

THE TENANT DIES WITHOUT A WILL AND LEAVES THE LANDLORD AND HIS HEIRS IN A LEGAL PICKLE

The Landlord's Problems

Suppose you are the landlord of Tom. Tom dies in the sixth month of a one-year lease. Tom had no will. Tom was man of modest means but with quite a bit of furniture and other items (“personalty” in legalese) in his Minneapolis apartment. In the next few days Harry and Jane each contact you, each claiming to be Tom’s only surviving heir and each demanding to be let into the apartment to remove Tom’s personalty. What do you do?

Or suppose Harry or Jane or both have a key to Tom’s apartment. Do you just stand by or do you change the locks to the apartment?

Or suppose no one contacts you and you don’t have any idea who are Tom’s heirs. What do you do?

Or suppose no one contacts you but you think Tom’s only heir is Abdi who lives somewhere in Somalia and you don’t have Abdi’s contact information. What do you do?

In all these situations, you’d like to be able to rerent the apartment pretty soon since you figure it will be difficult or impossible to collect any rent otherwise. Also, you want to obey the law.

Current Laws

So what laws matter? It turns out there are some relevant laws but not enough. Here are most of the relevant laws:

[1] Either the landlord or the personal representative (what some states call an “executor”) of Tom’s estate can give two-month notice to end the lease earlier than the six months left on the lease. The notice must be given to the other party.¹

[2] Since Tom had no will (in legalese, “he died intestate”), the Minnesota probate code names heirs for him.² And these heirs inherit his possessions, both his personalty and his real estate, immediately when he dies.³

¹See Minn. Stat. § 504B.265. All Minnesota statutes are available at <https://www.revisor.mn.gov/statutes/>

²See Minn. Stat. § 524.2-101 et seq.

³See *In re Beachside I Homeowners Ass'n*, 802 N.W.2d 771 (Minn.Ct.App.2011), available at https://scholar.google.com/scholar_case?case=17233950169505565272&hl=en&as_sdt=6,24

[3] Without a will, Tom’s estate has no personal representative until a court appoints one. Once a personal representative is appointed the personal representative can take control of the lease and personalty.⁴

[4] It is crime to lock out a tenant.⁵

[5] Locking out a tenant in bad faith also exposes the landlord to treble damages (three times the cost the tenant incurred from being locked out) or \$500, whichever is greater, and also exposes the landlord to the other sides’ attorney fees.⁶

[6] Ignorance of the law about lockouts is no excuse.⁷

[7] Even if the lockout was not in bad faith – due to unusual facts as opposed to ignorance of the law -- the landlord is still liable for the tenant’s actual damages.⁸

[8] Once a tenant has a legal right to occupy the unit, if the landlord prevents entry that is a lockout – even if the tenant has never actually been inside the unit.⁹

[9] Instead of a lockout, the legal way to remove a tenant who has violated the lease or stayed past the end of the lease is to file an Eviction Action lawsuit against the tenant (an “unlawful detainer action” in slang).¹⁰

⁴See *Laymon v. Minnesota Premier Properties, LLC*, 913 N.W.2d 449 (Minn. 2018), available at https://scholar.google.com/scholar_case?case=2296037531504881608&hl=en&as_sdt=6,24

⁵See Minn. Stat. § 609.606.

⁶See Minn. Stat. § 504B.231.

⁷See *Stone v. Clow*, available at https://scholar.google.com/scholar_case?case=6806927297305338648&hl=en&as_sdt=6,24

⁸See *Lindner v. Foy*, available at https://scholar.google.com/scholar_case?case=7083556952608638078&hl=en&as_sdt=6,24

⁹See *Cocchiarella v. Driggs*, 884 NW 2d 621 (Minn. 2016), available at https://scholar.google.com/scholar_case?case=17531294086458527640&hl=en&as_sdt=6,24

¹⁰See *Berg v. Wiley*, 264 N.W.2d 145 (Minn. 1978), available at https://scholar.google.com/scholar_case?case=17047075130046818808&hl=en&as_sdt=6,24

[10] If the landlord prevents the rightful owner of Tom's personalty from controlling it, the landlord has committed "conversion" and is liable to the owner.¹¹

With these laws in mind, what can the landlord do?

