

Prosecuting/Defending Rent Escrow Actions

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Handling Rent Escrow Cases

By Referee Mark Labine



Table of Contents

#	Title	Page #
1	Introduction	2
2	Rental License	4
3	Rent Escrow Judicial Checklist	5
4	Rent Escrow Notes	7
5	Issues of Notice and Rent Abatement	7
6	Rent Escrow Relief	8
7	Rent Abatement	9
8	Sample Rent Abatement Order	12
9	Index	21

1. Introduction

Rent Escrow actions in Housing Court are covered by Minn. Stat. 504B.385, which states that if a code violation exists in a residential building, a residential tenant may deposit the amount of rent due to a Landlord with the court administrator and commence a rent escrow case. The filing fee at the present time is \$70.00 (2017).

Tenant Remedy Actions (TRA's) fall under Minn. Stat. 504B.395 to 504B.471. These are actions brought by the Tenant or on behalf of the Tenant to ask the Court to address code violations or defects in residential rental units.

Both Rent Escrow cases and TRA's require that notice be given to Landlord's prior to the commencement of the action to give Landlord's a reasonable opportunity to fix the problem.

Comparison Chart

	Rent Escrow	Tenant Remedy Action (TRA)
Filing Fee	\$70 (2016 rate)	\$299 (2017 rate)
Rent Deposit	All rent owed	None unless ordered by Court as allowed under Minn. Stat. 504B.425
Proper Party	Person named in lease as Tenant	Tenant, All other tenants in building, City Attorney, Neighborhood Organizations

A prerequisite to the filing of a rent escrow action is giving Landlord notice of the code violation or repairs that need to be done and allowing Landlord at least fourteen days to do the work. *See Minn. Stat. 504B.385, subd. 1 (c).*¹ If the repairs are ordered by a Housing Inspector, the Housing Inspector will generally list a completion date for the work to be done. Tenant may commence rent escrow earlier than completion date if asserts time to complete the work excessive.

It can be argued that Tenant does not need to prove notice of violations of covenants that existed at the beginning of a tenancy. A landlord who violated the covenants had a duty to warn the tenant of the defective condition of the property if the landlord **knew or should have known** of the danger, and if the tenant would not discover it by exercising due care. *See Oakland v. Stunlund, 420 N.W.2d 248, 252 (Minn. Ct. App. 1988); Broughton v. Maes, 378 N.W.2d 134, 135-37 (Minn. Ct. App. 1985); Hanson v. Rowe, 373 N.W.2d 366, 370 (Minn. Ct. App. 1985); Meyer v. Parkin, 350 N.W.2d 435, 437-39 (Minn. Ct. App. 1984).*

¹ (c) For a violation as defined in section [504B.001, subdivision 14](#), clause (2) or (3), the residential tenant must give written notice to the landlord specifying the violation. The notice must be delivered personally or sent to the person or place where rent is normally paid. If the violation is not corrected within 14 days, the residential tenant may deposit the amount of rent due to the landlord with the court administrator along with an affidavit specifying the violation. The court must provide a simplified form affidavit for use under this paragraph.

Tenants may also assert a Fritz defense in an eviction action (*see Fritz v. Warthan, 298 Minn. 54, 213 N.W.2d 339*). “Fritz” cases are basically rent escrow actions in reverse. In a Fritz defense case, Tenants must deposit the rent owed Landlord also. Regarding this escrow of rent, the Court of Appeals in the “Fritz” case held as follows:

*Recognizing these potential problems, we have concluded that once the trial court has determined that a fact question exists as to the breach of the covenants of habitability, that court will order the tenant to **pay the rent to be withheld** from the landlord into court, **and that until final resolution on the merits, any future rent withheld shall also be paid into court**. The court under its inherent powers may order payment of amounts out of this fund to enable the landlord to make repairs or meet his obligations on the property or for other appropriate purposes. In the majority of cases, final determination of the action will be made quickly and this procedure will not have to be used. It is anticipated that the trial court, in lieu of ordering the rent paid into court, in the exercise of its discretion may order that it be deposited in escrow subject to appropriate terms and conditions or, in lieu of the payment of rents, may require adequate security therefor if such a procedure is more suitable under the circumstances.*

In rent escrow cases under Minn. Stat. 504B.385, the Court has discretion to do any of the following:

- (i) order relief as provided in section [504B.425](#),² including retroactive rent abatement;
- (ii) order that all or a portion of the rent in escrow be released for the purpose of remedying the violation;
- (iii) order that rent be deposited with the court as it becomes due to the landlord or abate future rent until the landlord remedies the violation; or
- (iv) impose fines as required in section [504B.391](#).

When a proceeding under this section has been consolidated with a counterclaim for possession or an eviction action, (Fritz defense) and the landlord prevails, the residential tenant may redeem the tenancy as provided in section [504B.291](#).

² **504B.425 Judgment.**

(a) If the court finds that the complaint in section [504B.395](#) has been proved, it may, in its discretion, take any of the actions described in paragraphs (b) to (g), either alone or in combination.

(b) The court may order the landlord to remedy the violation or violations found by the court to exist if the court is satisfied that corrective action will be undertaken promptly.

(c) The court may order the residential tenant to remedy the violation or violations found by the court to exist and deduct the cost from the rent subject to the terms as the court determines to be just.

d) The court may appoint an administrator with powers described in section [504B.445](#), and:

(e) Order that rents due in future be deposited with the Court.

