmon's hotel bill while locked out) plus attorney fees under the anti-lockout statute, Minn. Stat. § 504B.231. Second, how long is a “reasonable notice”? As the Lee court said, usually this is a factual determination to be decided by a jury at trial.⁵

Harmon's parents could give him what they think is reasonable notice (or maybe get him to agree to a reasonable notice) and if he still doesn't leave call the police and ask him to be arrested for

trespass. This remedy suffers from the fact that police officers tend to declare such disputes, often incorrectly, as “civil matters” and avoid acting, and it’s very hard to make them change their minds. Furthermore, trespass is only a misdemeanor, so police might need a warrant to enter the home to arrest Harmon. Finally, the police might think the notice was not “reasonable”. So, family dynamics aside, calling the police might work but often it doesn’t.

The parents could seek injunctive relief from the courts and get an order that Harmon must move or face contempt of court. However, this is cumbersome and difficult to do without an attorney.

Thus, the parents would like to file an eviction action under Minn. Stat. § 504B.285. However, this is likely not a proper basis for an eviction action. Minn. Stat. § 504B.285 limits its reach to holdovers by mortgagors, contract-for-deed vendees, delinquent property taxpayer, tenants at will, or any person who “holds over real property after termination of the time for which it is demised or leased”. It doesn’t provide for eviction of licensees.⁶

What about an eviction under Minn. Stat. § 504B.301, which says, “A person may be evicted if the person has unlawfully or forcibly occupied or taken possession of real property or unlawfully detains or retains possession of real property”? The problem with this idea is Berg v. Wiley I, 303 Minn. 247, 226 N.W.2d 904 (1975). The plaintiff in Berg was a tenant unlawfully locked out by her landlord, who then occupied the space. There was no doubt that the landlord had unlawfully entered the premises and was unlawfully detaining the same. The plaintiff alleged that the landlord was subject to removal by way of an eviction action (then entitled an “unlawful detainer action”). The Berg court rejected this interpretation of section 504B.301 (then codified at section 566.02) and held that by itself, this section was not enough to proceed. Instead, the plaintiff also needed to be one of the listed plaintiffs in section 504B.285 (then codified as section 566.03).

There are a couple of unpublished cases hinting that Berg might not actually eliminate the use of section 504B.301 by Harmon’s parents. Footnote 2 in Wajda v. Schmeichel, No. A18-0060 (Minn. Ct. App. Nov. 26, 2018) (unpublished), review denied (Minn. Feb. 19, 2019)⁷ says, “This language [504B.301] indicates that it provides a basis for eviction independent of section 504B.285, subdivision 1(a).” However, this footnote [a] ignores Berg completely and [b] is dicta and is labeled as such (“we need not reach appellant’s arguments [on this issue]”). *Id.*, slip op. at 8. And the court in DePetro v. DePetro, No. A03-727 (Minn. Ct. App. April 27, 2004) (unpublished) allowed an eviction in a Harmon type of situation but the occupant never contested jurisdiction and based her defense on a claim that she and not her mother actually owned the home. This means that Harmon’s parents would not be laughed out of court if they filed an eviction action against him but they should have their case dismissed under Berg.

Given the lack of a non-violent remedy that is clearly useful and available to Harmon’s parents, it makes sense to add their situation to the list of allowed eviction cases in section 504B.285.⁸ The invention of the eviction action well over a century ago has proven to be a good middle ground between owners having to take the law into their own hands via lockouts and other unsavory methods or having to use slow or cumbersome court procedures such as ejectment or injunctive actions. The same law could establish the time period for a notice to the occupant and exactly

which occupants would be covered.

As an example, New York allows and requires an eviction action (in NY, a “summary process”) to remove a squatter who has lawfully occupied for 30 days. The owner must give a 10-day notice to the occupant before filing the case.⁹

There is nothing magic about the New York 30-day minimum occupancy or the 10-day notice period. Instead of a 30-day minimum occupancy, it would make better sense to expand section 504B.285 to cover all licensees and to define “licensee” as person holding a “license” as defined in section 504B.001. As to the notice period, given that most licensees have a fair amount of property to move and need time to reorder their lives, 10 days seems somewhat short. Perhaps there could be two notice periods, a shorter one for occupancies of fewer than 30 days and a longer one for occupancies of at least 30 days. The key elements of the law would be [a] a bright line rule that a licensee can be evicted under section 504B.285 and [b] what notice must be given prior to filing the case.

