

# Minnesota's Tenant's Right to Privacy Statute Lags Behind Other States' Statutes and Should Be Improved

## Introduction

### Privacy Concerns of Residential Tenants

One frequent source of friction between landlords and residential tenants is landlords entering the tenant's home. In the absence of regulation, unscrupulous landlords enter without prior notice, at odd hours like midnight or 5:00 am, and even for immoral reasons such as hoping to read the tenant's private letters. Even some good landlords sometimes enter with what seems like short notice, or at inconvenient hours, or for reasons that might not be immoral but have no apparent business purpose.

These entries result in the naked-in-shower problem when landlord's plumber enters the bathroom to fix the toilet<sup>1</sup>, entries that surprise the tenant in the middle of a birthday party for her child, and a host of similar problems. The COVID-19 pandemic has added an extra concern among elderly, immunosuppressed and similar tenants who are worried about catching COVID-19 from persons entering their homes. HOME Line's tenant hotline has seen a spike in landlord-entry calls since the dangers of SARS-CoV-2 became known<sup>2</sup>, and the HJN listserve of tenant advocates has also seen a similar increase<sup>3</sup>.

### Legislative Responses – Regulation of Entry by Landlords

Given the unequal bargaining power of residential landlords over their tenants, many residential leases give the landlord an unfettered right to enter and many other leases give the landlord a right to enter with little notice at odd hours.<sup>4</sup> As a result, most states have enacted laws regulating entries. Minnesota's is [Minn. Stat. § 504B.211](#).

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<sup>1</sup>Endnote 1 is a transcription of testimony by Doug Clark to the House Committee on Housing as part of the process that led to the enactment of what is now codified as Minn. Stat. § 504B.211. Clark describes a classic case of the problem.

<sup>2</sup>HOME Line reports a 74% increase in "privacy" calls year to year (2020 compared to 2019) for March-April and an 18% increase for March-Sept (the full months since the COVID-19 pandemic clearly reached Minnesota and for which data is available). The 18% increase is despite the drop in tenants moving, an event that usually increases privacy calls in the summer due to increased showings and inspections.

<sup>3</sup>The Housing Justice Network ("HJN") listserve allows Legal Aid and other lawyers who mostly represent tenants to exchange ideas and legal analysis. I've been on this listserve for years. While I don't have numerical data, I can report a considerable number of posts on the subject of entries that concern tenants worried about catching COVID-19.

<sup>4</sup>Historically, with one limited exception, unless the lease allows the landlord to enter, any entry without the tenant's permission is a trespass; if the lease requires the landlord to make certain

## Efforts to Improve Minn. Stat. § 504B.211 Suggest Reviewing Statutes in Other States

Minn. Stat. § 504B.211 has some provisions that are odd or vague or both. A bill to change some of these, [HF 3348](#)<sup>5</sup>, was introduced in the current legislative session. However, mostly due to the COVID-19 pandemic, which derailed most bills, HF 3348 did not advance beyond one committee.

Because the next legislature is likely to (re)consider modifying Minn. Stat. § 504B.211, I was curious where Minnesota's statute stands among the 51 states (including the District of Columbia as a "state"). That research is discussed in the next section.

### The Issues I Examined

All the states allow immediate entry in an emergency. For non-emergency entries, I examined the statutes in each state for the following underlined items:

- Statute/s: Whether the state has such a statute, and if so what is/are the citation/s for the statute/s in question.
- Notice Period: How much advance notice is required for non-emergency entries? Is the required notice a specific number of hours or days? Or is it vaguer like the "reasonable notice" required in Minn. Stat. § 504B.211?
- Time Frame: Are there limits on the time entry may be made such as "no entries except during 9 am to 5 pm"? Or is it vaguer, such as "entries must be made during a reasonable time" similar to as the Minnesota statute? Or no limits?
- Specific Stated Remedies: Here I noted if the [a] statutes limited the type of lawsuit (only Minnesota did); [b] whether they mentioned possible lawsuits (some do); and [c] they set a minimum recovery (some do) and if so what.
- Written: Whether the notice must be written.

### Results of the Survey

The results of my survey are shown in two charts. [Chart 1](#) summarizes the law in each state. Of the 51 states, 16 have no statute and are listed at the end of the chart in alphabetical order; the states with statutes are listed in alphabetical order above them. [Chart 2](#) groups the states on each issue, summarizing Chart 1.

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repairs, the landlord may enter for that purpose. [30 Dunnell Minn. Digest Landlord and Tenant § 3.00 \(4th ed.2000\)](#). It is not clear if Minn. Stat. § 504B.211 has changed this rule. However, most leases include a broad landlord-may-enter clause.

