A Review of Minnesota Landlord-Tenant Anti-Retaliation Law

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The goal of this essay is to set out the current state of landlord-tenant anti-retaliation law in Minnesota and to provide copies of a few hard-to-obtain legal materials on the subject.

By "retaliation" I refer to the following sequence of events. [1] The tenant asserts some right. [2] The landlord then does one of the following: [a] gives a notice to vacate (quit) or a notice of non renewal of the lease without cause; [b] terminates a lease or files an eviction action for cause; or [c] raises the tenant's rent or fees or reduces the tenant's services. [3] The landlord was motivated to do #2 by the tenant's assertion of right/s..

In the old days, the tenant had no protection against retaliation. However, starting in the middle of the 20th century, tenants have gained several forms of protection. These include protections based on

[a] the First Amendment;
[b] civil-rights laws;
[c] Minnesota statutes now codified in Minn. Stat. Chap. 504B;
[d] city ordinances; and
[e] Minnesota common law.

After discussing one procedural point I review each of these in turn below.

Procedural Point

Tenants most commonly assert anti-retaliation law when defending an eviction action (what used to be called an "unlawful detainer action" or a "UD"). Unless a tenant asserts an affirmative defense, the landlord wins an eviction action when it proves that the tenant is in unlawful possession of property – failed to pay rent, breached the lease through bad behavior or held over past the termination of the lease. *Mac-Du v. LaBresh,* 392 N.W.2d 315 (Minn. App. 1986).[1] A retaliation defense concedes that the landlord can make this proof, and is thus an affirmative

[1]Unless otherwise noted, cases should be available at https://scholar.google.com/ (click "Case Law"). Minnesota statutes are available at https://www.revisor.mn.gov/statutes/ and Minnesota rules at https://www.revisor.mn.gov/rules/ . Federal statutes are available at https://uscode.house.gov/ . The Endnotes give URLs for cases or ordinances that are harder to find.

defense.[2]

First Amendment

This defense applies to both commercial and residential tenants when the landlord is a state actor. The most obvious state actors are governments (e.g. a city or a public housing authority). Other less obvious possible examples include some subsidized landlords. The law on who is a state actor is a muddle[3] that I won't discuss here. I'm unaware of any Minnesota First-Amendment retaliation case but here are four examples from other states:

> *Cuban Museum of Arts and Culture, Inc. v. City of Miami*, 766 F.Supp. 1121 (S.D. Fla. 1991) (injunction against a UD, showing pro-Castro art)
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> *Brooklyn Institute of Arts v. City of New York*, 64 F.Supp. 2d 184 (E.D. New York 1999) (injunction against a UD, showing "sick" art)
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> *Rudder v. United States*, 226 F.2d 51 (D.C. Cir. 1955) (UD, not signing loyalty oath)
>
> *City of Rivera Beach v. Fane Lozman*, File No. 50-2006-CA-014054-XXXX-MB (Palm Beach Cty, FL 3/2/2007)[4]

I don't discuss the free-speech clause in the Minnesota Constitution because it has been held to provide no more protection than the federal provision. *State v. Wicklund,* 589 N.W.2d 793 (Minn. 1999).

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[2] *Berryhill v. Healey,* 95 N.W. 314,325-316, 89 Minn. 444,447 (1903)* ("when the defendant desires simply to deny the allegations of the complaint, the verbal plea of not guilty is sufficient, but if he proposes to go farther, and defend by setting up new matter byway of excuse, justification, or avoidance, then he must proceed as in other civil actions, and file and serve an answer, in order that the opposing party may have notice of the issues presented"). Under modern practice, probably the tenant can assert the affirmative answer orally, at least in the housing courts in Ramsey and Hennepin counties. See Minn.R.Gen.Prac. 610.

[3] For a starting point, read *Joy v. Daniels*, 479 F.2d 1236,1238 (4th Cir. 1973) (a leading pro-tenant eviction case) and *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982) (a leading case limiting state-actor doctrine).