In the “Fritz” case, the court **did not** require the residential tenant to pay the landlord's filing fee as a condition of retaining possession of the property when the residential tenant has deposited with the court the full amount of money found by the court to be owed to the landlord. Generally, in Hennepin County, the court does not require deposit of the court costs (filing fee and service fee) when ordered Tenant to deposit their rent into court.

2. Rental License

Under 504B.385 a Court has discretion to order rent abatement under subd. 9 if it finds that a violation exists as defined under 504B.001 subd. 14.³ A violation includes any violation of state law or municipal codes related to a rental unit which includes having a rental license. In a recent unpublished opinion (*Beumia vs. Eisenbraun*, (A06-1482 Ct. App. 2007) the Minnesota Court of Appeals addressed the issue of a rental license requirement in the City of Alexandria. **The Alexandria City Ordinance provided that any written or oral agreement to rent any rental unit that did not have a rental license was illegal as a matter of law.** The Court stated as follows:

A lessor’s compliance with a covenant imposed by law and a lessee’s duty to perform under a lease agreement are mutually dependent. See Fritz v. Warthen, 298 Minn. 54, 58, 213 N.W.2d 339, 341 (1973). Here, Beumia acquired the house on October 17, 2005, but did not register it with the city as a rental unit until May 23, 2006. Thus, the earliest that Beumia was in compliance with the ordinance was May 23, and before that date, the Eisenbrauns had no obligation to pay rent.

*When an eviction action is based solely on a failure to pay rent, if a tenant’s duty to pay rent was excused, the eviction action fails. In Mac-Du Props. v. LaBresh, 392 N.W.2d 315, 316-17 (Minn. App. 1986), review denied (Minn. Oct. 29, 1986), the landlord failed to acquire a “certificate of occupancy” from the city as required by an ordinance. This court determined that the **landlord’s compliance with the ordinance and the tenant’s duty to pay rent were mutually dependent.** Id. at 319. Thus, because the tenant was under no duty to pay rent, and because the action was based solely on the tenant’s failure to pay rent, the tenant’s eviction was improper. Id.*

Under the ruling in the unpublished Court of Appeals decision, therefore, a Tenant in the City of Alexandria had no duty to pay rent until the Landlord had obtained a rental license. This ruling seems to suggest the Landlord could evict for other reasons, but not for failure to pay rent. (at least until the rental licenses has been obtained).

³ Subd. 14. **Violation.** "Violation" means:

(1) a violation of any state, county or city health, safety, housing, building, fire prevention, or housing maintenance code applicable to the building;

(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

(3) a violation of an oral or written agreement, lease, or contract for the rental of a dwelling in a building

Each city has their own rules regarding rental licenses. Not all cities have the strong language used by the City of Alexandria. Pursuant to this Unpublished Court of Appeals decision, however, there is certainly a reasonable argument that Landlord's can't evict for non-payment of rent if Landlord is not in compliance with a City ordinance requiring a rental license. This unpublished decision has persuasive value, but it is not precedential. *Dynamic Air, Inc. v. Bloch* 502 N.W. 2d 796 (Minn. Ct. App. 1993) also Minn. Stat. 480A.08 subd. 3. Also, the statutory language under Minn. Stat. 504B.385 still seems to suggest that courts have discretion to award rent abatement for a violation of any state or municipal law.

In most cities rental licenses are NOT required when persons rent out rooms in their homestead. In Minneapolis, for example, under Minneapolis City Code Article VIII, section 244.820, it is legal to have up to two unrelated adults living in a single family dwelling unit.

3. Rent Escrow Judicial Checklist

Rent Escrow cases are governed by Minn. Stat. 504B.385. If Landlord is in violation of a law, building code, or obligation as set forth in Minn. Stat. 504B et sec. in a residential building, a **residential tenant**⁴ may deposit the amount of rent due to the landlord with the court administrator using the procedures described in 504B.385. A notice of hearing must be sent by the Court and a hearing must be scheduled within ten to fourteen days from the date the Tenant files the rent escrow action.

A Landlord may file a counterclaim for possession if a rent escrow action is filed and the court must set a hearing not less than seven and not more than fourteen days from the date the counterclaim is filed.

1. Verify names of parties and address of leased property.

Need to verify who owners or Management Company is. Sometimes there is confusion as to who Tenant is dealing with. Often there is an owner and a Manager and both may need to be served.

2. Make sure Landlord has been properly served.
3. Make sure all rent owed has been deposited.

⁴ The definition of residential tenant is defined under Minn. Stat. 504B.001 subd. 12 (2014). "Residential tenant" means a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, all other regular occupants of that dwelling unit, or a resident of a manufactured home park. Under the case "*Cocchiarella v. Diggs*, 884 N.W.2d 621 (Minn. 2016), a Tenant who holds the present right to occupy residential rental property pursuant to a lease or contract (written or oral so long as consideration paid) satisfies the definition of "residential tenant."

Need to verify how much rent is owed which usually can be done by looking at lease. Landlord will certainly help you determine this. If legitimate dispute, this can be addressed at the hearing. If all rent required to be deposited is not put into escrow, then case can be dismissed.

4. Try to get parties to agree on what repairs are needed or what else Landlord needs to do to comply with the law. In other words, what is basis for Tenant's complaint?

If repairs are needed, it can greatly simplify the trial if the parties agree on what repairs need to be done. Even if Landlord did not get sufficient notice, it makes sense to address the repair issues now rather than have the parties maybe come back later. If there is something else the Landlord is not in compliance with (e.g. no rental license) try to list that in order.