If Tom had a will and the personal representative named in the will accepts the responsibility of being personal representative, the landlord is in pretty good shape. He can give the personal representative 2-month notice. He can let the personal representative into the apartment to remove the personalty. He can probably work out an agreement with the personal representative to end the lease as soon as possible. If the personal representative won't cooperate and won't pay the rent during the two months, he can file an Eviction Action against the estate and force the personal representative to pay the rent or give up possession of the apartment. Once the landlord has possession of the apartment, he can remove the personalty to a storage area¹² and re-rent the apartment.

However, Tom had no will. The landlord is in a pickle. If he locks out an heir – who became an heir the moment Tom died – he is liable to the heir, possibly for treble damages or \$500 plus attorney fees. He probably also committed a crime. Locking out both Harry and Jane is dangerous since either (or both) might be an heir.

On the other hand, if the landlord lets Harry in but not Jane and it turns out Harry was not an heir, then Jane will sue him for being locked out and for all the items Harry effectively stole from her when he entered and took them away.

Furthermore, under a strict reading of Minn. Stat. § 504B.265 notice is to be given to the personal representative and so until one is appointed the landlord cannot end the lease by two-month notice. If rent is not paid, it's not clear if he can file an eviction against the heirs for nonpayment because unless they agree to take over the lease only the estate and not the heirs owes rent (even assuming he can figure out who the heirs are).

If no potential heir approaches the landlord, can he risk removing the personalty and re-renting? What if he does so and the next day an heir appears? Now the landlord faces the similar problems as if he had locked out Harry or Jane. If the heir is the unreachable Abdi in Somalia, the landlord has a similar problem.

A less immediate problem involves the security deposit. The deposit is supposed to be "held ... for tenant".¹³ If the tenant owes for rent or damage by giving notice to the tenant the landlord can convert the

¹¹See *Inland Construction Corp. v. Continental Casualty Co.*, 258 N.W.2d 881,884 (Minn.1977) ("the gist of conversion ... [is] an interference with the plaintiff's right to control his property"; this was a case involving changing a lock). This case is available at https://scholar.google.com/scholar_case?case=1297300738215559618&hl=en&as_sdt=6,24

¹²See Minn. Stat. § 504B.271.

¹³See Minn. Stat. § 504B.178, subd. 1; *Nat'l Corp. for Housing Partnership v. Liberty State Bank*, 836 F.2d 433 (8th Cir.1988) (available at

deposit to himself¹⁴ but if there is no identified tenant, is this an option?

The landlord can deal with this list of problems by applying to the probate court to appoint a personal representative but even if the “Informal Probate” procedure is used that will take time and some money.¹⁵ If Tom were rich, that would work well since the landlord will eventually get fully compensated from the estate. However, since Tom was not rich, the landlord will likely never recover for the time and money (and time IS money).

The landlord might be able to prepare ahead of time by purchasing the right kind of insurance. However, it is not clear if the needed policies are available.¹⁶ And, a plan to break the law and hope insurance protects one after the fact is not an especially good plan.

The problems are not all one-sided. The heirs have their own problems.

If an heir is locked out, she can call the cops and report a violation of Minn. Stat. § 609.606 but likely the cops will claim it is a “civil dispute” and tell her politely to get lost. She can file a lockout suit for money¹⁷ and/or a lockout petition to get back in quickly¹⁸. However the former is slow and the landlord may not have money himself, and while the latter is quick it has a filing fee of about \$300 and probably requires Jane to declare herself a tenant - perhaps making her, not just the estate, liable for the

https://scholar.google.com/scholar_case?case=3040892282490475116&hl=en&as_sdt=6,24)

¹⁴See Minn. Stat. § 504B.178, subd. 3.

¹⁵See Minn. Stat. § 524.3-301 (and et seq). If it appears that there will be significant dispute/s over Tom’s estate, the more complex “Formal Probate” process must be used. See Minn. Stat. Chap. 524.3, Part 4.