[4] This case is discussed in *Riviera Beach v. That Certain Unnamed Gray Vessel*, 649 F. 3d 1259,1263 (11th Cir. 2011). After Mr. Lozman won his eviction case, the city tried to remove him by using maritime law, leading to 649 F.3d 1259 and eventually to 568 U.S. 115, where he won as well. The trial court documents in 50-2006-CA-014054-XXXX-MB are available at https://www.mypalmbeachclerk.com/records/court-records

Civil-Rights Law

Both the federal Fair Housing Act (FHA) and the state Human Rights Act (MHRA) prohibit not only discrimination but also retaliation for a tenant's claim of discrimination. 42 U.S.C. §3617; Minn. Stat. § 363A.15 (using the word "reprisal" instead of "retaliation").

The tenant successfully asserted this federal law in *Neudecker v. Boisclair Corp*, 351 F.3d 361 (8th Cir. 2003) . Under federal civil-rights law, to prove retaliation the litigant need not prevail on his underlying claim of discrimination but only show that he or she a good faith, objectively reasonable belief that the practices were unlawful. Pye v. Nu Aire, Inc., 641 F.3d 1011, 1020 (8th Cir. 2011) .

No Minnesota appellate case has dealt with Minn. Stat. § 363A.15 in a landlord-tenant case. Two cases have held that a tenant may raise a MHRA defense in an eviction action. Schuett Inv. Co. v. Anderson, 386 N.W.2d 249, 253 (Minn. App. 1986) (tenant prevailed); *Highland Management v. Moeller,* Minn. Ct. App. File No. A19-0574 (Jan. 21, 2020) (unpublished) (finding defense available to tenant but that tenant did not prove discrimination). Many employment cases have dealt with reprisals but the Minnesota supreme court has not decided whether the rule in *Pye* – the litigant only needs to prove a good faith belief that the practices were unlawful – applies to section 363A.15. However, it likely would concur.[5]

The FHA only protects residential tenants (occupiers of dwellings). 42 U.S.C. §3604. The MHRA protects all tenants. Minn. Stat. § 363A.09.

Protection for Tenants Calling for Emergency Help

Minn. Stat. § 504B.205 provides a landlord may not:

> (1) bar or limit a residential tenant's right to call for police or emergency assistance in response to domestic abuse or any other conduct; or
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> (2) impose a penalty on a residential tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct.

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[5]In Bahr v. Capella Univ., 788 N.W.2d 76, 82 (Minn. 2010) the court stated "we need not, and do not, decide whether a plaintiff must plead opposition to a practice that is actually forbidden under the MHRA in order to survive a Rule 12.02(e) motion, or must merely plead a good-faith, reasonable belief that the opposed practice was forbidden under the MHRA, because even under the more favorable good-faith, reasonable-belief standard, Bahr's complaint fails." In the underlying case the court of appeals had followed the *Pye* good-faith rule. *Bahr v. Capella Univ.*, 765 N.W.2d 428, 436 (Minn. App.2009). Furthermore, in *Bahr*, the supreme court itself stated that in "construing the MHRA, we apply law developed in federal cases arising under Title VII of the 1964 Civil Rights Act." 788 N.W.2d at 83.

Often thought of a protecting victims of domestic violence who call the police, the statute's reach is broader. It is limited to residential tenants.

Specific Protection for Residential Tenants Adding Children to Their Household

Minn. Stat. § 504B.315 provides that:

> No residential tenant of residential premises may be evicted, denied a continuing tenancy, or denied a renewal of a lease on the basis of familial status commenced during the tenancy unless one year has elapsed from the commencement of the familial status and the landlord has given the tenant six months prior notice in writing, except in case of nonpayment of rent, damage to the premises, disturbance of other tenants, or other breach of the lease. Any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void.

