

**A LANDLORD'S CONUNDRUM -- WHEN THE HOUSEHOLD HAS SEVERAL  
ROOMMATES AND THEY ALL MOVE OUT,  
WHO SHOULD GET BACK THE SECURITY DEPOSIT?  
A POSSIBLE LEGISLATIVE FIX.**

The Problem

Suppose you are a landlord renting a house in Minnesota to four roommates. The roommates are now Art, Bob, Charlie and Ed. The tenancy started a two years ago with the original roommates being Art, Bob, Charlie and Dave. They paid a security deposit of \$1,000 with four \$250 checks, one from Art, one from Bob, one from Dave and one from Charlie's mother. Six months ago with your permission Dave moved out and Ed moved in and took over his slot on the lease. The current lease just ended and Art, Bob, Charlie and Ed all moved out the last day of the lease, turned in their keys, and left the house in excellent condition. Art, Charlie and Ed have each given you different mailing addresses where they wish you to deliver the deposit. Bob has not said what to do with the deposit. You had sensed some tension among the four when you visited the house during the last week of the tenancy.

You want to obey the law. How do you handle return of the deposit?

Issues Faced

The answer is not obvious and there may not be an absolutely correct answer. The three issues you face are:

[#1] Does it matter that only three of the original tenants paid his share of the deposit from his own pocket but Charlie's share apparently was paid by his mother?

[#2] Does it matter that the original \$1000 came from Art, Bob, Charlie and Dave but the tenants at the end of the lease were Art, Bob, Charlie and Ed?

[#3] Does it matter that you've only received return instructions from Art, Charlie and Ed and they each gave different return addresses?

My Analysis

I think #1 and #2 have correct answers. I'm not sure about #3. The legislature could resolve the problem with new legislation. Here is my reasoning.

## One Statute Largely Controls the Situation

Residential security deposits are largely controlled by a detailed statute, Minn. Stat. § 504B.178.<sup>1</sup> Subdivision 10 of section 504B.178 says, “Any attempted waiver of this section by a landlord and tenant, by contract or otherwise, shall be void and unenforceable.” Therefore, if the statute says what to do you must do that even if the lease says something else.

### Issue #1

Minn. Stat. § 504B.178, subd. 3 says the landlord must return the deposit to “the tenant”. Charlie’s mother is not and never was a tenant. So she has no claim to the deposit.

### Issue #2

Obviously Art, Bob and Charlie are three of the tenants eligible for return of the deposit under Minn. Stat. § 504B.178, subd. 3. Is Dave or Ed the fourth eligible tenant?

The answer is Ed. The most direct reason the answer is Ed comes from law outside Minn. Stat. § 504B.178 and requires delving a bit into real-estate law.

### Real Estate Law

Art, Bob, Charlie and Dave were tenants in common. See Minn. Stat. § 500.19, subd. 2.<sup>2</sup> As such, Dave didn’t have the power to affect the rights of Art, Bob and Charlie.<sup>3</sup> However, Dave could transfer some or all of his rights to Ed. [Denison v. Sawyer, 95 Minn. 417,420, 104 N.W. 305,307 \(1905\)](#); [Schalck v. Harmon, 6 Minn. 265,270 \(1861\)](#) .

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<sup>1</sup>Minnesota statutes are available at <https://www.revisor.mn.gov/statutes/>

<sup>2</sup>This subdivision says “All grants and devises of lands, made to two or more persons, shall be construed to create estates in common, and not in joint tenancy, unless expressly declared to be in joint tenancy. This subdivision shall not apply to mortgages, nor to devises or grants made in trust, or to executors.” In this hypothetical and in nearly all rentals to roommates, there was no declaration of joint tenancy. Thus the four roommates formed a tenancy in common.

<sup>3</sup>As one modern case stated, “Under a tenancy in common, a co-owner of property alone cannot alter the terms of rental to a third person without the other owner’s consent because the lease is regarded as being leases of the owners’ separate shares of the property. 20 Am. Jur. 2d Cotenancy and Joint Ownership, § 109 (2002).” [Abraham v. Bellefy, File No. A03-585 \(Minn. Ct. App. 2/3/04\)](#). An older case stated the same principle in the language of the time as follows: "If tenants in common join in a lease it is in judgment of law the distinct lease of each of them, for they are separately seized, and there is no privity of estate between them." [Eastman v. Lamprey, 12 Minn. 153 \(Gil. 89\) \(1866\)](#).

