

## A GAP IN MINN. STAT. § 504B.375, THE LOCKOUT-PETITION STATUTE.

### The Facts in *Denzer v. Dolan*<sup>1</sup>

Starting in April 2017, Amy Denzer rented a room in Ann Dolan's house on a month-to-month lease. A year later, in the early hours of April 2, 2018 Denzer came home and was confronted by Dolan who said the "house smells like weed". She told Denzer to leave the house by morning and repeated the demand in the morning. While Denzer was out during the day, Dolan hired a locksmith to change the locks and moved Denzer's belongings to the basement. Denzer came home while the locksmith was finishing, took some of her things, handed over the now-useless keys, asked Dolan to store some of her things, and left.

On April 5 Denzer, pro se, filed a "lockout" petition, using State Court Administrator's Form HOU702. By checking boxes she asked for an order under Minn. Stat. § 504B.375 to regain possession of her room. In handwriting she asked the court to "set a hearing for my possession under MN Statute 504B.375 set a hearing under Minn Statute 504B.225, 504B.231 to hear my claims for damages, costs and attorney fees. award me costs if I win. allow me to deduct any money judgment against the landlord from my rent." Since Minn. Stat. § 504B.225 is a criminal statute, Denzer's effective claims were only under Minn. Stat. § 504B.375 and Minn. Stat. § 504B.231.

That day, the district court judge issued an *ex parte* order allowing Denzer to immediately move back into her room and scheduled a hearing for April 11.

A different judge presided over the April 11 hearing. Both parties testified about the lockout events and Denzer testified about her damages. The judge issued an order awarding Denzer possession of the room (basically reissued an order) and awarding her disbursements (filing fee and any service-of-process fee). Orally she denied the damages claim on the grounds that such a claim could not be brought under Minn. Stat. § 504B.375.

Later that day Dolan filed an Eviction Action against Denzer.<sup>2</sup>

Denzer's attorney wrote the judge asking for an order for damages, apparently based on the Minn. Stat. § 504B.231 claim. On April 23 the judge denied the request in a new order on the grounds that Denzer did not prove her damage claims with credible evidence. The new order said nothing about proof or lack of proof of Dolan's bad faith during the lockout.

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<sup>1</sup>The facts of the case are gleaned from the decision and the documents filed with the Court of Appeals and the Supreme Court.

<sup>2</sup>See the docket for Ramsey County Dist. Ct. File No. 62-HG-CV-18-738 which is available on MNCIS, <http://pa.courts.state.mn.us/default.aspx>. The docket says this case eventually was dismissed without prejudice in May before trial.

## The Court of Appeals Decision

Denzer appealed. The Court of Appeals made two rulings.

First, it ruled that Minn. Stat. § 504B.375 does not allow for damage claims or attorney fees.

Second, it ruled *sue sponte* on an issue not decided by the district court, holding that since Denzer did not “claim or offer evidence that Dolan acted in bad faith”, her claim under Minn. Stat. § 504B.231 necessarily failed because that statute requires proof of bad faith. It also affirmed the district court judge’s finding that Denzer’s evidence of damages was unconvincing.

### Minn. Stat. § 504B.375

#### The Ruling

As to Minn. Stat. § 504B.375, the appellate and district courts were at least half right. A close reading of subdivision 2 of section 504B.375 shows that this statute does not allow for a damage claim and only allows for attorney fees in one scenario. If the court issues an *ex parte* order for possession and the landlord then makes a written motion on two days notice for a hearing to contest the facts and grounds of the *ex parte* order, then the winner of that motion has a claim for attorney fees.

In this particular case, the MNCIS docket shows no written motion. According to the transcript, Dolan generally contested the April 5 order at the April 11 hearing.

Had the district court judge strictly followed Minn. Stat. § 504B.375, in the absence of a written motion under subdivision 2, she would have not allowed any evidence or argument on Minn. Stat. § 504B.375 nor reviewed the April 5 order nor made any ruling on Minn. Stat. § 504B.375 except as to costs and disbursements. Thus the only proper ruling she made on Minn. Stat. § 504B.375 was to award disbursements (the filing fee). Why she made no ruling on statutory costs of \$205.50 under Minn. Stat. § 549.02, subd. 1, clause (2) is unclear.

#### A Gap in the Statute

Putting aside the above procedural details, this case illustrates a problem with Minn. Stat. § 504B.375. The statute provides a simple form of relief to a residential tenant locked out of her home. It recognizes that unlike most commercial tenants, residential tenants are generally less sophisticated, generally poorer, and almost always imperiled by a lockout since few tenants have an alternate place to stay or sleep. The other statutes allowing the residential tenant to get rapid injunctive relief – e.g. Minn. Stat. § 504B.381, 504B.385, and 504B.395 et seq – provide for attorney fees, allowing the tenant to hire competent counsel. Yet, if the tenant is thrown out of her home, goes to the trouble of hiring counsel to file a petition under Minn. Stat. § 504B.375, and is restored to her home in a few days, she is out her attorney fees unless the landlord contests the order and does so by a specific sort of written motion. If the landlord contests the order for possession in some other way, as happened in *Denzer v. Dolan*, the tenant gets no attorney fees.