<sup>5</sup>Available at <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF3348&ssn=0&y=2020>

## Concerns re Minn. Stat. § 504B.211 and How Other States Deal With Them.

### No Suing in Conciliation Court or After the End of the Tenancy.

The oddest part of Minn. Stat. § 504B.211 is what an attorney would call the subject-matter provision. Subdivision 6 requires the tenant to enforce the statute via a Rent Escrow or Tenant Remedies Action (“TRA”) lawsuit. These lawsuits require the tenant to sue while he is still living in the unit. Also they do not allow the tenant to sue in conciliation (small-claims) court. No other state limits tenants in this manner.

For tenants who simply want recompense (a money judgment) and not equitable relief (e.g. an early end to their lease), filing a Rent Escrow or TRA case is an extra burden. These cases are a bit more complicated than conciliation-court lawsuits.

Furthermore, Rent Escrows and TRAs require the tenant to sue during the tenancy. Many tenants prefer to avoid this for two reasons: [a] suing before the tenancy ends can worsen landlord-tenant relations and lead the landlord to retaliate; and [b] suing after the end of the tenancy allows the tenant to combine the wrongful-entry claim with a claim for an unreturned security deposit.

Moreover, suing during the last few days of the tenancy is nearly impossible because the tenant is busy packing. For a tenant without access to electronic filing or who needs have a judge authorize *in forma pauperis* status (filing-fee waiver for low-income litigants), it is literally impossible if the last few days of the tenancy fall on a weekend or holiday. This means that a landlord’s illegal entry during those days is immune from punishment. That is certainly bad policy. It might also require the courts to fashion a remedy on top of those stated in Minn. Stat. § 504B.211. [\*U.S. and Canada Land Co. v. Sullivan\*, 113 Minn. 27, 32, 128 NW. 1112 \(1910\)](#), \*

As the charts show, Minnesota is the only state whose statute prohibits filing a case under the statute in small claims court or for money only. Minnesota should join the other states and allow such lawsuits under Minn. Stat. § 504B.211.

### A Low Minimum Recovery of “Up To” \$100 per Violation

The remedies section of Minn. Stat. § 504B.211, subdivision 6, allows the tenant damages that appear to be limited to “up to” \$100 per violation.<sup>6</sup> This low amount, only \$20-30 more than the filing fee for a Rent-Escrow or a conciliation-court case, makes suing over one, two, or maybe even three wrongful entries probably not worth the time and effort. A higher amount, such as a

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<sup>6</sup>Rent Escrow and Tenant Remedies Action lawsuits allow for attorney fees, perhaps capped at \$500, but these are not mandatory. This subdivision also allows “a rent reduction up to full rescission of the lease, recovery of any damage deposit less any amount retained under section 504B.178”. The first phrase seems to be aimed at allowing the tenant to break the lease although it could be read to allow some return of rent or some delay in the end of the lease while rent is reduced. The second phrase is clearly designed to kick in the usual return-of-deposit rules upon the early end of the lease. So the statute may or may not allow more than the \$100 per violation plus minimal attorney fees as compensation to the tenant.

month's rent, that also is a minimum recovery (not "up to" \$X) would make the statute a strong deterrent to landlords tempted to disobey it.

Of the seven states with minimum damages in their statutes, two (Washington and Maine) set the amount at \$100 while four (Arkansas, Connecticut, Nebraska and Oregon) set it at one month of rent. Minnesota is alone at setting it at only "up to ... \$100".

### A Vague Time Notice Period and a Vague Time Window for Entry

#### Notice-Period Vagueness

Two vague aspects of Minn. Stat. § 504B.211 are the notice period – how much advance notice the landlord must give the tenant prior to the entry – and the time frame – when during the day and for what window of time may the entry occur. Subdivision 2 merely says, "a landlord may enter the premises rented by a residential tenant only ... after making a good faith effort to give the residential tenant reasonable notice under the circumstances".

How long is "reasonable notice under the circumstances"? Two days as under Public Housing regulations?<sup>7</sup> 24 hours, a common thought? Overnight? 2 hours? 5 minutes? Inevitably, some landlords push the envelope. Others are left in the dark as are their tenants.

In this regard Minnesota is an outlier. Only four other states have a similarly vague notice period ("reasonable", "adequate" or "advance") without a stated minimum time. Of the others, a plurality of 17 use either 24 hours or one day<sup>8</sup>, 10 use 48 hours or two days<sup>8</sup>, and one uses 12 hours.