The advantage of doing it this way is that the Landlord has incentive to come into compliance before the hearing and then you will not have to schedule another compliance hearing to ensure that Landlord makes the needed or required repairs or other actions to come into compliance. You can then focus the hearing on the issue of rent abatement and other money penalties only.

5. Schedule a hearing. (Note: NO right to Jury trial for rent escrow cases).

6. Conduct trial on issues raised in rent escrow affidavit and answer of Landlord.

If Landlord has made all required repairs or is now in compliance with the law, then it can greatly simplify the trial. If there are still things that need to be done, you will have to determine those and then probably schedule another compliance hearing to ensure that Landlord complies with your order.

All rent escrow cases involve some breach of law, code, or other obligation of the Landlord. Try to determine what the breach is. If repairs needed, try to determine whether Landlord had 14 days to make repairs as statute requires.

7. Issue Findings and Order. If necessary, schedule a compliance hearing to ensure Landlord complies with order. You may allow rent to continue to be placed in escrow until all repairs done.

Possible remedies set out in Minn. Stat. 504B.385 subd. 9. Remember, you have a lot of discretion here. Rent abatement is most common remedy asked for.

4. Rent Escrow Notes

The classic set of facts which would qualify Tenant to bring a rent escrow action is that the Housing Inspector has inspected the leased property and noted building code violations at the leased property which Landlord needs to fix.

The residential tenant should not deposit the rent or file the written notice of the code violation until the time granted by the Housing Inspector to make the repairs has expired without satisfactory repairs being made, unless the residential tenant alleges that the time granted is excessive.

If there are other repairs needed at the leased property for which Landlord is responsible to make, the residential tenant must give written notice to the landlord specifying the violation. The notice must be delivered personally or sent to the person or place where rent is normally paid. If the violation is not corrected within 14 days, the residential tenant may deposit the amount of rent due to the landlord with the court administrator along with an affidavit specifying the violation.

5. Issue of Notice and Rent Abatement.

There is an issue about whether or not Tenant is required to give written notice of the violations prior to commencing a rent escrow case or as a condition for asking for rent abatement. Clearly, under Minn. Stat. 504B.385, fourteen days written notice is required. It is fair and equitable to expect that Landlord be made aware of a repair problem before assessing a penalty against Landlord. This argument supports the conclusion that no rent abatement should be allowed until after Landlord received notice of the repair issue. However, there is an argument that once you have decided that Tenant is properly before the court, then the issue of rent abatement is determined by how long the Tenant had subpar housing and how long the Landlord knew or should have known about the repair problems. In an unpublished case titled *Richtor v. Czock*, 2002 WL 338181 (Minn. App.), The Court of Appeals held as follows:

Under Minn.Stat. §504B.425(a) if the court finds that a violation of clause (1) or (2) of Minn.Stat. 504B.161, subd. 1, has been proved, in its discretion,

*[t]he court may find the extent to which any uncorrected violations impair the residential tenants' use and enjoyment of the property contracted for and order the **rent abated** accordingly. If the court enters judgment under this paragraph, the parties shall be informed and the court shall determine the amount by which the **rent** is to be **abated**. (Emphasis added.) See also Minn.Stat. § 504B.395, subd. 1(1) (procedure for bringing tenants' action), .001, subd. 14(2) (2000) (defining violation).*

Under this statute, the court has discretion to order rent abatement; it is not required to order abatement. Compare Minn.Stat. § 645.44, subd. 15 (2000) (stating " 'may' is permissive") with Minn.Stat. § 645.44, subd. 16 (2000) (stating " 'shall' is mandatory"). Appellants have not shown that the district court abused its discretion in abating rent only during the period that it was shown that the landlord knew about the violations.

The Czock decision appears to support the proposition that rent abatement is reasonable during any period that Landlord knew about the violations.

There are a series of tort cases that have held that a Landlord who violated covenants of habitability had a duty to warn the Tenant of the defective condition if the Landlord knew or should have known of the violations or danger. See *Oakland v. Stenlund* 420N.W.2d 248, (Minn. App. 1988), which stated the duties of a Landlord to warn are as follows:

*[W]here a landlord has information which would lead a reasonably prudent owner exercising due care to suspect that danger exists on the leased premises at the time the tenant takes possession, and that the tenant exercising due care would not discover it for himself, then he must at least disclose such information to the tenant. * * **

“To require one to use that care which an ordinarily prudent person would exercise under the same or similar circumstances can hardly be onerous, unreasonable or oppressive.” (quoting the trial court memorandum) citing Johnson v. O'Brien, 258 Minn. 502, 5105 N.W.2d 244 (1960).

Conclusion: It is reasonable for a court to award rent abatement for loss of use or impaired value of the rental for any period that Landlord knew or should have known about a defective or impaired condition.

Deposit of Rent. The residential tenant need not deposit rent if none is due to the landlord at the time the residential tenant files the rent escrow action. All rent which becomes due to the landlord after that time but before the hearing under subdivision 6 must be deposited with the Court Administrator. As long as proceedings are pending under this section, the residential tenant must pay rent to the landlord or as directed by the court and may not withhold rent to remedy a violation.

Counterclaim for possession. The landlord may file a counterclaim for possession of the property in cases where the landlord alleges that the residential tenant did not deposit the full amount of rent with the court administrator.

Notice of hearing. A rent escrow hearing must be held within ten to fourteen days from the day a residential tenant deposits rent with the court administrator.

