INTRODUCTION

While there are several types of lawsuits available to oust an occupant of real estate[1], the fastest, simplest and most commonly used lawsuit is the eviction action, what used to be called an unlawful-detainer action. Eviction actions are governed by statute. Since 1999 the eviction statutes have been codified in Minn. Stat. §§ 504B.281-504B.371. Prior to 1999, the eviction statutes were codified in their own chapter, with the chapter number changing over time as new codifications were made.[2]

IS MINN. STAT. § 504B.301 A CATCHALL PROVISION THAT RENDERS MINN. STAT. § 504B.285, SUBDIVISION 1(a) SUPERFLUOUS?

Most of the eviction statutes govern the court procedure. Two statutes provide bases to file an eviction action, Minn. Stat. § 504B.285, subd. 1(a) and Minn. Stat. § 504B.301. They read as follows:

> **504B.285 EVICTION ACTIONS; GROUNDS; RETALIATION DEFENSE; COMBINED ALLEGATIONS.**
>
> **Subdivision 1. Grounds.**
>
> (a) The person entitled to the premises may recover possession by eviction when:
>
> (1) any person holds over real property:
>
> (i) after a sale of the property on an execution or judgment*;
>
> (ii) after the expiration of the time for redemption on foreclosure of a mortgage*, or after termination of contract to convey the property*; or
>
> (iii) after the expiration of the time for redemption on a real estate tax judgment sale*;
>
> (2) any person holds over real property after termination of the time for which it is demised or leased* to that person or to the persons under whom that person holds possession, contrary to the conditions or covenants of the lease or agreement under which that person holds*, or after any rent becomes due according to the terms of such lease or agreement*; or
>
> (3) any tenant at will holds over after the termination of the tenancy by notice to quit*.

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[1] In addition to eviction actions, the plaintiff can seek an injunction or file an ejectment action. *Yager v. Thompson*, 352 N.W.2d 71, 73-74 (Minn.App.1984) (injunction); Minn. Stat. Chap. 559 (ejectment actions).

[2] All Minnesota statutes and session laws since 1851 are available at the Revisor's excellent website, https://www.revisor.mn.gov/statutes/

and

> **504B.301 EVICTION ACTION FOR UNLAWFUL DETENTION.**
>
> 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.
>
> A seizure under section 609.5317, subdivision 1, for which there is not a defense under section 609.5317, subdivision 3, constitutes unlawful detention by the tenant.

Put aside for now the second sentence of § 504B.301. At first glance, the underlined clause in the first sentence of § 504B.301 seems to be a catchall that allows eviction of an occupant who lost his right to occupy the property in any manner. The problem with this interpretation is that it renders § 504B.285, subd. 1(a) superfluous. Minn. Stat. § 504B.285, subd. 1(a) lists eight specific bases to evict, which I've marked with asterisks above, so this interpretation cannot be right because no statute is superfluous.[3]

CASE LAW MAKES CLEAR THAT THE FIRST SENTENCE OF MINN. STAT. § 504B.301 ONLY APPLIES TO OCCUPANTS WHO MOVED IN ILLEGALLY ON DAY ONE.

Case law from 1853 thru 1932

What is the solution to this conundrum? The answer is that the "first glance" interpretation of section 504B.301 is wrong. To fully understand what sort of bad acts § 504B.301 really covers, one must start at the literal beginning – the original versions of these statutes.

Appendix 1 includes the language in every version of these statutes since the beginning of statehood. The appendix shows that with a few exceptions the original language of these statutes is reflected in the current statutes. These exceptions include:

> [i] Under the 1858 statutes, unlawful detainer actions were heard by a justice of the peace. They are now heard in district court.
>
> [ii] Until a 1971 amendment, what is now section 504B.301 included a fine as well as ouster as a punishment.
>
> [iii] A 1917 amendment added holding over past a cancellation of a contract for deed to what is now section 504B.285, subd. 1(a).
>
> [iv] A 1989 amendment added the second sentence of section 504B.301.
>
> [v] A 2017 amendment added holding over past expiration of the time for redemption on a real estate tax judgment sale to what is now section 504B.285, subd. 1(a).

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[3] *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn.2000) ("A statute should be interpreted, whenever possible, to give effect to all its provisions; no word, phrase, or sentence should be deemed superfluous, void, or insignificant.")

