

Minn. Stat. § 504B.211, Subdivision 6 – Square Pegs Do Fit into a Round Hole

The remedies clause in Minnesota’s Tenant’s Right to Privacy statute references three other specific statutes.

As discussed in my previous blog post, [Minnesota’s Tenant’s Right to Privacy Statute Lags Behind Other States’ Statutes and Should Be Improved](#), Minnesota’s statute governing landlord entries into tenant’s homes, Minn. Stat. § 504B.211, is literally outstanding. Among the 35 states (including DC as a state) with such statutes, section 504B.211 is the only one that limits tenants to specific kinds of lawsuits to vindicate their rights. Specifically, subdivision 6 of the section 504B.211 reads as follows:

Subd. 6. **Penalty.** If a landlord substantially violates subdivision 2 [requiring reasonable notice prior to non-emergency entries], the residential tenant is entitled to a penalty which may include a rent reduction up to full rescission of the lease, recovery of any damage deposit less any amount retained under section [504B.178](#), and up to a \$100 civil penalty for each violation. If a landlord violates subdivision 5, the residential tenant is entitled to up to a \$100 civil penalty for each violation. *A residential tenant shall follow the procedures in sections [504B.381](#), [504B.385](#), and [504B.395](#) to [504B.471](#) to enforce the provisions of this section.*

(emphasis added). Therefore, to vindicate her rights in court under Minn. Stat. § 504B.211 (“this section”), the tenant must file a lawsuit under one of these three statutes:

Minn. Stat. § 504B.381 (known as the Emergency Tenant Remedies Act or ETRA)

Minn. Stat. § 504B.385 (known as the Rent Escrow law or RE)

Minn. Stat. § 504B.395-504B.471 (known as the Tenant Remedies Act or TRA)

These three statutes were designed for lack-of-repair problems.

Briefly, the RE and TRA laws are designed for a tenant whose landlord is not keeping up on repairs or otherwise disobeying the lease. The tenant gives notice of the problem, either by a letter or by having a municipal housing inspector order repairs. The letter automatically sets a 14-day deadline for the landlord to cure the problem; the inspector will set his own deadline, typically a few days for a major problem and weeks for a smaller problem. If the landlord doesn’t cure the default by the deadline, the tenant may file a TRA or RE case, seeking rent abatement (discounted rent) plus an order to repair. If the tenant chooses the RE law, he pays his rent into court as it comes due. The ETRA law is like a TRA except [1] it only applies to loss of essential services such as heat in the winter; and [2] the notice is just a 24-hour notice of an intent to file an ETRA and an implication that the case won’t be filed if the problem is fixed.

Thus, the ETRA, RE and TRA laws are not well designed for a wrongful entry by the landlord. Once the landlord has illegally entered the tenant’s home the problem cannot be cured. The invasion has occurred and cannot be undone. Giving notice of the problem also makes little sense. Until and unless a landlord violates section 504B.211, subd. 2, there is nothing to notify about and there is no need to notify the landlord about the law. [State v. King, 257 N.W.2d 693, 697 \(Minn. 1977\)](#) (“[a]ll members of an ordered society are presumed either to know the law or, at least, to have acquainted themselves with those laws that are likely to affect their usual activities.”)

In summary, the ETRA, RE and TRA laws as remedies for violating section 504B.211, subd. 2 are square pegs that need to fit into a round hole.

Although seemingly odd choices, these three statutes must be applicable to a 504B.211 claim.

Normally, square pegs don't fit into round holes but here they must fit. There are three reasons this is true.

First and most importantly, it would be absurd for the legislature to enact a law limiting landlord entry into a tenant's home, provide exactly three permitted remedies for a violation, and then not allow those remedies to be used. [Minn. Stat. § 645.17](#) ("In ascertaining the intention of the legislature the courts may be guided by the following presumptions: ... the legislature does not intend a result that is absurd, impossible of execution, or unreasonable"); [U.S. and Canada Land Co. v. Sullivan, 113 Minn. 27,32, 128 N.W. 1112,1113 \(1910\)](#) ("a right without a remedy is an anomaly in the law.")