6. Rent Escrow Relief

Judgment. Upon finding that a violation exists, the court may, in its discretion, do any or all of the following:

- (1) order relief as provided in section 504B.425, including retroactive rent abatement;
- (2) order that all or a portion of the rent in escrow be released for the purpose of remedying the violation;

(3) order that rent be deposited with the court as it becomes due to the landlord or abate future rent until the landlord remedies the violation; or

(4) impose fines as required in section 504B.391.

(5) When a proceeding under this section has been consolidated with a counterclaim for possession or an eviction action, and the landlord prevails, the residential tenant may redeem the tenancy as provided in section 504B.291.

(6) When a proceeding under this section has been consolidated with a counterclaim for possession or an eviction action on the grounds of nonpayment, the court may not require the residential tenant to pay the landlord's filing fee as a condition of retaining possession of the property when the residential tenant has deposited with the court the full amount of money found by the court to be owed to the landlord.

Release of rent after hearing. If the court finds, after a hearing on the matter has been held, that no violation exists in the building or that the residential tenant did not deposit the full amount of rent due with the court administrator, it shall order the immediate release of the rent to the landlord. If the court finds that a violation existed, but was remedied between the commencement of the action and the hearing, it may order rent abatement and must release the rent to the parties accordingly. Any rent found to be owed to the residential tenant must be released to the tenant.

7. Rent Abatement.

Under Minn.Stat. § 504B.425(e), if the court finds that a violation of clause (1) or (2) of Minn.Stat. 504B.161, subd. 1⁵, (Covenants of Habitability) has been proved, in its discretion, the court may find the extent to which any uncorrected violations impair the residential tenants' use and enjoyment of the property contracted for and order the rent abated accordingly. If the court enters judgment under this paragraph, the parties shall be informed and the court shall determine the amount by which the rent is to be abated. See also Minn.Stat. §§ 504B.395, subd. 1(1) (procedure for bringing tenants' action), 504B.001, subd. 14(2) (2000) (defining violation).

⁵504B.161 Covenants of landlord or licensor.

Subdivision 1. **Requirements.** In every lease or license of residential premises, the landlord or licensor covenants:

(1) that the premises and all common areas are fit for the use intended by the parties;

(2) to keep the premises in reasonable repair during the term of the lease or license, except when the disrepair has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee; and

(3) to maintain the premises in compliance with the applicable health and safety laws of the state, including the weatherstripping, caulking, storm window, and storm door energy efficiency standards for renter-occupied residences prescribed by section 216C.27, subdivisions 1 and 3, and of the local units of government where the premises are located during the term of the lease or license, except when violation of the health and safety laws has been caused by the willful, malicious, or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.

The parties to a lease or license of residential premises may not waive or modify the covenants imposed by this section.

Under this statute, the court has discretion to order rent abatement; it is not required to order abatement. Compare Minn.Stat. § 645.44, subd. 15 (2000) (stating " 'may' is permissive") with Minn.Stat. § 645.44, subd. 16 (2000) (stating " 'shall' is mandatory"). Under Minn.Stat. § 504B.425, the district court "may in its discretion ⁶," order one or more of several possible remedies including rent abatement. The statutes' use of "may" combined with their non-exclusive lists of remedies show that no particular remedy is mandatory and that the district court has broad discretion to select the remedy appropriate to the facts of the case. *Compare Minn.Stat. § 645.44, subd. 15 (1994) ("may is permissive") with Minn.Stat. § 645.44, subd. 16 (1994) ("shall is mandatory")*. *Scroggins v. Solchaga*, 552 N.W. 2d 248, (Minn. App. 1996).

How to award rent abatement is open to interpretation. A good case addressing rent abatement is the unpublished decision titled *Ghebrehiwet v. Ghneim*, 2016 WL 102510 (Minn. App. Jan. 11, 2016) (A15-0397). The Court of Appeals reviewed a Landlord's appeal from conciliation court and a District Court appeal where the District court awarded Tenants damages of \$3,300 for Landlord's breach of the covenants of habitability, and penalties for Landlord's privacy violations. This case provide a good outline of how a court should handle a rent abatement case. The court of Appeals made a number of findings in this decision, including the following:

- a. The emphasized portions of section 504B.425 indicate that the district court must use a proportionate approach when it retroactively abates rent as a remedy for an established violation of the covenants of habitability.
- b. A party seeking damages for breach of contract must prove the party's damages by a preponderance of the evidence. *See Wick v. Widdell*, 276 Minn. 51, 53–54, 149 N.W.2d 20, 22 (1967) ("In an ordinary civil action the plaintiff has the burden of proving every essential element of his case, including damages by a fair preponderance of the evidence.").
- c. Generally, damages need not be proved with absolute certainty nor with mathematical precision. Sufficient proof must be given, however, to avoid speculative awards." *Bethesda Lutheran Church v. Twin City Constr. Co.*, 356 N.W.2d 344, 348 (Minn.App.1984), *review denied* (Minn. Feb. 5, 1985).
- d. While the law most certainly does not require that damages be calculable with absolute precision, damages must nevertheless be ascertainable with reasonable exactness and may not be the product of benevolent speculation." *Faust v. Parrott*, 270 N.W.2d 117, 120 (Minn.1978).