To put it charitably, the original, 1858, version of the first sentence of section 504B.301 was wordy but the comparable language in the 1858 statute was:

> **Minn. Pub. Stat. 1858, Chapter 77, Section 2**: … [I]f …[i] an unlawful or forcible entry hath been made, and said lands, tenements or other possessions are unlawfully detained by force and strong hand, or [ii] that the same, after a lawful entry, are so held or detained unlawfully, then such justice shall cause the party complaining to have restitution thereof.

The current language is:

> **Minn. Stat. § 504B.301 (2020**) A person may be evicted if the person has [i] unlawfully or forcibly occupied or taken possession of real property or [ii] unlawfully detains or retains possession of real property.

Both versions allow eviction ("restitution thereof") if [i] the defendant used force to enter unlawfully or [ii] didn't use force but detained the property unlawfully. Thus, the meaning of the 1858 statute as construed by the courts tells us the meaning of the current statute.

The 1858 statute was not actually drafted by the Minnesota legislature. The entire 1858 eviction-action chapter, Minn. Pub. Stat. 1858, Chapter 77, was copied word-for-word from Wisconsin Revised Statutes 1849, Chapter 117. Thus, the construction of its statute made by the Wisconsin supreme court in two 1853 cases – Gates v. Winslow, 1 Wisc. 650 (Smith 555) (1853) and Ferrell v. Lamar, 1 Wisc. 8 (1853) -- applies to Minnesota's identical statute enacted in 1858.[4]

The reason the Wisconsin statutes, and thus the Minnesota statutes, included the pair of statutes at issue – one that seems like a catchall statute and one that provides specific bases to evict – is that the two statutes had two very different purposes. As a leading 19th century treatise explained, Section 2 (now the first sentence of 504B.301) was directed at criminal behavior while section 12 (now 504B.285, subd. 1(a)) was directed at non-criminal, civil-law issues. [5]

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[4] Minn. Stat. §645.17(4) ("when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language"). This principle of statutory construction is much older than section 645.16. E.g. see Washburn v. Van Steenwyk, 32 Minn. 336,349, 20 N.W. 324,326 (1884)[4] ("Statutes are enacted with regard to the already established state of the law").

[5] A TREATISE ON THE AMERICAN LAW OF LANDLORD AND TENANT by John Neilson Taylor, Seventh Edition, revised by Joseph Willard (Little, Brown, and Company 1879) (hereafter, "Taylor Treatise") at 605-607. ("[M]any of the states [including Wisconsin] have adopted substantially the ordinary provision of the English statutes relating to a forcible entry and detainer, and have made them applicable to all cases of an unlawful detention of property[footnote]5. But this latter proceeding ... partakes rather of the nature of a criminal prosecution of wrongdoing, than of a civil action for the restoration of a civil right. For this reason, New York [unlike Wisconsin, see footnote 5 on page 606], adhering to this well-defined distinction of remedies, retains the old procedure of forcible entry and detainer, while she has a separate procedure for the removal of a tenant.") [emphasis added]

Section 2 of the Wisconsin statute (now Minn. Stat. § 504B.301) and statutes like it "exclude recovery by landlords for merely unlawful detainer after peaceable entry, and … allow process only where actual force has been used by the lessee";[6] Gates v. Winslow, supra and Ferrell v. Lamar, supra.

The Wisconsin Supreme Court did take an expansive view of "actual force" to include other criminal behavior. In Winterfield v. Stauss, 24 Wis. 394 (1869) it held that entry by "stealth or stratagem" brought the entry within the statute even if the entry was not actually forcible.

Minnesota's courts followed the Wisconsin courts. In both Davis v. Woodward, 19 Minn. 174 (1872) and Mastin v. May, 127 Minn. 93, 148 N.W. 893 (1914) the Minnesota Supreme Court construed the statute even more strictly than in the Wisconsin cases, holding that it only covered situations where the occupant used force both to enter and to detain the property. Subsequently, based on the legislature adding "and forcibly" to "unlawfully" in 1905 and then removing "and forcibly" in 1917 (thereby returning the statute to its original form)[7], in Mutual Trust Life Ins. Co. v. O.T. Berg, 187 Minn. 503, 246 N.W. 9 (1932) the court held that as of 1917 the statute covered situations in which the entry was unlawful even if the detention was without force. This made Minnesota's law equivalent to the original Wisconsin law -- **only if the original entry was unlawful does the first sentence of section 504B.301 come into play**.