Second, during the hearings when section 504B.211 was enacted¹, the following colloquy occurred (emphasis added):

**Colloquy re Remedies, 1/30/95
House Committee on Housing**

Representative Dan McElroy The amendment references, as it pertains to remedies, Statute 566.18 to 566.33. Could we get an explanation as to what the remedy is, as to what procedure that is?

[irrelevant comments by staff counsel follow, then McElroy continues]

Rep. McElroy Would a tenant be able to use small claims or conciliation court in the event of a violation of the statute proposed by this amendment?

[counsel] [more irrelevant comments] *** But to be honest [voice trails off]

¹ Minn. Stat. § 504B.211 (2021) was originally enacted in 1995 as [Minn. Stat. § 504.183 \(1995 Supplement\)](#), 1995 Minn. Laws c. 226 art. 4 s. 21. A detailed legislative history of this 1995 law is available [here](#). A full transcription of this colloquy including the staff counsel's befuddled efforts to answer Rep. McElroy's question is available [at this link](#). A recording of the hearing is available at <https://www.lrl.mn.gov/media/file?mtgid=791447> with the colloquy at timestamp 1:18:10 to 1:21:15.

Chairwoman Clark Representative Dawkins?

Rep. Dawkins² ****

Where it does play with 566.18 is the Tenant Remedies Act which allows the tenant to be able to petition the court, when a lease isn't being followed, to have the court put the property into a receivership. That's really not going to happen either with what we're doing -- **what in fact happens is 566.18 references a different law that we have that is called a "rent escrow action"** which would then allow a tenant to bring the rent to court, pay the court clerk and have the judge decide later whether you should get some of your rent back, rather than have them pay the full rent because the landlord violated the lease, which set this whole thing up.

Chairwoman Clark Is that helpful? Representative McElroy?

Rep. McElroy Yes I think so. Madam Chair, Representative Dawkins, is that an action that a tenant can take without an attorney? Is there a filing fee involved? Is it the equivalent of conciliation court? Is it a fairly simple, straight-forward remedy?

Chairwoman Clark Representative Dawkins?

Rep. Dawkins Representative McElroy, your questions are exactly apropos and that does all of those things. You don't need an attorney, **you go right to court, you pay the clerk;** it makes the work real easy. So, it's a good remedy having this amendment.

² Although Rep. Dawkins was not a named co-author of the bill, it was clear that he was a prime actor in trying to get this legislation passed. *Listen to the recording of the prior meeting of the House Housing Committee, 1/23/95, at timestamp 59:57 to 1:00:45, available at <https://www.lrl.mn.gov/media/file?mtgid=791446> .*

(emphasis added).

Therefore the remedies subdivision was definitely intended to include RE. “Rent Escrow” was mentioned by name in the first highlighted passage and the RE requirement of paying rent into court, not part of the TRA or ETRA laws, was mentioned in the second highlighted passage.

Third, in 1995, the landlord-tenant laws were codified in Minnesota Statutes chapters 504 and 566. In 1999, all those laws were recodified, renumbered and had some phrasing modernized but without changing their meaning into chapter 504B.³ In 1995, the TRA law was codified at Minn. Stat. § 566.18-566.33 (1994) and the RE law at Minn. Stat. § 566.34 (1994). Because of some sloppy drafting (probably by the revisor who drafted the amendment Dawkins discussed), the sentence in the bill being discussed and in the final law read, “A tenant shall follow the procedures in sections 566.18 to 566.33 to enforce the provisions of this section.” Thus, the bill actually omitted the very RE provision Dawkins wanted to include although it did include the TRA to which Dawkins also referred. Recognizing this drafting error, in 1998, the legislature fixed the problem by amending “.33” to “.34”, explicitly and precisely allowing a tenant to use the RE law to enforce his rights under what is now section 504B.211. [1998 Minn. Laws ch. 266 s. 1.](#)⁴ [Occhino v. Grover, 640 N.W.2d 357,362 \(Minn. App. 2002\).](#)

How to fit the square pegs into the hole? The tenant only follows ten procedures in the three statutes.