⁶ **504B.425 JUDGMENT.**

- (a) If the court finds that the complaint in section 504B.395 has been proved, it may, in its discretion, take any of the actions described in paragraphs (b) to (g), either alone or in combination.
- (b) The court may order the landlord to remedy the violation or violations found by the court to exist if the court is satisfied that corrective action will be undertaken promptly.
- (c) The court may order the residential tenant to remedy the violation or violations found by the court to exist and deduct the cost from the rent subject to the terms as the court determines to be just.

e. The court reversed the lower courts award of rent abatement or damages because Tenants did not meet their burden to prove reasonably exact, nonspeculative damages.

f. Minnesota Law does not provide that a tort recovery is allowed on a breach of contract claim.

One argument made is that rent abatement should be determined by determining the fair market value of the property, and how that fair market value of the property would be diminished when repairs are not made. By way of example, where the case involves breach of contract for real property, “the correct measure of damages is the difference between the value of the building as it is and what it would have been worth if it had been built in conformance with the contract.” *Marshall v. Marvin H. Anderson Const. Co.*, 167 N.W.2d 724, 729 (Minn. 1969). Further, a comparison must be made between cost of restoration and the diminution of value; the lesser of the two numbers is the correct measure of damages. *Heath v. Minneapolis, St. P. & S.S.M.R. Co.*, 148 N.W. 311, 313 (Minn. 1914).

8. Sample Rent Abatement Order

State of Minnesota

Hennepin County

District Court

Judicial District:

Fourth

Court File Number:

xxxxxxxxxx

Case Type:

Housing

*Community Organization (Tenant Remedy Action) or
Tenant,*

Plaintiff,

vs.

Rent Abatement Order

Landlord

Defendants,

This matter came on for hearing before the Honorable Mark Labine, Referee of Housing Court, on date..

Plaintiff was present. Plaintiff may hereinafter be referred to as Tenant.

Defendant was present. Defendant shall hereinafter be referred to as Landlord.

Based upon the verified petition, testimony, evidence, and arguments presented, and all of the files, records, and proceedings, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This matter involved Leased Property located at (address here).

*2. Tenant Remedy Actions are authorized by Minn. Stat. 504B.395 and may be commenced by a **residential tenant** of a residential building in which a violation, as defined by Minn. Stat. 504B.001, subd. 14 is alleged to exist. A housing-related neighborhood organization may also commence an action with the consent or written permission of a residential Tenant of a residential building.*

*3. "**Residential tenant**" means a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, all other regular occupants of that dwelling unit, or a resident of a manufactured home park. Under the case *Cocchiarella v. Diggs*, 884 N.W.2d 621 (Minn. 2016), a Tenant who holds the present right to occupy residential rental property pursuant to a lease or contract (written or oral so long as consideration is paid) satisfies the definition of "residential tenant. In the *Cocchiarella* case, the Tenant had not actually moved in, but had paid a security deposit and had an oral agreement to move in.*

4. Plaintiff provided the following information which summarizes the identity of the tenants, the term of their tenancies, the amount of rent paid, and the amount of rent abatement they are seeking.

<i>Tenant</i>	<i>Apt</i>	<i>Start of Tenancy⁷ Or December 2012</i>	<i>End of Tenancy or end of October 2016.⁸</i>
1. <i>Tenant one</i>	101	June, 2015	October 2016 17 months
2. <i>Tenant two</i>	104	December, 2014	December, 2015 13 months
3. <i>Tenant three</i>	105	December, 2014	November, 2015 12 months
4. <i>Tenant four</i>	106	June, 2015	October 2016 17 months
5. <i>Tenant five</i>	201	February, 2015	February, 2016 13 months
6. <i>Tenant six</i>	202	May, 2014	August, 2015 16 months
7. <i>Tenant seven</i>	204	April, 2015	October 2016 19 months
<i>Tenant eight</i>	205	January, 2013	October 2016 47 months
8. <i>Tenant nine</i>	206	September, 2014	October, 2015 18 months
<i>Tenant ten</i>	A	January, 2013	October 2016 47 months
9. <i>Tenant eleven</i>	B	December, 2012	December, 2015 47 months
10. <i>Tenant twelve</i>	C	June, 2015	November, 2015 17 months
<i>Tenant thirteen</i>	D	December, 2014	October 2016 23 months

5. This Tenant Remedy Action was commenced on January 20, 2016. Therefore, the Court will order rent abatement only for those Tenants who were residential Tenants and who actually resided at the Leased Property at the time this Tenant Remedy Action was commenced.

⁷ Based on leases produced by Defendants.

⁸ Note, period of time where rent abatement at issue is from December 2012 to the end of October 2016, a period of 47 months.

6. Based on information provided to the Court by affidavit or other means, the following Tenants resided at the Leased Property at the time this action was commenced on January 2016 and were “residential Tenants” as defined by the statute.

Names	Apt
1. Tenant one	101
2. Tenant four	106
3. Tenant five	201
4. Tenant seven	204
5. Tenant eight	205
6. Tenant ten	A
7. Tenant thirteen	D

Rent Abatement

7. Under Minn. Stat. § 504B.425(e), if the Court finds that a violation has been proven of a clause contained in Minn. Stat. § 504B.161, subd. 1 (Covenants of Habitability), in its discretion, the Court may find the extent to which any uncorrected violations impaired the residential tenants' **use and enjoyment** of the property contracted for and order the rent abated accordingly.

8. The Court, in its Conclusions of Law of the Order filed September 13, 2016, found that Landlord violated the covenants of habitability, and determined Tenants who resided in the Leased Property during the period of these violations may be entitled to retroactive rent abatement. The Court declined to award rent abatement, at that time, because the record did not contain sufficient evidence to establish which Tenants lived at the Leased Property, when they lived there, and how much rent they paid to Landlord.