This dichotomy of purpose between sections 2 and 12 of the 1858 statutes accounts for the former allowing for a fine (per section 9) while the latter did not. It made sense for the former – a criminal-type statute -- to provide for a fine, while the latter -- a civil-type statute – did not provide for a fine.

A 1975 case

The Minnesota Supreme Court has considered the reach of section 504B.301 one time since 1932. In Berg v. Wiley I, 303 Minn. 247, 226 N.W.2d 904 (1975), plaintiff Katherine Berg was a tenant unlawfully locked out by her landlord, who then occupied the space. The court assumed that the landlord had wrongfully entered the premises and was wrongfully detaining the same.[8]

The two New York chapters are printed in N.Y. Rev. Stat. 1829, Title X, Art. 1-2 (Volume 2, pages 507-516), available via this link: http://www.nysl.nysed.gov/scandocs/laws.htm

[6] Taylor Treatise at 606, footnote 5.

[7] As shown in Appendix 1, prior to 1905, the language was "or … after a lawful entry, are so held or detained unlawfully". The 1905 revision changed this to "or having peaceably entered, unlawfully and forcibly detains the same". The 1917 session law removed "and forcibly" so that the statute now read "or having peaceably entered, unlawfully detains the same". The 1905 change was odd because the 1905 law was part of a recodification of the entire statute book that was not intended to change the law. REVISED LAWS MINNESOTA 1905, edited and annotated by Mark B. Dunnell (State of Minnesota 1906) Preface at PDF page 3.

[8] In a subsequent case arising out of the same facts, the court held this to be so. Berg v. Wiley II, 264 N.W.2d 146 (Minn. 1978).

Ms. Berg alleged that the landlord was subject to removal by way of an eviction action under the first sentence of section 504B.301 (then Minn. Stat. § 566.02).

The court rejected this interpretation of section 566.02. It 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 566.03, subd. 1 (now 504B.285, subd. 1(a)) to file an eviction action and dismissed the case for lack of subject matter jurisdiction. Id. at 249-250, 226 N.W.2d at 906.

This holding actually restricts the reach of the first sentence of section 504B.301 a bit further than the Mutual Trust v. O.T. Berg court did. Wiley's entry into Katherine Berg's restaurant was unlawful. However when Wiley bought the building it had entered lawfully. The Wiley I court thought this was enough to make first sentence of section 504B.301 inapplicable, holding that Katherine Berg should have filed an ejectment action where the more complicated issues arising out of Wiley's owner could be better resolved. Id. at 907.

Subsequent legislatures have followed the reasoning of *Mutual Trust* and *Berg v. Wiley I*.

88 years have passed since the Mutual Trust case was decided and 45 years have passed since Berg v. Wiley I. Thus the legislature has acquiesced to their interpretation of the first sentence of section 504B.301. Engquist v. Loyas, 803 N.W.2d 400, 406 (Minn.2011) .

In fact, subsequent legislatures have affirmatively taken to heart the limited reach of the first sentence of section 504B.301. In 1993, the legislature wanted to allow a cooperative to use the eviction process to oust a unit owner who didn't redeem in a foreclosure of the association's assessment lien. In 2017, it wanted to allow a city or county to use the eviction process to oust to a person holding over past expiration of the time for redemption on a real estate tax judgment sale. Because these two types of occupants had entered lawfully, the first sentence of section 504B.301 didn't apply. Therefore, the legislatures enacted specific laws to allow those two types of eviction actions. See 1993 Minn. Laws ch. 222, art. 3 s 16, clause (j); 2017 Minn. Laws 1st Sp. Sess., ch. 1, art. 2, s. 40 .

THE 1989 ADDITION OF THE SECOND SENTENCE TO SECTION 504B.301 (566.02) IS CONSISTENT WITH THE FIRST SENTENCE ONLY APPLYING TO THOSE WHO ENTERED ILLEGALLY.

Its language is consistent.

Lastly, it is worth discussing the import of the second sentence of Minn. Stat. § 504B.301, which reads:

> A seizure under section 609.5317, subdivision 1, for which there is not a defense under section 609.5317, subdivision 3, constitutes unlawful detention by the tenant.