This seems unfair. While Minn. Stat. § 504B.231 does allow for attorney fees, as this case illustrates that statute requires proof of bad faith. It also is simply a monetary-claim statute and thus can take months or even years to resolve, leaving the tenant who got the most important thing she wanted – a home to sleep in – out her attorney fees at least for a while and perhaps forever.

In practice, many district court judges do not award possession via an *ex parte* order and simply set the matter on for a hearing a day or two after the 504B.375 petition is filed. This clearly violates the statute and leaves the tenant with the worst of both worlds – a delay in getting back into her home and no possible claim for attorney fees.

Minn. Stat. § 504B.375 should be amended to allow the tenant whose is awarded possession by an order that is not reversed to recover her attorney fees, motion or no motion.

#### Minn. Stat. § 504B.231

This case does not suggest that Minn. Stat. § 504B.231 needs to be amended but does merit some comments about bad faith.

Denzer did weak job of proving damages at the April 11 hearing and thus it made sense to affirm the trial judge's finding that Denzer didn't prove actual damages.

However, it is hard to understand why the trial judge ignored the bad-faith issue. If the tenant proves that the lockout was in bad faith, section 504B.231 affords the tenant a judgment for costs and disbursements plus her attorney fees plus the greater of triple damages or \$500. Denzer plead costs, damages and attorney fees under section 504B.231, meaning she claimed a bad-faith lockout. Denzer provided considerable evidence about the lockout, evidence which Dolan essentially admitted. Even if zero damages or attorney fees were proven, if the lockout was in bad faith, Denzer should have been awarded the minimum \$500.

Bad faith “means a refusal to fulfill some duty or some contractual obligation not prompted by an honest mistake as to one’s rights or duties, but rather by some ulterior motive.” *Lassen v. First Bank Eden Prarire*, 514 N.W.2d 831,837 (Minn. App. 1994). The court of appeals implied that Dolan thought Denzer “acquiesced” in the lockout by turning in keys and asking for storage of some things. However, when Denzer did those two things, the lock had been changed making the keys useless and her room had been cleared out. Dolan had already locked out Denzer in clear violation of the law.

Dolan was not mislead about her rights after receiving poor legal advice or an okay from the court to change the locks. Simple ignorance of the law is no excuse.<sup>3</sup> She simply decided to take the law into her hands. For 41 years, since *Berg v. Wiley*, 264 N.W.2d 145 (Minn. 1978), it has been clear that lockouts are illegal in Minnesota. To contest the “weed” issue, Dolan should have

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<sup>3</sup>This adage should need no citation but here is a recent case reviewing this ancient rule of law. *Alderman's Inc. v. Shanks*, 515 N.W.2d 97,102 (Minn. App.1995).

filed an Eviction Action – which she finally did on April 11 – instead of locking Denzer out.

If non-professional landlords are allowed to lock out tenants one time for “free”, claiming they didn’t know the law, the anti-lockout rule of *Berg* would be eviscerated. The trial judge should have found bad faith and awarded the minimum \$500 under Minn. Stat. § 504B.231.

### Form HOU702 and Other Pro Se Forms

Finally, the *Denzer* case raises a concern with the usual forms provided to pro se tenants. Form HOU702 only lays out a claim under Minn. Stat. § 504B.375. Some other forms lay out two claims, one under Minn. Stat. § 504B.375 and one under Minn. Stat. § 504B.231.

As illustrated in *Lindner v. Foy*, Minn. Ct. App. File No. No. A04-2060 (Jun. 28, 2005), pro-se forms should lay out a third claim as well, a claim for damages resulting from a non-bad-faith lockout.

Non-bad-faith lockouts occur. For example, in *Lindner*, the landlord locked a garage after the tenant voluntarily left her apartment, not knowing the tenant maintained an interest in the garage. In another case, which I handled myself, the landlords really thought that the tenant had skipped out. They moved the tenant’s things items to a storage bin and changed the locks; when the tenant returned from a long trip to deal with an emergency and contacted the landlord, they immediately let her back into her home and moved her items back. In those sorts cases, there was no bad faith but the tenants had a claim for loss of use and missing items

Tenants should plead simple damages as in *Lindner* and *Berg* as well as 504B.231 and 504B.375 claims. And, pro-se forms should include all three claims as check-off boxes.

### Conclusions

[1] Minn. Stat. § 504B.375 should be amended to provide the tenant with attorney fees whenever her order for possession is not reversed.

[2] Pro-see lockout forms should have check boxes suggesting three claims, one under Minn. Stat. § 504B.375, one under Minn. Stat. § 504B.231, and one under *Berg* for breach of the lease.

[3] Courts should be wary of deciding a lockout was not in bad faith simply because the landlord was not a legal expert.