Dave's transfer is called an "assignment" An assignment occurs when a tenant transfers his entire interest as opposed to a sublease. In a sublease, the sublessor retains a remainder interest (like subleasing five of the six remaining months on a lease and keeping the right to occupy during the last month). [Baehr v. Penn-O-Tex Oil Corp., 258 Minn. 533,536, 104 N.W.2d 661,664 \(1960\).](#) That is what Dave did and what typically happens in this type of scenario. Furthermore, there "is a rebuttable presumption that one in possession of leased premises is there as an assignee of the lessee." *Id.* Thus without facts to the contrary, once Ed moved in he was presumed to have taken an assignment.<sup>4</sup>

The effect of Dave's assignment is that he transferred "the privity of estate" to Ed. This is legalese for saying that the assignment created the relation of landlord and tenant between you (the original lessor) and Ed (the assignee). [Davidson v. Minnesota Loan & Trust Co., 158 Minn. 411,416, 197 N.W. 833, 833-834, 32 A.L.R. 1418,1422 \(1924\).](#) Dave was no longer your tenant. *Id.* In slang, Ed stepped into the shoes of Dave as the fourth tenant.

#### Minn. Stat. § 504B.178 Itself

Four parts of Minn. Stat. § 504B.178 confirm that Ed and not Dave is the fourth "tenant" and claimant of the deposit.

First, Minn. Stat. § 504B.178, subd. 3 actually provides two different deadlines for return of the deposit. One deadline of three weeks applies to this situation where the tenants move out because the lease ended in the usual way. The other deadline is five days when "the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives". Other than the difference in deadlines, Minn. Stat. § 504B.178 treats all "tenants" the same. The condemned "tenant" obviously is the tenant living there when the tenancy ended by condemnation. By analogy, when the tenancy ends because the lease reaches its end, "tenant" means the renters then in the home, i.e. Art, Bob, Charlie and Ed.

Second, Minn. Stat. § 504B.178, subd. 8 says "No tenant may withhold payment of all or any portion of rent for the last payment period of a residential rental agreement ... on the grounds that the deposit should serve as payment for the rent." Between Dave and Ed, it is only the incumbent tenant/assignee (Ed) who could do this. Dave literally could not withhold the last month rent even if he wanted to.

Third, Minn. Stat. § 504B.178, subd. 4 allows deductions for physical damage. Until the final moment, it is the incumbent tenant (Ed) who controls physical damage. He should be the one who is motivated not to damage the place by being the one eligible to get back all the deposit if the place remains in good shape. If the assignor (Dave) were the person who gets the deposit, Ed

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<sup>4</sup>If Dave actually only subleased to Ed, then he would remain the "tenant", presumably he would be back in the house at the end of the lease, Ed would have moved back out, and Dave, rather than Ed, would be eligible for return of the deposit.

could wreck the place without changing how much deposit money he got; that doesn't make sense.

Fourth, Minn. Stat. § 504B.178, subd. 3 requires “the tenant” to furnish delivery instructions. The former occupant, Dave, probably would not do that since he is unlikely to even know that the tenancy is coming to an end.

Thus, the answer to #2 is that the deposit should be returned to the tenants renting the house at the end, i.e. to Art, Bob, Charlie and Ed.<sup>5</sup>

### Issue #3

Sometimes tenants are really helpful and all four jointly give the landlord delivery instructions and tell him to send all the money to one of them. That landlord should comply.<sup>6</sup> However, you are not so fortunate since Art, Bob, Charlie and Ed are not cooperating.<sup>7</sup>

Because the place was returned in excellent condition you should return a total of \$1,020 (\$1,000 + \$20 = two years worth of interest at 1% per year per Minn. Stat. § 504B.178, subd. 2). But how?

- [1] Should you return a fourth of this, \$255, to each of Art, Charlie and Ed and hold onto the last \$255 awaiting instructions from Bob?
- [2] Or write one check for \$1,020 made out to all four names and send it to Art, Charlie or Ed, figuring he will have to get four endorsing signatures to cash the check?
- [3] Or write one check for \$1,020 made out to just one person (Art, Charlie or Ed) and hope he has the decency to pay each of the other three \$255 each?
- [4] Or return nothing and send a letter to each (or at least to the three who've given delivery instructions even if you have no idea how to reach Bob) saying you want to hear from all four of them before you promptly pay up?

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<sup>5</sup>If this seems unfair to Dave there is a simple solution. Before assigning his interest to Ed, Dave should get Ed to pay him \$250 + interest or some other satisfactory amount.

<sup>6</sup>For example, see this case: [\*Hogg v. Jaeckle\*, 561 S.W.2d 568 \(Tex. Civ.App.1978\)](#).

<sup>7</sup>In the very unusual situation where the tenants and the landlord have agreed to a joint tenancy rather than tenancy in common under Minn. Stat. § 500.19, subd. 2, the landlord is in the clear. As discussed in [\*Abraham v. Bellefy\*](#) (cited above in footnote 3), each joint tenant can unilaterally control all or part of the tenancy. The landlord could then simply pick one tenant, ask him if he wanted the entire deposit, and when he says “yes”, send it to him.

[5] Or pay the money into court under [Minn. Rule Civil Procedure 67.02](#) and let a judge sort it out?

None of these is really satisfactory. Starting with the last idea, this might completely protect you but is a slow process so the tenants, especially Art, Charlie and Ed would be prejudiced. Furthermore, you would incur court costs of about \$350<sup>8</sup> which you could never recoup.