This sentence was added by 1989 Minn. Laws ch. 305, s. 2. Presumably, the 1989 legislature realized that while using a house to store large quantities of drugs or contraband was illegal, that by itself was not a basis to evict a tenant under the first sentence of Minn. Stat. § 504B.301. Some new cause of action was needed. The 1989 legislature modified the statute accordingly. As amended by the addition of the new second sentence, the statute allowed eviction in two

situations: [a] unlawful entry followed by unlawful detention (per the old first sentence); and [b] lawful entry followed by a specific type of drug or contraband possession (per the new second sentence).

Its legislative history is consistent.

I've compiled a summary of thes legislative history of 1989 Minn. Laws ch. 305, s. 2 in Appendix 2. I also obtained the files kept by the law's chief author, (ex) State Representative Andy Dawkins. For a while these files had been on deposit with the Minnesota History Museum but I received them from Mr. Dawkins. They are compiled in Appendix 3 and are cited as "Appendix 3 at X" where "X" is the PDF page number in this PDF file.

The History Museum kept tapes of floor and committee debates but only for 16 years, so the 1989 tapes are gone for good. However, Mr. Dawkins' notes for his presentation to the House Judiciary Committee say he planned to make the following points in favor of the bill before going through a provision-by-provision summary:

> [i] Landlords need a new cause of action to deal with drug dealing.
>
> [ii] Tenants don't like other tenants in their complex who are dealing drugs.
>
> [iii] Third-party neighbors don't like absentee landlords who ignore drug dealing.
>
> [iv] When police seize drugs in a multi-occupant unit, there is a constructive-possession problem – the seizure is evidence of drug dealing from that apartment but maybe not evidence of who is dealing. The bill would create a presumption in civil court that all the tenants in the unit are to blame.
>
> [v] Society needs "to keep crack dealers on the run".
>
> [vi] The bill provides a way to give landlords notice of the problem; gives landlords a tool they can use; and punishes landlords who don't act.

Appendix 3 at 74 et seq.

Mr. Dawkins' notes for his presentation to the House floor on Third Reading say he planned to make similar points to those he made in committee and then to identify supporters of the bill. Appendix 3 at 92-94.

Mr. Dawkins told me in August 2020 that his recollection of the debates was the same as indicated by his notes: The bill was only about possession of drugs or contraband, not other unlawful acts. It was designed to create a "new cause of action", not to add to a cause of action already existing in Minn. Stat. § 566.02 (1988) and the court cases construing that law never came up.

Mr. Dawkins' press release issued a few days before the floor debate on Third Reading made the following points:

[i] The bill is about drugs and landlords who won't act.

[ii] The bill deals with problems the prosecution faces in criminal court.

[iii] The bill deals with drugs and contraband (things that are illegal to possess).

[iv] The legislative committees voted unanimously for the bill.

[v] The bill is designed to give the community more power to keep it safe.

Appendix 3 at 114-115.

The Bill Summary prepared by House Research summarized the bill consistent with Mr. Dawkins' presentations. It does not mention or comment on the meaning of Minn. Stat. § 566.02 (1988). Appendix 3 at 42.

In summary, the bill was aimed at significant drug-and-contraband possession, not other unlawful acts. It was meant to create a "new cause of action", not to add to a cause of action already existing in Minn. Stat. § 566.02 (1988). Nothing was said about the bill changing the established meaning of Minn. Stat. § 566.02 (1988).

CONCLUSION

The first sentence of Minn. Stat. § 504B.301 only provides a path to evicting occupants who entered the premises illegally from Day One.

Minn. Stat. § 504B.301 is not a catchall provision for evicting tenants. Indeed, other than eviction under its second sentence for possessing a large amount of drugs or other contraband, it provides no basis for evicting a tenant or any other occupant who entered the premises lawfully.

Thus, Minn. Stat. § 504B.301 provides no basis for a landlord to evict a tenant because the landlord has no rental license; for a mother to evict her grown son whom she had invited to live in her house for free but now had overstayed his welcome; for a landlord to evict a tenant because FEMA has declared the unit unsafe; for a "landlord" who "rents" something he doesn't actually own to evict his "tenant" on the grounds the "rental" was illegal (the renting-the-Brooklyn-Bridge problem); or other similar situations. There may be lawful methods for these ousters, and third parties, such as the government, might be able to oust these occupants, but section 504B.301 is not the vehicle to do so.