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TO: Minnesota House Judiciary Finance and Civil Law Committee

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Written Testimony on HF 12 for Committee Hearing on 3/18/2021

Introduction

Thank for this opportunity to testify in writing about HF 12. My electronic set up at home makes it difficult for me to testify “in person” by Zoom. This testimony is submitted without knowledge of any amendments, which might deal with my concerns.

By way of background I am a retired attorney as of the end of 2018. For about 25 years I practiced housing law, representing both landlords and tenants but mostly tenants. I was one of the five reporters who drafted the housing-law recodification legislation, what is now Minn. Stat. Chap. 504B (1999 Minn. Laws ch. 199), and I led the drafting of the Minnesota State Bar Association form residential lease.

I support the thrust of HF 12 but have concerns about some of the bill. Most of my concerns involve what I think are drafting problems. I lay those out in Part II below. I have one policy concern (which also might just be a drafting problem), which I discuss in Part I.

Part I

I think the bill bans “no cause” evictions – evictions based on lease terminations without cause by a notice to quit or nonrenewal. This is important. Otherwise, the bill would create a big loophole for landlords who want to evict tenants who are behind on rent due to the pandemic or otherwise remove acceptable tenants and force them into unsafe housing. There is evidence from other states where non-payment evictions are banned but no-cause evictions are allowed illustrating the concern -- an upsurge of no-cause evictions, some filed right after a landlord tries but fails to evict for non-payment.

Lines 1.20-1.22 (“A material violation does not include ... holding over past the expiration of the lease”) indicate that the bill is meant to protect tenants from no-cause evictions. The specific exception for family members in line 2.5 suggests the same thing.

However, the bill is unclear because lines 1.16-1.17 are self-referring. They could be read to allow eviction based on a properly timed no-cause notice to quit or nonrenewal. As discussed above, this would create a bad loophole. I would make the following two changes:

- Change “paragraph (b)” to “paragraph (c) on line 1.17.
- Change “paragraph (b)” to “paragraph (b), clauses (1), (2) or (4),” on line 2.7.

Part II

My drafting concerns are discussed below. My comments are ordered from the top to the bottom of the bill.

Line 1.13-1.14: Minn. Stat. § 504B.165 does not actually define “unlawful destruction”. I would change these two lines to “(1) causes unlawful destruction of the residential property in a manner that would allow an action under Minnesota Statutes, section 504B.165;”.

Line 3.4 uses the phrase "in-law". It is unclear which in-laws qualify. Section 273.124, subdivision 1, paragraph (c) already says, “‘relative’ means a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, uncle, aunt, nephew, or niece. This relationship may be by blood or marriage”. Therefore the appropriate in-laws are already covered and are covered with specificity. I would delete "in-law" from the bill.

Line 5.21 does not allow for the possibility of a new Executive Order limiting evictions. I would change “or 20-79” to “20-79 or similar order”.

Line 5.25-5.26: The second sentence in clause (b) requires the court clerk to do legal analysis of section 2 and to make legal rulings. That seems wrong to me, and I’d guess to the clerks as well. Also, what happens if the clerk misses something? I would change the second sentence in this clause to “If the notice is not attached, the court must dismiss the case without prejudice and expunge the case.”

Thank you for your consideration.