The fourth idea leaves Art, Charlie and Ed out in the cold. Return is supposed to take only three weeks but this could take a very long time, especially since the four tenants were not getting along; Bob might never help. Eventually, Art, Charlie or Ed (at least) could sue you but that would take months and conceivably could cost you extra (court costs, extra interest, maybe even penalties under section 504B.178 for late return of the deposit).

The third idea lets the lucky recipient (say Art) run the show, perhaps leaving the other three with no money or no money for a quite a while.<sup>9</sup>

The second idea suffers from two problems. Even if everyone cooperates, that could take a while and Bob isn't even around to cooperate. It might take a lawsuit to resolve the problem, meaning delay and extra costs to deal with a relatively small amount of money. Moreover, in my experience some banks would allow one of the four named payees to deposit the check without the other three signatures, turning the second idea into the third one.

The first idea might pass muster but it doesn't deal well with two or three problems: [a] It doesn't fully refund the money and so you could face the late payment and bad faith penalties in section 504B.178 (see subdivisions 4 and 7, respectively). [b] Perhaps the four tenants had made a deal to let Bob get back all the \$1,020 or at least more than \$255 (say in return for him paying for the U-Haul). [c] Even though as set out in footnote 9 the four tenants each ultimately has a claim for

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<sup>8</sup>The filing fee is \$299 or more depending on the county. While Rule 67.02 allows service of process by registered mail instead of a process server, that would still cost at least another \$13.05 per tenant. (Current postal rates are available on [USPS Notice 123](#))

<sup>9</sup>Bob, Charlie and Ed would each have a claim against Art for \$255. [Cleys v. Cleys, 363 N.W.2d 65, 71 \(Minn.App.1985\)](#) (citing "Minn.Stat. § 557.06 (1982) [which] states: 'One joint tenant or tenant in common, and his executors or administrators, may maintain an action against his cotenant for receiving more than his just proportion of the rents and profits of the estate owned by them as joint tenants or tenants in common.'" Division into equal shares is presumed. [Dorsey v. Dorsey, 142 Minn. 279, 281, 171 N.W. 933, 934 \(1919\)](#); [Gibson v. Trustees of the Minn. State Basic Bldg. Trades Fringe Benefits Funds, 703 N.W.2d 864 \(Minn. Ct. App. 2005\)](#) (illustrates application of rule).

However, if Art absconds, becomes insolvent or judgment proof or goes bankrupt, Bob, Charlie and Ed will never collect their judgments against Art.

his share of the \$1,020, since they are tenants in common with each having an “undivided interest in the whole”, perhaps you don’t have the right to divide this undivided interest and will be penalized for doing so.<sup>10</sup>

### A Possible Legislative Fix

One model for a legislative solution to Issue #3 is the rule for the renter’s (property-tax) refund. To enable the tenants to access the refund, the landlord must give each renter a Certificate of Rent Paid by January 31 of each year for rent paid in the previous calendar year. When there are multiple roommates, Minn. Stat. §§ 290A.03, subd. 8(f) and 290A.08 govern. Based on the statutes, the Minnesota Department of Revenue 2019 Certificate of Rent Paid (CRP) Instructions<sup>11</sup> require the landlord to divide up the rent paid into equal portions among the renters regardless how payments were made or whose name was on the lease and each gets credit for actual months of occupancy.

As discussed above, for the security deposit it is not occupancy but being a tenant at the end of the lease that counts. Therefore, the only recipients of the deposit are the tenants at the end of the lease. However, the rest of the CRP concept could be imported. Minn. Stat. § 504B.178 could be amended as follows:

[1] In a tenancy with multiple tenants, the tenants would be allowed to tell the landlord where and to whom to return & account for the deposit. This could be to one person at one address or to more than one person at more than one address. The direction would have to be in writing, subscribed to (signed by) all the tenants, and delivered to the landlord before the end of the tenancy. If that occurred, the landlord would have to follow those delivery instructions.

[2] If that did not occur, then the landlord would be required to provide each final tenant with an accounting of the deposit and an equal share of the deposit plus interest minus deductions. The three-week clock (or five-day clock if a condemnation is involved) would start separately for each tenant based on when that tenant provided his or her own delivery instructions.

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<sup>10</sup>As a general rule, all the cotenants must join in an action against a stranger for an injury to the common property, but a single tenant in common may maintain such an action if his cotenants refuse to join or are nonresidents or are out of the state. [\*Rowland v. McLaughlin Bros.\*, 110 Minn. 398, 125 N.W. 1019 \(1910\)](#); [\*Peck v. McLean\*, 36 Minn. 228, 30 N.W. 759 \(1886\)](#). This doesn’t prove you cannot divide up the deposit but it suggests it.

<sup>11</sup>Available at [https://www.revenue.state.mn.us/sites/default/files/2019-12/crp\\_ldin\\_19.pdf](https://www.revenue.state.mn.us/sites/default/files/2019-12/crp_ldin_19.pdf)