The key to fitting the three square pegs into the round hole – making the pegs round if you will – is to realize that what section 504B.211 says is “A residential tenant shall follow the procedures in sections 504B.381, 504B.385, and 504B.395 to 504B.471 to enforce the provisions of this section” rather than “A residential tenant shall use sections 504B.381, 504B.385, and 504B.391 to 504B.471 from start to finish, including notices, to enforce the provisions of this section.”

What are the “procedures” in question? In Appendix 1, I’ve listed each part of each statute that might be called a procedure, using black font for those parts that seem like definite procedures and blue font that don’t seem certain to be procedures, at least not within the court case itself.

³ The purpose of that recodification law “was to consolidate, clarify, and recodify the majority of Minnesota’s housing statutes under one chapter ... [and] it was made clear that no substantive changes to the current housing laws were intended.” [Occhino v. Grover, 640 N.W.2d 357,362 \(Minn. App. 2002\).](#)

⁴ I speculate that the inclusion of the ETRA in the bill was caused by similar sloppiness. In 1995, the ETRA was codified at Minn. Stat. § 566.205 (1994), so when the drafter wrote “sections 566.18 to 566.333” s/he forgot that buried within that numerical range was the ETRA statute. The recodified law has a more logical numbering system, separating the ETRA at Minn. Stat. § 504B.381 (1999) from the TRA, Minn. Stat. § 504B.391-471 (1999), and the RE, Minn. Stat. § 504B.385 (1999).

Endnotes in Appendix 1 give detailed citations for each requirement.⁵ The thirty items that are definitely procedures – ten items for each of the three statutes -- are set out in Table 1 below.

ISSUE	TRA	RE	ETRA
Who may file?	Residential tenant	Residential tenant	Residential tenant
Where to file?	County where tenant lives	County where tenant lives	County where tenant lives
Filing fee	\$285 + small county-specific fees	\$65 + small county-specific fees	\$285 + small county-specific fees
Who prepares the Summons?	The court administrator	The court administrator	The judge
Who prepares the Complaint?	The tenant + her attorney	The tenant + her attorney, but the court must provide a form the tenant or her attorney can use if they wish	The tenant + her attorney
Who serves the Summons & Complaint?	The tenant's process server	The court administrator	The tenant's process server or the tenant
How is the Summons and Complaint served?	By personal service or by mail & mail if personal service cannot be accomplished by due diligence	By mail by the court administrator	By personal service or by mail
Who hears the case	A judge or referee	A judge or referee	A judge or referee
Does tenant deposit rent into court?	No, unless ordered by the judge	Yes, as it comes due	No, unless ordered by the judge
How soon is the case heard?	7-14 days after filing	10-14 days after filing	Very rapidly

Taking those thirty (10 x 3) items as the “procedures” in question, the tenant can logically use sections 504B.381, 504B.385, or 504B.391 to 504B.471 to enforce her rights under Minn. Stat. § 504B.211, subd. 2. The square pegs are rounded off.

Conclusion

The tenant can enforce Minn. Stat. § 504B.211, subd. 2 – Minnesota’s statute requiring the landlord to give reasonable notice prior to non-emergency entries – by using either a TRA,

⁵ At the top of Appendix 1 I’ve put “[in a building where a violation is alleged to exist](#)” in blue font. These requirements for an “existing” violation or a “loss of essential service” are not really part of the court case but more part of a tenant’s life. More importantly, as discussed at the beginning of this essay, it makes no sense for a landlord’s illegal entry to be called an existing violation or a loss of service; it was a specific event, over and done with.

ETRA, or Rent Escrow case. Although these laws seem like odd choices, the tenant must simply pick one of those laws and then follow the ten specific procedures in the law he chooses and listed in Table 1 just above. Also, while seemingly odd choices, these laws afford the tenant a rapid hearing and the opportunity for both legal and equitable relief without having to draft complicated pleadings.