Section 504B.315 defines "familial status" by reference to the definition in Minn. Stat. § 363A.03, subdivision 18, to wit:

> the condition of one or more minors being domiciled with (1) their parent or parents or the minor's legal guardian or (2) the designee of the parent or parents or guardian with the written permission of the parent or parents or guardian. The protections afforded against discrimination on the basis of family status apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.
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> Minn. Stat. § 504B.285, subd. 2

This subdivision protects both residential and commercial tenants. *Cloverdale Foods of Minnesota, Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 50-51 (Minn. App. 1998).

The subdivision only applies to a "notice to quit" meaning a "termination of a tenancy at will [without cause]" as opposed to a termination based on breach of lease. *Cent. Hous. Assocs. v. Olson,* 910 N.W.2d 485,489 (Minn. App. 2018).[6]

It is an open question whether this subdivision protects the tenant who received a notice of non renewal on a term lease (a/k/a an "estate for years" in legalese, meaning a lease for a definite

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[6]The tenant lost this case at the court of appeals but won at the supreme court. *Cent. Hous. Assocs. v. Olson,* 929 N.W.2d 398 (Minn. 2019). However, Mr. Olson did not seek review of this particular issue and only won on another issue, so this holding should be good law. This holding decided a "tie" between *Cloverdale*, which held that section 504B.285 does not apply to for-cause evictions but made no mention of *Barnes v. Weis Mgmt,* 347 N.W.2d 519 (Minn. App. 1974) which had held just the opposite.

period of time, a typical example being a 6-month lease). In *Dominium Mgmt v. C.L.*, Minn. Ct. App. File No. A03-85 (Dec. 9, 2003) (unpublished) the court avoided the issue by deciding that the tenant was protected under Minn. Stat. § 504B.441. *Id.* at second ¶ of Part I

The subdivision provides a defense to an eviction action ("an action for recovery of premises") if

> (1) the alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, under the laws of the state or any of its governmental subdivisions, or of the United States; or
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> (2) the alleged termination was intended in whole or part as a penalty for the defendant's good faith report to a governmental authority of the plaintiff's violation of a health, safety, housing, or building code or ordinance.

The subdivision has a 90-day window providing extra protection. During the 90 days after the tenant asserts his right/s the landlord has the burden of proof. The burden is that the landlord must establish by a fair preponderance of the evidence a substantial nonretaliatory reason for the eviction, arising at or within a reasonably short time before service of the notice to quit. A nonretaliatory reason is a reason wholly unrelated to and unmotivated by any good-faith activity on the part of the tenant protected by the statute. *Parkin v. Fitzgerald*, 307 Minn. 423, 427-28, 240 N.W.2d 828, 831 (1976).

The *Cloverdale* court somewhat limited the meaning of the phrase "enforce rights under a lease or contract", specifically as to which "contracts" are included. It held, "We ... construe the term contract to mean a contract governing the landlord-tenant relationship." It included dicta that said the "retaliatory eviction defense does not apply to this case because the assertion of contractual rights … unrelated to the landlord-tenant relationship".

The facts of the case illustrate how far the Cloverdale/Pioneer Foods contract was divorced from landlord-tenant law. The court of appeals' opinion only alludes to the contract in half a sentence, stating "eviction defense was Pioneer's participation in a federal action between Cloverdale and Pioneer that was unrelated to the landlord-tenant relationship between the two parties." To determine what that contract involved, I obtained the court records from the federal district court. The contract in question involved meat packing and the federal case involved claims and counterclaims with each side claiming the other was at fault for the production of poor-quality meat sticks and beef jerky.[7] So the court of appeals' holding deals with a contract that was well removed from the landlord-and-tenant relationship.

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[7] Appendices 1-2 are the briefs to the court of appeals. They give some indication of the nature of the federal lawsuit. However, it is Appendix 3 – copies of the docket, complaint, countercomplaint, and a pre-trial order obtained from the federal district court file -- that really makes clear what was at stake in the federal case.