¹⁶Copies of policy forms are not widely available. A common policy form seems to be the DP3 form, see <https://www.heritagepci.com/products/dwelling-fire-dp3/> . A copy is available on PDF pages 9-47 at <https://birnberglegalwebsite.files.wordpress.com/2019/09/bunchpolicy.pdf>). The DPS policy does not seem to provide protection to the landlord for lockouts. It might provide insurance for lost personalty due to an “accident” – IF the landlord’s allowing the wrong “heir” to remove Tom’s things is an “accident” under insurance law. The Minnesota Department of Commerce has an incomplete set of insurance policies available on SERFF (availability depends on how recently the policy form was filed). SERFF includes one form that does seem to protect against lockouts (“wrongful eviction”) but maybe not loss of personalty -- a Foremost Insurance policy available at <https://filingaccess.serff.com/sfa/search/filingSummary.xhtml?filingId=130123780> (click on Form 11009) or at <https://birnberglegalwebsite.files.wordpress.com/2019/10/foremost-policy-form-11009.pdf>

¹⁷See Minn. Stat. § 504B.231.

¹⁸See Minn. Stat. § 504B.375.

rent.

If the estate is worth no more than \$75,000 there is a procedure an heir can use to recover personalty without going through the process of having a personal representative appointed.¹⁹ However, that cannot be done until at least 30 days after Tom's death.²⁰

As with the landlord, the heir can get a personal representative appointed but that involves the same sort of time and effort the landlord would have to expend to do this.

SUMMARY OF THE PROBLEM

To summarize, when the tenant dies with no will his death leaves both the landlord and the tenant needing quick resolution to dealing with the leftover personalty and apartment but not much in the way of quick or easy court procedures available. While the tenant is alive, each side has access to rapid court procedures – eviction actions for the landlord and lockout petitions for the tenant – but once the tenant dies these often become insufficient.

RECOMMENDATIONS

Joint Landlord/Tenant Drafting of Legislation

Both tenant and landlord groups should have a vested interest in developing new statutes and procedures to solve or at least partially solve these problems. It seems like an arena where they can cooperate rather than butting heads, presenting a joint proposal for legislation to the legislature.

My Suggestions

In this blog I'm not going to propose definitive legislative solutions but below do suggest six ideas below.

[1] Modify Minn. Stat. § 504B.265 to allow the landlord to give a notice of less than two months, perhaps a lot less, in return for waiving a claim for post-death rent and contingent on the landlord safeguarding the dead tenant's personalty for an extended period (say three months, which would be about the two-month notice period in 504B.265 plus the 28 days post tenancy that the landlord must hold personalty under Minn. Stat. § 504B.271). And, allow the landlord to move the personalty to a storage area at the end of the notice period without filing an eviction action.

[2] Modify Minn. Stat. § 504B.265 to allow the landlord to give a notice to someone other than the personal representative if the tenant dies without a will. This could be done by posting a notice on the door of the property and electronically on a website run by the State (like the Department of Commerce's unclaimed property website), and also by First Class Mail and Certified Mail or by personal service to all known heirs.

[3] Modify Minn. Stat. § 504B.178 to allow the landlord to give notice similarly to notice under

¹⁹See Minn. Stat. § 524.3-1201 et seq.

²⁰See Minn. Stat. § 524.3-1201(a)(2).

suggestion #2.

[4] Shorten the 30-day period under Minn. Stat. § 524.3-1201 for personalty left in the premises formerly rented by a now-deceased residential tenant.

[5] Allow heirs or personal representatives to file Rent Escrow cases under Minn. Stat. § 504B.385 without prior notice (without the usual 14-day demand for repair) if their only claim is for a court order releasing the dead tenant's personalty, requiring that the summons and affidavit be served on not just the landlord but also all interested parties. This would create a quick court case to resolve competing claims for the personalty. Rent Escrow cases have a low filing fee and are heard 10-14 days after filing. Alternatively, allow filing such a case but require a 14-day notice giving the landlord a final chance to release the personalty (although that already might be allowed under Minn. Stat. § 504B.385).

[6] Create an incentive for tenants to provide copies of wills to landlords.