9. The Court found that Landlord failed to complete the repairs in a timely manner as required by Notice of Ordinance Code Violations contained at Pl. Ex. 14, in violation of Minneapolis Code of Ordinances Section 244.510.

10. The violations committed by Landlord are set out in paragraph 11 of the Findings of Fact in the Order filed September 13, 2016, as follows:

Violation One: The front security door was in poor repair; (see exhibit 14, Notice of violation on **September 4, 2015**) a person of average strength could open it with a firm tug unaided by mechanical implements (such as crowbars, jacks, winches, etc.). This defect compromised the security of the residential tenants and their personal property, and violated Minneapolis Code of Ordinances Sections 244.530 and 244.675. Several Tenants testified about the impact this had on their day-to-day lives. These Tenants provided compelling testimony about the bad conduct of non-tenants who exploited this security defect to gain access to the Property.

Violation Two: The property was infested with roaches, bedbugs, and mice in violation of City of Minneapolis inspections orders, received as Pl. Ex. 12 (Notice of violation on **September 3, 2015**)

and 13, (Notice of violation on September 3, 2015) and the Minneapolis Codes specifically identified therein. The Court found that these persistent infestations had a profoundly negative impact on the lives of Tenants at the Property.

Violation Three: Landlord did not complete the repairs as directed by the Notice of Violation and Second Notice of Violation contained in Pl. Ex. 8 and Pl. Ex. 11. (Notice of violation on **June 7, 2013** and second notice of violation on June 6, 2014). As of the date this action was filed, Landlord had **failed to make “all exterior walls, roofs, foundations, and chimneys . . . reasonably watertight and rodent proof”** in violation of Minneapolis Code of Ordinances Sections 244.530. The Court finds that Landlord’s failure to comply with these City Inspection Orders had less of an impact on the Tenants’ day-to-day lives, but are significant enough to warrant corrective action.

Violation Four: The Court finds that the **heat at the Property was insufficient** to maintain all occupied units at the Property at the time this action was filed, in violation of Minneapolis Code of Ordinances Section 244.430. The dates of this violation are not stated in the order. Tenants proved that the heat in several units dipped slightly below the 68° Fahrenheit standard established by ordinance. The Court finds that the lack of sufficient heat had a significant impact on several Tenants at the Property during the coldest months of the year.

11. A summary of the code violations to which the Court will award rent abatement to the Tenants will be as follows:

No.	Description of Violation and Abatement awarded	Date of Housing Inspector Report	Date of written notice	Date Repairs completed
<i>V.1</i>	<i>Front security door was in poor repair. 5% Abatement</i>	<i>September 4, 2015 Exhibit 14</i>	<i>Unknown</i>	<i>Not completed when property sold in October 2016.</i>
<i>V.2</i>	<i>Property was infested with roaches, bedbugs, and mice. 35% Abatement</i>	<i>September 3, 2015 Exhibit 12</i>	<i>Unknown</i>	<i>Not completed when property sold in October 2016.</i>
<i>V.3</i>	<i>Failed to make “all exterior walls, roofs, foundations, and chimneys reasonably watertight and rodent proof.” 5% Abatement</i>	<i>(Notice of violation on June 7, 2013 and second notice of violation on June 6, 2014). Exhibit 8 and Pl. Exhibit 11.</i>	<i>Unknown</i>	<i>Not completed when property sold in October 2016.</i>
<i>V.4</i>	<i>Heat at the Property was insufficient. 5% Abatement during winter months.</i>	<i>Unknown</i>	<i>October 2015</i>	<i>Not completed when property sold in October 2016.</i>

12. The Court shall order a 5% rent abatement for Landlord’s failure to repair the front security door for period from September, 2015 until October 2016.

13. The Court shall order a 35% rent abatement for Landlord's failure to properly address the roach, bedbug and mice infestation for period from September 2015 until October 2016. The prior finding by the judicial officer who conducted the hearings found that these persistent infestations had a profoundly negative impact on the lives of Tenants at the Property. This finding supports this court's finding that Tenant's rent should be abated by 35%. This is a significant rent abatement, but is less than the judicial officer who conducted the hearing ordered in a prior action. In that case, the court awarded a 50% rent abatement, finding that the day-to-day living of Tenants was frequently interrupted by onerous preparation for pest control treatments, and a finding that attempted to quantify the value of bedbug bites on Defendant and her children. There are no findings of bed bugs or bed bug bites here, so the court is not awarding the same amount of rent abatement in this case.

14. The Court shall order a 5% rent abatement for Landlord's failure to properly make all exterior walls, roofs, foundations and chimneys reasonably watertight and rodent proof for period from June, 2013 until October 2016.

15. The Court shall order a 5% rent abatement for Landlord's failure to properly address the heat at the Leased Property for period from October 2015 until April 2016.

16. Rent abatement for the seven residential Tenants shall be awarded as follows: (note, rents rounded off to nearest dollar).