Minn. Stat. § 504B.285, subd. 3

This subdivision, like subdivision 2, protects both commercial and residential tenants. It protects them for the making same assertions as subdivision 2, but differs from subdivision 2 in that it protects against rent increases rather than terminations. Unlike subdivision 2, it has no 90-day-window so the tenant always has the burden of proof.

To assert the defense, the tenant must tender the undisputed rent (the pre-raised rent) to the court or to the landlord.

Minn. Stat. § 504B.441

This statute only protects residential tenants. It protects against all the various ways a landlord can punish a tenant. It reads in its entirety,

> A residential tenant may not be evicted, nor may the residential tenant's obligations under a lease be increased or the services decreased, if the eviction or increase of obligations or decrease of services is intended as a penalty for the residential tenant's or housing-related neighborhood organization's *complaint* of a *violation*. The burden of proving otherwise is on the landlord if the eviction or increase of obligations or decrease of services occurs within 90 days after filing the complaint, unless the court finds that the complaint was not made in good faith. After 90 days the burden of proof is on the residential tenant. [emphasis added]

The "violation" in question has a broad meaning. It means,

> (1) a violation of any state, county or city health, safety, housing, building, fire prevention, or housing maintenance code applicable to the building;
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> (2) a violation of any of the covenants set forth in section 504B.161, subdivision 1, clause (1) or (2), or in section 504B.171, subdivision 1; or
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> (3) a violation of an oral or written agreement, lease, or contract for the rental of a dwelling in a building.

Minn. Stat. § 504B.001, subd. 14.

The word "complaint" means a "complaint of a violation to a government entity, such as a housing inspector, or commencement of a formal legal proceeding." *Cent. Hous. Assocs. v. Olson,* 929 N.W.2d 398.408 (Minn. 2019). Section 504B.441 "does not provide a defense to retaliation based on an expression of dissatisfaction to the landlord." *Id.*

City Ordinances

Some cities have anti-retaliation ordinances as part of their rental codes. These govern residential, not commercial, tenancies.

For example, Minneapolis City Ordinance § 244.80** provides protection similar to Minn. Stat. § 504B.441 except that it has no 90-day window. The burden is always on the landlord to prove no retaliation.

Another example is Saint Louis Park City Ordinance § 8-334(6)*** which allows the city to revoke, suspend or non-renew a rental license if the landlord engages in

> either intimidation of or retaliation against a tenant relating to the initiation of a police contact, the reporting of a potential property maintenance violation or other communication to any public official or other third party about the condition of the property or activities occurring on or near the licensed premises.

Common Law

In *Cent. Hous. Assocs. v. Olson,* 929 N.W.2d 398 (Minn. 2019) the supreme court established a new common-law defense to eviction.. The actual holding does not restrict itself to residential tenancies but the syllabus does so and the case involved a residential tenant. The court held that

> tenants have a common-law defense to landlord evictions in retaliation for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease.

Id. at 409. Unlike section 504B.441, the common-law defense does not have the extra 90-day window shifting the burden of proof. The tenant always has the burden of proof when asserting the common law defense. *Id.*

This new rule was applied in *Timberland Partners v. Liedtke*, Minn. Ct. App. File No. A-19-0216 (Aug. 19, 2019) (affirming the trial court's finding that there was no actual retaliation).

Summary and Spreadsheet

Each of the various protecting laws has it own set of coverages and limitations, such as residential vs all tenants, notice to quit vs eviction for cause. To help sorting through these limitations they are summarized in Appendix 4.

Endnotes

*Available at https://www.google.com/books/edition/Minnesota_Reports/otgUAAAAYAAJ?hl=en&gbpv=1&dq=berryhill+healey+court+minnesota&pg=PA444&printsec=frontcover

**.Available at https://library.municode.com/mn/minneapolis/codes/code_of_ordinances (search for “244.80")

***.Available at https://www.stlouispark.org/home/showdocument?id=11863