APPENDIX 1

ISSUE	TRA	RE	ETRA
Who may file?	Residential tenant in a building where violation alleged to exist ¹	Residential tenant in a building where violation alleged to exist ²	Residential tenant in a building where violation alleged to exist ³
Where to file?	County where tenant lives ⁴	County where tenant lives ⁵	County where tenant lives ⁶
Filing fee	\$285 + small county-specific fees ⁷	\$65 + small county-specific fees ⁸	\$285 + small county-specific fees ⁹
Who prepares the Summons?	The court administrator ¹⁰	The court administrator ¹¹	The judge ¹²
Who prepares the Complaint?	The tenant + her attorney ¹³	The tenant + her attorney, but the court must provide a form the tenant or her attorney can use if they wish. ¹⁴	The tenant + her attorney ¹⁵
Who serves the Summons & Complaint?	The tenant's process server ¹⁶	The court administrator. ¹⁷	The tenant's process server or the tenant. ¹⁸
How is the Summons and Complaint served?	By personal service or by nail & mail if personal service cannot be accomplished by due diligence ¹⁹	By mail by the court administrator. ²⁰	By personal service or by mail ²¹
Who hears the case	A judge or referee ²²	A judge or referee ²³	A judge or referee ²⁴
Does tenant deposit rent into court?	No, unless ordered by the judge ²⁵	Yes, as it comes due. ²⁶	No, unless ordered by the judge ²⁷
How soon is the case heard?	7-14 days after filing ²⁸	10-14 days after filing ²⁹	Very rapidly ³⁰
"Procedures" pre-court	[1] Violation of a code, of Covenants of Habitability, or of lease and [2] If based on violation of Covenants of Habitability or lease, wait 14 days past letter to landlord asking for cure of violation; or if the case is based on violation of a code, wait until inspector's	[1] Violation of a code, of Covenants of Habitability, or of lease and [2] If based on violation of Covenants of Habitability or lease, wait 14 days past letter to landlord asking for cure of violation; or if the case is based on violation of a code, wait until inspector's	[1] Attempt to notify the landlord at least 24 hours before filing of intent to seek emergency relief. and [2] An emergency caused by the loss of essential services or facilities. ³⁴

<p>["Procedures" pre-court, cont'd]</p>	<p>deadline unless it is deemed excessive, then until some unstated, non-excessive time³¹ Also, tenant may file a TRA without delay if she alleges [i] "a violation of any state... safety, housing, ... code" [ii] asked for inspection but didn't get one; [iii] demanded landlord cure violation; and [iv] reasonable time has elapsed after demand. So, perhaps no delay.³²</p>	<p>deadline unless it is deemed excessive, then until some unstated, non-excessive time³³</p>	
<p>Contents of the Complaint</p>	<p>[1] material facts showing violation/s in the building;</p> <p>[2] the relief sought;</p> <p>[3] amount of rent from each dwelling within building, if known;</p> <p style="text-align: center;">and</p> <p>[4] <u>if</u> the case is based on violation of a code, either</p> <p>[a] copy inspector's report</p> <p style="text-align: center;">or</p> <p>[b] statement that request for inspection was made, that demand was made on the landlord to correct the code violation, and that a reasonable period of time has elapsed since the demand or request was made.³⁵</p>	<p>[1] a copy of the inspector's report if the case is based on a violation of a code;</p> <p style="text-align: center;">~ or</p> <p>[2] a list of the unresolved problems related to compliance with the Covenants of Habitability or with the lease if the case is based one of those two types of violations.</p> <p>Note: While this is all the statute requires, typically, the court administrator requires the name and address of both parties and the amount of rent due and under #2 a copy of the letter demanding compliance.³⁶</p>	<p>[a] description of the premises and the identity of the landlord;</p> <p>[b] statement of the facts and grounds demonstrating existence of an emergency caused by the loss of essential services or facilities;</p> <p style="text-align: center;">and</p> <p>[c] request for relief.³⁷</p>
<p>ISSUE</p>	<p>TRA</p>	<p>RE</p>	<p>ETRA</p>

Endnotes to Appendix 1

¹ Actually both residential tenants and housing related neighborhood organizations may file, but in the context of a section 504B.211 complaint, only the former makes sense. Minn. Stat. § 504B.395, subd. 1.

² Minn. Stat. § 504B.385, subd. 2.