Tenant One
Tenants 6/15 to 10/16

	<i>Abatement V.1 Security Door 9/15 to 10/16</i>	<i>Abatement V.2 Pests 9/15 to 10/16</i>	<i>Abatement V.3 Walls, etc 6/13 to 10/16</i>	<i>Abatement V.4 Heat 10/15 to 4/16</i>	<i>Total Abatement</i>
<i>Monthly Rent</i>	\$760	\$760	\$760	\$760	
<i>Abatement %</i>	5%	35%	5%	5%	
<i># of months</i>	13	13	17	7	
<i>Total Abatement</i>	\$494	\$3,458	\$646	\$266	\$4,864.00

17. Tenant had an unpaid balance as of October 2016 of \$40.14 which shall be deducted from his abatement amount, leaving a balance awarded (rounded off) of \$4,824.00.

Tenant Four
Tenants 6/15 to 10/16

	<i>Abatement V.1 Security Door 9/15 to 10/16</i>	<i>Abatement V.2 Pests 9/15 to 10/16</i>	<i>Abatement V.3 Walls, etc 6/13 to 10/16</i>	<i>Abatement V.4 Heat 10/15 to 4/16</i>	<i>Total Abatement</i>
<i>Monthly Rent</i>	\$760	\$760	\$760	\$760	
<i>Abatement %</i>	5%	35%	5%	5%	
<i># of months</i>	13	13	17	7	
<i>Total Abatement</i>	\$494	\$3,458	\$646	\$266	\$4,864.00

18. Tenant had an unpaid balance as of October 2016 of \$21.70 which shall be deducted from his abatement amount, leaving a balance awarded (rounded off) of \$4,842.00.

Tenant Five

19. On February 8, 2016, Tenant signed a waiver and settlement agreement waiving all claims they had against Defendants. Therefore, their claim for rent abatement shall be denied. See Declaration of Landlord filed May 8, 2017, page 71.

**Tenant Seven
Tenants 4/15 to 10/16**

	<i>Abatement V.1 Security Door 9/15 to 10/16</i>	<i>Abatement V.2 Pests 9/15 to 10/16</i>	<i>Abatement V.3 Walls, etc 6/13 to 10/16</i>	<i>Abatement V.4 Heat 10/15 to 4/16</i>	<i>Total Abatement</i>
<i>Monthly Rent</i>	\$760	\$760	\$760	\$760	
<i>Abatement %</i>	5%	35%	5%	5%	
<i># of months</i>	13	13	17	7	
<i>Total</i>	<i>\$494</i>	<i>\$3,458</i>	<i>\$646</i>	<i>\$266</i>	<i>\$4,864.00</i>

20. Tenant had an unpaid balance as of October 2016 of \$97.30 which shall be deducted from his abatement amount, leaving a balance awarded (rounded off) of \$4,768.00.

**Tenant Eight
Tenants 1/13 to 9/16**

	<i>Abatement V.1 Security Door 9/15 to 10/16</i>	<i>Abatement V.2 Pests 9/15 to 10/16</i>	<i>Abatement V.3 Walls, etc 6/13 to 10/16</i>	<i>Abatement V.4 Heat 10/15 to 4/16</i>	<i>Total Abatement</i>
<i>Monthly Rent</i>	\$760	\$760	\$760	\$760	
<i>Abatement %</i>	5%	35%	5%	5%	
<i># of months</i>	12	12	16	7	
<i>Total</i>	<i>\$456</i>	<i>\$3,192</i>	<i>\$608</i>	<i>\$266</i>	<i>\$4,522.00</i>

21. Tenant had an unpaid balance as of October 2016 of \$552.69 which shall be deducted from his abatement amount, leaving a balance awarded (rounded off) of \$3,969.00.

**Tenant Ten
Tenants 1/13 to 10/16**

	<i>Abatement V.1 Security Door 9/15 to 10/16</i>	<i>Abatement V.2 Pests 9/15 to 10/16</i>	<i>Abatement V.3 Walls, etc 6/13 to 10/16</i>	<i>Abatement V.4 Heat 10/15 to 4/16</i>	<i>Total Abatement</i>
<i>Monthly Rent</i>	\$749	\$749	\$749	\$749	
<i>Abatement %</i>	5%	35%	5%	5%	
<i># of months</i>	13	13	17	7	
<i>Total</i>	<i>\$487</i>	<i>\$3,407</i>	<i>\$637</i>	<i>\$262</i>	<i>\$4,793.00</i>

22. Tenant had an unpaid balance as of October 2016 of \$99.13 which shall be deducted from his abatement amount, leaving a balance awarded (rounded off) of \$4,694.00.

Tenant Thirteen
12/14 to 10/16

	<i>Abatement V.1 Security Door 9/15 to 10/16</i>	<i>Abatement V.2 Pests 9/15 to 10/16</i>	<i>Abatement V.3 Walls, etc 6/13 to 10/16</i>	<i>Abatement V.4 Heat 10/15 to 4/16</i>	<i>Total Abatement</i>
<i>Monthly Rent</i>	\$740	\$740	\$740	\$740	
<i>Abatement %</i>	5%	35%	5%	5%	
<i># of months</i>	13	13	17	7	
<i>Total</i>	\$481	\$3,367	\$629	\$259	\$4,736.00

23. Tenant had an unpaid balance as of October 2016 of \$22.36 which shall be deducted from his abatement amount, leaving a balance awarded (rounded off) of \$4,714.00.