NOTES

1. “Resident” is a term of art. It means “an owner of a manufactured home who rents a lot in a manufactured home park and includes the members of the resident's household.” Minn. Stat. § 327C.01, subd. 8.

2. This case and other published Minnesota appellate cases decided since 1950 are available at <https://scholar.google.com/>. Search “Case law” rather than “Articles”.

3. There is dicta in Lee v. Regents of the University of Minnesota, 672 N.W.2d 366 (Minn. App. 2003) citing Thompson v. Baxter, 107 Minn. 122, 124, 119 N.W. 797, 798 (1909) for the proposition that permission from an owner is all that is needed to create a tenancy-at-will and that rent or other obligations are not needed. However, what Baxter actually says about permission is that a “tenancy at will [arises] where possession is by permission of the landlord”, *id.*, not permission of the “owner”; i.e. the owner must be acting as a landlord in granting permission. A “landlord” is person “who, being the owner of an estate in land, has leased it ... on a rent reserved, to another person, called the ‘tenant.’” BLACK’S LAW DICTIONARY 1021 (4th Ed). A “lease” is an “agreement which gives rise to relationship of landlord and tenant.... Contract for exclusive possession of lands.” *Id.* at 1035. Accord Local Oil Company, Inc. v. City of Anoka, 303 Minn. 537, 539, 225 N.W. 2d. 849, 851 (1975) (a lease is a form of contract). A “contract” is an “agreement, upon sufficient consideration, to do or not to do a particular thing. BLACK’S LAW DICTIONARY 394.

Thus, even putting aside the possibly more restrictive definition of “residential tenant” in section 504B.001 and using the common-law definition of “tenant”, to be a tenant Harmon must pay for his occupancy. Indeed, in Baxter, the occupant paid \$22/month of rent and all the cases cited in Baxter involved payment of rent. The issue in Baxter was whether the occupant was a tenant at will or the holder of a life estate (not a tenant at all) and the court said that the former “arises where no definite time is agreed upon and the rent is fixed ... and is terminable at the expiration of any period for which rent been paid.” *Id.* at 798 (emphasis added). An occupant must pay rent

or provide other consideration (such as services) to be a tenant.

Thompson v. Baxter is available at
<https://birnberglegalwebsite.files.wordpress.com/2019/03/thompson-vs-baxter.pdf>

BLACK'S LAW DICTIONARY (4th Ed) is available at
<https://smhttp-ssl-70271.nexcesscdn.net/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf>

4. In addition to the issue of rent payment, a “tenant under a lease is one who has been given a possession of land which is exclusive even of the landlord except as the lease permits his entry.... A licensee is one who has a mere permission to use land, dominion over it remaining in the owner and no interest in or exclusive possession of it being given to the occupant.”
Seabloom v. Krier, 219 Minn. 362,367, 18 N.W.2d 88,91 (1945) (citations omitted)

Seabloom is available here: <https://www.courtlistener.com/opinion/3535578/seabloom-v-krier/>

5. Lee involved a very unusual licensee versus owner/manager dispute regarding lab space and samples lost due to a freezer failing and was resolved on summary judgment. 672 N.W.2d at 374. Residential-licensee-notice disputes rarely involve that sort of clarity.

6. “Demise” means to “to convey or create an estate for years or life; to lease.” BLACK’S LAW DICTIONARY 518. That is not the deal his parents had with Harmon.

7. This case and other unpublished as well as published Minnesota appellate cases decided since May 1996 are available at <https://mn.gov/law-library/search/?v:sources=mn-law-library-opinions>

8. E.g., the delinquent taxpayer category was added recently. 2017 Minn. Laws Special Session, ch. 1, art. 2, § 40.

9. See, e.g. Stuhr Gardens Assoc., LLC v. Doe, 2016 NY Slip Op 30813 (N.Y. City Court) (beginning of Part II), available at <https://www.leagle.com/decision/innyco20160506347>