³ Minn. Stat. § 504B.381, subd. 1, referring to Minn. Stat. § 504B.391, subd. 1

⁴ Minn. Stat. § 504B.395, subd. 2.

⁵ This is not directly stated but the statute refers to merging the case with an eviction action, Minn. Stat. § 504B.385, subd. 8, and allows counterclaims for possession. Minn. Stat. § 504B.385, subd. 2. Eviction actions are tried in the county where the tenant resides. Minn. Stat. § 542.02.

⁶ Minn. Stat. § 504B.381, subd. 2.

⁷ Minn. Stat. § 357.021, subd. 2.

⁸ Minn. Stat. § 357.022.

⁹ Minn. Stat. § 357.021, subd. 2.

¹⁰ Minn. Stat. § 504B.395, subd. 5, Minn. Stat. § 504B.401, subd. 1.

¹¹ Minn. Stat. § 504B.385, subd. 5 (administrator impliedly prepares a “notice of hearing” in lieu of a summons).

¹² The statute does not provide for a summons. Rather the tenant files a “petition” (like a complaint) and the judge issues an ex parte order. Minn. Stat. § 504B.381, subd. 5.

¹³ Minn. Stat. § 504B.395, subd. 6.

¹⁴ Minn. Stat. § 504B.385, subd. 1(c). The complaint is called an “affidavit”.

¹⁵ Minn. Stat. § 504B.381, subd. 5.

¹⁶ Minn. Stat. § 504B.401, subd. 2.

¹⁷ Minn. Stat. § 504B.385, subd. 5(b) (exception, which does not apply to a 504B.211 case, if the cost to remedy the problem exceeds the jurisdictional amount in conciliation court).

¹⁸ Minn. Stat. § 504B.381, subd. 5. There is no “summons” but the judge does issue an ex parte order on the basis of the petition the tenant files. Likely the order will include a copy of the petition (the complaint). Since service can be by mail and the order is also not an opening document, the tenant should be allowed to serve the document herself.

¹⁹ Minn. Stat. § 504B.401, subd. 2.

²⁰ Minn. Stat. § 504B.385, subd. 5(b) (exception, which does not apply to a 504B.211 case, if the cost to remedy the problem exceeds the jurisdictional amount in conciliation court).

²¹ See endnote 18.

²² Minn. Stat. § 504B.421, subd. 2.

²³ Minn. Stat. § 504B.385, subd. 6.

²⁴ The statute is unclear but the structure of the statute makes it impossible for a jury to be involved in the beginning steps. Also, since relief under Minn. Stat. § 504B.425 is allowed and that relief is largely equitable, any trial should be to the court as well.

²⁵ Minn. Stat. § 504B.425.

²⁶ Minn. Stat. § 504B.385, subd. 1.

²⁷ Minn. Stat. § 504B.381, subd. 5 referencing Minn. Stat. § 504B.425.

²⁸ Minn. Stat. § 504B.401, subd. 1(c).

²⁹ Minn. Stat. § 504B.385, subd. 5(a).

³⁰ Minn. Stat. § 504B.381 does not state a specific time frame, but the possibility of ex parte relief and the structure & purpose of the statute are consistent with what courts usually do which is to hear the case within a very few days, perhaps the same day.

³¹ Minn. Stat. § 504B.395, subd. 3-4 (for this entire block of table).

³² It's reasonable to claim that Minn. Stat. § 504B.211 is a state safety code. Suppose the tenant asks an inspector to inspect for violating Minn. Stat. § 504B.211, is refused (which is highly likely), demands the landlord cure his breach (which he won't because he literally cannot), and waits a reasonable time after the demand, which is zero time because cure is impossible, and then files. While this is convoluted it probably is not absurd.

³³ Minn. Stat. § 504B.385, subd. 1 (for this entire block of table).

³⁴ Minn. Stat. § 504B.381, subd. 4 and subd. 3 respectively.

³⁵ Minn. Stat. § 504B.395, subd. 6 (for this entire block of table).

³⁶ Minn. Stat. § 504B.385, subd. 1 (for this entire block of table).

³⁷ Minn. Stat. § 504B.381, subd. 3 (for this entire block of table).