24. A summary chart of the residential tenants being awarded rent abatement in this action are as follows:

<i>Tenant</i>	<i>Apt</i>	<i>Monthly Rent plus Utilities⁹</i>	<i>Start of Tenancy¹⁰ Or December 2012</i>	<i>End of Tenancy or end of October 2016.¹¹</i>	<i>Rent Paid from August 2015 to present¹²</i>	<i>Total Amount Rent Abatement Requested</i>	<i>Total Amount Rent Abatement Granted</i>
1. One	101	\$760.32	June, 2015	October 2016 17 months	\$11,530.33 -\$40.14 unpaid balance	\$10,919.22	\$4,825
2. Four	106	\$759.81	June, 2015	October 2016 17 months	\$11,395.56 -\$21.70 unpaid balance	\$10,791.60	\$4,843
3. Five	201	\$760.32	February, 2015	February, 2016 13 months	\$11,401.51	\$10,101.74	0
4. Seven	204	\$760.32	April, 2015	October 2016 19 months	\$10,611.55 -\$97.30 unpaid balance	\$10,049.14	\$4,768
5. Eight	205	\$759.81	December, 2012	October 2016 47 months	\$10,044.78 -\$552.69 unpaid balance	\$9,512.41	\$3,969
6. Ten	A	\$748.84	December 2012	October 2016 47 months	\$11,173.53 -\$99.13 unpaid balance.	\$10,581.33	\$4,694
7. Thirteen	D	\$739.81	December, 2014	October 2016 23 months	\$11,195.56	\$10,602.20	\$4,714

⁹ Based on the rent and utilities charged for the last full month in the produced tenant ledgers.

¹⁰ Based on leases produced by Landlord.

¹¹ Note, period of time where rent abatement at issue is from December 2012 to the end of October 2016, a period of 47 months.

¹² Based on tenant ledgers and adding the Monthly Rent plus Utilities for the months of March 2016 through October 2016.

<i>Tenant</i>	<i>Apt</i>	<i>Monthly Rent plus Utilities⁹</i>	<i>Start of Tenancy¹⁰ Or December 2012</i>	<i>End of Tenancy or end or October 2016.¹¹</i>	<i>Rent Paid from August 2015 to present¹²</i>	<i>Total Amount Rent Abatement Requested</i>	<i>Total Amount Rent Abatement Granted</i>
					- \$22.36 unpaid balance		
					\$78,127.82	\$73,125.72	\$27,813.00

ORDER

1. **RENT ABATEMENT:** *The residential Tenants above named had diminished use and enjoyment of the premises. The following Tenants are awarded rent abatement as follows:*


<i>Tenant Name</i>	<i>Amount of Rent Abatement Owed</i>
1. <i>One</i>	<i>\$4,825.00</i>
2. <i>Four</i>	<i>\$4,843.00</i>
3. <i>Five</i>	<i>0</i>
4. <i>Seven</i>	<i>\$4,768.00</i>
5. <i>Eight</i>	<i>\$3,969.00</i>
6. <i>Ten</i>	<i>\$4,694.00</i>
7. <i>Thirteen</i>	<i>\$4,714.00</i>
<i>TOTAL</i>	<i>\$27,813.00</i>

2. **ATTORNEY FEES:** *Under Minn. Stat. § 504B.425 subd g. Tenants are awarded attorney fees of \$500.00 and their costs and disbursements.*

3. *Tenants shall be allowed to recover the above sum from Landlord individually and named Defendants. The named Defendants shall be joint and severally liable for this rent abatement, and Tenants are entitled to judgment against Defendants for the total amount of the rent abatement owed, plus their costs and disbursements, and attorney fees awarded.*

4. **SERVICE OF ORDER:** *The Clerk of Court shall either give to the parties or mail to the parties by first class mail a copy of this Order.*

5. **EXHIBITS:** *Parties are informed that pursuant to Rule 128 of the Rules of Practice for Civil Actions that it is the duty of the party offering exhibits during a trial to remove the exhibits from the custody of the court. Parties may request the return of their exhibits after 15 days from the time allowed for appeal of the final decision has passed. Failure to request removal of the exhibits could result in the exhibits being part of the public record or could result in the exhibits being destroyed by the Court.*



Mark Labine, Referee
Dated: 2017

District Court Judge
Dated:

Index

- Bethesda Lutheran Church v. Twin City Constr. Co.*, 10
- Beumia vs. Eisenbraun*, 4
- Cocchiarella v. Diggs*, 5, 12
- Comparison Chart, 2
- Counterclaim for possession, 8
- Covenants of Habitability, 9, 14
- Deposit of Rent, 8
- Dynamic Air, Inc. v. Bloch*, 5
- Faust v. Parrott*, 11
- filing fee deposit, 4
- finances, 9
- Fritz v. Warthan*, 3
- Ghebrehiwet v. Ghneim*, 10
- Heath v. Minneapolis*, 11
- Johnson v. O'Brien*, 8
- Judgment, 8
- knew or should have known, 2, 7
- Landlord knew or should have known, 8
- Mac-Du Props. v. LaBresh*, 4
- Marshall v. Marvin H. Anderson Const. Co.*, 11
- may in its discretion, 10
- Minn.Stat. § 504B.425, 10
- NO right to Jury trial for rent escrow cases, 6
- notice of code violation, 2
- notice of the violations, 7
- Oakland v. Stenlund*, 8
- Release of rent after hearing, 9
- Rent Abatement, 9
- Rent Abatement Notice, 7
- Rent Escrow Checklist, 5
- rent escrow hearing, 8
- Rent Escrow Notes, 7
- Rent.Deposit, 8
- Rental License, 4
- repair notice, 2
- residential tenant definition, 5
- retroactive rent abatement, 8
- Richtor v. Czock*, 7
- Scroggins v. Solchaga*, 10
- Wick v. Widdell*, 10