#### Window-for-Entry Vagueness

When can the landlord enter? Every day? Every day but the tenant's Sabbath? 9 am to 5 pm? 8 am to 8 pm? Any time convenient to the landlord? To the tenant? Again, Minn. Stat. § 504B.211 is unclear and disputes arise.

Of the states with a privacy statute, 5 are completely silent, Minnesota and 19 others "specify" the entry time as "reasonable", and 10 give specific time frames. Of those ten, three specify "business hours", four a longer time period (a 12- or 12½-hour window), and three give the tenant some veto over the time frame.

My view is that there should be some overall limit (such as an 8-hour or 12-hour time frame) AND a shorter window of time on the day in question, such as 4 hours. A long period like 12

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<sup>7</sup> See [24 C.F.R. § 966.4\(j\)\(1\)](#) (at page 488, PDF page 5).

<sup>8</sup> Note that "24 hours" is similar but not the same as "one day" and "48 hours" is similar but not the same as "two days". See [Cent. Internal Med. Assoc., P.A. v. Chilgren, No. C2-00-36, at Part I \(Minn.App. July 18, 2000\)](#) (7 days under Minn. Stat. § 504B.331 is not a full 7×24 hours). "One-day" notice can include notice given before midnight on a given day and directed to the morning of the next day; "two-day" notice can include notice given before midnight on a given day and directed to the morning of the day after next.

hours creates two problems: [a] That 12-hour period is 12 hours during which the tenant cannot take a shower or do something else private; [b] if the tenant wants to be home to safeguard his home, he must sacrifice an entire day from work or other pursuits. Most companies (utilities, cable TV companies, etc) use a 2-4 hour window for repair appointments so the customer does not have to miss an entire day of work.

### Written Notice Not Required

It's an urban myth that the Minnesota statute requires written notice. It doesn't, but should it? Written notice tends to make the tenant take the notice more seriously and also creates a "paper trail"<sup>9</sup> that notice was or was not given.

Minnesota is in the majority of 28 states allowing either oral or written notice, while 7 states require the notice to be written.

### Conclusion

On a few issues Minnesota's Tenant Right to Privacy statute is out of sync with most other states and should be changed. These include the low statutory damages of "up to ...\$100", not permitting suits in regular district court or conciliation court, and lack of specificity in the time of entry and the length of notice. On the issue of allowing both oral and written notice, Minnesota is in the majority although about a quarter of the state statutes require written notice.

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<sup>9</sup> These days, that "paper trail" may well be an electronic record of an emails, texts or faxes. See [Minn. Stat. § 645.44, subd. 14](#) for a typical expansive definition of "written" that includes electronic writings.

**Endnote 1**

**Part of the Testimony of Doug Clark,  
1/23/95 Minnesota House Committee on Housing  
In Support of a Bill That Became Minn. Stat. § 504.183 (1995)  
(now codified at Minn. Stat. § 504B.211)**

Doug Clark

[I ... inaudible] Legal Services in St. Cloud & Cambridge focusing on housing issues in approximately 12 counties throughout Central Minnesota. What I'd like to talk about today is the amendment or possible amendment regarding the previous part of the bill entitled "Tenant's Right of Privacy."

During the 6 years I have been with Legal Services, I probably talked to close to 100 people a year regarding various landlord-tenant problems, and I would estimate close to anywhere from 10 to 20% of those people specifically bring up issues regarding landlords, caretakers, maintenance individuals, specifically coming into their units at a time when they may not be there or at a time when they are there but on an unscheduled basis, and how this affects the tenants. A lot of the problems that I deal regarding landlord-tenant issues tend to focus either on larger landlords or smaller landlords, but this is one that I have found that cuts all the way across the size of the landlord and the management company. I have personally experienced large manager/large management companies having problems following or seeming to follow what we would consider to be common courtesy of notifying prospective or [sic] tenant when they are going to come into their particular unit.

When I first moved to St. Cloud, six years ago, for three months my wife and I lived in an apartment while we looked for a house to purchase. During that time, on numerous occasions, our caretaker came into our unit for a variety of reasons, without ever announcing that he intended to do that or even leaving any notice that he had done so. On one occasion he came into our unit while my wife was coming out of the

shower and he had come in simply to leave a note saying that he was trying to contact us and talk about an issue regarding that. As you can probably imagine, that was an extraordinarily disturbing experience for her to come out in a very vulnerable position and finding someone who was a relative stranger confronting her for circumstances of which she doesn't know.

I hear that kind of complaint very regularly, and it doesn't just involve large management companies who have to supervise a variety of different properties or a variety of different caretakers. I also hear that problem from smaller complexes that are as small as 2 or 3 units or complexes that are more than 6 to 20-unit range.